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INSIDE

- Resolving the future of farm policy: six-year farm bill signed

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IN FUTURE ISSUES

- *Pronsolino* case update

Ninth Circuit rules that factoring agreements do not per se breach PACA trust

The Ninth Circuit Court of Appeals has ruled that factoring agreements do not per se breach the trust created by the Perishable Agricultural Commodities Act (PACA). *Boulder Fruit Express & Heger Organic Farm Sales v. Transportation Factoring, Inc.*, 251 F.3d 1268, 1271-72 (9th Cir. 2001), *cert. denied,* 122 S. Ct. 1077 (2002). In rejecting the trust beneficiaries' claim that factoring agreements per se breach the PACA trust because they contemplate a discounted sale of trust receivables, the court opined that "a commercially reasonable sale of account for fair value is entirely consistent with the trustee's primary duty under PACA ... to maintain trust assets so that they are 'freely available to satisfy outstanding obligations to sellers of perishable commodities.'" *Id.* at 1271 (quoting 7 C.F.R. § 46.46(d)(1)). Thus, while declining to rule that factoring agreements are per se breaches of the PACA trust, the court did not foreclose the possibility that a particular factoring agreement might breach the trust because it was not commercially reasonable. *See id.* at 1271-73.

The PACA, 7 U.S.C. §§ 499a-499t, regulates the marketing, shipping, and handling of perishable agricultural commodities to protect the interests of sellers of the commodities subject to the Act. In part, Congress created PACA to protect growers of fresh fruit and vegetables from buyers who are unable to pay their debts. *Id.,* at 1270 (citing *Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280, 282 (9th Cir. 1997); *Farley & Calfee, Inc. v. USDA*, 941 F.2d 964, 966 (9th Cir. 1991)).

Among the protections the PACA provides to unpaid sellers is the creation of a floating, non-segregated statutory trust that extends to commodities, the products derived from them, and to the receivables and proceeds of the sale of these commodities and products. *See* 7 U.S.C. § 499e(c). The PACA trust requires perishable commodity commission merchants, dealers, and brokers, as the trustees of the PACA trust, to hold receivables or proceeds in trust for all unpaid commodity sellers until the sale price is paid in full. *Boulder Fruit,* 251 F.3d at 1270 (citing 7 U.S.C. § 499e(c)(2)). "'Through this trust, the sellers of the commodities maintain a right to recover against the purchasers superior to all creditors, including secured creditors.'" *Boulder Fruit,* 251 F.3d at 1270 (quoting *Endico Potatoes, Inc. v. CIT Group/Factoring, Inc.,* 67 F.3d 1063, 1067 (2d Cir. 1995)).

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"Business Manager Agreement" between bank and produce dealer found to violate PACA trust

The United States District Court for the Middle District of Tennessee has ruled that a commercial bank, acting pursuant to a "Business Manager Agreement" between it and a produce buyer, violated a trust created under the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §§ 499a–499t, for the benefit of unpaid sellers of produce. *Overton Distributors Inc. v. Heritage Bank,* 179 F.Supp.2d 818 (M.D. Tenn. 2002). In essence, the court concluded that the agreement did not provide for the sale of the produce buyer's accounts receivable as it purported to do. Instead, it gave the bank a security interest in the accounts. The court also concluded that the bank did not acquire the accounts receivable as a bona fide purchaser because it did not give value for them and it had notice that their transfer to the bank was a breach of the PACA trust. *See id*. at 828-36

The produce buyer, Quality Foods of Tennessee, Inc., had a history of financial

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"Factoring" is "the commercial practice of converting receivables into cash by selling them at a discount." *Id.* at 1271 (citing *Black's Law Dictionary* (7th ed. 1999)). A "factor" is a third party who pays a company a reduced amount, obtaining the right to collect on accounts receivable when due. *Black's Law Dictionary* 484-85 (7th ed. 1999). The factor "assumes the risk of delay in collection and loss on the accounts receivable." *Id.* at 485. The "factorage" is the amount of compensation a factor collects for his services. *Id.*

Boulder Fruit grew fresh fruit and vegetables and sold them on credit to Certified Organics, a fruit and vegetable wholesaler. *Boulder Fruit,* 251 F.3d at 1269. These sales were subject to the PACA. Certified Organics resold the fruits and vegetables it received from Boulder Fruit, creating accounts receivable expressly subject to the trust. *Id.* at 1270 (citing 7 U.S.C. § 499e(c)(2); 7 C.F.R. § 46.46). Certified Organics, in an attempt to generate cash, then sold the accounts receivable to Transportation Factoring Inc. for eighty percent of their face value. *See id.* at 1269. When Certified Organics failed to repay Boulder Fruit, Boulder Fruit sued Transfac and Capital Resource Funding, a factoring company who had introduced Transfac to Certified Organics.

Boulder Fruit contended, among other claims, that the factoring arrangement between Certified Organics and Transfac was a per se breach of the PACA trust. The district court, however, granted summary judgment in favor of both Transfac and Capital, holding that because Transfac paid more for the accounts than what they were worth, the factoring arrangement did not violate the trust. *See id.* at 1270.

In its de novo review of the district court's judgment, the Ninth Circuit premised its analysis on the application of general trust principles, noting that these principles governed in the absence of a direct conflict between them and the PACA. *Id.* at 1271 (citing *Sunkist*, 104 F.3d at 282). Under these principles, noted the court, a breach of trust is "'a violation by the trustee of any duty which as trustee he owes the beneficiary.'" *Id.* 1271 (quoting Restatement (Second) of Trusts § 201 (1959)). The court also observed that the PACA regulations require the trustee to maintain the trust assets in a "'manner that such assets are freely available to satisfy outstanding obligations to sellers of perishable agricultural commodities.'" *Id.* (quoting 7 C.F.R. § 46.46(d)(1)). Finally, the court noted that the PACA regulations prohibit the "'dissipation of trust assets,'" which is defined to mean "'any act or failure to act which could result in the diversion of trust assets or which could prejudice or impair the ability of unpaid suppliers, sellers, or agents to recover money owed in connection with produce transactions.'" *Id.* (quoting 7 C.F.R. § 46.46(a)(2)).

Based on these principles, the Ninth Circuit rejected Boulder Fruit's argument that factoring agreements were a per se breach of the PACA trust because they allow the sale of trust assets at less than the face value. The court reasoned that because it does not command the "perpetuation of unliquidated commercial paper," the PACA does not prohibit a trustee from generating cash through the sale of receivables. *Id.* (citations omitted). Instead, noted the court, since the trustee has the duty to maintain the trust's liquidity, the trustee's sale of receivables at their fair market value may be prudent. In other words, because it generates cash, the commercially reasonable sale of accounts receivables can allow a trustee to achieve the overall PACA goal of paying growers for their products. *See id.*

The court opined, however, that the sale of trust assets could in some instances violate the PACA trust. For example, selling an account for "pennies on the dollar" might breach the PACA trust, while selling a trust at a "commercially reasonable rate" would not. *Id.* (citing *E.Armata, Inc. v. Platinum Funding Corp.*, 887 F.Supp. 590, 593 (S.D.N.Y. 1995)). According to the court, the fact that some factoring arrangements might contemplate commercially unreasonable rates did not justify a holding that factoring agreements were a per se violation of the PACA trust. *See id.* at 1272.

Having concluded that factoring arrangements were not per se breaches of the PACA trust, the court turned to Boulder Fruit's contention that the agreement between Transfac and Certified Organics breached the PACA trust because Transfac did not pay face value for the accounts. *See id.* at 1272. In rejecting this contention, the court agreed with Transfac's position that the factoring arrangement was commercially reasonable and actually added value to the trust. The court noted that Transfac charged a factoring discount of only twenty percent and that it paid Certified Organics $18,482 more than it collected from the accounts. *Id.* at 1272.

Finally, the court upheld the district court's ruling that Boulder Fruit failed to prove that Certified Organics misapplied trust funds. Boulder Fruit had offered no evidence of how Certified Organics spent the trust funds. Moreover, noted the court, PACA trust funds are non-segregated floating trust funds that could have been applied to the payment of perishable commodities producers other than Boulder Fruit without violating the trust. *Id.* at 1272 (citing 7 U.S.C. § 499e(c)).

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BMA Cont. from p.2

difficulties. To improve its finances, Quality entered into a Business Manager Agreement ("BMA") with Heritage Bank, its principal lender. Under the BMA, Heritage administered and managed Quality's accounts. The BMA also allowed Quality to obtain advances against the face value of the accounts receivable that it presented to Heritage. These accounts were purportedly purchased by

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Farm Bill/Cont. from p.7
First, there is a developing effort in the Senate to cut the maximum level of payments that producers can receive under the new farm bill. On June 5th, Senators Chuck Grassley (R-IA), Mike Enzi (R-WY), and Chuck Hagel (R-NB), introduced an amendment to the fiscal year 2002 supplemental spending bill that would reduce the overall payment limitation by lowering the amount of direct decoupled payments that a producer can receive and placing a cap on the use of generic certificates. In addition, Senators Grassley and Byron Dorgan (D-ND) have also stated that they will try to attach such a change to the annual agriculture appropriations bill.

Second, the drought situation in the West is prompting several western senators to seek disaster assistance for their producers. When President Bush warned that he will not favor any new agriculture funding, including disaster aid, Senator Conrad Burns (R-MT) recently unveiled a $1.2 billion disaster assistance proposal that would offset funding from the conservation, trade, nutrition, forestry, and rural development programs in the new farm bill. Such a measure could appear as an amendment to the supplemental appropriations bill currently pending in the Senate.

Conclusion

After several years of effort, Congress has completed its revision of current domestic farm policy. The resulting measure reflects a strong commitment to a variety of interests ranging from conservation to energy production. The parameters of its implementation continue to be defined.

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[1] *See* S. 1628, S. 1731, 107th Congress (2001).

[2] The current soybean loan rate of $5.26 per bushel was set deliberately high in the 1996 farm bill to compensate for the fact that soybean producers were not receiving AMTA payments. Because the new farm bill provides oilseed producers with direct decoupled payments, the conference lowered the loan rate to a level considered to be in balance with the loan rates for other commodities.

BMA/Cont. from page 2
Heritage and became Heritage's assets. Quality and its owners, however, remained liable for the repayment of the advances if the proceeds from the account receivables were insufficient to cover the funds advanced. *See id*. at 827-29. Notwithstanding this arrangement, Quality subsequently defaulted on its loans and ceased operations.

Overton Distributors, Inc., a produce wholesaler, brought this action to recover approximately $220,000 from the Heritage Bank. Overton alleged that the sums it sought represented PACA trust assets in the form of Quality's accounts receivables and their proceeds that Heritage had acquired under the BMA. Overton premised its claim on its assertion that the PACA had created a trust in its favor as an unpaid seller of produce to Quality, and that Heritage Bank's receipt of the funds was in breach of the trust. *See id.* at 823-24.

Under the PACA, a statutory trust in favor of unpaid sellers arises when a perishable agricultural commodity commission merchant, broker, or dealer receives perishable agricultural commodities. The trust extends to the commodities, products derived from the commodities, receivables, and proceeds from the sale of the commodities or their products. *See* 7 U.S.C. § 499e(c)(1). Sellers seeking to benefit from the trust must affirmatively preserve their rights, either by sending notice to the buyer within thirty days after payment is due or by including certain statutory language on produce invoices. *See Overton Distributors,* 179 F. Supp.2d at 825. Sellers who preserve their trust rights have a claim to the trust assets that is superior to the claim of the secured lenders of the commission merchant, broker, or dealer. *See id*.

In an earlier order, the court had concluded that Overton had preserved its rights as a PACA trust beneficiary by using the "'invoice method.'" *Id*. at 825-26. Turning to the central issue presented—whether Heritage received trust assets from Quality in breach of the trust—the court found that the funds held by Heritage were trusts assets. The parties had agreed that about ninety percent of Quality's business involved the sale of produce covered by the PACA, and the court concluded that Heritage had failed to prove that the assets received from Quality in payment for services or through Quality's liquidation were not PACA trust assets. *See id*. at 828.

Turning to the question of whether Heritage had received these assets in breach of the trust, the court concluded that the BMA between Heritage and Quality constituted a breach of trust. The court found that the BMA created a relationship that was more analogous to a loan or line of credit than to a purchase of accounts receivable under a factoring arrangement. In the court's view, the evidence showed that Heritage considered the BMA was both a service arrangement whereby Heritage essentially provided bookkeeping services and a line of credit. The latter provided Heritage with a profit greater than the service charge. *See id*. at 828-29.

Under the BMA, Heritage had loaned money to Quality based on Quality's accounts receivables. These accounts, which were PACA trust assets, were then transferred to Heritage. Heritage received payments from Quality's customers and applied them against the loan balance. Quality, however, retained the risk of nonpayment, for it remained indebted to Heritage for the cash advances until they were repaid. Thus, the court reasoned, Heritage did not actually purchase the accounts receivable. Instead, it only acquired a security interest in the accounts receivable, and this interest was inferior to the rights of the PACA trust beneficiaries, in this case, Overton. *See id*. at 829.

Having concluded that Heritage received trust assets through a security interest in the accounts receivable, the court addressed and rejected Heritage's claim that it was a bona fide purchaser of those assets and thus entitled to retain them. While bona fide purchasers of trust assets are not liable to the trust beneficiaries, bona fide purchaser status requires the giving of value for the trust property with neither notice of the breach of trust nor knowing participation in any illegal transaction in relation to the trust. *See id.* at 830.

The court concluded that because Heritage did not assume any risk of loss under the BMA it had not given value for the accounts receivable. The court also concluded that Heritage had notice of the breach of trust. Heritage was deemed to have constructive notice of the existence of a PACA trust because a federal statute created the trust. Also, Heritage was aware that it was dealing with a PACA licensee and that Quality was experiencing financial difficulties, as was revealed by Quality's frequently overdrawn account. The court further reasoned that even if Heritage was not aware of the PACA as it claimed, it had the duty to inquire, under the standard of a reasonably prudent lender, whether its customer was a PACA trustee and whether the trust had been breached. The court opined that a reasonably prudent businessman would have noticed the explicit PACA language in Overton's invoices and would have concluded that it was dealing with trust assets. *See id.* at 834-35. For these reasons, the court ruled that Heritage was not entitled to the bona fide purchaser defense. *See id.* at 835.

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Resolving the future of farm policy: six-year farm bill signed

By Anne Hazlett

On May 13th, President Bush signed into law H.R. 2646, "The Farm Security and Rural Investment Act of 2002." Replacing the 1996 Freedom to Farm law, the legislation will govern federal farm policy for the next six years. In bringing resolution to the future of farm programs, the new farm bill creates an important safety net that will provide counter-cyclical payments to program crop producers when prices are in decline. In addition, it contains a significant increase in resources for conservation, trade, nutrition, rural development, research, and energy programs.

The purpose of this article is to highlight the major provisions of the conference agreement. It details aspects of the new farm bill relating to commodity support, conservation, trade, nutrition, rural development, research, energy and livestock issues. It then discusses several factors that will govern implementation of the new law.

Highlights of the new farm bill

Commodity programs for wheat, cotton, rice, feed grains, and oilseeds

The new farm bill reauthorizes both the current fixed-rate payments, which are decoupled from production, and the marketing loan provisions. Most significantly, it also adds a counter-cyclical program, modeled after the old target price system that was abandoned by Congress in 1996, to provide budgeted support when markets are depressed.

Section 1103 of the new law directs the Secretary of Agriculture ("Secretary") to make direct decoupled payments to producers of covered commodities in an amount equal to the product of the payment rate, the payment acres, and the payment yield. For each of the covered crops, the new farm bill increases the rate of the direct payment from the 2002 Agriculture Market Transition Act ("AMTA") payment level. In addition, it provides direct payments to soybean and other oilseed producers.

Section 1103(b) legislates the following payment rates: (1) wheat, $0.52 per bushel, (2) corn, $0.28 per bushel, (3) sorghum, $0.35 per bushel, (4) barley, $0.24 per bushel, (5) oats, $0.024 per bushel, (6) upland cotton, $0.0667 per pound, (7) rice, $2.35 per hundredweight, (8) soybeans, $0.44 per bushel, and (9) other oilseeds, $0.0080 per pound.

With respect to the timing of direct payments, § 1103(d) requires the Secretary to make payments to producers as soon as practicable for the 2002 crop year and not before October 1 for the 2003 through 2007 crop years. In addition, the new law gives producers an option to receive up to 50 percent of the direct payment in advance. Pub. L. No. 101-171, § 1103(d)(2). Specifically, producers may elect to receive the money in any month during the period running from December 1 of the calendar year before the calendar year in which the crop is harvested through the month in which the direct payment would otherwise be made. *Id.*

As to marketing loans, the new farm bill continues the current marketing loan program at increased loan rates for all crops except soybeans.[2] As part of the compromise between the House and Senate farm bills, the conference agreed to higher loan rates in crop years 2002 and 2003. Pub. L. No. 101-171, § 1202(a). In crop years 2004 through 2007, loan rates will decrease slightly, while target prices under the new counter-cyclical program will increase. Pub. L. No. 101-171, § 1202(b).

Section 1202(a) legislates the following loan rates for crop years 2002 and 2003: (1) wheat, $ 2.80 per bushel, (2) corn, $1.98 per bushel, (3) sorghum, $1.98 per bushel, (4) barley, $1.88 per bushel, (5) oats, $1.35 per bushel, (6) upland cotton, $0.52 per pound, (7) extra long staple cotton, $0.7977 per pound, (8) rice, $6.50 per hundredweight, (9) soybeans, $5.00 per bushel, and (10) minor oilseeds, $0.096 per pound.

Section 1202(b) legislates the following loan rates for crop years 2004 through 2007: (1) wheat, $2.75 per bushel, (2) corn, $1.95 per bushel, (3) sorghum, $1.95 per bushel, (4) barley, $1.85 per bushel, (5) oats, $1.33 per bushel, (6) upland cotton, $0.52 per pound, (7) extra long staple cotton, $0.7977 per pound, (8) rice, $6.50 per hundredweight, (9) soybeans, $5.00 per bushel, and (10) minor oilseeds, $0.093 per pound.

Finally, the new farm bill brings an additional facet to the existing commodity program that will make counter-cyclical payments whenever the "effective price" for a covered commodity is less than an established target price. Section 1104(b) defines the effective price as an amount equal to the sum of: (1) the higher of the national average market price during the 12-month marketing year for the commodity or the national average loan rate, and (2) the payment rate for direct decoupled payments for the commodity. The payment rate for counter-cyclical payments is equal to the difference between the target price and the effective price for the commodity. Pub. L. No. 101-171, § 1104(d). The payment amount is then the product of the payment rate, the payment acres, and the payment yield. Pub. L. No. 101-171, § 1104(e).

Section 1104(c)(1) legislates the following target prices for crop years 2002 and 2003: (1) wheat, $3.86 per bushel, (2) corn, $2.60 per bushel, (3) sorghum, $2.54 per bushel, (4) barley, $2.21 per bushel, (5) oats, $1.40 per bushel, (6) upland cotton, $0.7240 per pound, (7) rice, $10.50 per hundredweight, (8) soybeans, $5.80 per bushel, and (9) minor oilseeds, $0.0980 per pound.

Section 1104(c)(2) legislates the following target prices for crop years 2004 through 2007: (1) wheat, $3.92 per bushel, (2) corn, $2.63 per bushel, (3) sorghum, $2.57 per bushel, (4) barley, $2.24 per bushel, (5) oats, $1.44 per bushel, (6) upland cotton, $0.7240 per pound, (7) rice, $10.50 per hundredweight, (8) soybeans, $5.80 per bushel, and (9) minor oilseeds, $0.1010 per pound.

With respect to the timing of counter-cyclical payments, the new farm bill directs the Secretary to make payments as soon as practicable after the end of the 12-month marketing year for a covered commodity. Pub. L. No. 101-171, § 1104(f)(1). However, the law also allows for partial payments to be made in advance. Pub. L. No. 101-171, § 1104(f)(2).

To carry out these components of the commodity program, the new farm bill makes several changes in program implementation. First, the law allows producers to update their base acres. Section 1101 gives producers an option to retain their current AMTA base acres and add oilseed acres in a limited manner, or to update base acres using their acres planted and prevented planted to all covered commodities during the 1998 through 2001 crop years.

Second, the new farm bill gives producers an opportunity to update payment yields. Section 1102 provides that producers who elect to update base acres to the average of their 1998 through 2001 plantings may update yields for purposes of their counter-cyclical payments only. There, a producer may update payment yields using 70 percent of the difference between current AMTA yields and a full yield update based on 1998 through 2001 yields, or 93.5 percent of his 1998 through 2001 yields.

Lastly, the law makes adjustments to the current payment limitations rules. The new farm bill imposes a $65,000 limit on the new counter-cyclical payments. Pub. L. No. 101-171, § 1603. It reduces the limit on loan deficiency payments and marketing loan gains from $150,000 to $75,000. *Id.* In addition, it adopts an adjusted gross income cap, which limits eligibility for participation in farm programs. Pub. L. No. 101-171, § 1604. The law reduces the total dollar limitation from $460,000 to $360,000. It also creates a commission to study the potential impacts of further payment limitations on farm income, land values, rural communities, agribusiness infrastructure, planting decisions of affected producers, and the supply and prices of covered commodities, specialty crops and other agricul-

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tural commodities. Pub. L. No. 101-171, § 1605.

Commodity programs for peanuts, dairy, sugar and fruits and vegetables

In addition to the major program crops, the new farm bill provides support for several other commodities. First, for peanut growers, the law terminates the market quota program and compensates quota holders for the loss of the quota value asset at $0.11 per pound per year for five years. Pub. L. No. 101-171, § 1309. In addition, the measure establishes a marketing loan for peanut producers at §355 per ton. Pub. L. No. 101-171, § 1307. It also creates a direct decoupled payment of $36 per ton and a counter-cyclical program with a target price of $495 per ton. Pub. L. No. 101-171, §§ 1303, 1304.

Second, for the dairy industry, the new farm bill legislates a national dairy market loss program that will operate for three and a half years. The program will provide a monthly market loss payment to producers that is equal to 45 percent of the difference between $16.94 and the Boston Class I price. Pub. L. No. 101-171, § 1502. In addition, the law extends the milk price support program through 2007 at $9.90 per hundredweight. Pub. L. No. 101-171, § 1501. It also reauthorizes the Dairy Export Incentive Program through 2007. Pub. L. No. 101-171, § 1503. Finally, the new farm bill continues the Fluid Milk Processors Promotion and Education Program and provides authority for a Dairy Promotion and Research Program that will enable the Dairy Board to assess importers of dairy products in the same manner as domestic producers. Pub. L. N. 101-171, §§ 1505, 1506.

Third, for sugar producers, the law strengthens domestic sugar production by lowering Commodity Credit Corporation interest rates on price support loans and by eliminating marketing assessments on sugar. Pub. L. No. 101-171, § 1401. Further, it reestablishes the no-net-cost feature of the program by authorizing a payment-in-kind program. *Id.* The new farm bill also eliminates the one-cent loan forfeiture penalty and requires the Secretary to establish marketing allotments for domestically grown sugar. Pub. L. No. 101-171, § 1403.

Fourth, for fruit and vegetable growers, the law retains the current prohibition on planting fruits and vegetables on commodity program acres. Pub. L. No. 101-171, § 1106. It also assists producers with trade promotion by increasing funding for the Market Access Program and creating a special technical assistance fund to help specialty crop growers overcome export barriers. Pub. L. No. 101-171, §§ 3103, 3205. Further, the new farm bill creates additional domestic opportunities by allocating $200 million annually for the purchase of surplus fruits and vegetables, establishing a one-year pilot program to make fresh fruits and vegetables available in twenty-five schools in four states, and giving $15 million per year for a Senior Farmers' Market Program, which provides vouchers to seniors to purchase fresh fruits and vegetables at farmers' markets. Pub. L. No. 101-171, §§ 10603, 4305, 4402.

Conservation

Title II of the new farm bill increases the federal investment in soil and water conservation programs by nearly 80 percent. These resources will provide farmers and ranchers with more options to implement conservation practices on their land. In addition, producers will have greater access to technical assistance.

The law reauthorizes the Conservation Reserve Program ("CRP") through 2007, with an increase in the maximum enrollment cap from 36.4 to 39.2 million acres. Pub. L. No. 101-171, § 2101 (§ 1231). In addition, it modifies several provisions governing program administration. First, the law extends program eligibility to lands where enrollment would result in a net savings of ground or surface water to the agricultural operation. *Id.* Second, it clarifies that land that is currently enrolled in the CRP is eligible for re-enrollment. *Id.* Third, the new farm bill retains conservation priority areas but requires the Secretary to conduct a rulemaking that will ensure a balance of conservation interests in soil erosion, water quality, and wildlife habitat in the contracts awarded. *Id.* Fourth, it permits managed harvesting and grazing, including the managed harvesting of biomass for energy, as well as the installation of wind turbines on CRP land where such activity is consistent with the conservation of soil, water quality and wildlife habitat. Pub. L. No. 101-171, § 2101 (§ 1232). Fifth, the law reauthorizes the wetland pilot program through 2007 and expands enrollment to one million acres with participation by all states. Pub. L. No. 101-171, § 2101 (§ 1231).

As to the Environmental Quality Incentives Program ("EQIP"), the new farm bill provides for more than a six-fold increase in funding. Resources for this program are increased from $200 million annually to $1.3 billion in fiscal year 2007. Pub. L. No. 101-171, § 2701 (§ 1241). Of this money, 60 percent of the funding is allocated to livestock producers. Pub. L. No. 101-171, § 2301 (§ 1240B). In addition to these resources, the new farm bill also provides $600 million for cost-share and incentive payments to conserve ground and surface water. Of this amount, $50 million is set aside to assist producers in the Klamath Basin. Pub. L. No. 101-171, § 2301 (§ 1240I).

With respect to administration of the EQIP, the law makes several changes. First, it removes the current prohibition on producers with more than 1,000 animal units obtaining cost-share assistance to construct animal waste management facilities. Second, the law shortens the length of EQIP contracts. Whereas current law provides for a range of five to ten years, an EQIP contract in the new bill may range in length from ten years down to a term that is equal to the period beginning on the date on which the contract is entered into and ending one year after all practices under the contract have been implemented. Pub. L. No. 101-171, § 2301 (§ 1240B). Third, the new farm bill allows the Secretary to award a higher percent cost-share to limited resource and beginning farmers. *Id.* Fourth, the law eliminates the current geographic priority areas with the thought that EQIP applications should be awarded to address priority issues, such as air and water quality, not particular geographic regions. Pub. L. No. 101-171, § 2301 (§ 1240C). Fifth, it directs the Secretary to give incentive payments in an amount that will encourage producers to perform multiple land management practices. Pub. L. No. 101-171, § 2301 (§ 1240B). In so doing, it allows greater significance to be given to practices that promote residue, nutrient, pest, invasive species and air quality management. *Id.* Sixth, the law requires producers to implement a comprehensive nutrient management plan as part of their EQIP plan where applicable. Pub. L. No. 101-171, § 2301 (§ 1240C). Finally, it rewrites the payment limitations provisions to impose a $450,000 limit over the life of the farm bill regardless of the number of contracts entered into. Pub. L. No. 101-171, § 2301 (§ 1240G).

The new farm bill reauthorizes the Wetlands Reserve Program through 2007. Pub. L. No. 101-171, § 2201. It also increases the current enrollment cap of 1.075 million acres to 2.275 million acres. Pub. L. No. 101-171, § 2202.

The law reauthorizes both the Wildlife Habitat Incentives Program ("WHIP") and the Farmland Protection Program ("FPP"). In the WHIP, the farm bill provides over a ten-fold increase in funding from $62.5 million to $700 million over the life of the bill. Pub. L. No. 101-171, § 2701 (§ 1241). For the FPP, the law increases the funding nearly twenty-fold from $53.4 million to $985 million. *Id.* The new farm bill also makes agricultural land that contains historic or archeological resources eligible for the FPP. Pub. L. No. 101-171, § 2503.

In addition to existing programs, the law creates three new programs. First, it establishes a Grasslands Reserve Program which will enroll two million acres of virgin and improved grassland in ten, fifteen, twenty, and thirty-year rental agreements as well as thirty-year and permanent easements. Pub. L. No. 101-171, § 2401 (§ 1238N). This program is funded at $254 million. Pub. L. No. 101-171, § 2701 (§ 1241).

Second, the new farm bill creates the Conservation Security Program ("CSP"). Primarily an incentive program, the CSP is intended to reward producers for adopting, maintaining, and increasing the level of

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conservation practices adopted on their farm or ranch. The CSP establishes three tiers of practices under which producers may enter into five-to ten-year contracts and receive payments of up to $45,000 depending on the level of conservation benefits achieved from the practice adopted. Pub. L. No. 101-171, § 2001 (§§ 1238A, 1238C).

Third, the law provides $200 million for a new program designed to help conserve desert terminal lakes. Pub. L. No. 101-171, § 2507. Importantly, this money cannot be used to purchase or lease water rights. *Id.*

Beyond these measures, the new farm bill also offers producers protection from the release of confidential information by the Secretary. Pub. L. No. 101-171, § 2004. Specifically, the law amends the Freedom of Information Act to protect information that is provided by a producer to the Secretary in a conservation program as well as information that is proprietary to a participating operation. *Id.* This amendment will not affect the availability of payment information, including the names and addresses of payment recipients or the amounts received. *Id.*

Trade

Title III of the new farm bill makes substantive investments in programs designed to aid in the creation, expansion and maintenance of foreign markets for United States agricultural products. It increases funding for the Market Access Program from $90 million per year up to $200 million in fiscal years 2006 and 2007. Pub. L. No. 101-171, § 3103. This program promotes value-added agricultural products in international markets. Further, the law increases funding for the Foreign Market Development Cooperator Program from $27.5 million per year to $34.5 million. Pub. L. No. 101-171, § 3105. It also directs the Secretary to place a continued emphasis on the importance of exporting value-added agricultural products through the program. *Id.*

In addition to developing markets overseas, the new farm bill enables the needy in developing countries to share in the bounty of American agriculture. The law increases funding for the Food for Progress Program. This food aid program provides commodities to developing countries and emerging democracies on credit terms or on a grant basis. In so doing, it feeds hungry people while at the same time helping domestic producers by removing surplus commodities from the market. The new farm bill increases the program's transportation and administration caps so as to maximize opportunities to ship more commodities and help more people. Pub. L. No. 101-171, § 3106. It also sets a minimum tonnage of commodities available for the program. *Id.*

Further, the law reauthorizes the Food for Peace Program (Pub. L. No. 480) and makes improvements in the program relating to the transportation, shipping and handling of domestic commodities to developing countries. Pub. L. No. 101-171, §§ 3011, 3012. It increases the minimum amount of commodities to be purchased for the program and reauthorizes funds for stockpiling and distribution of pre-packaged food. Pub. L. No. 101-171, §§ 3004, 3008. It also reauthorizes the farmer-to-farmer program with an additional focus on African and Caribbean countries. Pub. L. No. 101-171, § 3014.

Lastly, the new farm bill provides $100 million annually for the McGovern-Dole International Food for Education and Child Nutrition Program. Pub. L. No. 101-171, § 3107. This program provides food for education programs in foreign countries to improve food security, reduce the incidence of hunger, and improve literacy as well as primary education. *Id.* It also provides food for nutrition programs serving pregnant women, nursing mothers, infants and children under five. *Id.*

Nutrition

Title IV of the law spends $6.4 billion on nutrition programs. With these resources, the new farm bill maintains a critical link between agriculture and nutrition programs and makes important structural improvements to the food stamp program. As to commodity programs, the law adds $40 million per year to the Emergency Food Assistance Program. Pub. L. No. 101-171, § 4204. This program provides food to food banks and soup kitchens across the country. The new farm bill also increases the funding available for grants to community food projects, provides $100 million for additional commodities to be purchased in the school lunch program, and reauthorizes the Commodity Supplemental Food Program. Pub. L. No. 101-171, §§ 4125, 4126, 4201. Finally, it requires the Secretary to make grants available to states to purchase locally-produced foods for school lunch and breakfast programs. Pub. L. No. 101-171, § 4303.

With respect to the food stamp program, the new farm bill increases the level of assistance to needy families in several ways. First, the law increases the standard deduction to 8.35 percent of each year's poverty guidelines. Pub. L. No. 101-171, § 4103. Second, it permits states to provide five months of transitional food stamp benefits to families who cease to receive cash assistance as part of welfare. Pub. L. No. 101-171, § 4115. Third, the new farm bill reinstates benefits for legal immigrants who have lived in the United States for at least five years. Pub. L. No. 101-171, § 4401. In addition, it restores benefits for legal immigrant children and disabled individuals without imposing a minimum residency requirement. *Id.*

Beyond increasing the level of assistance, the law also simplifies the food stamp program. Specifically, it reduces state reporting requirements, allows states to freeze deductions until the next determination of food stamp eligibility, gives grants to eligible entities to simplify the food stamp application and eligibility determination system, allows states to exclude child support payments, simplifies the definitions of income and resources, extends the requirement for unmatched federal funding in employment and training programs, and simplifies the use of a utility allowance. Pub. L. No. 101-171, §§ 4109, 4106, 4116, 4101, 4102, 4107, 4121, 4104.

Rural development

Title VI of the new farm bill commits significant resources to rural communities for several development efforts. First, the law includes $100 million for loans and loan guarantees that will bring high-speed, quality broadband services to rural consumers. Pub. L. No. 101-171, § 6103.

Second, it provides $80 million for rural residents in underserved areas to gain access to local television stations. Pub. L. No. 101-171, § 6404.

Third, the new farm bill increases the funding for value-added market development grants from $15 million to $40 million per year through 2007. It also broadens participation in the program by altering the eligibility standards so producer groups can receive grant funds. Pub. L. No. 101-171, § 6401.

Fourth, the law increases the current loan limit for the business and industry lending program from $25 million to $40 million. Pub. L. No. 101-171, § 6017.

Fifth, it allocates $100 million to be used to provide planning and innovation grants to certified regional investment boards under the Rural Strategic Investment Program. Pub. L. No. 101-171, § 6030 (§§ 385F, 385G).

Sixth, the new farm bill provides $280 million in guarantees for rural business investment companies to provide equity investments for businesses in rural areas. Pub. L. No. 101-171, § 6029.

Seventh, the law allows for $50 million in grants to train rural firefighters and emergency personnel and to improve training facilities. Pub. L. No. 101-171, § 6405.

Lastly, it provides $360 million to fund pending applications for water and waste disposal system grants and loans. Pub. L. No. 101-171, § 6031.

Research

Title VII of the law extends the Initiative for Future Agriculture and Food Systems beyond its current sunset date of 2003 and incrementally increases its funding from $120 million per year to $200 million annually. Pub. L. No. 101-171, § 7205. Created in 1997, this measure is designed to promote on-the-ground solutions for producers and consumers in critical issue areas such as plant and animal genomics, food safety, and natural resources management.

Energy

The new farm bill is the first piece of such legislation to contain a separate title devoted to energy. The primary component of this title is $204 million devoted to continue the existing Bioenergy Program during fiscal years 2003 through 2006. This program makes payments to bioenergy producers who purchase agricultural commodities for the purpose of expanding production of biodiesel and fuel grade ethanol. Pub. L. No. 101-171, § 9010.

In addition to the Bioenergy Program, the law contains several provisions designed to assist farmers both in their role as producers of renewable energy and consumers of energy. First, it authorizes the Secretary to make grants to assist biorefineries in demonstrating the commercial viability of new and emerging processes for converting biomass to fuels, chemicals and energy.

Second, the new farm bill provides $1 million each year in fiscal years 2003 through 2007 to carry out a new competitive grant program for the purpose of educating governmental and private entities, as well as public, about the benefits of biodiesel. Pub. L. No. 101-171, § 9004.

Third, the law creates a new requirement for federal agencies to give preference to purchasing biobased products. This provision also includes a voluntary biobased labeling program. The law provides $1 million each year in fiscal years 2003 through 2007 to test biobased products. Pub. L. No. 101-171, § 9002.

Fourth, the new farm bill authorizes the Secretary to make grants to assist entities in conducting energy audits that provide farmers and ranchers with recommendations on how to improve energy efficiency in their operations. Pub. L. No. 101-171, § 9005.

Fifth, it provides $23 million each year in fiscal years 2003 through 2007 to carry out a loan, loan guarantee, and grant program to assist individual farmers, ranchers, and rural small businesses in purchasing renewable energy systems and making energy efficiency improvements. Pub. L. No. 101-171, § 9006.

Sixth, the new farm bill reauthorizes the Biomass Research and Development Program through fiscal year 2007. Pub. L. No. 101-171, § 9008. In so doing, it provides $5 million for fiscal year 2002 and $14 million each year for fiscal years 2003 through 2007. *Id.*

Outside the energy title, the law also reflects commitment to renewable energy in several provisions. Section 6013 expands the Secretary's existing authority to make loans and loan guarantees for the purpose of encouraging the development and construction of wind energy systems and anaerobic digesters. Section 6401 expands the definition of a value-added agricultural product under the Value-Added Agricultural Market Development Grant Program in a manner that will enable the Secretary to consider grant applications for projects focusing on renewable energy. Lastly, the new farm bill amends the Conservation Reserve Program to allow for wind turbines and managed harvesting of biomass on CRP lands. Pub. L. No. 101-171, § 2101 (§ 1232).

Livestock

The new farm bill benefits livestock producers in a number of ways. First, the bill consolidates the various animal health programs into a new "Animal Health Protection Act" in order to fill gaps in existing laws, clarify areas of uncertainty, and enhance the Secretary's ability to carry out the mission of the Animal Plant Health Inspection Service. This measure will protect producers by enabling the Secretary to deal expeditiously with animal disease outbreaks that threaten the economic viability of animal agriculture. It designates the Department of Agriculture ("USDA") as the lead federal agency in responding to pests and disease in livestock, poultry, and aquaculture. Pub. L. No. 101-171, § 10409. It also includes heightened civil and criminal penalties for violations of the measure. Pub. L. No. 101-171, § 10414.

Second, the law significantly increases the funding for the Environmental Quality Incentives Program. With 60 percent of this money committed to livestock producers, the program will provide meaningful assistance to farmers and ranchers coping with developing regulatory schemes such as the new confined animal feeding operation regulations. Pub. L. No. 101-171, §§ 2701 (§ 1241), 2301 (§ 1240B).

Third, the new farm bill clarifies that livestock and poultry producers can discuss the terms of a production contract with a federal or state agency, legal adviser, lender, accountant, executive or manager, landlord, or immediate family member. Pub. L. No. 101-171, § 10503.

Lastly, it provides statutory protection under the Packers and Stockyards Act to growers with swine production contracts. Pub. L. No. 101-171, § 10502.

Miscellaneous

Beyond the benefits described above, the new farm bill also contains two important miscellaneous provisions. First, the law requires the Secretary to implement a country of origin labeling program for meat, fish, fruits and vegetables, and peanuts. Pub. L. No. 101-171, § 10816. Such a program will begin with guidelines for voluntary labeling issued by September 30, 2002. Pub. L. No. 101-171, § 10816 (§ 284). It will then become mandatory in two years. *Id.* Under the terms of the law, a commodity may not be labeled as a United States product unless it is produced and processed in the United States. Pub. L. No. 101-171, § 10816 (§ 282). Commodities used for ingredients in processed products are exempt from the labeling requirement. *Id.*

Second, the new farm bill extends the family farm bankruptcy provisions under Chapter 12 of the bankruptcy code through December 31, 2002. Pub. L. No. 101-171, § 10814.

Implementation of the new farm bill

Since the new farm bill was signed by the President nearly one month ago, USDA has begun the tedious, but critical, process of implementing the law. Agriculture Secretary Ann Veneman has assembled an implementation team to coordinate the departmental effort and expedite approval of new regulations. Just one day after the signing ceremony, USDA unveiled a farm bill website (http://www.usda.gov/farmbill/index.html) to communicate with producers and the public about the new law. The Farm Service Agency has also sent letters to producers that describe the significant program changes and identify information that will be needed to enroll in the new programs.

In implementing the new farm bill, USDA faces several formidable challenges. First, the law will require USDA field staff to make intricate determinations such as base acre updates, yield updates, and adjusted gross income calculations. Second, USDA is attempting to implement the measure with a significantly reduced workforce. In a June 4th briefing to Congressional staff, USDA officials stated that the department is operating with 20,000 fewer employees than it had during implementation of the 1996 farm bill. Randy Cook, president of the National Association of Farm Service Agency County Employees, described this scenario to a Washington columnist in the following manner: "We have just added 10,000 more acres of cropland into the farm's operation, and we only have a four-row planter— and needless to say there is considerable rain in the forecast." Jim Weismeyer, "Washington Agenda: Congress In Recess", May 28, 2002, http://www.agweb.com. On June 7th, Secretary Veneman announced the authorization to hire an additional 1,000 employees to aid county offices in implementing the new law. In addition, USDA may seek resources for additional employees in a supplemental Congressional appropriation or the regular appropriations process. Finally, while USDA is implementing the new farm bill, it is also charged with carrying out the daunting task of homeland security as it relates to protection of the domestic food supply. In effect, that need creates a competing interest for employee time and resources.

Beyond these bureaucratic obstacles, implementation of the new farm bill may be further shaped by two additional factors.

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