



Risk Management Education for Native American Farmers and Ranchers – A Proposal Resource

ISSUES UNIQUE TO CONDUCTING RISK MANAGEMENT EDUCATION ON AMERICAN INDIAN RESERVATIONS

**A Collaboration between the Federally Recognized Tribal Extension Program
and the Western Center**

Purpose

The purpose of this document is to provide an overview on key issues existing on many American Indian reservations which will affect the approach and success of risk management education activities; in particular, the ability of Native American farm and ranch participants to achieve risk management goals within the context of their cultural traditions. Links and references at the end of the document provide more in depth information.

Farm / Ranch Operations

There is a great degree of *variability* among reservations as to how agricultural operations are established and maintained based on the legal environment as well as long held cultural beliefs and practices. There is no single, generalizable approach to American Indian agricultural education. The factors most frequently identified by Federally Recognized Tribal Extension Agents include: (1) Land tenure/ownership status, (2) Farm/Grazing Lease Administration, (3) Financial Risk Management, i.e. implications of losing a crop or herd of animals, (4) Personal Risk, and/or, (5) Ceremonies/cultural issues associated with raising, harvesting and using certain crops/animals. The unique interaction and relative importance of these factors will determine how 'Risk Management' is defined by a Tribe. As importantly, applicant organizations serving this audience must possess the ability to understand these issues and provide appropriate

risk management education that can be adequately interpreted and/or translated for this target audience.

Placement of Core Cultural Issues within Extension RME's Five General Risk Categories

The next section addresses areas of risk that are unique to Native American agriculture. While these areas fall within the five general risk categories defined by the Center's Extension RME (ERME) program, it will be important for applicants to interpret these core cultural issues within the context of the enabling legislation for this program.

Land Tenure/Ownership – (Human/Financial Risk)

- Understanding the status of land ownership will be important for evaluating grant applications that address the following:
 - o *Tribal Trust Lands*: Tribal lands held in trust by the U.S. Government for a tribe.
 - o *Allotted Lands* – Lands allotted to an individual (1887 Allotment Act), but held in trust by the U.S. Government for an individual Indian. Indians can use and profit from an allotment, but can't sell it.
 - o *Fee Simple Land* – Deeded lands. Often found within the exterior boundaries of reservations.
- Other Tribal land ownership issues, including fractionation (divided interests in land tracts) and *checkerboarding* (parcels with different land status within a reservation) result in complex land and financial management issues.

Grazing/Farming Lease Structure – (Human/Legal Risk)

Grazing/Farming leases between an individual (whether an enrolled tribal member or not) and a tribal government may differ greatly from those on deeded lands or between a non-Indian rancher/farmer and the U.S. government and these differences should be recognized within the application's approach.

- Tribal members may have preference for *grazing/farming leases* over non-Indian lessees.
- A tribal member may hold a grazing lease that he/she does not utilize - nor make a profit from - for a period of years. With many tribes, there are no/minimal negative consequences to "non-use".
- The Bureau of Indian Affairs (BIA) may or may not have control over grazing/farming leases depending upon the ownership/tenure status of the land in question and/or the formal relationship held between them and the tribe with respect to the Indian Self Determination Act of 1974 (which determines whether the tribe or the BIA controls leases).

Financial/Legal Risk

Financial risk as defined by the Extension RME program will generally be very different for Native American producers farming on reservations or deeded land. For

example, on several reservations obtaining a profit may not be the main goal of the family or operation, so the applicant will need to deliver culturally appropriate education or training with a good working knowledge of these issues.

- There are unique issues relating to tribal land ownership. For example: an enrolled member can lose an entire crop or herd (even in successive years) without risk of losing land or the lease. Within the context of financial risk, a culturally appropriate approach might involve the introduction of basic financial skills such as record keeping that could improve quality of life while increasing the chances for crop or herd profitability.
- An ERME applicant must understand the tribal government of the target audience, farm and ranch land ownership, lease or use law and propose appropriate education to address these issues. A “tribal” farm or ranch may be a corporate or private enterprise, which may be comprised of a mixture of allotted/individual trust, fee, federal, tribal trust and/or state lands. These various terms have precise legal definitions and should be used carefully and correctly (see Definitions on page 7).
- The tribal farm and ranch land ownership and lease considerations will also impact an individual’s ability to obtain operating loans for cash flow as well as requiring adjustments in the balance sheet and other financial statements.

Personal Risk (Human and Legal Risk)

Indian Country is legally recognized as ‘*Sovereign Land*.’ While non-Indian, “dominant society” American cultures often base many of their risk management actions on the possibility of lawsuits or other legal actions, tribal government liability and their resulting policies may differ considerably. In most cases, for instance, state laws have no standing in Indian Country/on reservations (federal law, however, does). There are some exceptions in accordance with Public Law 280, which allows for some states to have certain kinds of jurisdictions on certain reservations.

- Tribal policy affects how someone might fare upon incurring a loss or having an accident on tribal property. If the person suffering a loss tries to sue the tribe, they may be unable to do so in a manner common in non-native cultures. If he/she wanted to sue, they may only have standing under the tribal court system and/or the tribal appeals process. Understanding such differences is important when looking at *risk losses*.
- Indian Country *Workers Compensation* is different from non-native communities. Tribal Workers Compensation products are generally written outside of the state system--but with A-rated carriers, so while the protection is there, the policy may recognize the jurisdiction of the tribe, rather than the jurisdiction of a particular state.
- Other differences exist, too, such as *loss control*. Loss control becomes quite an involved service. Although state and federal OSHA regulations exist, for instance, tribes are not generally bound by state laws (above). Tribal regulations do; however, often mirror state or federal regulations (see Resource Links on Page 6).

Cultural Considerations (Financial and Human)

Long-held and long-practiced tribal cultural beliefs may be intricately intertwined with on-the-ground ranching and farming practices. Tribal members often identify cultural aspects of their life as much more important than their financial or economic health. For example, on the Navajo Nation, a failed colored corn crop might be a grave loss in terms of not having enough corn for seasonal ceremonies instead of being viewed as a financial loss.

- Projects should address the importance of the local culture in the proposal and document how these considerations will be addressed to help participants improve profitability and overall quality of life.

OTHER TRIBAL EDUCATIONAL PROGRAM CONSIDERATIONS

Program Attendance Numbers

The success of a particular educational program is often partially based on short-term attendance numbers at workshops, field days or other learning venues. The experience of the 30+ Federally Recognized Tribal Extension Agents (FRTEP) offering extension education on Indian Reservations across the country has shown that the initial numbers attending workshops on Indian Reservations will often be less than at non-native workshops. Applicants from university extension programs and other public/private sector organizations need to: (1) build effective and lasting relationships with tribal audiences (2) work to alleviate distrust for “another government program,” and (3) help participants view a “change-in-behavior” as necessary or desirable by acknowledging and having respect for existing traditional knowledge.

Suggested Best Practices for Achievement of Educational Program Goals

Projects proposing an increase in knowledge or understanding for a smaller number of tribal members, and that includes “listening sessions” or inclusion of traditional beliefs as part of the training, may have a greater chance of success. These types of projects might also have a better chance of achieving long term risk management goals versus projects estimating large numbers of participants will adopt new practices following the simple introduction of a new concept.

Other Best Practices for Indian Country

- Because adoption of new techniques generally takes a longer period of time to accomplish in Indian Country applicants should be able to demonstrate:
 1. Respect and knowledge of existing traditions and beliefs.
 2. Introduction of new ideas and increase of knowledge as beginning risk management goals.
 3. A plan of work with realistic short, mid and long term goals.
 4. An approach that introduces new ideas, reinforces these ideas with pilot projects or demonstrations, which can result in long term changes in practice and/or behavior.

5. A strong local presence and/or ties to the targeted tribal community.
6. A strong understanding of issues being addressed, including the legal context where applicable.
7. Evaluation methods with measurable outcome verification that can provide evidence of a positive impact on the individual producer and his/her peer network with extended cultural, economic, and social benefits for the tribal community (see Resource Links on page 8).

Allowing Enough Time

Garnering Tribal government, departments or local tribal leader support for a new education or training program (including obtaining a letter of support to accompany a grant proposal) can take more time in Indian Country due to lack of familiarity or trust with education programs outside the purview of the tribe. In particular, tribal government and local leaders may need more knowledge of the project team and collaborators and the roles each member will play in the project. Applicant organizations should be prepared to provide key tribal government officials and local leaders with enough knowledge about their project team and collaborators such that they (tribal governments and local leaders) can determine if the proposed project can benefit their members.

The time required to implement educational activities, to collect data for the verification of risk management results, and to evaluate the overall success of a Tribal program may also take much more time. The applicant may need to adhere to Human Subjects Protection, and receive Institutional Review Board (IBR) approval which may be required for proposals, evaluations and reports.

Depending on the nature of the proposed project, it may be required to have a working agreement with the tribe. This agreement can take the form of a Memorandum of Understanding (MOU), a Tribal Resolution or Tribal Council Approval. Although the IBR may serve as the agreement, there may be project and/or programs that do not require an IBR but will require one of the three working agreements identified above.

In developing a working agreement with a tribe you will need to specifically state what is expected of each party and identify the specific date the agreement will be entered into. The working agreement can be nullified by either party within a specific time frame stated in the agreement. Depending on the leadership of the tribe, they may want to obtain a tribal resolution to approve a program. This can happen if it is a program specific MOU that is not necessarily designed for the tribe; or if it's a specific program within the tribe, the tribal government will require a tribal resolution for the MOU to be approved.

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RESOURCE LINKS

GENERAL TRIBAL LINKS

Federally Recognized Indian Tribes and Resources for Native Americans.

<https://www.usa.gov/tribes>

Indian Self-determination Act <http://www.gao.gov/products/RCED-99-150>

National Congress of American Indians: <http://www.ncai.org/>

LAND OWNERSHIP LINKS

Allotted Lands & History of Indian Land ownership:

<http://library.findlaw.com/1999/Jan/1/241490.html>

Trust Land definition: <https://iltf.org/resources/other-resources/>

Private Home ownership: <http://www.gao.gov/products/RCED-98-49>

Passing Reservation Lands to Future Generations: <http://tinyurl.com/Generational-planning>

Indian Land Tenure Foundation: (ILTF) <http://www.iltf.org/>

ILTF Glossary: <http://www.iltf.org/glossary> definition of terms

Fractionated Land Ownership: http://www.tribal-institute.org/lists/fractionated_ownership.htm

TRIBAL GRAZING/FARMING LEASES

Natural Resources: Bureau of Indian Affairs:

<http://www.bia.gov/WhoWeAre/BIA/OTS/NaturalResources/AgrRngeDev/index.htm>

National Agriculture Law Center

<http://www.nationalaglawcenter.org/readingrooms/nativeamerican/>

Encyclopedia of the Great Plains

<http://plainshumanities.unl.edu/encyclopedia/doc/egp.ag.052>

TRIBAL FINANCIAL RISK

Tribal Sovereignty: <http://www.ncai.org/policy-issues/tribal-governance>

Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule:

https://scholar.harvard.edu/files/jsinger/files/myths_realities.pdf

TRIBAL 'CULTURAL AGRICULTURE' VALUES

American Indian Education: http://www2.nau.edu/jar/AIE/Ind_Ed.html

TRIBAL TAX ISSUES

Rural Tax: <http://ruraltax.org/>

Tribal Tax Codes: <http://www.ncai.org/initiatives/partnerships-initiatives/ncai-tax-initiative/examples-of-tribal-tax-codes-tax-agreements-other-resources>

IRS Tax Rules & Native American Producers: <http://www.choicesmagazine.org/choices-magazine/submitted-articles/irs-tax-rules-and-native-american-producers-one-size-does-not-fit-all>

MOU's & TRIBAL RESOLUTION LINKS

Developing Work Agreements with Tribal Populations: <http://westrme.wsu.edu/wp-content/uploads/sites/46/2017/01/Tribal-MOU-Development.pdf>

CURRICULUM and GUIDE LINKS

People of the Land: <http://www.unce.unr.edu/publications/files/ag/2009/cm0901.pdf>

Increasing Collaborative Success Between American Indians and Agricultural Professionals: <http://www.unce.unr.edu/publications/files/ag/2011/fs1141.pdf>

Personal & Business: Financial Tools & Training Curricula: www.diverseag.org

“The objective of the money management curriculum is to help students understand their financial standing and create a plan that will help them succeed in improving their financial future. There are eight modules in the money management curriculum and each module addresses a topic that will help students take control of their finances.”

EVALUATION and PERFORMANCE MEASURE LINKS

Documenting Success through Performance Measures:
<http://westrme.wsu.edu/news/fall-2017-newsletter/documenting-success-through-performance-measures/>

Program Evaluation: <http://westrme.wsu.edu/news/fall-2017-newsletter/documenting-success-through-performance-measures/>

Ripple Effects Mapping: <http://ppe.cw.wsu.edu/ripple-effects-mapping/>

OTHER LINKS

Environmental Risk Projects: Native Americans and The Environment
<http://www.ehso.com/ehshome/Native%20Americans%20and%20the%20Environment.htm>

DEFINITIONS

Alienated Land

Land that has had its ownership transferred to another party.

Allotted Land

Reservation land the federal government distributed (between 1887 and 1934) to individual Indians, generally in 40-, 80-, and 160-acre parcels. These allotments were held in trust for individuals by the United States. That is, the legal title was held by the United States and the allottee was given beneficial title - the right to live on, use and profit from the allotment. These individual trust lands passed from one generation to another as undivided interests (or shares).

Allottee

An individual who owns an [interest](#) in a parcel of allotted land.

Beneficial Use

The right to benefit from (live on, use, profit from) a parcel of land, the legal title to which is held by the trustee. In the case of Indian land, the trustee is the federal government.

Chain of Title

A report of the ownership history from the government allotment or [trust patent](#) to the current owners.

Checkerboarding

Lands within reservation boundaries may be in a variety of types of ownership—tribal trust, individual (Indian) trust, non-Indian (fee simple). Non-Indian, non-tribal land held by the US Government is also somewhat common within the exterior boundaries of many reservations. The pattern of mixed ownership resembles a checkerboard.

Fee Simple (Fee Land)

Land ownership status in which the owner holds title to and control of the property. The owner may make decisions about land use or sell the land without government oversight. This land is subject to non-Indian property taxes. There are no property taxes paid on US-titled lands (allotted, tribal trust).

Fee-to-Trust Conversion

When original allotted [trust lands](#) that were transferred to [fee simple](#) status are returned to trust status. Tribes or individual Indians can initiate the process on fee lands they already own or lands they acquire.

Forced Fee Patents

A [trust-to-fee conversion](#) without the request, consent, or knowledge of the landowner. Forced fee patents led to the loss of many land parcels through tax foreclosure sales.

Fractionated Ownership / Heirship

Occurs when individual trust parcel of allotted land is passed to successive generations (heirs). The land passes as undivided interest to all heirs; not as individual sub-tracts of the original allotment. Over time the number of heirs holding undivided interests may number in the hundreds. The practice of allotting lands to individuals began in 1887 with the General Allotment Act. Once adult heads of households were allotted their individual lands, the remaining un-allotted land within the exterior boundaries of the reservation was declared surplus and lost to the tribes. Much of this land eventually became fee simple, owned by non-Indians and Indians alike. The allotment provisions of the Act were revoked by the 1934 Indian Reorganization Act.

Indian Land Tenure

The terms and conditions by which Indians hold land.

Indian Landowner

Any tribe or individual Indian who owns an [interest](#) in Indian land in [trust](#) or [restricted](#) status.

Interest

When used with respect to Indian land, an interest is an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration. This includes [life estates](#).

Intestate

Leaving no legally valid will.

Joint Tenancy with the Right of Survivorship

When land, which is owned with other parties as joint tenants, and the right to the land lasts as long as each joint tenant is alive. As each joint tenant dies, the surviving joint tenant(s) receive the share of the deceased joint tenant. Eventually, the last surviving joint tenant owns the entire [interest](#) in the land, and only that person can decide who gets the land after that remaining tenant dies.

Life Estate

The right to live on, use, and take income from land during a person's lifetime.

Off-Reservation Trust Land

Land outside the current exterior boundaries of a reservation that is protected by the federal government for Indian use. For example, these pieces of land could be religious sites or pieces allotted to individuals out of the public domain.

Patents-in-Fee

The "patent" is the title deed by which the federal government conveys or transfers land to people. "In fee" refers to the [fee simple](#) ownership in land. The term "patent-in-fee" describes the title document issued by the U.S. Government to terminate the trust created by the [trust patent](#) issued to the [allottee](#). The patent-in-fee operates to vest fee simple ownership in an allottee or their heirs.

Probate

Probate is the process by which property is transferred from a deceased property owner to his or her heirs and/or beneficiaries. Under the General Allotment Act, a tribe's traditional rules of descent and property transfer were replaced by the probate laws of the territory or state in which the tribal member resided or where the property was located. This is still the case when an Indian landowner dies without having written a will if the tribe has no tribal probate code. The federal Office of Hearings and Appeals (OHA) is responsible for the probate of trust property owned by deceased American Indians and examines federal law, federal regulations, tribal law, and state law to determine the heirs and/or beneficiaries, the validity of wills, and the validity of claims.

Remainder Interest

If a person owns a remainder interest in land, his or her right to the land begins when the person owning the [life estate](#) in the land dies. If an Indian has the remainder interest, the land remains in trust. Non-Indian heirs receive a life estate in Indian lands. Because a non-Indian heir owns less than the full [interest](#), a "remainder interest" is created, and this remainder interest must go to an Indian. If there are no such heirs, the remainder may be purchased by any Indian co-owner of the parcel. If no offer is made to purchase the parcel, the remainder interest passes to the tribe. The rules are applicable to both [testate](#) and [intestate](#) Indian estates.

Restricted Fee Land

The ownership is the same as [fee simple](#) land, but there are specific government-imposed restrictions on use and/or disposition.

Tenancy in Common

The most common form of ownership of rights to land held in trust for tribal members. Tenants in common have unity of possession, which means that every owner has an equal right with their co-owners to the land as long as they live. A tenant in common has an [undivided interest](#) in the whole property as if they were the sole owner, and can transfer their [interest](#) by gift, sale or will. A tenant in common can also decide who will own their interest when they pass away.

Testate

Having made a legally valid will.

Testate Succession

The transfer of property according to a legally valid will.

Tribally-Owned Land

Land that is owned by a group of Indians recognized by the federal government as an Indian tribe.

Trust Land

Land owned either by an individual Indian or a tribe, the title to which is held in trust by the federal government. Most trust land is within reservation boundaries, but trust land can also be [off-reservation](#), or outside the boundaries of an Indian reservation.

Trust Patent

Individual Indian [allottees](#) were issued documents called “trust patents” to verify that their land was held in trust by the government.

Trust-to-Fee Conversion

The conversion of lands held in trust by the U.S. Federal Government to [fee simple](#) status. With the passage of the Burke Act of 1906, Indian lands held in trust were converted to fee status if the Secretary of the Interior determined that the Indian landowner was competent. Today, trust lands can be converted to fee status in 30 days. Only individual Indian landowners can request a trust-to-fee conversion.

Undivided Interest

A share of the ownership [interest](#) in a parcel of [trust land](#). The number of interests grows with the division among heirs of these interests according to federal or tribal law.