



COALITION OF LARGE TRIBES

Blackfeet Nation • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap Indian Community • Mandan, Hidatsa & Arikara Nation • Navajo Nation • Northern Arapaho Tribe
Oglala Sioux Tribe • Rosebud Sioux Tribe • Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
Shoshone Bannock Tribes • Sisseton Wahpeton Oyate • Spokane Tribe • Ute Indian Tribe

President Ervin Carlson
Intertribal Buffalo Council
520 Kansas City Street, Suite 300
Rapid City, SD 57701

December 28, 2023

Attn: Mr. Bryan Newland,
Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Submitted via email to: consultation@bia.gov

RE: COLT / ITBC Written Comments Regarding Proposed Draft Agricultural Leasing Regulations, 25 CFR Part 162, Subpart B

To Whom It May Concern:

The Coalition of Large Tribes (COLT) and Intertribal Buffalo Council (ITBC) appreciate this opportunity to provide comments to the U.S. Department of the Interior (DOI) on its Proposed Draft Agricultural Leasing Regulations in 25 CFR Part 162, Subpart B. By way of background, COLT advocates for the interests of the more than 50 tribes with reservations of 100,000 acres or more — representing more than 95% of the Indian Country lands in the United States and approximately half the Native American population in the country. ITBC is a collection of 84 tribes in 21 states that have collectively restored and manage more than 20,000 buffalo. ITBC members manage more than 32 million acres of tribal lands and have restored buffalo on nearly 1 million of those acres. ITBC is committed to reestablishing buffalo herds on tribal lands in a manner that promotes cultural enhancement, spiritual revitalization, ecological restoration, and economic development.

COLT and ITBC welcome the invitation to comment on these much needed revisions and updates to Indian agricultural regulations. As a threshold matter, we support any and all proposed regulations that relax federal restrictions (in this case, updating these Indian agricultural regulations to harmonize with the HEARTH Act and the updated federal leasing regulations in 25 CFR Part 162) and acknowledge and/or affirm tribal sovereignty, especially over tribal lands. For



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instance, we strongly support §162.106(a) statement that the proposed federal Indian agricultural regulations “may be superseded or modified by tribal laws”

We also recommend these revisions to be harmonized with access to USDA programs. Our member tribes have often complained that meeting one federal agency requirements often precludes you from the other federal agency’s programs. This conflict in regulations should be resolved and we urge both federal departments to work together to maximize the available federal benefits to Native farmers and ranchers. In this context, we also recommend that DOI and USDA take action to update applicable federal regulations regarding grazing leases as well.

COLT and ITBC support the regulatory provisions that provide flexibility (e.g., assignments, subleasing, amendments, etc. for agricultural leases – see §§162.145 through 162.156) and lease rental values that are not seeking to maximize economic benefits (e.g., §162.112(b)). Our member tribes and their citizens often exercise their subsistence rights in their homelands and continue to practice their culture, both of which continue to have significant tribal value beyond economic benefits. And, importantly, we also support updated technologies and regenerative agricultural practices, both of which may promote important practices to heal the land and implement conservation.

COLT and ITBC strongly support 25 CFR §162.112, as proposed and we urge DOI to retain the section’s language, concepts, and flexibility. For example, in §162.112(b), an “agricultural lease must require that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals” Our organizations support sustained yield management and sound conservation practices for our member tribal communities. We also agree with the inclusion of “other community goals” as expressed in tribal laws, policies and plans that defer to tribal community preferences.

Similarly, in §162.112(c), an “agricultural lease may allow conservation practices not explicitly described in the lease . . . especially if such practices, as adopted, ensure maximum eligibility for participation in federal agricultural and conservation programs.” COLT and ITBC strongly support this language and the provisions that allow our member tribes to maximize federal resources and maintain flexibility with tribal projects. Further, we support §162.119, which expressly allows for an agricultural lease holder to allow for compatible or other authorized uses with their lease. Flexibility for mixed uses is beneficial for both tribal governments and individual Indians that have long term agricultural leases.

Regarding the section on monetary compensation requirements, COLT and ITBC strongly support deference to tribal governments in §162.120(a) regarding negotiated payment amounts and



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not requiring a valuation when the tribal government has a tribal resolution that attests to the amount, waiving of a valuation, and expressly determines such amount and waiver are in the tribe's best interest. With regard to an agricultural lease of individual owned Indian land, we support the flexibility and discretion in §162.121(b)(1) and (b)(2) that allow for a waiver of the right to receive fair market rental upon a determination that such waiver is in the landowner's best interest based on listed criteria. In specific, COLT and ITBC note that §162.121(b)(2)(iv) should be maintained in the regulations as it allows other types of leases (e.g., religious, educational, recreational, cultural, or other public purposes) to be utilized for tribal and Indian agricultural leasing practices.

We also support the provisions of §162.121(c) and §162.121(e) that both provide approval opportunities for the Tribe, Indian landowner and/or lessee for payments less than fair market value during pre-development or infrastructure improvement periods that can help attract investment in Indian country. Similarly, COLT and ITBC support the flexibility of BIA fair market rental determinations for agricultural leases in §162.122 that utilize "a market analysis, appraisal or other appropriate valuation method" and that allow Indian landowners, in §162.122(d), to use competitive bidding as a valuation method. We also support the flexibility of non-monetary or varying types of compensation, in §162.126, for agricultural leases and for deference in that regard to a Tribe's determination with its own tribal land.

With respect to compensation review or adjustments in §162.128(a), COLT and ITBC support the deference to tribal leaders' discretion to forego such adjustments if the tribe, in a tribal authorization, deems non-adjustment to serve the tribe's own best interest. And we also note that a similar exception for individually owned Indian land is important to maintain in the regulations. With regard to bonding and insurance, we agree with the provisions of those sections (§§162.134(g) and 162.137(c)) that the BIA will provide deference to "the maximum extent possible" to the tribe's determination that a waiver of a performance bond, other form of security, and/or insurance is in its best interest.

Our member tribes have long observed the lack of enforcement of lease violations by agricultural producers and the federal trustee, BIA, not fulfilling its oversight duties to ensure protection of the land resource. Against this backdrop, we simply acknowledge the proposed federal agricultural regulations in §§162.161 through 162.174 and express our general support for tribal and/or federal enforcement of existing law, regulations, and policy regarding agricultural activities in Indian country. Additional resources to fulfill these lease compliance responsibilities is desperately needed to improve leasing operations and for necessary conservation practices.

COLT and ITBC reserve the right for future comments on leasehold mortgages of an agricultural lease, as set forth in §§162.157 through 162.160. However, we believe that it is noteworthy that our member tribes and their citizens have had great difficulty in accessing capital,



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obtaining agricultural credit needs, and have almost universally faced barriers to lending on tribal lands. *See e.g.*, GAO Report No. 19-464 (May 2019). We simply urge DOI and USDA to collaborate to help find solutions and tailor the relevant federal regulatory provisions to facilitate tribal and individual Indian policy preferences regarding agricultural and related leasing.

Lastly, we would like to express our appreciation for Secretarial Order 3410 (March 2023) because it enhances DOI’s work to restore wild and healthy populations of American bison and the prairie grassland ecosystem through collaboration among DOI’s Bureaus, other federal agencies, states, tribes, and landowners using the best available science and indigenous knowledge. We support the creation of a DOI Bison Working Group that is initiating tribal consultation toward development of a DOI Bison Shared Stewardship Plan. In addition to the SO 3410, Bison Working Group and Stewardship Plan, the recent funding announcement in September 2023 of \$5 million for bison restoration all constitute very promising action steps to help restore bison back to our member tribes in their homelands.

Respectfully,

Hon. Marvin Weatherwax, COLT Chairman
Councilman, Blackfeet Nation Tribal Business Council

Mr. Ervin Carlson, President
InterTribal Buffalo Council

cc: Mr. Joaquin Gallegos, Special Assistant to ASIA