

HOUSE OF REPRESENTATIVES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Testimony of Phil Givens

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INTRODUCTION

I am a bilingual, African-Native American farmer from Tahlequah, Oklahoma. I have farmed for 26 years and operate on 1500 acres of land in four counties. Oklahoma has the second largest Indian population in the country and the four county area where I farm -Adair, Cherokee, Delaware and Muskogee - the highest concentration of Native Americans in Oklahoma. For the last 26 years I have traveled from Oklahoma to Washington, DC to represent myself and more than 1,760 farmers from eight different tribes in Indian country. I have represented farmers from Oklahoma, Kansas, Missouri and New Mexico. During those years I have participated in USDA training on farm loans, rural business, conservation, ethics and civil rights. In 2000, I received the Outstanding Small Farm Operator of the Year Award from USDA and in other years I have received awards from GIPSA, AMS, and Food Inspection Services. I also represent two Indian schools: Cave Springs and Oaks Schools.

BACKGROUND

It is important to understand that Farm Services Agency Offices will not serve most Native Americans who visit or schedule appointments for services. Farm Services Agency in Oklahoma will not register most Native American farmers in their database.

In 2000, the USDA Civil Rights Office found that FSA did not provide county committee election ballots to Indian landowners; did not provide training to staff to process civil rights complaints; had not implemented the Indian Outreach Program required by 7 CFR Part 1901 Subpart N and 7 CFR 1901.651; had not collected and maintained eligibility and participation data and that county office employees required extensive training. All of these conditions and violations continue to exist and I will address these issues in my testimony. Similar violations were reported for Native Americans in South Dakota.

FAILURE TO ENROLL INDIAN LAND IN THE FSA DATABASE

The implications of this failure to enroll native land in the FSA are disastrous and cyclical for Native Americans. NCRS is involved in this process when they as they have many times in Oklahoma refused to provide a conservation study or plan to enroll native land as required by the 1985 Farm, Food Security Act. If your land isn't enrolled in the FSA database, you receive no notices from FSA about programs or loan opportunities. Equally important, you are not allowed to participate in county elections.

Since FSA will not enroll native land, they also will not provide services to Native Americans. Ironically when natives rent their land to white farmers, white farmers are allowed to enter the land in the database and participate in USDA programs.

FSA will not provide members of the fourteen counties that comprise the Cherokee Nation service when they go to their offices. A few services are provided at the tribal headquarters but in the past if you farmed non-tribal land no services were provided to

Native Americans in the county offices. Members of the nation are usually not allowed to participate in County elections because tribal land is not in the FSA database.

COUNTY ELECTIONS

From 1999 to 2000, Native Americans in northeastern Oklahoma filed at least 76 complaints against the FSA County Election Process. To this date none of those complaints have been resolved. In 2004, Native Americans never received election ballots. Complaints were filed and USDA placed Rick Fowler, a member of the military on the Cherokee County Committee. However, the County Committee dismissed Rick Fowler because he missed several meetings when he had to fulfill his military duty.

Native American land is still not entered in the database. Natives are still not informed about USDA programs in Indian country and they cannot fairly participate in County elections in counties where they comprise almost fifty percent of the farming population. In 2005, I met with the FSA administrator about county elections because the few native farmers who were allowed to participate were required to submit ID cards showing that they were tribal members. No identification requirement exists for white farmers.

Wyman Thompson, the Superintendent of Oaks Indian School, filed a written complaint about the practice; there has been no response to his complaint to this day.

COMPLAINT PROCESS

In 2004, I received a favorable decision to a complaint of discrimination against the Indian Livestock Program. Rather than implement the decision, Assistant Secretary

Vernon Parker decided to have an outside contractor review the findings of his own office. He contracted a Northern Virginia firm, Compucon Inc. of Alexandria, Va. to reinvestigate the case. After spending several months in Oklahoma and billing the government \$100,000.00, Compucon found again that USDA discriminated against me. Now three years later, USDA has not responded to my requests for settlement. Native American farmers are not allowed full participation in the Indian Livestock Program. Native American farmers are financially disadvantaged. USDA knows we do not have the resources to run to federal court every time they discriminate and exclude us from participating in federal programs.

Native Americans in Oklahoma, Kansas and Missouri have filed 15 complaints about the failure of USDA to provide outreach since the 2000 Compliance review reported that there was inadequate outreach to Native Americans. There has been no further review and little outreach beyond what I have been able to arrange at Oaks School. There has been no finding on those complaints. Yet in 2004, USDA threw all fifteen complaints out because the employees in the Office of Adjudication do not understand civil rights law or anything about the USDA farm programs and how they are intended to operate. The bare truth is that USDA outreach and farm service to Native Americans in Oklahoma is dysfunctional. Most Native Americans are refused service. They are lied to and told that there are no loans if the farmer does not articulate the exact name for the specific loan program. When I am able to return to the office with most of these farmers they are provided service. During this present spring, I have assisted about 200 farmers to obtain loans after FSA had denied them an application.

RETALIATION

Representing Native American farmers in Oklahoma has created personal problems when USDA has retaliated against me. In 2003, 2004, and 2005 I filed complaints based on a 2000 compliance review that found that NRCS had provided inadequate outreach to Native American farmers about EQIP, Fletcher farms and other programs. I had gone in to discuss the specific programs that we were eligible for because NRCS had sent me to training and I had received a certificate for successful completion of this program.

NRCS responded by barring me from their offices in Oklahoma, Kansas, and Missouri. This exclusion was devastating because in these states, most NRCS, FSA and RD offices are housed in the same centers.

When NRCS barred me from their offices they barred me from visiting FSA and RD offices as well. I had to retain counsel to regain access to these offices. When we met with mediators in Tulsa, the only reason that they gave for excluding me from the offices was that I knew more about the programs than they did and I made them feel inadequate. There were no reports of threatening or disruptive behavior, racial slurs or profane language. For no reason, USDA had excluded me from participating in federally financed programs. Federal employees in the field offices had to call headquarters to state that I had engaged in no disruptive behavior in their offices and the restrictions were not justified. The USDA Assistant General Counsel Tami Trost managed as well as defended this discriminatory and unconstitutional treatment by NRCS.

RECOMMENDATIONS

- **Provide effective outreach and technical assistance to Native American farmers and fully implement the 1988 Interagency Agreement between USDA and the Department of Interior and fully implement 7 CFR 1901.651.**
- **Increase scholarships and career days for Native Americans.**
- **Train USDA employees on how to do business in Indian country. Many eligible Native Americans are unable to obtain loans from Rural Development because USDA personnel does not know how to perfect a lien in Indian country.**
- **Attorneys in the USDA Civil Rights Office should receive civil rights training. The Office of General Counsel hinders and impedes the department's ability to process civil rights complaints and should not be able to deny complainants their rights because they are ignorant of civil rights provisions.**
- **Restore to the Office of the Assistant Secretary for Civil Rights the authority to settle civil rights complaints. A recent delegation of authority makes the process more cumbersome than ever to have a complaint resolved when there is a finding of discrimination.**
- **Restore basic due process and require the Office of Adjudication to state the reason a case is dismissed so that the farmer may proceed to federal court if he is able to. OCR should not be able to send a letter three years after a case was filed and state that the case is dismissed because they have not investigated it.**
- **Since they are dysfunctional and thousands of cases are pending require USDA to establish a special process to resolve these cases and provide farmers the right to representation and attorney fees.**
- **Protect USDA employees who are willing to provide service to small farmers from retaliation from the Office of General Counsel and others at USDA who do not support small farms.**