"Wins" and "Losses" in the 2002 Farm Bill: Overview of the Farm Security and Rural Investment Act of 2002

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Executive Summary

President Bush signed the 2002 Farm Bill into law on Monday, May 13, 2002. Although initial indications were that Congress intended to be responsive to voices favoring small farmers in the United States, final negotiations resulted in a bill that essentially preserves the status quo. This long awaited piece of legislation was greeted with mixed but generally negative reviews from advocates for small farms and sustainable agriculture. However, there is a current trend within the U.S. Department of Agriculture to increase outreach efforts to minority farmers, in part the likely result of recent class-action lawsuits filed on behalf of African-American and Native American farmers. With the current agency emphasis on service to traditionally underserved communities and the recent appointment of a new Undersecretary for Civil Rights, now may be the opportune time to pursue benefits previously denied to Native American communities.

One has to be appreciative of the specific inclusion of the terms "tribes," "Indians," and "Alaska Natives" in this Farm Bill, especially when compared to the 1990 legislation. The inclusion of Indian Country in this Farm Bill can be credited to the extensive efforts of the Intertribal Agricultural Council and the National Congress of American Indians, among others, who were active in mobilizing their constituencies and working with legislators to make sure the voice of Indian Country was heard.

This Farm Bill offers opportunities for tribes, individuals, and tribal colleges that were not available in previous Farm Bills. However, there are a variety of factors that will potentially impact program success. Although implementation of several of the larger programs began upon enactment, no appropriation bills were finalized as of calendar year-end 2002, and given the current political climate it is unclear when monies will actually be allocated. Rulemaking on this and other new programs will be a critical factor in determining programmatic success.

It is therefore of critical importance that Native American farmers, proponents of local food systems, and others involved in Indian agriculture remain active during the rulemaking and appropriations processes to ensure the voice of Indian Country will be heard. Education about and enrollment in the available programs is the only effective means to demonstrate demand for services in Indian Country, and to ensure that funding remains available.

Highlights of "Wins" in 2002 Farm Bill

Although there are far more sustainable options for food systems assistance available in the 2002 Farm Bill, traditional food distribution programs are continued, with some notable improvements. Community Food Project grants are intended to increase access by limited-resource households to fresher, more nutritious foods, and other new provisions require the Secretary of Agriculture to encourage federal program participants to purchase locally produced foods. Both the Women, Infants, and Children (WIC) and Senior Farmers' Market Nutrition Programs are mandated to purchase fresh fruits and vegetables. A fruit and vegetable pilot program is initiated with this bill as well, and the Zuni Tribal Organization was chosen as one of the participants. Overall there is a strong message in this legislation to improve nutrition and community development through providing more sustainable food options.

Provisions in Title VI of the 2002 Farm Bill cover a myriad of community assistance programs. Eligibility requirements have been expanded to include Native Americans and reservation lands in farm loan guarantees, loans for renewable energy systems, and Rural Business Enterprise and Cooperative Development Grants. The Beginning Farmer and Rancher Development provisions establish a competitive grant program for training, education, outreach, and technical assistance. Tribal networks have increased eligibility and funds are slated for limited-resource and socially disadvantaged farms. Tribal colleges and universities have also received increased opportunities for integrated grants programs.

Resource conservation provisions in this bill far surpass stewardship provisions in previous farm bills, and all producers are now eligible to participate in conservation programs – not just program crop and livestock producers. Cost-share limits are increased in several sections and tribal governments have greater opportunities than ever before to participate as full partners in formulating stewardship agreements and achieving certification as technical assistance providers. Forestry programs are another area where opportunities are expanded above and beyond previous bills. The Forest Land Enhancement Program and the Sustainable Forestry Outreach Initiative allow for greater flexibility and again, allow opportunities for tribal entities to receive funds and participate as full partners.

As this legislation appears to have taken a turn toward greater inclusiveness, overall opportunities for Indian Country are expanded as well. As previously stated, however, it is imperative that Native communities take an active role in the rulemaking and appropriations processes in order to be heard and to ensure the continued viability of these new and expanded programs.

For more information, please also visit the Intertribal Agriculture Council website at www.i-a-c-online.com

Overview

Although initial indications were that Congress intended to be responsive to voices favoring reform of farm policy in the United States, final negotiations resulted in a bill that essentially preserves the status quo. In the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill),[1] the same people who have always benefited will continue to do so, with the top ten percent of the largest farms receiving two-thirds of the crop subsidies. More than 60 percent of U.S. farms do not produce any of the subsidized crops and so will not benefit. Conservation programs that could benefit those who operate medium- and small-sized farms face reduced

[1] H.R. 2646, 107th Cong., 2d Sess. (2002). Enacted as Public Law 107-171 on May 13, 2002.

funding and potentially increased competition for remaining funds, including a backlog of applications for conservation assistance amounting to $2.5 billion.[2]

Other analyses expressed mixed, although generally critical, views and agree that this bill is good for large agri-business and does little to address price, overproduction, and the needs of family farmers.[3] The general consensus is that this bill will likely maintain or possibly increase land values and rents, encourage overproduction and subsequently depressed prices, will continue to transfer large amounts of cash to traditional program crops.[4]

However, there is a current trend within the U.S. Department of Agriculture to increase outreach efforts to minority farmers, in part the likely result of recent class-action lawsuits filed on behalf of African-American farmers,[5] Native American farmers,[6] and others. With the current agency emphasis on service to traditionally underserved communities and the recent appointment of a new Undersecretary for Civil Rights, now may be the opportune time to pursue benefits previously denied to Native American communities.

Finally, while there appear to be many opportunities within this legislation for expansion of Native food systems, there are a variety of other factors that will potentially impact program success. Although implementation of several of the larger programs began upon enactment, as of calendar year-end 2002 no appropriations bills have been finalized, and given the current political climate it is unclear when monies will actually be allocated. Furthermore, in the case of new programs, such as the Conservation Security Program, many questions remain as to how the program will be administered. Rulemaking on this and other new programs will be a critical factor in determining programmatic success.[7]

The following section-by-section analysis of the 2002 Farm Bill will highlight items of interest in each Title, particularly provisions of specific relevance to Native American agricultural producers.

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[2] Environmental Working Group. (n.d.). *About the 2002 Farm Bill: A missed opportunity*. Retrieved August 8, 2002, from http://www.ewg.org/farm/farmbill/stake.php
[3] Rural Coalition. (n.d.). *Campaign for a just food and farm policy: 2002 Farm Bill* report. Retrieved August 16, 2002, from http://www.ruralco.org/html2/farmbillreport.html
[4] Gray, A. W. (2002, May). *Possible consequences of the 2002 Farm Bill* (CES-343), page 2 and 6. Retrieved August 22, 2002, from Purdue University Cooperative Extension Service Website at http://www.ces.purdue.edu/famrbill/CES-343.pdf
[5] Pigford v. Veneman, 182 F.R.D. 341 (D.D.C. 1998).
[6] Keepseagle v. Veneman, Civil Action No. 99-03119 (D.D.C., filed December 12, 2001).
[7] Lovejoy, S. & Doering, O. (2002, May). *Conservation and environmental enhancement in the 2002 Farm Bill* (CES-344) at 7. Retrieved August 22, 2002, from Purdue University Cooperative Extension Service at http://www.ces.purdue.edu/famrbill/CES-344.pdf

Title I: Commodity Programs

Overall, the commodity programs included in the 2002 Farm Bill do not appear to offer any substantive benefit to people seeking to establish food security within their communities, based on current food needs. Only producers of "program crops" are eligible to receive commodity payments, i.e., farm subsidies. "Program crops" include the following:[8]

Wheat	Oats	Tobacco
Corn	Extra-long staple & upland cotton	Peanuts
Barley	Rice (not including wild rice)	Sugar
Grain sorghum	Oilseeds	

For those tribes that do produce any of the "allowable" commodities, the various payment provisions in the farm bill are intended to reduce the ad hoc, or "emergency," nature of farm assistance and provide a more predictable income source. That said, most other analyses of this bill suggest that while there is little change in overall spending, the distribution of that spending is potentially very harmful to small family farms and ranches in the United States. According to the Center for Rural Affairs (CRA), the commodity title fails to make any significant improvements over traditional farm-subsidy programs. The difference is that now specific provisions are included that will ensure that the fewest, largest farms will receive a larger share of payments than under current law.[9]

One of the most publicized provisions in this title, the option to update base acres and program yields,[10] has both pluses and minuses. While payments are made on 100 percent of a producers' base acreage, these provisions may encourage producers to plant more of their acres to program crops, thus encouraging overproduction and penalizing those who employ environmentally friendly crop rotations.

However, the opportunity to establish base acres could benefit individual Native landowners by potentially increasing the lease value of their land holdings. Furthermore, this provision may encourage greater participation by individual Native producers, particularly in the Great Plains states where a higher concentration of program crop producers is found.

The other high-profile provisions in this title refer to "direct" and "counter-cyclical" payments that farmers will receive each year and, again, there are advantages and disadvantages to this scheme. The potential to eliminate the historical ad hoc, emergency-based nature of farm

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[8] Economic Research Service, U.S. Department of Agriculture. (n.d.). *The 2002 Farm Bill: Provisions and economic implications / Farm Policy: Title I – Commodity Programs*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/farmbill/titles/titleIcommodities.htm

[9] Center for Rural Affairs. (n.d.) *Analysis of the Senate Farm Bill: S. 1731, the Agricultural, Conservation Rural Enhancement Act of 2001 as adopted by the Senate Agricultural Committee*. Retrieved August 22, 2002, from http://www.cfra.org/resources/senate_farm_bill.htm

[10] Looker, D. (2000, August). Getting through the farm bill maze. *Successful Farming Online.* Retrieved August 22, 2002, from http://www,agriculture.com/sfonline/sf/2002/august/0208farmill.html. Base acres and program yields are a farm's history of crop acreage and its average yields.

payments and provide more predictable support could be of benefit to beginning and leveraged farmers in that it may make it easier to secure financing. However, not all farms will benefit and payments will be made only if the effective price for a covered commodity is less than the target price. If, for example, market prices stay above target prices for a year and a crop failure occurs, counter-cyclical payments will provide no relief at all. Additional concerns revolve around the question of whether or not counter-cyclical payments will be cut short if total payments exceed negotiated World Trade Organization limits.[11]

The CRA concludes that this bill will neither strengthen family farms nor increase the incomes of farm operators except to the extent that they own the land. As long as big farms get additional payments every time they add an acre of production, virtually all farm payments will be bid into higher cash rents. Such a system will continue to deny opportunities for smaller farms and beginning farmers.[12]

"Wins"

For those farmers who do produce program crops, this Farm Bill introduces a variety of support payments. Additionally, "Marketing Assistance Loans" and repayment rates, and "Loan Deficiency Payments" are extended to peanuts, wool, mohair, honey, small chickpeas, lentils, and dry peas. Note that each type of payment uses a different formula to calculate the amount of payment each producer will receive, and that the "loan rate," "direct payment," and "target price" referred to in the formulae are established in the respective legislation for each type of payment.

Section 1103 – Direct payments are fixed payments that are made based on a producer's historical production base. Introduced in the 1996 Farm Bill, they are received by the producer regardless of commodity price levels and what program crops are planted on the farm. Formerly known as AMTA (Agricultural Marketing Transition Act) payments, most producers have been receiving these direct payments since 1996. Those who have not are now eligible to enroll if they have been planting any program crops over the course of the past four years.[13]

Section 1104 – Counter-cyclical income support payments are additional payments to producers when market prices fall below a certain level, known as the target price. These payments are made based on historical production levels, much like direct payments. However, the rate per yield unit will not be fixed, as it is with direct payments. Instead, the rate per yield unit will depend upon the 12-month marketing year average price for the given commodity.[14]

This safety net was developed to replace most ad hoc market loss assistance payments, previously authorized by emergency legislation in 1998-2001. Again, crops covered by this program include wheat, corn, grain sorghum, barley, oats, rice, upland cotton, soybeans, other oilseeds, and peanuts. Farmers are given almost complete flexibility in deciding which crops to

[11] *Id.*
[12] Center for Rural Affairs, *supra* note 9.
[13] Gray, A. W. (2002, May). *2002 Farm Bill: Impacts on decisions at the farm* (CES-342), page 1. Retrieved August 22, 2002, from Purdue University Cooperative Extension Service Website at http://www.ces.purdue.edu/famrbill/CES-342.pdf
[14] *Id.* at page 2.

plant and producers are permitted to plant all cropland acreage on the farm to any crop, with some limitations. Farmers must also comply with certain conservation and wetland provisions.[15]

Section 1205 – Loan Deficiency Payments are made when the posted county commodity price, on the producer's chosen day, is below the loan rate for that county, and are based on the producer's current production of that crop. The producer must be able to prove that s/he is actually in possession of the harvested crop on the particular day chosen, and then sell the crop in order to receive the payment.[16]

Loan rates are fixed in the legislation and marketing loan provisions are also extended to peanuts, wool, mohair, honey, small chickpeas, lentils, and dry peas, in addition to unshorn pelts (wool), hay, and silage. Producers must no longer enter into a direct payment agreement in order to be eligible for loan program benefits, as that requirement has been eliminated.[17]

Section 10708 (found at **Title X: Miscellaneous** but relevant to allocation of commodity benefits) **– County Committees**, which play a large role in the allocation of farm program benefits and informing producers about programs, have been an ongoing source of discrimination against minority farmers and ranchers. The 2002 Farm Bill attempts to address this inequity with the institution of various measures requiring, for example, that the Secretary establish uniform procedures for nominating and electing committee members and ballot handling, authorizing evaluation of election outcomes, and action where election outcomes are deemed unrepresentative of farmers in the community. Public disclosure and reporting to Congress are also now required. It is hoped that this greater transparency and standardization of procedures will empower minority farmers and allow them to participate more fully in the program.[18]

"Losses"

A specific exception to planting flexibility included in this Farm Bill is made for fruits, vegetables, and wild rice, making these crops ineligible to receive direct, counter-cyclical program, or loan deficiency payments. Furthermore, the Secretary may, as in the past, assess penalties for planting base acres to fruit and vegetable crops.[19] This is, of course, a huge disincentive for those producers who are more interested in growing food crops for their communities. By eliminating them from the federal farm subsidy program this provision drastically narrows the opportunities for food security by perpetuating dependence on government food handouts.

Section 1106 – Outlines what **planting flexibility** exists in order to be eligible to receive subsidy payments. Subsequent paragraphs in this section specifically eliminate several crops

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[15] H.R. 2646, *supra* note 1. Section 1105 specifically requires compliance with 16 U.S.C. 3811, et seq. and 16 U.S.C. 3821, et seq., respectively.
[16] Allan, *supra* note 4 at 2.
[17] Economic Research Service, *supra* note 8.
[18] Rural Coalition, *supra* note 3.
[19] Allan, *supra* note 4 at 9.

considered of value to Native communities, including wild rice and tree/perennial fruits and vegetables. If a producer has historically planted any of the above "outlawed" crops, this provision may allow continued planting, however, no subsidy is authorized for those crops and program payments will be reduced on an acre-for-acre basis if any base acres continue to be planted. While tree and perennial fruits and most vegetables are specifically disallowed, provisions are made elsewhere in this bill for fruits and vegetables (see Title IV, Section 4305 for example).

Title II: Conservation

The conservation provisions in the 2002 Farm Bill are almost universally touted as a huge boon to environmental stewardship efforts. Assuming that appropriations are forthcoming, conservation programs in this bill are the "most ambitious and costly set of stewardship programs ever."[20] The flagship of this new bill is the Conservation Security Program (CSP), which represents a radical departure from previous conservation efforts in that it rewards producers for stewardship efforts on actively worked farms and ranches, versus paying for the temporary "retirement" of productive agricultural lands (i.e., taking them out of production). This may allow for greater flexibility for producers and should increase the overall level of conservation effort on farms.[21]

An important piece of the CSP is that it is intended to assist all producers, including nonprogram crop and livestock producers. Thus those operations that cannot take advantage of the commodity program, such as fruit and vegetable producers, can receive payments under the conservation provisions, a seemingly more attractive and holistic option than simply increasing the production of program crops. Under this program, farmers and ranchers are allowed to participate at their desired level and to choose their strategies from a wide variety of best management practices such as nutrient management, energy, habitat, and/or water conservation, controlled rotational grazing, etc.

The agriculture committee has for the first time in history approved a farm program consisting of "green" payments, which provide incentives to producers to adopt and maintain conservation practices on working lands. Both existing and new conservation practices on any farm and ranch would be eligible for this three-tiered system of increasing rewards for increasing environmental management. Funding is increased in this bill for the Wetland Reserve Program, Wildlife Habitat Incentives Programs, and the Farmland Protection Program, while the Conservation Reserve Program is reauthorized with an increased acreage enrollment cap. The Environmental Quality Incentives Program (EQIP) is also reauthorized, however, it is radically transformed. What was once a $200 million-per-year program targeted at family livestock

[20] Lovejoy and Doering, *supra* note 7 at 1.
[21] Economic Research Service, U.S. Department of Agriculture. (n.d.). *Farm Bill 2002: Analysis of selected provisions: Conservation funding overview*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/FarmBill/analysis/conservationoverview.htm

operations has now evolved into a funding source for large operators and confined animal feeding operations.[22]

While some have claimed this Farm Bill to be the most environmentally beneficial bill since the Clean Water Act, more than 50 percent ($9 billion) of conservation spending will go to the EQIP program which allows each individual operator, including corporate factory farms, to receive up to $450,000 in payments over the lifetime of the bill. Additionally, the impacts to the environment from overproduction stimulated by the bill's commodity programs are not addressed.[23]

Some analysis suggests that a primary concern is ***how*** these programs will be administered and how the participant selection process, technical services, monitoring, enforcement, and evaluation will be accomplished. While this conservation title is not a radical departure from previous USDA programs, it is a very different approach and resources are greatly increased to assist agricultural producers. The bottom line is that the rules governing the programs will be critical to their success.[24] See also Title VIII: Forestry.

"Wins"

Section 2001 – The new **Conservation Security Program** (CSP) provides financial incentives to producers to implement conservation measures on their farms is authorized as an entitlement program – thus making it the first conservation program to be on a par with the commodity program.[25] The CSP is considered to be a true bright spot within the 2002 Farm Bill wherein for the first time farmers who have practiced good stewardship will receive payments for the multiple benefits their farming systems generate for society. The bottom line no longer need by how much of a commodity one produces, but rather the opportunity to receive payments based on the environmental and conservation benefits any individual farmer can produce.[26]

Section 2003 – With regard to **partnerships and cooperation**, the Secretary is authorized to enter into stewardship agreements with Indian tribes and nongovernmental organizations, among others, and allows the State Conservationist to designate special projects to enhance technical and financial assistance provided to owners, operators, and producers in addressing natural resource issues related to agricultural production. These agreements are intended to allow greater flexibility in adjusting eligibility criteria, approved practices, and innovative conservation practices to better reflect the unique local circumstances.[27]

Section 2701 – Mandates the Secretary to ensure that persons with expertise in the technical aspects of conservation planning, watershed planning, environmental engineering (including

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[22] Center for Rural Affairs, *supra* note 9.
[23] Rural Coalition, *supra* note 3.
[24] Lovejoy and Doering, *supra* note 7 at 6.
[25] Rural Coalition, *supra* note 3.
[26] Land Stewardship Project, "Farm Bill: LSP Makes a Difference at the National Level." (2002, May 10). Retrieved August 20, 2002, from http://www.landstewardshipproject.org/opinions/02/opinion_0505510.html
[27] H.R. 2646, *supra* note 1 at Section 2003.

commercial entities, nonprofit entities, state or local governments or agencies, and other federal agencies), are eligible to become approved providers of the **technical assistance**.[28]

These two provisions hold great potential benefits for Native communities by allowing conservation programs to be tailor-made for local and regional circumstances, in addition to allowing tribal entities (such as departments of natural resources and tribal colleges) opportunities for certification as technical service providers.

Other conservation highlights of the 2002 Farm Bill are as follows:

- **Section 2101 –** A $2-billion budget is authorized for the **Conservation Reserve Program** with an increase of maximum acreage to 39.2 million acres. Additionally, the **CRP Wetland Enrollment Pilot Program** is extended to all states and increases the enrollment cap to one million acres (100,000 acres in any one state with possible increase by the Secretary to 150,000 acres).

- **Section 2201 –** the **Wetlands Reserve Program** (WRP at Section 2201) is reauthorized and the cap is increased to 2.275 million acres. The Secretary is further required, to the extent practicable, to enroll 250,000 acres per year.

- **Section 2301 –** The **Environmental Quality Incentives Program** (EQIP) is reauthorized for $1.3 billion over the next seven years. Allows 90 percent cost-share (above and beyond normal 75 percent) if producer is a limited-resource or beginning farmer or rancher.[29] Additionally, funding for livestock producers is targeted at 60 percent of annual program funding and the annual animal cap for cost-share eligibility is removed. Three-year contracts are now allowed, which are a better “fit” with limited lease terms required by the BIA, and thus enrollment eligibility is potentially increased for Native-owned lands. Finally, nonindustrial private forestland has been added to the definition of eligible land.

- **Section 2401 –** A **Grasslands Reserve Program** (at Section 2401) is established that allows enrollment of up to two million acres of restored, improved, or natural grassland, rangeland, and pastureland, including prairie.

- **Section 2502** expands conservation efforts to include technical assistance relating to **conservation on private grazing land**, and includes an additional $700 million for the Wildlife Habitat Incentives Program.

"Losses"

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[28] *Id.* at Section 2701.

[29] Natural Resource Conservation Service, U.S. Department of Agriculture. (n.d.). *Farm Security and Rural Investment Act of 2002: Conservation provisions – Section by section description*. Retrieved August 16, 2002, from http://www.nrcs.usda.gov/about/legislative/pdf/SectionbySection5-7.pdf

A provision to provide $10 million in additional outreach funds to help minority farmers gain access to the program and counter still low rates of participation in conservation programs was removed from the bill in final negotiations.[30] Since the majority of tribal communities have neither a Natural Resource Conservation Service (NRCS) office or liaison available to them, it is imperative that other mechanisms within the Farm Bill be utilized to ensure that those who wish to participate in the many conservation programs administered by the NRCS and authorized by the bill receive appropriate attention and assistance. Additionally, while total acreage caps are increased, county quotas (caps) are not taken into consideration, which may limit program enrollment opportunities.

Section 2301 – The **Environmental Quality Incentives Program** (EQIP) offers cost share assistance to producers to make their farms more environmentally sustainable. The battle to maintain the integrity of this program for the small farmers who need it, and keep it from becoming a major subsidy for the largest factory livestock production operations was lost in the House and the Senate.[31]

Title III: Trade

"Wins"

Section 3103 – the **Market Access Program** is expanded under the 2002 bill and funds are already ensured. Furthermore, for funding in excess of the Fiscal Year (FY) 2001 level, equal consideration is given to eligible trade organizations that have not previously participated in the program and to activities in emerging markets or other markets.[32]

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Title IV: Nutrition

The 2002 Farm Bill appears to maintain the status quo with regard to food and nutrition programs, and many of the changes appear to be administrative and designed to increase quality

[30] Rural Coalition, *supra* note 3.
[31] *Id*.
[32] Economic Research Service, U.S. Department of Agriculture. (n.d.). *The 2002 Farm Bill: Provisions and economic implications / Farm Policy: Title III – Trade*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/farmbill/titles/titleIIItrade.htm

control. The Food Stamp Program is reauthorized through FY 2007 and eligibility is restored to legal immigrants to the U.S. while the Temporary Assistance to Needy Families (TANF) Program has added a small extension of five months as a transitional benefit. Additionally, funds for the Emergency Food Assistance Program (TEFAP) are increased to $140 million each year beginning in FY 2002.

Perhaps of more interest, funding for Community Food Projects was doubled, although funding is still limited to $5 million for FY 2002 through FY 2007. These funds may be used for programs addressing community issues such as rural poverty, welfare dependency, and promotion of self-sufficiency. The Farmers' Market Nutrition Program will receive $15 million, up from $10 million, and the $5 million is authorized for implementation and expansion of the Senior Farmers' Market Program. The Secretary is also required to use a minimum of $50 million per year to purchase fresh fruits and vegetables for school lunch and other child nutrition programs.[33]

"Wins"

Section 4121 – the **Food Stamp Employment and Training (FSE&T) Program** now allows more state flexibility in spending, including elimination of the $25-per-month cap on federal reimbursements for transportation and other work costs incurred by participants.

The following programs have been reauthorized through FY 2007:

- **Section 4122 – Food Distribution Programs on Indian Reservations**.
- **Section 4126 – Emergency Food Assistance Program**. Increases to $140 million (from $100 million) the amount of Food Stamp Appropriations that must be used each year.
- **Section 4201(a) – Commodity Supplemental Food Program**.[34]

Section 4125 – Annual funds of up to $5 million are authorized for **Community Food Projects**. These grants are awarded for projects designed to increase access of low-income households to fresher, more nutritious food supplies, increase self-reliance of communities in providing for their own food needs, and to promote comprehensive responses to local food, farm, and nutrition issues. Definition of qualifying projects expanded to include those that meet specific local needs through infrastructure development, long-term planning, and/or innovative marketing activities. Up to $200,000 annually can be used to contract with a nongovernment organization to develop and recommend programs for addressing common community issues

[33] Economic Research Service, U.S. Department of Agriculture. (n.d.). *The 2002 Farm Bill: Provisions and economic implications / Farm Policy: Title IV – Nutrition Programs*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/FarmBill/Titles/TitleIVNutritionPrograms.htm
[34] Food and Nutrition Service, U.S. Department of Agriculture. (2002, May 14). *Section by section summary of provisions affecting food distribution programs*. Retrieved August 21, 2002, from http://www.fns.usda.gov/cga/2002_Farm_Bill/food_distribution.html

such as loss of farms and ranches, rural poverty, welfare dependency, hunger, job training, and promotion of self-sufficiency for individuals and communities.

Section 4203 – Distribution of Surplus Commodities to Special Nutrition Projects. This provision extends through September 30, 2007 the Secretary's authority to enter into agreements with private companies to reprocess "bonus" commodities into end-food products to encourage consumption.[35] This provision may be worth exploring for opportunities for Native communities to tap into this market.

Section 4303 – A new provision requiring the Secretary to encourage institutions participating in the school lunch and breakfast programs to purchase locally produced foods to the maximum extent practicable; advise institutions of **the locally produced food policy**; and provide start up grants to 200 institutions to defray initial costs of equipment, materials, storage facilities, and similar costs.[36] Annual funding of $400,000 for FY 2003-2007 is authorized for startup grants for up to 200 institutions.

* See also May 16, 2002 memo from USDA Child Nutrition Division Director Stanley Garrett to Regional Directors of Special Nutrition Programs in re 1997 "farm to school" initiative and the Small Farms/School Meals Initiative."

Section 4305 – A **Fruit and Vegetable Pilot Program** is authorized, effective upon enactment, requiring the Secretary to make free fresh and dried fruits and fresh vegetables available to 25 schools in each of four states (Indiana, Iowa, Michigan, and Ohio) and on one Indian reservation (Zuni Tribal Organization, New Mexico), in the 2002-2003 school year. Not more than $6 million of "Section 32"[37] funds are authorized to carry out this pilot program. The purpose of this program is to determine best practices for increasing fruit (both fresh and dried) and fresh vegetable consumption in elementary and secondary schools and to publicize related health promotion messages for four years.

Section 4307 – Women, Infants, and Children (WIC) Farmers' Market Nutrition Act of 1992 mandated the USDA to help participants in the Special Supplemental Nutrition Program for WIC to obtain fresh fruits and vegetables from farmers' markets. Additional funding in the 2002 Farm Bill shall be available through the Commodity Credit Corporation (CCC) in the amount of $15 million, until it is expended.

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[35] *Id.*

[36] Food and Nutrition Service, U.S. Department of Agriculture. (2002, May 14). *Section by section summary of provisions affecting special nutrition programs*. Retrieved August 21, 2002, from http://www.fns.usda.gov/cga/2002_Farm_Bill/special_nutrition.html

[37] Section 32 of the Agricultural Adjustment Act Amendment of 1935 finances distribution of surplus agricultural commodities, typically for child nutrition programs. Retrieved August 20, 2002, from http://www.ers.usda.gov/Features/FarmBill/2002glossary.htm

Section 4402 – The Secretary is required to use $5 million in funds available to the CCC for the **Senior Farmers' Market Nutrition Program** (SFMNP) for FY 2002, and $15 million in CCC funds for each of FY 2003 through FY 2007 to carry out an expand the SFMNP.[38]

Section 4403 – The **Nutrition Information and Awareness Pilot Program** is a new $10 million-per-year cost-share pilot program, established to create demonstration projects aimed at increasing fruit and vegetable consumption and promoting healthy eating.[39]

Title VI: Credit[40]

Rules for borrower eligibility are relaxed in this bill, as are lending rules for beginning farmers and ranchers. Furthermore, more farmers may qualify for emergency loan financing. While authority is granted to guarantee owner-financed farm purchase loans to beginning farmers on a pilot basis and to guarantee State beginning farmer loans, a change in the Internal Revenue Service code is required to put this provision into effect.

Although minor, changes to credit policies could possibly boost demand for loan programs, even though annual funding levels in the credit program do not change significantly. One noteworthy positive development in this bill is that county committee involvement in loan decisions is reduced, thereby hopefully reducing bias in lending practices.

"Wins"[41]

Section 5003 – Addresses the **amount of guarantee of loans for farm operations on tribal lands** and establishes eligibility rules for Native Americans whose operations are within the jurisdiction of a reservation. These may be exempt altogether from limits on direct eligibility loans, in addition to up to 95 percent guarantees on operating loans (up from 90 percent).

Section 5311 – Increases annual **loan authorization levels** to:

- $205 million for direct farm ownership loans (up from $85 million).
- $565 million for direct operating loans (up from $500 million).

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[38] *Supra* note 36.
[39] Economic Research Service, U.S. Department of Agriculture. (n.d.). *The 2002 Farm Bill: Provisions and economic implications / Farm Policy: Title X – Miscellaneous*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/farmbill/titles/titleXmiscellaneous.htm
[40] Economic Research Service, U.S. Department of Agriculture. (n.d.). *Farm Bill 2002: Analysis of selected provisions: Farm Service Agency Farm Loan Programs*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/farmbill/analysis/creditprovisions.htm
[41] Economic Research Service, U.S. Department of Agriculture. (n.d.). *The 2002 Farm Bill: Provisions and economic implications / Farm Policy: Title V – Credit*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/farmbill/titles/titleVcredit.htm

- $1 billion for guaranteed farm ownership loans (up from $750 million).

Section 5313 – The four percent **interest-rate reduction program** for guaranteed operating loans is made permanent, and 15 percent of the $750 million in annual authority is set aside for beginning farmers until March 1 of each fiscal year.

"Losses"

Authorization for guaranteed operating loans was reduced from $2.1 billion to $2 billion.[42]

Title V: Rural Development

The "flagship" of the Rural Development title appears to be the provisions for value-added agriculture, which encompasses methods to increase the value obtained from agricultural production, such as manufacturing processed foods that sell at a higher price than raw commodities. Rules were relaxed to allow value-added cooperatives greater opportunity to participate in the Rural Business and Industry Program by larger loan guarantees, loans to buy stock in value-added cooperatives, loans for renewable energy systems, and Rural Business Enterprise Grants. Additionally, the Value-Added Agricultural Product Marketing Development Grant pilot program is reauthorized at $40 million per year. All of these programs are expected to increase employment and income share in rural areas, but as there is little research or evidence to date that they are really working.[43]

A key variable with the potential to severely impact this program is the appointment of Thomas Dorr as Undersecretary for Rural Development. The Senate Agriculture Committee gave Dorr a "vote of no confidence" while over 118 groups signed a letter to President Bush condemning his appointment of Dorr. The grounds for opposition to Dorr are listed as his support of corporate-controlled agriculture, his opposition to sustainable agriculture, and his view that ethnic diversity is an impediment to economic development.[44]

"Wins"[45]

Section 6009 – establishes a community facilities grant for **Tribal College and University Essential Community Facilities**, but provides no funding.

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[42] *Id*.
[43] Economic Research Service, U.S. Department of Agriculture. (n.d.). *Farm Bill 2002: Analysis of selected provisions: Value-added agriculture*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/FarmBill/analysis/valueaddedag.htm
[44] Missouri Rural Crisis Center and the National Family Farm Coalition. (2002, August 7). *Family farmers denounce Bush's appointment of Thomas Dorr.* Retrieved October 2, 2002, from http://www,commondreams.org/news2002/0807-08.htm
[45] Rural Development Online, U.S. Department of Agriculture. (n.d.). *2002 Farm Bill: Section-by-section summary*. Retrieved August 27, 2002, from http://www.rurdev.usda.gov/rd/farmbill/sections.htm

Section 6010 – Authorizes $30 million per year in grants, $30 million per year in loans, and $20 million per year in grants to benefit Indian tribes and for **Water and Waste Facility Grants for Native American Tribes**.

Section 6011 – extends **Grants for Water Systems for Rural Native Villages in Alaska**.

Section 6013 – Loans and Loan Guarantees for Renewable Energy Systems. Makes renewable energy systems, including wind energy and anaerobic digestors for the purpose of energy generation, eligible for under the Business and Industry Program (see Section 6017).

Section 6014 – Rural Business Enterprise Grants eligibility is extended to certain small and emerging private businesses, including those with a principal office in an area that is located on land of an existing or former Native American reservation. Authorization is doubled, from $7.5 million to $15 million per year.

Section 6015 – The nonfederal financial match requirement in the **Rural Cooperative Development Grant** program for 1994 institutions (i.e., tribal colleges) is decreased to five percent (remains at 25 percent for all other eligible applicants).

Section 6017 – The **Business and Industry Loan** Program has been modified to allow:

- Eligibility of existing cooperatives to in the Cooperative Stock Purchase Program, in addition to startup cooperatives.
- Startup cooperatives to contract for services to process agricultural commodities during its first five years in order to provide adequate time for planning and constructing the cooperative's processing facility.
- Rural Business-Cooperative Service to consider the market value of brand names, patents, or trademarks of the cooperative.
- Loans to cooperatives for projects located in a rural area and that provides for the value-added processing of agricultural commodities.

Section 6029 – Requires the Secretary to enter into an interagency agreement with another federal agency that has experience in operating a **Rural Business Investment Program** and authorizes $40 million in grants.

Section 6401 – Authorizes $40 million per year through FY 2007 and establishes a program to fund projects that increase agricultural producers' share of the food and agricultural system, including renewable energy, wineries, high value products from major crops, agri-marketing ventures, and community supported agricultural projects. **Value-added agricultural product market development grants** for FY 2002 totaled in excess of $37 million and included salmon, bison, and "Indian ricegrass." Unfortunately, only two grants appear to have been awarded to Native producers.[46]

Section 9006 – (found at **Title IX: Energy** but relevant to farm and small business operations) Authorizes $23 million per year from FY 2003 through FY 2007 and establishes a grant, loan, and loan guarantee program to assist eligible farmers, ranchers, and rural small businesses in purchasing **Renewable Energy Systems and Energy Efficiency Improvements**.

"Losses"[47]

Section 6008 – establishes a community facilities grant for **Tribal College and University Essential Community Facilities**, but provides no funding.

Section 6025 – Establishes the **Grants for Training Farm Workers in New Technologies and to Train Farm Workers in Specialized Skills Necessary for Higher Value** Crops, but provides no funding.

Title VII: Research & Related Matters

"Wins"

Section 7206 – Establishes "1994 Institution" (i.e., tribal colleges and universities) **eligibility for the integrated grants program.**[48]

Section 7208 – Adds 20 new **high-priority research and extension initiatives** for competitive grants. A sampling of these areas includes land use management, water and air quality, harvesting productivity for fruits and vegetables, agricultural marketing, and programs to combat childhood obesity.[49]

Section 7405 – The **Beginning Farmer and Rancher Development Program** establishes training, education, outreach, and technical assistance competitive grants. Collaborative State, tribal, local, or regionally based networks are eligible and funds will be specifically earmarked for limited-resource and socially disadvantaged farms.[50]

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[46] U.S. Department of Agriculture Rural Development. (n.d.). *2002 Value-added agricultural product market development grant selections.* Retrieved October 23, 2002, from http://www.rurdev.usda.gov/rd/newsroom/2002/value_ad.html
[47] Rural Development Online, USDA, *supra* note 45.
[48] H.R. 2646, *supra* note 1 at Section 7206.
[49] Economic Research Service, U.S. Department of Agriculture. (n.d.). *The 2002 Farm Bill: Provisions and economic implications / Farm Policy: Title I – Research & Related Matters*. Retrieved August 16, 2002, from http://www.ers.usda.gov/Features/farmbill/titles/titleVIIagriculturalresearch.htm
[50] *Id.*

Section 7411 – A new provision authorizes $8 million in pilot program **grants for Youth Organizations** such as the 4H and Future Farmers of America.[51]

"Losses"

Section 7205 – Funding for the **Initiative for Future Agriculture and Food Systems** is progressively increased from $120 million in FY 2004 to $200 million in FY 2007 and beyond with priority assigned to "rural, economic, and business and community development" issues. However, the application process was suspended in FY 2002 as a result of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Public Law 107-76) and the future of the program is uncertain.[52]

Title VIII: Forestry

As with the conservation provisions of the 2002 Farm Bill, the Forestry Title (Title VIII) appears to be a boon for environmental stewardship efforts. There are significant advances over the 1996 Farm Bill, which did not have a Forestry Title at all, and a portion of forestry funding in the 2002 bill is mandatory, another new precedent in federal forestry policy. There is a great deal of forest management flexibility in this bill, in addition to an apparently strong commitment to public input. Finally, this title includes the first cost-share forestry program ever to receive mandatory funding in a farm bill.[53] Two of the key sections in this Farm Bill are:

Section 8002 – The **Forest Land Enhancement Program** (FLEP) is designed to provide assistance to State foresters, and to encourage the long-term sustainability of nonindustrial [*sic*] private forestlands, by "investing in practices to establish, restore, protect, manage, maintain, and enhance the health and productivity of the nonindustrial [*sic*] private forest lands in the United States for timber, habitat for flora and fauna, soil, water and air quality, wetlands, and riparian buffers."[54]

Section 8101 – Funds under the **Sustainable Forestry Outreach Initiative**, an amendment to the Renewable Resources Extension Act of 1978, are available only to Land Grant Institute Extension Services. The purpose of this program is to "educate landowners about the value and benefits of practicing sustainable forestry" and "the variety of public and private sector resources available to assist landowners in planning for and practicing sustainable forestry."[55] Whether or

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[51] *Id.*
[52] Cooperative Research, Education, and Extension Service, U.S. Department of Agriculture. (n.d.). *Important* notice *about IFAFS (Initiative for Future Agriculture and Food Systems)*. Retrieved October 2, 2002, from http://www.reeusda.gov/ifafs
[53] Ritter, L. (2002, August 8). *Overview of new and modified forestry programs in the Farm Bill*. Presentation at the Pinchot Institute for Conservation's *Farm Bill 2002 Forum: Review and Discussion of Forestry Opportunities*. Retrieved December 16, 2002, at http://www.pinchot.org/pic/farmbill/forum_report.pdf
[54] HR 2646, *supra* note 1 at Section 8002.
[55] *Id* at Section 8101.

not funds will be appropriated and how they are distributed for this program will dictate the potential benefits to Indian Country.

It must be noted, however, that whether or not these programs are of potential benefit to Indian Country is a function of how funding is managed. If funds are allocated exclusively through State committees it could be a "loss," depending on tribal relationship (or lack thereof) with State agencies. If tribes can receive funds independently, these could definitely be "wins."

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Title IX: Energy (*see Rural Development at Title VI*).

Title X: Miscellaneous

"Wins"[56]

Section 10605 – Establishes the **Farmers' Market Promotion Program** to make grants for projects to establish, expand, and promote Farmers' Markets, community-supported agriculture programs, and other direct producer-to-consumer market opportunities.

Section 10606 – Establishes the **Nation Organic Certification Cost-Share Program**, authorizing $5 million for FY 2002 (and until expended) to assist producers and handlers of agriculture products in obtaining certification under the Organic Foods Production Act.

Section 10607 – Provision included for the first time for research on and technical assistance for organic agriculture. Organic producers who produce and market only organic products will be allowed an **exemption from** paying conventional **marketing assessments** under any commodity promotion law. Through the USDA Cooperative State Research, Education, and Extension Service, funds will be used to identify marketing and policy constraints on the expansion of organic agriculture, production, marketing, and socioeconomic research among other subject areas. (See also Title VI and the Value-Added Agricultural Product Marketing Development Grant pilot program.)

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[56] H.R. 2646, *supra* note 1 at Title X.

Section 10707 – Requires the Secretary to carry out **Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers** in owning and operating farms and ranches and in participating equitably in the full range of agricultural programs offered by the Department. Such a program is required to "include information on commodity, conservation, credit, rural and business development programs, application and bidding procedures, farm and risk management, marketing, and other activities essential to participation in agricultural and other programs of the Department."