

2018 Farm Bill National Listening Session, Title VIII – Forestry May 15, 2019

Audience Questions and Responses

The National Listening Session recording (including PowerPoint and other informational documents for download) is available at <https://www.fs.fed.us/spf/tribalrelations/>.

General...

Question: I wonder if you could post the master list during discussions. A list of the various funding programs.

Response: The Forest Service received, in Fiscal Year (FY) 19, \$40 million in Congressional appropriations for the Collaborative Forest Landscape Restoration Program (CFLRP).

The following authorities did not come with any additional funding over and above the Forest Service's regular appropriations:

- Good Neighbor Authority (Section 8624, 2018 Farm Bill (P.L. 115-334))
- Tribal Forest Management Demonstration Projects (Section 8703, 2018 Farm Bill)
- Tribal and Alaska Native Biomass Demonstration Projects (Section 202 of the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (P.L. 115-325)).

Question: Can you provide examples of how removed tribes can partner with eastern forests using these authorities?

Response: Resources and a few examples are available at the following websites:

- <https://www.fs.fed.us/pao/news/2012/stories/12/caddo-nation.shtml>
- https://www.itcnet.org/issues_projects/issues_2/tfpa/tfporeports.html
- <https://www.fs.fed.us/spf/tribalrelations/documents/news/Summer2017-TribalRelationsNews.pdf>

Good Neighbor Authority Section 8624, 2018 Farm Bill (P.L. 115-334)

Question: Can you provide examples of successful uses of GNA with Tribes and National Forests?

Response: An Alaskan example includes the *Chugach National Forest and Chugachmiut work together thanks to Good Neighbor Authority partnership*. Information is available at: <https://www.fs.fed.us/inside-fs/delivering-mission/excel/chugach-national-forest-and-chugachmiut-work-together-thanks> (dated August 6, 2019). Information regarding additional Good Neighbor Authority projects is available at <https://www.fs.fed.us/managing-land/farm-bill/gna>.

Question: I have heard that GNA for Tribes, the payment has to go through the State.

Response: Under the Good Neighbor Authority, only States may earn and retain revenue from the sale of Federal timber. The 2018 Farm Bill changes did not provide for the retention of revenue by counties or Tribes. Thus, the Forest Service will not enter into an agreement that provides retention of revenues to counties and Tribes through the removal of timber. Good Neighbor Agreements with counties and Tribes for non-revenue generating projects are encouraged. For example, think about cultural surveys to support restoration work, weed spraying, and hazardous fuel reduction activities – just to name a few. (Per the Good Neighbor Authority, Authorized Restoration Services include activities to treat insect and disease infected trees; activities to reduce hazardous fuels; and any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.)

Question: You mentioned there are other tools to get money to Tribes from revenue generated timber sales other than through the state or counties. What are those other tools?

Response: Another tool in the box is a stewardship contract or agreement. Additionally, we could have a project proposed under the Tribal Forest Protection Act (TFPA) and do a sole-source contract. (For information about the TFPA, please reference the Intertribal Timber Council website at https://www.itcnet.org/issues_projects/issues_2/tfpa/tfpareports.html.)

Additionally, a timber project that generates revenue could result in a contract back to the Tribe - direct contracting with Knutson Vandenberg (KV), Salvage Sale (SSF) or Brush Disposal (BD) funds. It could be a stand-alone stewardship/service contract or we could use those funds to add into a stewardship agreement.

Question: Does Good Neighbor Authority apply for any Tribe(s), or must there be a shared federal/tribal boundary, shared watershed, or some other enumerated nexus?

Response: There is flexibility; it can be open to all Tribes that have some shared interest. It does not have to be a shared boundary. Just remember that the Good Neighbor Authority work will take place on the National Forest. (Note: The Good Neighbor Authority defines Indian tribes under 25 U.S.C. Section 5304(e) of the Indian Self-Determination and Education Assistance Act.)

Collaborative Forest Landscape Restoration Program Section 8629, 2018 Farm Bill (P.L. 115-334)

Question: Are Trust lands considered Nonindustrial Private Forest Land (NIPF)?

Response: The State and Private Forest Landscape-Scale Restoration Program (Section 8102 of the 2018 Farm Bill) definition of Nonindustrial Private Forest Land (13(A)(2) means land that – (A) is rural, as determined by the Secretary; (B) has existing tree cover or is suitable for growing trees; and (C) is owned by any private individual, group, association, corporation, Indian tribe, or

other private legal entity.” (Reference page 349 (132 STAT. 4837) of the 2018 Farm Bill at <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.)

Question: Does the extension of Collaborative Forest Landscape Restoration Program (CFLRP/CFLR) projects make them eligible for additional funding (out of the \$80 million/year)?

Response: Any of the 10 2010 CFLRP projects that are extended will be eligible for funding from the \$80 million authorized. Extensions must be reviewed by the CFLR Advisory Committee and approved by the Secretary of Agriculture. The remaining 23 current CFLRP projects selected in 2012 will receive funding in FY20 and FY21 to complete their ten-year proposals, pending appropriations.

Question: \$80 million has been authorized under CFLR; has it actually been funded at that amount?

Response: The \$80 million is only an authorization. The money will have to be appropriated by Congress. For FY 19, we were appropriated \$40 million.

Question: Does Collaborative Forest Landscape Restoration Program authority apply for any tribes, or must there be a share fed/tribal boundary, shared watershed, or some other enumerated nexus?

Response: There is flexibility; it can be open to all tribes that have some shared interest. It does not have to be a shared boundary. Note: the Collaborative Forest Landscape Restoration Program funding can only be spent on National Forest System lands. CFLRP proposals are submitted by Forest Service units, in partnership with stakeholders and collaborators.

Question: I assume the Request for Proposals (RFP) for projects will be sent to all?

Response: The Request for Proposals for Collaborative Forest Landscape Restoration projects will be sent far and wide via the CFLRP public website. I encourage you to work with your local forest to put together a proposal. Additionally, RFP information is now available on the Forest Service's Restoration – CFLRP webpage, at <https://www.fs.fed.us/restoration/CFLRP/overview.shtml>.

Question: Can you provide us with the call for nominations or other information for the CFLRP Federal Advisory Committee Act (FACA) Committee? Also, do you have a timeline for getting the Committee up and running?

Response: Please visit the CFLRP website for more information about the FACA Committee. The site has background information on CFLRP, which should be helpful, as well. The site's internet address is <https://www.fs.fed.us/restoration/CFLRP/index.shtml>.

Question: I don't see any information on the FACA Committee or timeline at the site. It's important that we get that up and running to keep the current CFLR Programs' momentum and get new programs in line.

Response: Information about the CFLRP proposal submissions and FACA Committee is now available at <https://www.fs.fed.us/restoration/CFLRP/index.shtml>. Once the charter for the FACA Committee is approved, the Forest Service will be able to solicit nominations through the Federal Register.

Question: Can you provide examples of successful uses of Collaborative Forest Landscape Restoration (CFLR) projects with Tribes and National Forests?

Response: Examples of successful CFLR projects include Tribes (such as, but not limited to Jemez Pueblo (the Southwest Jemez CFLR Project), the Confederated Tribes and Bands of the Yakama Nation (the Tapash CFLR Project), and the Confederated Tribes of the Colville (Northeast Washington Forest Vision 2020 CFLR Project)). Information about these and other successful projects is available in the Forest Service's CFLRP Resource Library at <https://www.fs.fed.us/restoration/CFLRP/resource-library.php> and in individual CFLR annual reports at: <https://www.fs.fed.us/restoration/CFLRP/results.shtml>.

Tribal Management Demonstration Project - "638" Authority Section 8703, 2018 Farm Bill (P.L. 115-334)

Question: Does 638 authority apply exclusively to Tribal Forest Protection Act (TFPA) projects or is the 638 authority available more broadly?

Response: The "638" authority is tied to the Tribal Forest Protection Act. Section 8703 of the 2018 Farm Bill permits both the Secretaries of Agriculture and Interior "to carry out demonstration projects by which federally recognized Indian Tribes or Tribal organizations may contract to perform administrative, management, and other functions of programs of the Tribal Forest Protection Act of 2004, through negotiated contracts entered into under the Indian Self-Determination and Education and Assistance Act."

Question: What is the current status of the consultation between the Forest Service, Bureau of Indian Affairs (BIA), and Intertribal Timber Council (ITC) on self-determination implementation?

Response: We have been and continue to be in consultation with BIA, Bureau of Land Management (BLM) and ITC. Additionally, on July 11, 2019, Forest Service executed a challenge cost-share agreement with the Intertribal Timber Council (ITC), a national tribal consortia dedicated to improving the management of natural resources of importance to Native American communities. This agreement builds upon a longstanding partnership with Forest Service and leverages our collective expertise to implement new tribal authorities in the 2018 Farm Bill and other legislation. Under this agreement, we will collaborate to identify and prioritize National Forest System areas at risk and craft Tribal Forest Protection Act (TFPA)

projects around the country that meet the needs and priorities for National Forest System-managed lands and reduces risks to tribal communities and their rights and interests on those lands. ITC will also bring the substantial experience of their member tribes in implementing the new FS authority for self-governance contracting under the Indian Self-Determination and Education Assistance Act and the TFPA.

Question: Thank you! One of our key tribal partner contacts is very involved in ITC and has been working with the group, on planning for implementation of 638. It is important we stay in the loop!

Response: Thank you for your comment.

Question: Is 638, since it is tied to the Tribal Forest Management Act, limited to lands adjacent to tribal lands? Good Neighbor would really be the most useful tool.

Response: The “638” authority is tied to the Tribal Forest Protection Act. TFPA requires the Tribe propose its project to take place on agency managed land, which borders or is adjacent to Indian trust land, but this does not mean physically “touching”. The TFPA requirements additionally include agency managed land which poses a fire, disease, or other threat to the Indian trust land or community, or is in need of restoration; is not subject to some other conflicting agreement or contract, and does involve a feature or circumstance unique to the proposing Tribe (i.e. legal, cultural, archaeological, historic, or biological).

We will really need to look project by project, to pick the best instrument for the job – GNA, or 638, or stewardship.

Question: Important to note that PL 93-638, Indian Self-Determination Act is intended to develop capacity, experience, and capability to assume federal program and project functions; therefore, training and capacity building is a major goal and should be incorporated and a basis for projects.

Response: Thank you for your comment.

Tribal and Alaska Native Biomass Demonstration Projects Section 202, Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (P.L. 115-325)

Question: Will you discuss the intent of the Tribal Biomass Demonstration Projects?

Response: The Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 amends the Tribal Forest Protection Act of 2004 to direct the Secretaries of Agriculture and Interior to enter into contracts or agreements with Indian tribes and, in Alaska, tribal organizations to carry out demonstration projects to promote biomass energy production on Indian forest land and in nearby communities by providing reliable supplies of woody biomass

from federal lands. Implementation of the Act requires at least four new demonstration projects, plus one in Alaska, each fiscal year (FY) through FY2021.

Question: For the last question from Alaska, this authority is available with the BLM also.

Response: Yes. The Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 includes the Secretary of Interior with respect to land under the jurisdiction of the Bureau of Land Management.

Question: Does this apply to the Bureau of Land Management and National Park Service neighbors?

Response: The Act specifies the Secretary of Agriculture, with respect to lands under the jurisdiction of the Forest Service and the Secretary of Interior, with respect to land under the jurisdiction of the Bureau of Land Management. It did not include the National Park Service.

Question: Section 202; can that simply include providing firewood?

Response: Yes, but we want to also have larger projects. We are *not* limited to four projects (plus one in Alaska) per fiscal year.

Question: Suggest that the Indian Tribal Energy Development demo projects be integrated with the existing DOE, Tribal Energy Program.

Response: These demonstration projects occur within the larger scope of developing Indian energy programs. The Forest Service's role, under section 202 authority, is to provide the woody biomass supply, not to develop the energy production.

Question: Does the Tribe need to have an existing biomass energy facility before entering into a biomass supply agreement with the USFS?

Response: No, but that would help. We (the Forest Service) have flexibility.

Question: Does section 202 help Tribes with feasibility studies for biomass energy?

Response: Although, these demonstration projects occur within the larger scope of developing Indian energy programs, the Forest Service's role is to provide the woody biomass supply, not to develop the energy production.

Question: Long-term contracts for biomass from FS lands are extremely helpful in obtaining financing for bioenergy projects. Does Section 202 allow local Forest Service districts to make these long-term contracts? Generally, this cannot be done without an MSA.

Response: Stewardship is an option for long term. For example, we can explore a long-term stewardship agreement.

Question: What is the process for applying and selecting the demo projects?

Response: We will work with Regions to look at any request. The Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 contains Eligibility Criteria required to be addressed by an Indian tribe or tribal organization in their application to the Secretary, in order to enter into Biomass Demonstration Projects. The Act also contains Selection Criteria, which will be used, without modification, by the Secretary of Agriculture to evaluate applications submitted. The Act's Eligibility and Selection Criteria will be used, without modification, to select biomass demonstration projects on lands under the jurisdiction of the Secretary of Agriculture. The Forest Service published these criteria in the Federal Register on March 27, 2019 (84 FR 11486-11487). The Federal Register Notice is in the presentation's Shared Files box, should you care to download them. (The National Listening Session and associated documents are available at <https://www.fs.fed.us/spf/tribalrelations/>.)

Question: Given there are only four authorized, what are the selecting criteria?

Response: There is a minimum of four (plus one in Alaska) each fiscal year – there could be more. We are not limited to four (plus one) - we can do more. The Act's Eligibility and Selection Criteria are being used, without modification, to select biomass demonstration projects on lands under the jurisdiction of the Secretary of Agriculture. The Forest Service published these criteria in the Federal Register on March 27, 2019 (84 FR 11486-11487). The Federal Register Notice is in the presentation's Shared Files box, should you care to download them. (The National Listening Session and associated documents are available at <https://www.fs.fed.us/spf/tribalrelations/>.)

Question: Is that four new bioenergy projects per year, or four overall?

Response: There is a minimum of four (plus one in Alaska) new projects per fiscal year. There can be more. We are not limited to four (plus one); we can and would like to do more each fiscal year.

Question: Stewardship Agreements are often difficult to develop and take a long time. Will there be any prioritization or extra resources available to develop these under the biomass program? In what way will this be different from the usual process? What is the value-added here?

Response: We are also pushing the long-term (20-year) stewardship agreement/contract program that we were authorized to implement last year. Forest Service Washington Office personnel are available to assist the Regions/Forests to examine and evaluate any long-term projects. (The 2018 omnibus budget bill, in Division O, Title II, Sections 204-207, amended the stewardship contracting authority. For more information reference: https://www.fs.fed.us/restoration/Stewardship_Contracting/index.shtml.)