

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARILYN KEEPSEAGLE, et al.,)	
)	
Plaintiffs,)	Civil Action No. 1:99CV03119
)	(EGS)
v.)	
)	
TOM VILSACK, Secretary, United States)	Judge: Emmet G. Sullivan
Department of Agriculture,)	Magistrate Judge: Alan Kay
)	
Defendant.)	

~~PROPOSED~~ ORDER

Upon consideration of Class Counsel's Recommendations Regarding Cy Pres Distribution Pursuant to the Addendum to the Settlement Agreement, it is, this 19th of July, 2018, hereby ORDERED that the following sums are awarded as set forth below, subject to any restrictions set forth for each award, and with all awards subject to the following restrictions:

1. Funds awarded may be used only for providing assistance designed to further Native American farming or ranching activities, in a manner designed to assist individual Native American farmers or ranchers, as set forth in the application the organization submitted seeking an award from the cy pres fund, and for purposes encompassed by Section 170(c)(2)(B) of the Internal Revenue Code; funds may not be used for litigation, lobbying, or political activity as those terms are defined by the Internal Revenue Code.
2. The funds awarded shall not be used to supplant any existing funding;
3. Each recipient of an award must submit a report detailing their expenditure of cy pres funds and the work completed pursuant to the award 12 months and 24 months after the awards are issued. The reports shall be submitted to the Trust established by the Addendum to the Settlement Agreement, the Native American Agriculture Fund.

A. Intertribal Agriculture Council

The Intertribal Agricultural Council is awarded funds for (a) creation of a nationwide Community Development Financial Institution (CDFI) to make agricultural loans; and (b) hiring four additional technical assistance providers, and other personnel expenses to expand their

organizational capacity, including (a) \$600,000 to be used for making small grants to youth who are involved in agricultural projects through 4-H, FFA, or similar endeavors; (b) \$1,600,000 to fund attendance at the IAC Annual Conference by students and by producers, as well as a small amount for speakers invited to such events; none of these funds may be used to pay for tribal staff members' attendance at the IAC Annual Conference or for general IAC Conference funding. A total of \$9,031,000 is awarded, allocated as follows: (a) \$2,965,000 for the CDFI program (eliminating entirely the proposed equity grants to agricultural producers and trimming some of the costs requested for supplies, travel and the like); (b) \$3,966,000 for expanding technical assistance and enhancing organizational capacity, along with the youth grants and funding for attendance at IAC conferences described above; and (c) \$2,100,000 for an endowment, with \$100,000 allocated to do the planning and establishment of the endowment. While the \$2 million endowment should be sufficient to support two technical assistance positions at the salary level included in IAC's application, the endowment is not restricted to such purpose. Instead the IAC Board of Directors shall have authority to determine how the endowment funds can best support IAC's work for Native American farmers and ranchers, so long as it is within the purposes established in the Addendum for these cy pres funds. Finally, the IAC must devote 15% of the resources (other than the endowment) to assisting Native American farmers and ranchers in Oklahoma, because no Oklahoma-specific projects are receiving cy pres funds. Given the size of the award and varied projects encompassed, the budget that was the basis of the recommendation is set forth below:

Personnel	Year 1	Year 2	Total
CDFI Director - 1.0 FTE - responsible for the overall direction and oversight of all lending under Cy Pres Project	\$150,000	\$150,000	\$300,000

CDFI Loan Specialist - 1.0 FTE - responsible for loan management and administrative support to Director	\$75,000	\$75,000	\$150,000
Cy Pres Priorities Director of Programs - 1.0 FTE - responsible for the overall direction and oversight of programming initiated under Cy Pres	\$90,000	\$90,000	\$180,000
Development Director - 1.0 FTE - responsible for seeking funding for the continued sustainability for program initiated under Cy Pres Project and to secure leveraged funding for Cy Pres projects	\$90,000	\$90,000	\$180,000
Cy Pres Compliance Officer - 1.0 FTE - who will monitor federal compliance with the funding from NAAFTF and the oversight of all producer/youth grants, scholarships, and activities	\$50,000	\$50,000	\$100,000
Technical Assistance Specialists - 4.0 FTE - four (4) technical assistance specialists, budgeted at \$50,000 per position x 4 positions	\$200,000	\$200,000	\$400,000
sub-total	\$655,000	\$655,000	\$1,310,000
Tax & Fringe (30%)	\$196,500	\$196,500	\$393,000
Total Personnel	\$851,500	\$851,500	\$1,703,000
Direct Expenses			
Meetings	\$50,000	\$50,000	\$100,000
Travel	\$225,000	\$225,000	\$450,000
Supplies	\$15,000	\$15,000	\$30,000
Equipment/capital expenditures	\$28,000	\$0	\$28,000
Contractual/consultants	\$70,000	\$70,000	\$140,000
Printing/publications	\$15,000	\$15,000	\$30,000
Total Direct Expenses	\$403,000	\$375,000	\$778,000
Endowment Funds			
Intermediary funds			
Regrants - grants will support youth producer grants	\$300,000	\$300,000	\$600,000
Loans - IAC obligates this line item for direct producer loan capital.	\$1,095,000	\$1,095,000	\$2,190,000
Scholarships - scholarships will support youth event attendees, adult producer annual meeting attendees and event speakers NOT Tribal employee attendees	\$830,000	\$830,000	\$1,660,000

Total Intermediary funds	\$2,175,000	\$2,175,000	\$4,350,000
Indirect (none requested)	\$0	\$0	\$0
Sub-Total	\$3,429,500	\$3,401,500	\$6,831,000
Endowment			\$2,000,000
funds to plan/establish endowment			\$100,000
Final Total			\$9,031,000

B. First Nations Development Institute

First Nations Development Institute (FNDI)'s proposal is approved with the exception of a small scholarship component. This includes a \$5 million endowment to maintain their agricultural grant program in perpetuity. The total award is \$7,454,803. FNDI must devote 15% of the resources (other than the endowment) to assisting Native American farmers and ranchers in Oklahoma, because no Oklahoma-specific projects are receiving cy pres funds. Further, FNDI must review the other projects funded through this cy pres distribution, and not provide any of these re-grant funds to those same projects.

C. The Lakota Fund

The Lakota Fund (Lakota Fund) is awarded funds to increase the capital available for agricultural loans, and to hire a full-time dedicated agriculture loan officer. The portion of its proposal which included two agricultural loans at the \$500,000 level was not recommended, therefore the total award is \$2,635,350.

D. Indian Land Tenure Foundation

Indian Land Tenure Foundation (ILTF) proposal includes funds for the Indian Country Cooperative Extension Fund (ICCE) which supports the work of the Federally Recognized Tribal Extension Program (FRTEP) which was established to improve agriculture outreach to tribal

communities to improve agricultural productivity and to support tribal youth in agriculture (e.g. 4-H programs); support for trainings on land tenure issues, assistance with estate planning, and other work on managing fractionated lands. Those projects are awarded a total of \$2,193,971 in funding. No funds may be used for the additional requested projects related to carbon sequestration or buffalo ranching loans.

E. Southwestern Indian Polytechnic Institute

The Southwestern Indian Polytechnic Institute (SIPI)'s proposal creating a Land Grant Office, converting its existing greenhouse to an Agricultural Training Complex for Native farmers and ranchers, and funding the creation of an Indian Food Hub (IFH) is approved. A total of \$1,500,000 is awarded.

F. Alaska Village Initiatives

Alaska Village Initiatives (AVI) is awarded \$1,500,000 in cy pres funding for its Alaska Native Outreach and Assistance Project. It is directed to use no more than \$606,666 for regrants to the Tribal Conservation Districts (1/3 of its requested amount). The other difference between their request and the awarded amount were due to decreasing the amount that may be spent on consultants.

G. First Nations Oweesta Corporation

First Nations Oweesta Corporation (Oweesta)'s "Native Fresh Food Fund," which will increase the capacity of 60 Native CDFIs so they can provide increased capital and business development services for agricultural clients, is awarded \$1,250,000. Oweesta may not use such funds to provide duplicate services to the Lakota Fund which has received separate funding. Further, 15% of Oweesta's work funded here should be provided to benefit Oklahoma, by ensuring that the Native CDFIs funded include CDFIs serving Oklahoma.

H. The Hopi Foundation

The Hopi Foundation proposal to use funds to deliver food system training to 120 community leaders and influencers, complete the Hopi Youth Farming Curriculum and rolling it out to several local schools, and support a seed saving initiative is approved, as is there plan to re-grant some of the funds through \$37,500/year in direct micro-grants of \$500 to \$2000 to 50 local producers over the two year period, and \$150,000/year in Partnership Capacity Building Grants to 10 community partners in the range of \$10,000-\$25,000 each. A total of \$1,011,034 is awarded to the Hopi Foundation, including \$250,000 to add to their existing endowment.

I. Inter-Tribal Buffalo Council

The Inter-Tribal Buffalo Council (ITBC) is awarded \$1,000,000 for its Herd Development Grant program. ITBC is directed to focus the use of cy pres funds on applications which to support the business of buffalo ranching, rather than other non-economic buffalo projects, in keeping with the purposes of the cy pres funds.

J. American Indian College Fund

The American Indian College Fund (AICF) is awarded \$824,000 for the proposed scholarship program for Native Americans studying agricultural related fields.

K. United Tribes Technical College

United Tribes Technical College (UTTC) is awarded \$821,225 to establish an Associate of Science degree in agriculture, including scholarships for students, and other training programs. No funds are awarded for actual construction of the greenhouse complex, but up to \$100,000 of the funds awarded may be used for planning, design or engineering in preparation for future construction.

L. American Indian Science and Engineering Society

The American Indian Science and Engineering Society (AISES) proposes a program with

scholarship and mentorship support for high school, college, and graduate students. A total of \$714,508 is awarded to AISES.

M. Farmers Legal Action Group

Farmers Legal Action Group (FLAG) is awarded \$692,213 for its American Agricultural Law Center. As set forth in the Addendum to the Settlement Agreement, it may not use any such funds for litigation or lobbying, but shall direct them to other legal services for Native American farmers and ranchers. *No funds shall be used for drafting legislation.*

N. Sisseton Wahpeton Oyate

The Sisseton Wahpeton Oyate tribe of South Dakota is awarded \$627,785 for their proposed "incubator farm" to assist tribal members in launching farms.

O. Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin

The Red Cliff Band of Lake Superior Chippewa Indians proposes to create a simple fish processing facility on the reservation, permitting tribal members to process their own fish and then sell it at a higher price than when they sell to a processor off-reservation. In addition, this project would involve production of organic fertilizer from the fish waste, creating another economically valuable product. They are awarded \$595,000.

P. Sitting Bull College

Sitting Bull College in Fort Yates, ND proposes to start a Shared Equipment Program to permit tribal members to borrow needed equipment from the College, with ongoing expenses for repairs and maintenance covered by a cost-share plan. They are awarded \$549,396 from the cy pres funds.

Q. Nisqually Indian Tribe

The Nisqually Tribe requires additional funds to complete modernization and improvement of the hatchery on Kalama Creek, and to develop a new facility on McAllister

Creek to reestablish another fishery area. A total of \$514,234 is awarded.

R. Owens Valley Indian Water Commission

The Owens Valley Indian Water Commission (Commission) is awarded \$428,720 for its proposed work providing training and technical support to individual Native American farmers/ranchers and to member Tribes, including small grants to individual farmers or ranchers. However, no funds from this award may be used for the proposed scholarship program, stipends for Commission members, or tribal herd support. Further, all of the re-grant funding requested shall go to individual producers rather than to tribal enterprises.

S. Suquamish Indian Tribe of the Port Madison Reservation

The Suquamish Indian Tribe of the Port Madison Reservation is awarded \$400,000 for the purpose of purchasing a new geoduck boat to be used by the tribe's geoduck divers.

T. Fort Belknap Indian Community of Montana

The Fort Belknap Indian Community is awarded funding for one new position and \$200,000 for their revolving loan fund, but no endowment. The total award is \$399,574.

U. National Congress of American Indians

The National Congress of American Indians (NCAI), proposes to launch a Tribal Food Sovereignty Advancement Initiative to provide an in-depth analysis of federal programs affecting land and agriculture, and develop recommendations for how such programs can better support Native American farmers and ranchers. NCAI is awarded \$388,941.

V. Oregon State University, for the Warm Springs Indian Reservation

Oregon State University is awarded \$370,266 for its project "Growing the Next-Gen: Strengthening Tribal Agriculture on the Warm Springs Reservation." No funds may be used for the proposed scholarship program, and the other reductions made from the original amount requested were from the equipment budget.

W. Pueblo of Sandia.

The Pueblo of Sandia is awarded \$363,900 for rehabilitation of on-farm concrete irrigation ditches. These funds may not be used to purchase a backhoe, but may be used for rental of a backhoe.

X. Four Bands Community Fund

Four Bands Community Fund (Four Bands) is awarded \$350,097, including \$250,000 in increased loan capital for agricultural loans, and funds to support its training and business assistance programs.

Y. Center Pole

Center Pole is awarded \$343,652 for its work with Crow youth.

Z. Shoshone-Bannock Tribes

The Shoshone-Bannock Tribes are awarded \$317,545 for scoping, programming, designing and architectural services for the planned Land Use Resource Range and Agriculture Complex.

AA. Bay Mills Community College

Bay Mills Community College (BMCC) in Michigan is awarded funds to purchase new equipment for its educational farm, and provide increased classes, internships, and summer youth experience. BMCC is granted \$298,503 from the cy pres fund.

BB. Painted Desert Demonstration Projects Inc. DBA The S.T.A.R. School

Painted Desert Demonstration Projects, Inc. is awarded funds for its proposed development and improvement of farmer's markets on the Hopi and Navajo reservations, including proper storage, handling, and basic processing facilities, mobile market equipment, and, significantly, workshops leading to the Good Handling Practices and Good Agricultural Practices certifications that are needed for local farmers to be authorized to sell STAR School

and other reservation schools food for the school lunch programs. The program will also include summer internships and apprenticeships for the students, encouraging the next generation of farmers. This project is awarded \$263,278 (the difference from the amount requested is correcting the calculation of the permitted indirect expenses for the project).

CC. Pueblo of San Felipe

The Pueblo of San Felipe is awarded funding for its Agriculture Program Coordinator, and for fencing projects, seeding native grasses, and constructing wells and solar pumps to provide watering stations, and to provide summer internships for youth. No other staff positions are encompassed by this award of \$239,880; in addition to eliminating funding for staff positions, this reflects a decrease in fencing costs based on a correction to the original calculation.

DD. Farm Aid

Farm Aid is awarded \$219,285 to expand its hotline and on-line resources to more fully address the needs of Native American farmers and ranchers, and to provide farm advocacy training to Native American farmers and ranchers. Farm Aid shall recruit a Native American advisory board to ensure that Native perspectives continue to be integrated into Farm Aid's work.

EE. Stone Child College

Stone Child College (SCC) on the Rocky Boy Reservation in Montana proposes to develop an "Agricultural Technician Certificate" training program, and to purchase a small baler and related equipment, which can be used by those completing the certificate program to mow and bale their fields and those of others who lack access to the needed equipment. SCC is awarded \$188,804 for this project.

FF. Flowering Tree Permaculture Institute

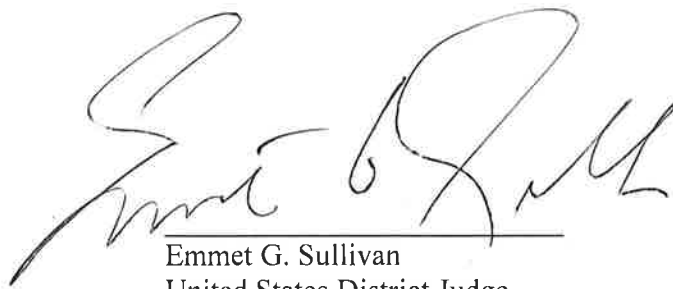
Flowering Tree Permaculture Institute is awarded \$184,236 to expand its training programs in traditional agriculture and farming.

GG. White Earth Land Recovery Project

White Earth Land Recovery Project is awarded \$183,163 to create a White Earth Farmers and Producers Association, promoting Native leadership and peer-to-peer support, and providing funding to purchase needed supplies for maple syrup production, for purchase of farm equipment for the White Earth demonstration farm, and related projects.

HH. Great Lakes Indian Fish & Wildlife Commission

The Great Lakes Indian Fish & Wildlife Commission is awarded \$145,637 to purchase 22 wild rice threshing machines, train local leaders in how to use and maintain them, and to complete a Needs Assessment Survey.



Emmet G. Sullivan
United States District Judge