

## Land Tenure and Other Institutional Barriers Limit Native American Agriculture

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According to the US Bureau of Labor Statistics, a higher percentage of Native Americans participated in agricultural (farming, fishing, and forestry), extractive (mining and energy), and construction jobs (a total of 9.1%) than the general population (6.0%) as of 2019 through 2021. These figures make it clear that profitable management of agricultural land is crucial to the economic well-being of the Native American population, yet the federal government has created significant obstacles over time that limit the ability of these farmers and ranchers to make the best use of their natural resources. This article will examine the historical context for those obstacles, how the federal government's relationship with Native Americans with respect to agriculture has evolved over time, and why Native American participation in voluntary conservation programs has lagged that of the general population in recent years.

### Native American Participation in the US Agricultural Sector

Native American farmers and ranchers operated on more than 63 million acres of farmland as of 2022, according to the Census of Agriculture (USDA-NASS, 2024). The 2022 census tallied 78,316 producers of Native American or Alaska Native descent. The census does not collect information about how many farmers are enrolled members of federally recognized American Indian tribes but rather how individual producers self-report their race or ethnicity. About 40% of those producers raised beef cattle, and about 30% were raising other types of livestock, including aquaculture.

The share of farming operations with 200 or more acres of land was slightly lower for Native American producers (26%) than it was for all US farming operations (30%), even taking in account all the Native American cattle operations in Western states that graze their cattle on rangeland during the spring and summer. In the seven

states with 1,000 or more Native American producers as reported in the 2022 Census (AZ, CA, MT, NM, OK, TX, and UT), average farm size was 72% greater for Native Americans than for all producers in those states, "beefed up" by the significant share of Native Americans engaged in cattle ranching in all of the states: between 23% (Utah) and 63% (Oklahoma). Despite having larger operations in terms of land area, Native American farmers report receiving less than half of the average market returns and government payments than the typical farmer in those seven states. Although participation in the USDA's Conservation Reserve Program (CRP) or other easement programs was not high across these states, averaging only 4.1% among all producers, it was even lower among Native American producers, averaging only 1.5%.

### Shrinking of Native American Land Holdings

A 2021 article in Science found that Native American tribes have lost nearly 99% of the land they controlled in North America as of the end of the sixteenth century, just prior to the arrival of European settlers (Farrell et al., 2021). Since the early nineteenth century, Congress has enacted several pieces of federal legislation that effectively mandated removing land from Native American control:

- 1) The Indian Removal Act of 1830, which evicted most Native Americans living east of the Mississippi River from their lands and moved them west, many ending up in eastern Oklahoma
- 2) The Indian Appropriations Act of 1871, which withdrew federal recognition of the sovereignty of Native American tribes
- 3) The Dawes Act of 1887, which divided up Native American reservations into allotments parceled out to individual members of those tribes. Due to the approach taken to assigning those allotments under the Dawes Act, much of the land that

ended up in Native American hands was low-quality, often lacking good access to water. In many regions, the good-quality land was deemed by federal officials to be “in excess of Indian needs” and separated from reservations and sold or leased to non-Native Americans.

Data collected by the USDA and available from the 2021 Soil Survey Geographic Database (SSURGO) suggests that only about one-quarter of land within Native American reservations is either considered prime farmland or of unique or statewide importance (Native Land Information System). Recent research indicates that the share of prime agricultural land that was included within the boundaries of reservations was highly correlated with how rapidly that land was allotted under the Dawes Act, with much of the land subsequently transferred into non-Native American ownership over time (Leonard, Parker, and Anderson, 2020). Farrell et al. (2021) found that while the remaining land available to Native American farmers and ranchers is on average less rugged than their earlier, much larger holdings, it is also more vulnerable to environmental shocks (e.g., more frequent wildfires, reduced precipitation, and higher average temperatures) due to the effects of climate change in recent decades.

Multiple armed conflicts between Native American tribes and the US Army, primarily in the Western United States between the 1830s and the 1890s, also resulted in the loss of lands. In the aftermath of their conflicts with the federal government, the tribes were confined to reservations that were only a small fraction of the territory they had held previously or in some cases forced to move away entirely from their homeland region.

## The Role of the Bureau of Indian Affairs (BIA) in Native American Land Management

Rather than allowing Native Americans to exercise the normal array of property rights over their agricultural land, the federal government imposed an artificial system of external management of those lands by the Bureau of Indian Affairs (BIA), an agency established in 1824 with the initial objective of creating “federal policies designed to terminate, relocate, and assimilate American Indians and tribal Nations.” At that time, the BIA was part of the Department of War, although it was moved to the newly created Department of the Interior (DOI) in 1849. Although the BIA’s statutory objective has been shifted toward supporting Native American governance and self-determination over the past several decades, BIA-imposed restrictions on how Native American farmers and ranchers can manage their land still impede their ability to improve the profitability and sustainability of their operations. For all the Native American land under BIA control, the BIA staff have responsibility for formulating agricultural leasing regulations, undertaking

land appraisals, preparing Title Status Reports, settling estates of Native American landowners, and performing environmental reviews. In February 2026, the US Government Accountability Office (GAO) reported that the BIA, which had already been short-staffed as of November 2024, had lost another 11% of their staff in 2025 due to staff buyouts and retirements. That means that in addition to all the tasks that any farmer must complete to participate in an NRCS program, Native American producers are often forced to wait even longer for these documents and processes to be completed by BIA as well.

## The Beginning of USDA Engagement with Native American Farmers and Ranchers

Until the last few decades, BIA dominated the federal government’s relationships with Native American farmers and ranchers. In 1988, Congress passed the Indian Self-Determination and Education Assistance Act (ISDEAA) Amendments of 1988 (P.L. 100-365), which had the stated goal of increasing Native American participation in federal programs. This law was followed shortly by the establishment of a Memorandum of Understanding (MOU) between the US Department of Agriculture (USDA) and the DOI, which spelled out the responsibilities of each department to Native American tribes and their members. In the following farm bill in 1990, Congress established the Federally Recognized Tribes Extension Program (FRTEP) to help provide targeted resources for Native American producers for extension help for the first time. This program has always been funded at modest levels, receiving \$10 million in fiscal year 2024 (FY24), compared to more than \$560 million provided for other agricultural extension activities managed by the National Institute of Food and Agriculture (NIFA) in FY24.

In 1994, Congress gave land-grant status to tribal colleges and universities (TCUs) under the Equity in Educational Land Grant Status Act (P.L. 103-382), although not all TCUs have a significant agricultural curriculum to offer to students. There are currently 35 TCUs in 15 states, with most of these educational institutions located in states west of the Mississippi River.

Following in the footsteps of the class action case charging discrimination in granting of loans and other assistance filed against USDA by African American farmers (originally *Pigford v. Glickman*) in 1997, a similar case was filed by Native American farmers (originally *Keepseagle v. Glickman*) in 1999 with respect to discriminatory treatment in farm loan programs. The case dragged on for about 12 years and resulted in monetary damages in the amount of \$720 million and the USDA’s agreement to improve access to farm loan programs for Native American producers and tribes.

## Land Tenure Arrangements for Native American Farmers and Ranchers

Most agricultural lands that lie within Indian country that belong to one of the 574 federally recognized American Indian tribes or to individual tribal members fall into one of three legal categories: (1) trust lands, (2) restricted fee lands, and (3) fee or fee simple lands. Trust lands are legally held by the BIA, but beneficial interest from the land accrues to Native American tribes or individuals, even though they face limits on their ability to sell, develop, or use their land as collateral without BIA approval. Restricted fee lands are directly owned by tribes or individuals but are still subject to restrictions on sales or transfers. Fee land is owned outright by tribes or individuals without any restrictions. According to an estimate published by the Native Land Information System in 2019, 94% of all Native American land was managed as trust land by BIA.

## Fractionation of Native American Lands Complicate Management Decisions

Within the first two legal categories listed above, land originally allocated to individual Native Americans in the nineteenth century is frequently now owned by all the legal descendants of those individuals (also known as allotment land), leading to “fractionation” of the rights to a given parcel of land to potentially hundreds of people. In fact, federal law barred such lands from being transferred to a single heir through a legal will. Fractionation makes it difficult to use land for beneficial purposes, such as farming, starting a business, building homes, or other uses that would improve the quality of life for Native Americans. Under BIA regulations, a decision to modify or improve the use of a given parcel of fractionated land requires majority consent of the land’s co-owners. That consent can be difficult to obtain, so reservation and allotment land can frequently lie idle. Even when required consent is obtained, economic benefit is often limited because income earned on fractionated land is divided among so many co-owners, with some owners’ shares of income amounting to just pennies per year. There are more than 245,000 owners of three million fractionated land interests, spanning approximately 150 Indian reservations.

In 2010, Congress enacted the Claims Resolution Act, providing \$1.9 billion in funding to the DOI to purchase fractionated interests from willing sellers at fair market value, consolidate those interests, and restore the land to tribal ownership under the Land Buy Back Program (LBBP). During the 10 years that LBBP was in operation, the DOI reports that \$1.69 billion in fair market value was paid to more than 123,000 individuals to consolidate approximately 3 million equivalent acres held in trust or restricted fee in 15 states (DOI, 2023).

In the 2014 farm bill, Congress established a new authority for the Farm Service Agency (FSA) to provide

loans specifically aimed at helping Native American farmers consolidate ownership of fractionated lands through an approved intermediary re-lending entity. It is called the Highly Fractionated Indian Land Loan Program (HFIL). Through the end of FY2024, FSA had completed zero loans under this program in its first decade. The lack of activity under this program is largely because the approved loan-making procedure fails to account for the additional complications of dealing with such small areas of land; thus, administrative costs per acre are unprofitable for the lender to assume. A 2020 “back of the envelope” analysis comparing property values of Indian trust land versus nearby land without BIA restrictions in three states (Montana, Utah, and Washington) found that having full property rights would add between \$4,000 and \$15,000 in value to an acre of land, depending on land prices surrounding a reservation (Dippel, Frye, and Leonard, 2020).

## Native American Participation in Conservation Programs and Practices

The relatively low level of participation by Native American producers in conservation practices is an example of how the regulatory and financial barriers described above can constrain decisions they might otherwise make that would improve the value of their land holdings.

Within its quinquennial Census of Agriculture publications, USDA includes a survey of select Native American reservations that looks at the operating characteristics of farms on 72 reservations, including differentiating between farms owned and operated by Native Americans (or Alaska Natives) within those reservations from the characteristics and practices of all operators within the same boundaries. For five reservations that had a mixture of Native American and non-Native American operation of farms across five states (Idaho, Minnesota, Montana, North Dakota, and South Dakota) in the 2022 Census, the share of Native American farmers adopting key conservation practices such as no-till and cover cropping was far lower than the share for all producers within those reservations. For example, on the Cheyenne River (Sioux) reservation in South Dakota, the share of all reservation acres for which no-till was used was 13.2% across all producers, but only 1.5% on farms operated by Native Americans. Total acres under those practices used by Native Americans were not available for several of the reservations, as the low number of farms participating barred USDA from publicly reporting them for legal reasons.

While not all US farmers who adopt conservation practices have done so with cost-share assistance from USDA programs, data from 2000 comparing median wealth of Native American households compared to the national median wealth of all US households (less than \$6,000 compared to more than \$65,000) suggest that

Native American farmers would be more likely to need external financial assistance than their non-Native American counterparts to make such changes in their operations (National Community Reinvestment Coalition, 2022). This estimated 1:10 disparity is consistent with other analyses, such as reported in a recent article by the Federal Reserve Bank of Minneapolis (Feir, Moreno, and Vogel, 2022).

As a group defined by federal statute for inclusion in the socially disadvantaged farmer category, Native American producers are eligible for an enhanced cost share from USDA to participate in voluntary conservation programs operated by the Natural Resources Conservation Service (NRCS). Such producers can receive up to a 90% cost share, as opposed to 75% for farmers in other categories. However, in July 2025, USDA announced that it would no longer enforce laws establishing preferences for socially disadvantaged producers based on 'race- or gender-based criteria' in any of its programs and policies. In its Federal Register notice on this decision, USDA asserted that past discrimination has been 'sufficiently addressed.'

A report published by NRCS after the completion of the 2018 Farm Bill, entitled *Civil Rights Impact Analysis Interim Rule: Environmental Quality Incentives Program*, provided data on the engagement of key minority groups in the agency's largest working lands program for FY2015–FY2017 (NRCS, 2019). On average, through those 3 years, only 21% of EQIP proposals made by Native American and Alaska Native producers were approved for funding, compared with 30% for white farmers over the same period. However, Native American producers did receive a higher share of EQIP funding in those years (3.3%) than their share of all producers in the US agricultural sector as reported in the 2022 Census of Agriculture (about 1.7%). White farmers accounted for 36 times more EQIP applications on average over those 3 years than Native American farmers, at nearly 120,000 applications submitted annually by white farmers compared to about 3,300 for Native American farmers.

## Why Does Native American Participation in USDA Conservation Programs and Practices Lag?

Clearly, the land tenure restrictions and fractionation issues described above play a role in the lower approval rates among Native American farmers in gaining funding through EQIP. For example, USDA rules require that fractionated land can only qualify for conservation program participation when control and ownership can be properly documented and a majority of the landowners formally agree to the contract. Failure to document the required approval from the majority of owners of fractionated land can be used as grounds for rejecting a proposed EQIP (or CSP) contract. The continued lack of coordination between NRCS and BIA

also contributes to the lag, as Native American farmers and ranchers must undergo separate environmental reviews under each agency to get an approved conservation contract under NRCS programs. The shortage of BIA staff in many regions, even before recent staffing drawdowns at the agency, also plays a role.

The impact of other factors described above (such as land use restrictions on trust land, high share of fractionated farmland within reservations, and overall quality of land farmed or grazed by Native American producers) varies considerably between reservations. BIA data on fractionated land within reservations indicates that this is primarily a problem for reservations within its Great Plains and Rocky Mountain regions. All five of the reservations examined above for the gap in conservation adoption rates between Native American farmers and all other farmers as of the 2022 Census of Agriculture are found within those two BIA regions, which clearly suggests that difficulty in obtaining consent for land use changes among fractionated land owners—as many as 100 in some instances—plays a role in lower adoption rates, although it is not necessarily the sole driving factor.

Similarly, research examining adoption of irrigation practices on a Native American reservation in Utah between cropland owned or leased under unrestricted fee simple rules and cropland operated under Indian trust land arrangements had quite different outcomes. While both types of land were generally irrigated due to the very arid climate of the region, operators of the fee simple cropland were 32 percentage points more likely to be using sprinkler irrigation technology (which is more water efficient but also more capital intensive) than operators on Indian trust lands, who most commonly relied on flood irrigation practices (Ge, Edwards, and Akhundjanov, 2020).

Once an NRCS-funded conservation project has been approved, Native American farmers and ranchers also face reviews by the state and tribal historic preservation offices (SHPO and THPO) with jurisdiction over where their operations are located to ensure that the new practice doesn't disrupt the cultural heritage of the land they are farming. This process can add considerable delay in getting the new practice underway, especially in tribes where the THPO's are underfunded. In addition, many farmers are forced to wait to implement their projects due to a frequent shortage of qualified contractors in relatively sparsely populated areas to take on work under projects that require excavating land or constructing infrastructure. If implementation of the practices agreed to under a given farmer's contract is not completed within 12 months, NRCS has the right to cancel the contract, although the agency can waive that requirement if it determines that the delay is occurring due to factors beyond the farmer's control. Although no hard data on NRCS contract cancellations could be

found, some anecdotal evidence based on conversations with NRCS officials suggests that this happens to Native American farmers as a group more frequently than with other farmer categories for the reasons described above.

## Another Example of Land Tenure Rules Constraining Optimization of Native American Land Use

The inability to fully utilize land tenured under BIA trust arrangements extends to economic sectors outside of agriculture. For example, productivity of oil wells drilled in the Bakken shale formation under the Fort Berthold reservation in North Dakota was found to be higher by 141 barrels of oil on parcels of fee simple land large enough to accommodate a full oil extraction project than for comparable projects established on land with fractionated ownership (Leonard and Parker, 2021). Similarly, recent research shows that solar and wind energy projects are far less likely to have been installed on Native American reservations than on comparable land adjacent to the reservations. Within zones deemed to have high solar or wind generation potential, the study found that reservation lands are less likely by nearly 50% or more for wind farms and solar installations to host such projects, due at least in part to the land tenure issues and financial constraints (such as poor access to credit) discussed in this paper (Parker et al., 2024).

## Concluding Remarks

Most Native American farmers and ranchers are steeped in their tribes' reverence for the land, and some of their traditional practices, such as controlled burning, have been incorporated into modern frameworks of regenerative agriculture (Sundseth, 2025). However, these farmers' ability to undertake such investments is constrained by the land tenure and other barriers discussed in this paper. All of the federal agencies with direct relationships with Native American farmers, especially BIA and USDA, need to bolster their capacity to deal with these matters unique to Native American farmers and ranchers, both in terms of staff numbers and in those staffers' underlying knowledge about these matters, to help ameliorate these barriers to entry. More resources, both financial and technical, need to be made available to entities within the agricultural lending sector that focus their activities on Native American producers, including Native American Community Development Financial Institutions (CDFIs), which were first established in the 1990s and Native Agricultural Financial Services (NAFS), which was launched in 2024. In addition, Congress should consider relaxing the restrictions on trust lands described above while safeguarding Native American control over those assets.

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## For More Information

- Dippel, C., D. Frye, and B. Leonard. 2020. "Property Rights Without Transfer Rights: A Study of Indian Land Allotment." NBER Working Paper 27479. <https://doi.org/10.3386/w27479%20>
- Farrell, J., P.B. Burow, K. McConnell, J. Bayham, K. Whyte, and G. Koss. 2021. "Effects of Land Disposition and Forced Migration on Indigenous Peoples in North America." *Science* 374(6567). <https://doi.org/10.1126/science.abe4943>
- Feir, D., E. Moreno, and L. Vogel. 2022, August 3. "Data from a Native CDFI Yield: New Insights on Wealth Gap in Indian Country." Federal Reserve Bank of Minneapolis. <https://www.minneapolisfed.org/article/2022/data-from-a-native-cdfi-yield-new-insights-on-wealth-gap-in-indian-country>
- Ge, M., E.C. Edwards, and S.B. Akhundjanov. 2020. "Irrigation Investment on an American Indian Reservation." *American Journal of Agricultural Economics* 102(4):1083–1104. <https://doi.org/10.1002/ajae.12077>
- Leonard, B., and D. Parker. 2021. "Fragmented Ownership and Natural Resource Use: Evidence from the Bakken." *The Economic Journal*, Volume 131, number 635, pp. 1215-549.
- Leonard, B., D. Parker, and T. Anderson. 2020. "Land Quality, Land Rights, and Indigenous Poverty." *Journal of Development Economics* 143:102435. <https://doi.org/10.1016/j.jdeveco.2019.102435>
- National Community Reinvestment Coalition. 2022. *Native Americans and the Racial Wealth Divide*. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2022/02/Racial-Wealth-Snapshot\\_Native-American-v3.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2022/02/Racial-Wealth-Snapshot_Native-American-v3.pdf)
- Native Land Information System. *Soil Capability on U.S. Native Lands*. <https://nativeland.info/dashboard/soil-capability-on-conus-native-lands/>
- Parker, D., S. Johnston, B. Leonard, D. Stewart and J.B. Winikoff. 2024. "Economic Potential of Wind and Solar in American Indian Communities." *Nature Energy* 9:1360–1368. <https://doi.org/10.1038/s41560-024-01617-4>
- Sundseth, K. 2025, May 19. "Prescribed Burning at Tamarac National Wildlife Refuge Benefits Habitat, Wildlife, and People." US Fish and Wildlife Service. <https://www.fws.gov/story/2025-05/using-fire-benefit-habitat-wildlife-and-people>
- US Department of Agriculture, National Agricultural Statistics Service (USDA-NASS). 2024. *2022 Census of Agriculture*. [https://www.nass.usda.gov/Publications/AgCensus/2022/Full\\_Report/Volume\\_1,\\_Chapter\\_2\\_US\\_State\\_Level/](https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_2_US_State_Level/)
- US Department of Agriculture, Natural Resources Conservation Service. 2019. *Civil Rights Impact Analysis Interim Rule: Environmental Quality Incentives Program*. [https://www.nrcs.usda.gov/sites/default/files/2023-03/EQIP\\_CRIA\\_10.23.19\\_updated\\_-12.05.2019\\_corrected.pdf](https://www.nrcs.usda.gov/sites/default/files/2023-03/EQIP_CRIA_10.23.19_updated_-12.05.2019_corrected.pdf)
- US Department of the Interior. 2023, December 4. "Three Million Acres of Land Returned to Tribes Through Interior Department's Land Buy-Back Program for Tribal Nations." <https://www.doi.gov/pressreleases/three-million-acres-land-returned-tribes-through-interior-departments-land-buy-back>
- US Government Accountability Office. 2026. *Indian Affairs: Opportunities Exist to Address Bureau's Strained Regional Workforce Capacity*. GAO-26-107940.

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