**Examining Agriculture Opportunity in Indian Country**

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## Introduction and Background for the Project

First, what is Indian Country? While the definition and descriptions can be complex and complicated, this report begins with a few simple facts that will not only provide the context for what "Indian Country" is, but also provide context as to why the issues discussed herein are of such importance at this time.

Indian Country is defined as "land within an existing Indian reservation under the jurisdiction of the United States Government."[ii] Indian Country can include reservations, dependent Indian communities, allotments, informal reservations, and lands with special designations.[iii] We will use the acronym "AI/AN" occasionally throughout this report to discuss issues important to American Indians and Alaska Natives. There are currently 566 federally recognized tribes in 35 states in the Unites States. There are also state-recognized tribes. A full list can be downloaded from the Bureau of Indian Affairs ("BIA").[iv] According to the latest Census, there are approximately 5.2 million self-identified AI/ANs of whom 2 million qualify for federal services. Eligibility for federal services varies based on the program; however the most general qualification is being a member of a federally recognized Indian tribe.

Over 2.1 million self-identified AI/ANs are under the age of 24.[v] In 2009, the poverty rate among Native Americans was 23.6% overall and 32.4% of the under-18 AI/AN population lives in poverty.[vi] Suicide is the second leading cause of death among AI/AN youth age 15 to 24 years old. Native teens experience the highest rates of suicide of any population in the United States- at least 3.5 times higher than the national average.[vii] Rates of diabetes in the AI/AN population are 177% higher than the US general population.[viii] A 2009 CDC report revealed 31.2% of AI/AN four year olds are currently obese, which is a rate much higher than any other racial group in the study.[ix] According to the Center for Native American Youth:

> Each tribe is distinct, with its own culture, traditions, language and community. These tribes are recognized as sovereign nations by the United States Constitution and have the power of self-government. The federal government has legal, treaty, and trust obligations to provide individuals from federally recognized tribes with health care, education, law enforcement, and other services. For example treaties between Indian tribes and the federal government, including those that exchanged land or other goods, call on the provision of medical, hospital or physician services….
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> Many laws, Executive Orders, and court cases, including Supreme Court cases, have confirmed the responsibility of the government to provide a variety of benefits and services to AI/ANs.
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> However, many of the federal systems in place to fulfill these responsibilities are chronically underfunded, leaving much of Indian Country with limited access to health care, education, and law enforcement services. [x]

The observations above regarding health care concerns equally apply to the provision of trust responsibilities in the housing, infrastructure, and community development arenas. When this project began, the approach was to explore the challenges and opportunities for engagement of a developing Indian Country food and agriculture system with the Farm Credit System. This project has as its goal to provide an overview of the historic and current challenges and opportunities available to American Indian and Alaska Native farmers, rancher, and food businesses in Indian Country and give a scan of important issues worthy of further research and discussion. These opportunities continue to rapidly evolve due to a confluence of ideas and actions - - the new Farm Bill of 2014, the actions of tribal governments and individual tribal citizens, and the expanding importance of food and agriculture in Indian Country.

The Farm Credit System funded this project as part of a larger portfolio of research related to increasing food production in the US to meet nutritional demands of an expanding world population through the year 2050. [xi] The Farm Credit System is also interested in understanding the credit demands that will have to be mobilized to address this growth. For much of Indian Country, the concern is with the here and now of food: availability of food, nutritional content of available foods, and building strong and sustainable food systems and rural communities with diversified economic opportunities that include food and agriculture. Many tribes still struggle to provide food for their communities and a few tribes already participate in global food export opportunities. What is important to recognize and identify the full menu of opportunities available to tribes and their business partners in food and agriculture most of which have yet to be fully realized.

In its research portfolio, the Farm Credit System is also interested in learning more regarding the implications of farm ownership age in the US. As stated in a recent USDA ERS report and cited by Farm Credit:

> "One of the most striking characteristics of U.S. principal farm operators-the operator most responsible for running the farm-is their advanced age. In 2011, about 32 percent of principal farm operators were at least 65 years old, compared with less than 11 percent of nonagricultural self-employed U.S. workers."

As recognized by Farm Credit, one of the logical conclusions from this data is that farm ownership will change dramatically over the next several years, and this intergenerational transfer of farm ownership will likely create interesting and challenging implications for agricultural credit providers. Indian Country data, as reported by NASS and ERS, and discussed later in this report, further reflect that the average age of an American Indian owner and operator is in some areas of the country roughly four years older than their non-Indian counterparts. The most recent 2012 Ag Census preliminary data released in February 2014 indicate those trends persist. The historic experiences of Indian Country with lack of planning for intergenerational transfer of lands has led to such severe fractionation of title, that Indian Country can literally serve as an example of what will happen outside reservation boundaries if attention is not paid to transfer of land ownership during this critical intergenerational change period in US agriculture. But that is another story.

At the heart of this report are the current and future capital needs in Indian Country agriculture, and how Indian Country agriculture will be positioned for future successful ventures. Further, assessing the human capital needs and barriers that exist in Indian Country will require a concerted approach to unlock nascent opportunity. Assessing the precursors necessary to deploy capital in Indian Country, to facilitate the increased food production that will be necessary to meet the nutritional demands of an expanding world population is also a goal of this project, as the authors believe that Indian Country can have a significant role to play in supplying the growing world demand for food. The project focuses on the unique challenges and opportunities that are embedded with these issues and discuss the important and unique role Farm Credit System can play in addressing these challenges and meeting these new opportunities.

## The Importance of Food and Agriculture to Indian Country: A Health and History Perspective

Indigenous communities have developed robust food and agricultural systems over hundreds, if not thousands, of years and continue to be a central institution in many Indigenous communities today. Indigenous food systems are highly connected in precise and intricate ways to the land base for the tribe (in some cases their original homelands before European settlement in the US and for others, to their new homelands post-removal). Indigenous communities often develop cultural and social institutions and behaviors that respond to the continued health and production of the land.

Regional and tribal food systems vary widely, but Indigenous traditional food systems have incorporated long periods of trial and error that span generations and, in fact, are still developing and adjusting to present day considerations. Some Indigenous food systems were so widely developed before European settlement that some Indigenous communities fortified trade routes based on those food systems between communities and regions that spanned hundreds of miles resulting in highly diverse regional economies and diets. Native Americans discovered and cultivated food crops that currently account for more than 52% of all foods now consumed by people worldwide. Native communities have retained connections to over 56 million acres of their land base in the United States, making them collectively the single largest private owner of agricultural land. [xii]

This highly complicated relationship between people, land, and food rarely resembled food production as it was structured in Europe pre-settlement and was not widely understood upon first and continued contact by European settlers. Indigenous lifestyles and production were often dismissed as a more primitive form of living or just simply ignored all together. However, the first explorers and first settlers often benefited from the established Indigenous food systems, Indigenous knowledge of land and environment, weather patterns, and inter-tribal trading relationships. The written history of the pre-settlement US abound with descriptions of acreages under continuous production in a variety of geographic locations. These historical written accounts of established farming and livestock operations pre-date the history of what is presently the US by centuries.

As more and more settlers convened in the Americas, the need for land became paramount. The impact of disconnection from Indigenous homelands was the first major disruption to established Indigenous food systems. Depending on specific tribal history, the disconnection from land and disruption of traditional food systems only continued as more Indigenous people were placed on reservations, moved to other regions of what would become the US, and concentrated on smaller areas of land. The Indigenous daily diets also changed during these times of displacement and disruption, as would be expected. Indigenous communities who were able to stay on their original homelands continued to access their traditional food systems, but often were restricted from some food sources such as deer or buffalo if they were not allowed to continue to hunt.

Some Indigenous communities were able to stay on their homelands, but had to share resources such as water, with an exploding population that far exceeded the land capacity. In some areas of the country this led to overuse of the land base and destruction of the traditional food system. Those Indigenous communities who were completely removed from their traditional food system had to rely on completely new sources of food. Many of the Indigenous communities who were removed from their homelands still struggle today to establish a local or regional food system and rely heavily on outside sources of food. Because Indigenous food systems are highly connected to the land, environment, and the people, these disruptions set in motion changes in the Indigenous diet and caused the beginning of social and health concerns that still plague many Indigenous communities today. As those connections were severed or transformed, the strength of the community relying on established trading routes was also negatively impacted.

Through federal law and policy coupled with social and economic realities and environmental changes, substantial weakening of what were traditional food systems has occurred and in many areas remains. Many indigenous communities have come to rely on government food sources as the only consistent and available food supply for their communities over large reservation land bases. Government-supplied food in many cases was high in density, and substantially lower in nutritional value than traditional food sources which tended to be heavily focused on lean meats, plants, nuts, vegetables and fruits.

Indian people today face an array of chronic health problems of which diabetes and obesity are highlighted most often; their rates of diabetes and obesity are higher than any other US population group. Recent studies have shown that 50 percent of Indigenous children are obese by the time they are in 3rd grade. American Indian or Alaska Native adults are 60% more likely to be obese than non-Hispanic Whites. In 2011, Native Hawaiians/Pacific Islanders were 30 percent more likely to be obese than non-Hispanic Whites. American Indian children at 4 years old experience obesity at a startling rate of 31.2%, which is a rate higher than any other racial or ethnic group[xiii].

However, even with these intense challenges there are growing numbers of examples today of Indigenous communities taking control of their economic situations, their health and lifestyles. Many Indigenous communities have chosen to address the health of their food systems internally. Other Indigenous communities have found creative ways to ensure the endurance of their food systems through the creation of local food markets, farmer's markets, or value added products. Other tribes have created thriving and expanding international export food markets that in turn support the building of local economies that are more sustainable. Still other tribes are engaging in the broader food industry by harnessing the potentials of their lands and natural resources to develop large agribusiness operations.

In more recent times, the communities that have become more engaged in food production because of concerns over the health of their citizens, have realized they are very good at producing food, growing crops, raising livestock, or managing natural resources. In many communities this is recognition of old skills; in some communities it is a recognition that old skills need to be retaught. In still other communities it is recognition that those skills were never completely lost and now can be celebrated and improved upon to create even more opportunities.

Because Indian gaming has been the primary source of economic development on Indian reservations for the past thirty years, tribal agribusinesses have been unfairly ignored. Some argue that agribusiness is innate to tribal communities in that Indigenous people have always managed natural and agricultural resources in productive and beneficial ways. Some of the greatest tribal economic and social successes today are in agribusiness.

Agribusiness can be defined as agriculture operated by a business; specifically, that part of a modern economy devoted to the production, processing, and distribution of food and fiber products and byproducts. Agribusiness has often been associated with modern, industrial agriculture. In contrast, tribes have developed their own definition of agribusiness that is often scaled to include their community and region. The term tribal agribusiness has included farmer' markets, agricultural tourism, agro-forestry, community supported agriculture (CSA), and community cooperatives. Tribal agribusiness is often the most viable form of local and regional economic development for communities that remain tied to their land base and are relatively rural and/or remote. Agribusinesses often utilize the existing social and economic structures already present in the community and do not require large injections of outside investment, compared to building a casino, for instance. Similarly, within a tribe, many members may already have existing skills that are needed in an agribusiness, so very little training may be needed to actually prepare a work force.

However, tribal agribusiness investment, as with any other economic development pursuit, has to be carefully weighed and studied. For example, a tribal agribusiness may not be viable if the local or regional market is already over-saturated with the proposed product. Or some tribes just may be too far away from a viable transportation infrastructure to support all types of agribusiness development and need to focus narrowly in order to build success.

All versions are deemed “tribal agribusiness” in Indian Country and the normally segregated view of small vs. large, direct vs. wholesale, retail vs. community, conventional vs. organic is lost in Indian Country vernacular.  In fact, the largest and most successful tribal farming and ranching operations tend to be owned outright by the tribal government as third party business ventures or are part of a totally vertically integrated business model with the tribal government acting as the stabilizing force for the individual operators.

**Impact of Loss of Federal Support:  Further Punctuation of the Importance of Food**

When this project began, no one anticipated a U.S. government shutdown for multiple days. What the government shutdown did for Indian Country (as opposed “to” Indian Country) was draw into sharp relief the need for tribal leaders, federal policy makers, and those in the food and agriculture sector to focus on food, agriculture, food production for the food insecure and for building diversified economies, the range of related issues to success in those realms, and more specifically, the critical role credit and capital access play in the world of food security. What followed the government shutdown in October 2013 was the passage of a long overdue Farm Bill in early 2014 and with it the indicators of possibilities began to be highlighted.

**Food Insecurity and Its Relation to Markets and Production in Indian Country**

According to multiple sources, approximately 49 million Americans struggle with food insecurity.  The most recently released USDA statistics place 7 million Americans in the “very low food security” tier; this means that “at times during the year, the food intake of household members was reduced and their normal eating patterns were disrupted because the household lacked money and other resources for food.”  Many food insecure Americans participate in one or more federal food assistance programs, like the Supplemental Nutrition Assistance Program (“SNAP”), the Women, Infants and Children Program (“WIC”), or the school lunch programs.

Imbedded within the 2014 Farm Bill language, which has yet to be fully implemented by USDA, are several provisions of vital interest to a discussion about food insecurity in Indian Country and upon which the success depends almost entirely on the availability of credit.  These provisions can serve as powerful market signals for increased food production in Indian Country, but interestingly enough the provisions are focused almost entirely on food insecurity and the provision of feeding programs.

Within Indian Country, many communities have chronic unemployment at the rate of 30-80%. In some reservation communities more than half of the individuals within the communities rely on some form of feeding program assistance.  This food insecurity often occurs within tribes that are sitting on substantial land bases with established and productive natural resource assets.  The government shutdown of October 2013 was a harsh wake-up call for many feeding programs serving these communities.  The Food Distribution Program on Indian Reservations (“FDPIR”) experienced total loss of fruits and vegetables in more remote tribal locations within the first week of the government shutdown; and a prolonged shutdown would have meant the loss of all foods for over half of all tribes in the US if depletion of warehoused food sources occurred.

FDPIR is a decades-old program that provides food to very low-income households, either on-reservation or to certain American Indian households off-reservation, depending on location. Participants cannot receive food from FDPIR if they participate in SNAP within the same month. Many participants in FDPIR choose this program over SNAP because they live in remote areas where SNAP vendors (i.e., grocery stores) either do not exist or are not accessible. Over half of all federally recognized tribes in the US participate in FDPIR; 275 Tribes of the total 566 tribes. FDPIR literally feeds the poorest of the poor in Indian Country.

In FY 2012, USDA reported that 76,530 participated on average monthly in FDPIR. With the government shutdown in October 2013, a spike in those numbers occurred and in some locations a 10% increase in FDPIR participation was experienced and has been consistently maintained since October 2013. The most recent participation numbers showed a spike to over 82,000 per month in early 2014. The harsh reality for many living in remote reservation locations where double-digit generational chronic unemployment is the norm is that reliance on the FDPIR package is an absolute. In many cases packages designed to feed one family are stretched to feed multiple extended family members.

The lack of food resources in the FDPIR package and related commodity feeding programs during the government shutdown, followed by the passage of the 2014 Farm Bill, has rejuvenated attention and concern in Indian Country on the importance of food and agriculture. However, this renewed attention was well on the way.

The importance of food to food-insecure communities, the desire to increase economic resiliency in Indian Country, and needs and desires of Indian Country to not only become healthier but also create vibrant rural economies, are all converging simultaneously. Inevitably, the conversation eventually turns to the possibilities for creating sustainable diversified economies in rural and remote places in Indian Country through greater participation in the entire food and agriculture sector. The conversation turns in this direction because Indian Country's vast land base - - over 56 million trust acres and up to 100 million acres in direct or indirect tribal control - - is an asset that cannot be ignored. That land base exists in over 30 states in the lower 48 and many of those millions of acres are already engaged in some form of food production, albeit not always as profitably as possible. While the needs of the most food insecure in Indian Country may draw us to the table for further discussions, it is the authors' position that the meaningful opportunity to fully participate in the food and agriculture sector and thus create stronger rural diversified economic opportunities will keep us there. Access to credit and strong financial partners is key to achieving success.

## Food and Agriculture in Indian Country: The Data

The actual number of American Indian farm numbers are lacking both in historical data and in location accuracy. While the United States conducts an agriculture census every five years, American Indian farmers were not initially counted or in many areas were counted as one farm operation/operator for an entire reservation for many census data gathering periods. Seeking and obtaining better data is still underway as it has only been in the 21st century that census enumerators delved into Indian Country. While the numbers are not perfect, by any stretch, what the numbers do show is a steady presence of individuals who self-identify as farmers and ranchers and a significant economic base reliant on agriculture.

In 2002 and again in 2007, the Ag Census worked diligently with Indian Country to collect more detailed data from AI/AN and to improve its data gathering in Indian Country. As a result of that effort, a dramatic increase was reflected in the number of American Indian farmers in the 2007 Ag Census. Part of the reason for the increase is that in 2002, the U.S. Department of Agriculture's National Agricultural Statistics Service conducted a pilot program to count American Indian operators on reservations in North Dakota, South Dakota, and Montana. That extra effort was replicated in the Southwest in the 2007 Census. The majority of the increase in the number of American Indian operators in 2007 occurred in just two states: Arizona and New Mexico where the count increased from 694 in 2002 to 12, 929 in 2007.

The 2007 Ag Census, as it relates to Indian Country is considered by all those within and outside Indian Country to be still largely underreported and likely under analyzed. Data from the 2012 census started to become available on February 20, 2014 and further release of data will occur in May 2014. So, for purposes of this report and project, the last data analysis is not available.

In the most recent Ag Census report available from 2007, there were 34,706 farms and ranches with American Indian principal operators, when capturing numbers based on the "one principal operator" dynamic. This is an increase of 15,494 over reported farms and ranches from 2002 – 124% more. There were 61,472 farms and ranches with at least one American Indian operator within the three operators demographic in 2007. The Ag Census counts up to three operators per farm, and operators may have reported as American Indian and another race. It is safe to say that there were approximately 80,000 known and counted American Indian operators in the United States in the 2007 census; the 2012 counts released preliminarily on February 20, 2014 only reflected the "one principal operator" data point. By contrast, in 2007, the number of American Indian principal operators was 34,706 and in 2014 the number of American principal operators was 37,857. If data to be released in May holds true to 2007 trends, we should see over 80,000 farms in the US with American Indian total operators and overall numbers of American Indian operators generally holding steady with slight locational increases or decreases.

All Indian Country experts agree that future Ag Census efforts will continue to reflect more accurately the real numbers of Native people involved in some aspect of the food and agriculture sector. However, until the Ag Census penetrates these remote and rural reservation communities (which could take decades) the tribal governments and communities know better than USDA NASS who is farming and ranching in their midst and what their potential might be for future growth. Even the BIA does not fully analyze this internal, inherent potential, as the practice has historically been that the BIA leases Indian lands to non-Indian operators as an acceptable land use activity. The general productivity of those lands and their general capacity for increasing productivity and income has never been full evaluated by most Tribes or by the BIA. In early days, leasing to non-Indian farmers or ranchers was grounded in the belief that Indian people might lack the sufficient knowledge to farm and ranch in an "acceptable manner" which would augment financial return on the land. However, as society progresses, we have come to know that is just not the case.

What we also know in Indian Country just by analyzing the data is that during the periods from 2002 and 2007 census periods, the average size of American Indian farms was 946 acres compared to the typical U.S. farm at 418 acres. So, American Indian farms and ranches tend to be twice the size of the average US farm and preliminary examination of early data released in 2014 indicates those trends likely to remain intact.

Overall, the Ag Census reported 922,095,840 total US acres were engaged in farm and ranch activity in the last census period for which full reports have been released, so based on that information approximately 6% of all US farmland is under direct American Indian control and located within what is commonly referred to as Indian Country. Even within the data gathered and maintained separately by the BIA, the total tribal trust land is approximately 56 million acres with an additional 40 million acres under direct and indirect tribal control. If data is taken into consideration from the BIA, the number of acres under American Indian direct and indirect ownership and utilized in some form of land-based economic activity is closer to 100 million acres, which would drive up the presence of American Indian lands to approximately 11% of the total lands involved in agricultural production in the US. According to the Ag Census, of the 56 million acres of Indian Country under tribal trust land tenure, 46 million acres are used for some type of agriculture. Of that land, 4 million are dry farmland acres and 1.5 million are irrigated acres. According to 2007 Ag Census data, over 58,163,401 acres of American Indian lands are engaged in some sort of food, agriculture, farming or ranching enterprise.[xiv]

The value of tribal agricultural products is also the subject of scrutiny by the Ag Census. According to 2007 data, AI/AN farm and ranch operators sold $3,165,858,000 worth of products compared to $297,220,491,000 for all U.S. farms. Crop sales for Indian Country totaled $1,455,080,000 compared to $143,657,928,000 for the US; livestock sales were $1,710,778,000 compared to $153,562,563,000, respectively. While the presence of food and agriculture is conservatively set at $3.1 billion annual production value for Indian Country, the average value of products sold per farm in Indian Country was $51,501 compared to $134,807 for all US farms. The reason why is unknown; although most speculate it has to do with the relative immaturity of development of those farms through mechanization, improved equipment, improved irrigation, and other infrastructure-related inputs, all of which are highly credit-dependent. Improved access to credit in the context of infrastructure development alone would likely move the needle on not only the annual agricultural products value for Indian Country but the average value of products sold per farm.

For the 2007 Ag census period, Arizona boasted the most farms with an American Indian as an operator, followed by Oklahoma, New Mexico, Texas, Montana, and California. However, the value of production for American Indian farms and ranches shows Oklahoma with the most income per farm, followed by California, Florida, Arizona, Texas and Montana. Apache County, Arizona has the most farms. These data points will need to be revisited upon full release of remaining Census data in May 2014 and thereafter.

To recap data to this point, a quick look at the preliminary census data released in February 2014 reflects the following:

- AI/AN farm operators are defined as those operators on or off an Indian reservation. According to the February 2014 release, for most reservations the individual operators were added to the census mailing list. Those reservations that did not include all the individual operators on the census mailing list were identified and the data for the entire reservation, including the data for the operators that would have met the definition of a farm were collected on one report form. (This information acknowledges that there a are still possibilities that operators remain uncounted).
- The land in all US farms and the overall number of all US farms both declined between 2007 and 2012 reporting periods.
- The number of one-operator farms reporting AI/AN rose from 34,706 in 2007 to 37,857 in 2012; the number of Native Hawaiian farms rose from 1356 in 2007 to 1488 in 2012; while the number of White farmers in the US declined during the same period.
- Arizona, Oklahoma, New Mexico and South Dakota had fewer numbers of AI/AN farmers and other states showed either stable or slight decline in AI/AN farmers.
- The total amount of AI/AN land in farms was up from around 50m attributable to one operator to 50,859,413 acres attributable to one operator.
- There was a decline in the size of AI/AN farms in the 1-9 acre category and an increase in size of AI/AN farms in all other categories across the board, including the largest acreage category.
- The market value for livestock and crops remained stable in Indian Country.
- Of the total, approximately 1/3 of all AI/AN farmers are women.
- Of the total, approximately 2/3 of all AI/AN farmers show their primary occupation as farming.
- The average age of AI/AN farmers is 58 years of age.
- Most AI/AN farmers report over 10 years on the farm.
- The biggest jump in age groups (increase in number of farmers by age) in Indian Country was in the under 25 age category, the 55-64 aged category and the over 75 aged category.[xv]

It must be pointed out that even with the more specific census enumeration activities conducted in Indian Country, the reported and analyzed statistics are inconclusive, underreported, and in many documents still inconsistently analyzed, with very little explanation given for demographic characteristics location by location. For instance, on the Lower Brule Sioux Tribe (SD) reservation or the Shoshone-Bannock (ID) reservation, is the number of farmers augmented or decreased by taking into consideration the farming activities conducted by the Lower Brule Sioux Tribe Farm Corporation or the Shoshone-Bannock Tribe? How accurate are the data points reflecting income from food and agriculture if the value-added food businesses that are growing in number in Indian Country are not counted in the total?

What Indian Country needs is a full and comprehensive analysis of the numbers and characteristics of all American Indian farmers and ranchers, the number and characteristics of farms and ranches on tribal lands, and the number and characteristics of food and agriculture sector businesses owned in whole or in part by tribal governments, corporations or individual or groups of American Indian people. This general lack of fully developed and understood data on Indian Country food and agriculture reflects a "holding steady" or increase in importance of American Indian food and agriculture.

## Keepseagle and the Current State of Agriculture Credit Relationships

In 2010, Secretary Tom Vilsack took steps to settle a long-standing class action (*Keepseagle v. Vilsack*)[xvi] involving discrimination in farm loan program delivery by the USDA Farm Service Agency. The case was filed in 1999, but covered a period dating back to 1981. The case was brought on behalf of farmers and ranchers who sought and were denied or discouraged from farm loans with FSA or whose farm loan was the subject of discriminatory servicing by the government.

The settlement of *Keepseagle* began the final act in a many decades-long chapter in the historic relationship between USDA and American Indian farmers and ranchers. The *Keepseagle* case was brought, not as a case involving violation of trust responsibilities or treaties between the federal government and tribal governments, but as a case involving individual civil rights discrimination allegations brought by individual American Indian farmers and ranchers.

The settlement created a fund of approximately $680 million in compensation, plus another $80 million in FSA farm loan debt forgiveness, in addition to tax relief and programmatic relief to those who were successful claimants of the *Keepseagle* class. Administration officials were often quoted as saying that perhaps the page could be turned and a new relationship created between Indian Country and USDA upon settlement of this important case.

Since the settlement, USDA has taken many other steps to improve its government-to-government relationship with Indian Country, including: passage of a new departmental regulation concerning consultation with tribal governments regarding policy matters; creation of a new Office of Tribal Relations in the Office of the Secretary[xvii]; seating of a new Council for Native American Farming and Ranching (which was a component of the *Keepseagle* settlement); and various other efforts all designed to bring USDA programs and services to Indian Country in more effective ways. In many ways, USDA as a partner to the private lending sector is more prepared today than ever to be an important piece in the development of Indian Country agriculture, particularly through utilization of its guaranteed loan programs and other complementary grant and loan programs found not only within FSA's authorities but throughout departmental mission areas.

Why is this relationship-improvement important for Farm Credit System? Most obviously, USDA has a number of programs that customers of Farm Credit regularly rely upon for building sustainable success in the farming and ranching operations. In order to truly and effectively deliver federal programs and services to Indian Country, and one can argue, any private sector-based solution to economic development challenges in Indian Country, all parties must recognize the important role that access to programs at USDA play (in farm lending, conservation, rural development, marketing and the like) and the related and often misunderstood roles of the BIA and the Office of the Special Trustee for American Indians ("OST").

An important example should be discussed at this juncture, which is important to relationship building with Indian Country. If an American Indian farmer wishes to farm on trust lands using an FSA direct farm loan, she must be able to prove to USDA FSA that she actually has secure access to and approval to farm or ranch the land in question (either through outright ownership interests and/or current and valid leases). If that land is fractionated in title, she will have to seek and obtain the permission of other joint owners and in some cases the probate court. If she wishes to place conservation cost-share practices funded through the USDA Natural Resources Conservation Service on those lands, she then must be able to prove that all owners have approved the implementation of the practice. In some cases, owners of fractionated interests on a single parcel of land can number into the hundreds. Requiring approvals and acquiescence of co-owners is not a quirk of a USDA official; these are requirements built into the lending and conservation programs at USDA by Congress and hard-wired into the role BIA and OST play vis-à-vis Indian lands, and in most cases hard-wired into the lending requirements of private-sector lending institutions. If the BIA cannot find these co-owners and if she doesn't know where the co-owners are, this multi-party arrangement to offer credit or implement conservation practices is lost or perhaps made fragile from the very beginning. While a borrower seeking credit from Farm Credit institutions might not have to deal with the USDA lending issues, at some point USDA will come into play if any steps to provide conservation practices or apply for and receive support from other USDA programs is sought.

The land leasing or credit extension process is long and arduous in Indian Country, with many steps built in that are unnecessary outside the trust land/Indian Country reality. If a farmer wants to buy a farm outside Plano, Texas, she would need to find the farm, write a business plan, apply and get approved for a loan, get an appraisal, close on the loan and move in to start planting, not necessarily in that strict order. If a farmer wants to buy or lease a farm on a reservation in Indian Country, she has to find a lender, approach the BIA and the OST, find out the land status of the parcel, find out who the co-owners might be and seek/obtain their approval, wait for the advertisement of the sale/lease, participate in a bidding process, review the loan/lease, have an appraisal done by the BIA/OST, have another appraisal done by USDA FSA if the loan is through this agency of government, perhaps post a bond, and close on the loan by going to at least three (or more) different offices.[xviii] This process can literally take years to complete.

The BIA and OST relationship to Indian people and to the land itself is bound up in the trust and treaty relationships and responsibilities that flow between tribes and the federal government.

These relationships are a part of federal law and reach through time to embrace modern day American Indian farmers and ranchers. The engagement of these offices in lending is clear and unavoidable, albeit deeply encumbered by bureaucracy. Credit access in Indian Country has long been understood as a barrier to true economic success but very few have been able to arrive at a sensible, effective, and efficient solution to the layers of complex relationships contained within a single land/credit transaction. The end result is that things muddle along and in some cases the same challenges Indian Country had fifty years ago in building strong, resilient communities persist today all because the "system" is so cumbersome that it proves daunting to all except the strong-willed and determined.

However, credit ***<u>is</u>*** being delivered in Indian Country. If it were not, there would be no administration buildings, no rural water systems, no telecommunications, no roads, and no electricity. Yes, there are many locations in Indian Country that these basic services haven't reached as yet. But, there are instances where extension of credit is occurring. There are many examples of successful tribal food and agriculture businesses, but not enough.

The question then becomes: how do we take those instances we know are working models, albeit slowly and inefficiently, and replicate and bring efficiencies into the process? How do we infuse the present circumstances with a sense of "yes – it can be done" as opposed to "no – it's too hard"? And, how do we encourage, honor, and focus on innovation in credit access. If Farm Credit participates more heavily in providing the credit that Indian Country needs, then a realization of and planning to address these practical realities is necessary.

**<u>Land Tenure in Indian Country: A Challenge to Extension of Credit</u>**

The state of high fractionation of land ownership in Indian Country is a fundamental challenge to the extension of credit. Land fractionation is a lingering effect of multiple factors, a few of which are: 1) land use policies of the federal government; 2) a lack of understanding about and incorporation of land use planning into tribal land use and individual estate planning; 3) a lack of resources to address the problem and 4) failure of approaches to resolving the problem.

Many farmers and ranchers outside Indian Country are stymied when seeking credit to infuse into their beginning or long-standing farming and ranching operation if they lack clear title to their property. This condition is amplified and worsened inside the boundaries of Indian Country.

As the Indian Land Tenure Foundation states:

> For over a century, Indian families have seen valuable land resources diminish as fractionated ownership increases with each passing generation. As a result of the General Allotment Act of 1887[xix] (also called the Dawes Act), reservation land was divided up and allotted to individual tribal members. When an allottee died, title ownership was divided up amongst all of the heirs, but the land itself was not physically divided. As such, each Indian heir received an undivided interest in the land. Now, as each generation passes on, the number of owners grows exponentially, which has resulted in the highly fractionated ownership of much Indian land today.

> Parcels with fractionated ownership can have hundreds—even thousands—of owners. With so many owners, individual income from the land is minimal—sometimes less than what it costs the federal government to process the payment. In addition, land use is compromised because an undivided interest owner must gain consent from a majority of the parcel's owners to do anything with the land. This makes it nearly impossible for any one of the owners to use the land for agriculture, business development or a homesite—all uses that would improve quality of life for Indian people.
>
> Fractionated ownership presents a serious problem that, if not addressed, will continue to get worse, placing Indian land further out of Indian control and adding to the excessive administrative costs of managing the interests.[xx]

Sadly, the challenges of fractionated land ownership continue to plague Indian Country. Land fractionation leads to "checker boarding" within reservation boundaries, which is generally defined as the phenomenon where trust lands, fee lands, lands owned by tribes, individual Indians and non-Indians all sit side-by-side within the reservation boundaries. This checker boarding leads to great difficulties in extending credit for activities (including agriculture, energy, housing, infrastructure and businesses) related to such land use patterns.

The most recent litigation involving these and related issues was the *Cobell v. Salazar* [xxi] class action, involving administrative mismanagement of the Individual Indian Money accounts maintained by the federal government incorporating proceeds from the leasing and related income generating activities on those lands. *Cobell*, like *Keepseagle*, was recently settled. The settlement was accompanied by the seating of a Commission on Indian Trust Administration and Reform (Trust Reform Commission). The Trust Reform Commission body has concluded their final report and recommendations.[xxii]

The basic recommendations of the Commission can be categorized in several broad ways, but the individual recommendations are based on some of the most complex areas in federal law and unless resolved, will continue to create burdensome challenges for developing economic development models that work for Indian Country. The recommendations include:

- Review and amendment of federal law
- Evaluation of tribal consultation policy
- Development of uniform tribal consultation policy
- Trust administration restructuring
- Improvement of the management, oversight and accountability of trust administration services and trust assets
- Various procedural changes (including probate, appraisals, and procedures dealing with Alaska).

While the outcomes from that Commission's final report cover many topics related to ensuring these interrelated management and land tenure problems do not continue to plague Indian Country for future generations, full implementation of the Commission recommendations and the *Cobell* settlement itself has not yet occurred. In the meantime, extension of credit still occurs, as has been noted elsewhere in this report, it just takes a lot longer and requires much more perseverance on the part of all those involved.

**Why the Farm Credit System is the Logical Partner for Indian Country**

The Farm Credit System makes loans to agriculture, rural housing, rural utilities, farm-related businesses, and to foreign and domestic companies involved in international agricultural trade. The Farm Credit Act of 1971 was intended to “make [e] credit available to farmers, ranchers and their cooperatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes.”[xxiii]

The following is found in the Farm Credit System’s own information concerning its history, legacy and focus:

> The Farm Credit System was initially chartered in 1916 in response to a need that farmers and ranchers had for a reliable and competitive source of financing for land purchases. Additional institutional capacity was added to the System in 1923 and again in 1933 to enhance the ability of Farm Credit institutions to serve agriculture, including cooperatives. From 1933 through the early 1980s, the System grew and became a significant institutional provider of credit and certain credit-related services to the farming sector.
>
> During the farm debt crisis of the 1980s, certain FCS institutions incurred substantial losses that ultimately resulted in Congress authorizing a loan fund that was available to stabilize troubled FCS institutions in 1987. Combined with a renewed emphasis on the fundamentals of sound lending System-wide and improving net farm income in our nation's farm economy, the System recovered in the late 1980s and into the 1990s. As banks and other lenders focused on more profitable lending opportunities in the nonfarm sector during the 2000s, the FCS once again enjoyed significant growth during the 2000s up until the financial crisis of 2008-present. The Farm Credit System is a major financial intermediary and direct lender for America's farmers, ranchers, fishermen, timber producers, cooperatives and rural utilities. It is the goal of this effort to identify more clearly through objective external information, analysis and perspective how the continued existence of the System serves to benefit agriculture and by so doing get a better understanding as to how it can continue to serve its public mission in the coming years.

There are several reasons why Farm Credit is the best partner for Indian Country:

- Farm Credit is a cooperative banking system that would resonate in Indian Country if the system’s nature were explained and demonstrated to Indian Country leaders; Indian Country understands cooperative enterprises.

- Farm Credit specializes in food and agriculture, energy, and rural infrastructure, all of which are vitally important to Indian Country.
- Farm Credit has a leasing "arm" that would serve well the infrastructure and equipment needs of Indian Country.
- Farm Credit has an internal insurance function that could either alone, or in cooperation with the only Native-owned, specialized insurance company - - AMERIND - - meet the insurance needs for the projects important to Indian Country.
- Farm Credit family of banking institutions are found throughout the country and are not isolated or unreachable by those tribes needing access to credit from a willing lender knowledgeable in food and agriculture and energy lending.
- Farm Credit has been through the rough times of the 1980s and is stable - - which is important to Indian Country in its own desires to build stable and sustainable diversified economies in rural areas.

These important characteristics of the Farm Credit System would resonate in Indian Country. Farm Credit has faced challenges of its own and within its own history knows the importance of innovative financing and complex problem solving. Those attributes are a part of Farm Credit's history and its ways of doing business historically. Because of Farm Credit's ability to provide wide-ranging credit services in rural areas across a broad range of financing needs (infrastructure, business development, farming and ranching, energy), they are a logical partner for Indian Country and the various smaller lending institutions trying to serve Indian Country needs. The problem right now is that most of Indian Country does not know who Farm Credit is or what their portfolio has to offer.

**Lessens in International Agricultural Development in Indigenous Communities and Applicability to Indian Country: IFAD**

Let's turn for a minute to lessons learned in investing in developing countries. These lessons have applicability to investment in Indian Country. Communities, nations, and the world at large, have responded to crises and catastrophes throughout time. The reaction is partly for humanitarian reasons, but more often, as a matter of healing and rebirth. Depending on the severity and spread of the occurrence, the call to action may be immediate or more contemplative, more tactical or more strategic. Humankind's ability to respond to traumatic upheavals is due in part not only to basic human instincts and reactions, but also to fulfill the need for continuity of purpose, or self-preservation as it were. Such was the case with the food crises of the early 1970s.

Under the auspices of the United Nations, the first World Food Conference was held in Rome in 1974. Fresh in the minds of the participants were the horrific scenes of the famine in Bangladesh. The international call for action led to the establishment of The International Fund for Agricultural Development ("IFAD") in 1977, as an international financial institution dedicated to reducing rural poverty, hunger and malnutrition. IFAD, as a project developer and implementer, focuses on the poorest and most deprived areas of the globe, in the hopes of developing viable and sustainable agriculture economies through financing food production.

From the IFAD website:  "One of the most important insights emerging from the conference was that the causes of food insecurity and famine were not so much failures in food production but structural problems relating to poverty, and to the fact that the majority of the developing world's poor populations were concentrated in rural areas."

At the heart of IFAD's work is the notion that understanding the causes of poverty and the conditions that create them is essential in developing economies in impoverished rural communities.  This approach has been seen in the U.S. non-profit world where the 'throw money at the problem' no longer is the norm.  Rather, an examination of the causes and how to achieve a greater impact for the investment dollar is the new approach.

How does IFAD process agriculture data, inputs and evidence in order to create an opportunity that achieves the best results?  They developed the "Results-based country strategic opportunities programme" methodology, or COSOP.

Briefly, COSOP is an operating model that focuses on making strategic choices, identifying financing opportunities and partnerships, and facilitating project management.  The resulting document is based on wide stakeholder participation and the project must empower the poor through the development process.  IFAD approaches these issues by creating a "living document" (a Project Design Report or PDR) that will serve as the main project document throughout the design process, although the content of relevant sections may be updated as the project design evolves through consultations with the government and other partners. The PDR will cover: strategic context and rationale for IFAD's involvement, commitment and partnership; poverty, social capital and targeting; project description; implementation and institutional arrangements; project benefits, costs and financing; project risks and sustainability; innovative features, learning and knowledge management.  Post-design completion steps include quality assurance, financing and project implementation, all of which are evaluated by an independent review board.

What can Indian Country learn from IFAD's experience in agriculture development in rural communities?  What are the best practices that Indian Country can apply to developing agriculture projects?  While the COSOP might be a more involved and detailed process than what a tribal nation can develop, the takeaway is that there must be put in place a process to evaluate projects and the project must have a quantifiable and lasting impact on food production and food security for the nation.  The principles and analysis set forth by IFAD in their operating model provides the foundation for determining whether to invest in a particular agriculture project.

There is a lesson to be learned by tribal leaders and their financial advisors from the international reaction to past world food crises and the IFAD model is a valuable resource.  For some, the IFAD model merely is a better way to do planning and project deployment in a more concerted way; for others the IFAD model is a common sense approach to "impact investing" and not merely "throwing money at the problem."  Regardless of the description, the process is the important part of this discussion.  This approach is not currently in play in Indian Country food and agriculture project development, but if advocated and supported properly could be an important and vital tool to ensure contemplative and rational decision-making and project deployment.

**The Rule of Law: Food Codes, Ag Codes, and Uniform Commercial Code ("UCC") Codes**

So, in moving from rational project analysis and deployment, why do tribal governments need UCC codes, Food codes or Ag codes? Some might say that the world has too many codes already. And they might be right at some level. However, in Indian Country the answer has other contours.

All those involved in international development in countries with either challenged economies, failed economies, or weak governments all arrive at the same result at some point. The most important and perhaps the first step in developing economies is to ensure there is a strong "rule of law" in place. Without it, commerce is difficult. And a rule of law is equally important in the agricultural development arena, as one of the more fundamental commercial activities in the world, with the strongest and longest history, is the trade and commercial activity in food.

An example (and surely not the only example) of the need for "rule of law" in food and agriculture was when the "Velvet Revolution" occurred in the early 1990s resulting in the separation of Czechoslovakia into the Czech Republic and Slovakia. Simplistically stated, this soft revolution happened within the confines of a pre-existing government taking upon itself to split into two functioning governments. However, it was well established that when the split occurred both governments had some "rule of law" work to do.

A period of uncertainty ensued which played out particularly delicately within the agriculture sector of Slovakia. Farmers were not getting paid until well after a year from harvest. There was no functioning system of credit for grain producers. There was no functioning grain warehouse receipt process to ensure that farmers knew that upon delivery, their harvest would be "counted" and they would be paid. There was no functioning land tenure system. There was no functioning banking and bankruptcy system or a functioning commercial credit or contract system. There was no functioning crop insurance or risk mitigation system. There was no "prompt payment" law. There were no standard rules for the drafting and interpretation of contracts and commercial instruments. All these components of a flourishing food and agriculture sector with tentacles past the backyard garden and into the commercial marketplace were an absolute necessity and had to be built up over time. Likewise, many developing or under-developed countries today are also accompanied by a weak "rule of law" system that forms the practical everyday underpinnings for successful trade and commerce. Availability of financing is useless unless there is an interrelated commercial "code of practice" that guides mutual relationships in business.

Indian Country faces the same degrees of uncertainty in the area of "rules of law" which leads to spotty success in food and agriculture. True, there are instances of agricultural development success; but they are usually joined by a story of strong tribal leadership over an extended period of time; engagement in and understanding by the tribal legislature of the conduct and business of farming and ranching and food business success; and the passage of some degree of one of two things. Either the tribal government had some components of a business code or a land leasing code or a food business code; or they had a mature business development arm that was allowed to fully operate with little to no tribal government involvement in their day-to-day business decisions. The latter meant that the food and agriculture business itself could decide its own “choice of law provisions” and place those provisions within its contracts with other parties. Likewise, the food and agriculture business could ensure it had the best experts possible to run the business, there was no concern about or any concerns had been resolved regarding waiving or impacting tribal sovereignty, and the food and agriculture business had the flexibility to make decisions that made good business sense. This “separateness” sometimes leads to confusion between the tribe and its members over various day-to-day matters or the scope and vision of a particular project. But in the end, the factors leading to success generally are those that either 1) ensured the tribal government was creating a strong business environment for the food/agriculture business; and/or 2) ensured that the tribal government and its members didn’t meddle in the success of the business.

The UCC is a necessity - - even though many tribes still do not have a UCC in place. For those highly successful tribes that have no comprehensive UCC code, the likely contributors to success include: strong tribal leadership; stable tribal leadership; accountability and transparency; strong business plans; specific contractual provisions that clearly delineate roles and responsibilities vis-a-vis the tribe and its business partner, and a commitment to success over time (the long vision). Comprehensive UCCs have provisions that include: sales, leases, negotiable instruments, bank deposits, funds transfers, letters of credit, bulk transfers and bulk sales, warehouse receipts, bills of lading, documents of title, investment securities and secured transactions. Without these fundamental building blocks for business, businesses cannot or have some trouble flourishing unless there are mitigating factors such as strong and stable tribal leadership and business competency.

Are food and agriculture codes necessary? We would argue they are. Food and Ag codes can mean many things to many people. For some it’s as simple as a food safety code or a “pure food code” as recommended by FDA. For others, like the authors, it is more encompassing of the full picture of food and agriculture success and can incorporate many of the following: pure food codes, food establishment inspection and safety, on farm food safety, preventive controls, general safe/sanitary practices, good agriculture practices, good manufacturing practices, fence law, stray animals, preferences in food purchasing, agriculture resource management, agriculture leasing, valuation for crop or livestock loss, food and fitness policies, branded product and food labeling, farmers market requirements, farmland preservation, farmland development rights and zoning, water quality, water availability for food and agriculture, insurance requirements, pesticides and use of chemicals, youth education, training of farmers and ranchers, tribal supported agriculture, general producer liability protection, right to farm, right to ranch, agriculture credit provisions, beginning farmer support, trade and export requirements, agriculture and food tax provisions, good Samaritan and liability protections for donated foods, conservation of agriculture lands, agricultural cooperatives as business entities and other business entities useful for food and agriculture business creation. This is not a full listing. For tribes that do not have these sorts of provisions in place, the question then becomes: whose law controls?

Tribal governments cannot look to the Bureau of Indian Affairs or Office of Special Trustee to express policy in these arenas. Most of these areas are not areas in which the federal government has either ever or intends to express policy in the future. Nor can they look to USDA or the Food and Drug Administration or any number of other federal agencies or departments to express policy in these areas. Again, most of these areas are not topics relevant to federal policy expression; many of these areas are within the purview of state and local policy. Tribes either wish to express their sovereignty and policy-development muscles in these arenas or they do not. But the question will still persist: whose law controls in the standard food and agriculture business arrangement involving Indian Country and how will the tribe's sovereignty be impacted in the various ways in which it engages more fully in the food sector?

For tribes to be absent in these policy arenas is to send a clear signal to not only their business partners in food and agriculture and their lenders, but to the other policy makers in food and agriculture, that they are satisfied with the status quo and that existing local, state or federal policies are "good enough" for them. It is unlikely as Indian Country food and agriculture sector matures in the modern business climate that tribal governments will remain silent on these policy tools. If tribes express themselves in food and agriculture through more comprehensive agriculture, business and land use codes, they will likely find that the agricultural financing community (in which specificity and risk mitigation are paramount) will be ready, willing, enthusiastic and interested partners.

**Planning: The Agricultural Resource Management Plan**

In 1993, Congress passed a law very important to Indian Country food and agriculture development that is still relatively un- or under-utilized by tribal governments: the Agricultural Resource Management Act.[xxiv] The Act states in its preamble the following:

> Indian agricultural lands are renewable and manageable natural resources which are vital to the economic, social, and cultural welfare of many Indian tribes and their members, and development and management of Indian agricultural lands in accordance with integrated resource management plans will ensure proper management of Indian agricultural lands and will produce increased economic returns, enhance Indian self-determination, promote employment opportunities, and improve the social and economic well-being of Indian and surrounding communities.

The Act goes on to authorize the following:

- Management of Indian agricultural lands and related renewable resources in a manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield
- Authorize the Secretary to "take part" in the management of these lands with the participant of the beneficial owners
- Provide for the development and management of Indian agriculture lands

- Increase educational and training opportunities to Indian people and communities in the practical, technical, and professional aspects of agriculture and land management.

The preamble for the Act specifically states that the planning process will focus on increased economic returns, enhanced Indian self-determination, promotion of employment opportunities, and improvement of the social and economic well being of Indian and surrounding communities. Congress contemplated that the Act would provide a framework for deliberation and development of goals unique to each tribes' food and agricultural visions. Ag Management Plans developed under the law are basically 10-year Indian agriculture resource management and monitoring plans developed and implemented:

- By an Indian tribe pursuant to self-determination contract or self-governance compact
- Utilizing broad discretion of the tribe in designing and carrying out the planning process
- Developed by the Secretary if the tribe chooses not to contract the development or implementation of the plan
- Contain provisions that
    - Determine available agriculture resources
    - Identify specific tribal agriculture resource goals and objectives
    - Establish management objectives for the resource
    - Define critical values of the tribe and its members and provide holistic management objectives
    - Identify actions to be taken to reach established objectives
    - Developed through public meetings
    - Us public meeting records, existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities, and
    - Completed within 3 years of the initiation of the activity to establish the plan.

Once an Indian agriculture resource management plan is developed and approved under the law, it governs the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and the Indian tribal government.

Additional provisions of the Act allow for waiver of other sections of the laws by the Secretary of the Interior should they conflict with the Indian agriculture resource management plan; identify and allow for passage of laws regarding trespass and enforcement of trespass on Indian agricultural lands; and establish internships, scholarships and other related educational programs important for ensuring the next generation of Indian agriculture producers is fostered and supported.

While it is likely that appropriation funding for full implementation of this Act was never and might never be forthcoming, what is also important is that this Act and its authorities exists, has never been repealed, and for enterprising tribes throughout Indian Country, there is nothing to prevent their usage of the Act with their own financial resources. Through creation of the agriculture resource plan itself tribes can unleash not only the powerful planning tools identified in the Act but also the resultant ability to have their own plans, goals and objectives for agriculture resource management and agriculture business development take root and grow. This is a fertile field for the development of long-term and exciting new business relationships between Farm Credit and Indian Country.

Many tribes have "Integrated Resource Management Plans" which are mentioned in the 1993 Act. However, an "integrated resource" plan is not the same as an "agriculture resource management" plan. The latter is a much more specific planning process and goes well beyond the assessment of natural resources for the sake of resource assessment and moves into the realm of utilization of those resources for purposes of agricultural resource development. The latter requires a more comprehensive staff for expertise and engagement of the plan, well outside those whose only expertise lies in land and natural resource assessment. What must be taken into consideration for a comprehensive agriculture resource management plan is how the available resources will be best utilized for agricultural development purposes; how the plans and visions of the tribe interface with agricultural resource development and management; and finally, how the vision of the tribe for agricultural resource management intersects with the specifically identified tribal goals and objectives in the area of food and agricultural development and commitment of financial resources to that end.

**Financing Agriculture Projects – The Need to Develop Internal Capacity and Capabilities**

Before any discussion about financing Indian Country agriculture projects begins, including the available financing options, there are a few considerations to establish as the foundation. Three questions for the tribe to ask are: What results do we wish to achieve or are we capable of achieving the desired result? What is needed to reach these desired results? How will we measure and know whether we have achieved the desired results?

These questions sound odd in a discussion about project finance, but go to the heart of the matter − that is, the project on the chalkboard could be one with a short life span and simple to establish, or one that requires a long-term time horizon to execute. Ideally, tribal leadership and the tribal community as a whole are united in the purpose of the project.

An example of an agriculture mixed purpose project would be establishing a community garden enterprise, a project many tribes have undertaken. Is the goal to (i) establish a self-sustaining cash crop enterprise, or (ii) a tribal government subsidized farming operation distributing foods to the tribal members at large? While these are separate ideas, they certainly are not mutually exclusive. The key here is what exactly does the tribal leadership want to achieve?

The former is a business, pure and simple. That means its execution must include business planning and sound operations, with business discipline fully invoked, and with the realization that if the enterprise in not profitable, then it must be closed. In the case of the cash crop enterprise, with the measure being profitability, the third question stated regarding metrics would clearly not be met if the goals of profitability were not achieved.

But what of the tribal government subsidized operation? The operation may not be profitable, in the business accounting sense, but it might be sustainable, given a subsidy for operations by the tribal government. Could it be said that the proper measure or metrics is sustainability without subsidy? Certainly related to profitability, but it is more than that and that distinction is important because, going back to the goals the tribe set out to achieve (namely, an operation that grows crops for distribution to tribal members) can the goal be achieved through a subsidized farming operation.

Why all this discussion on goals and measurements, metrics and achievability? Because the cost of capital, the borrowing itself, will weigh heavily on the tribal coffers and with no clarity of purpose, chances of success seem remote. One thing is clear – before any financing discussion takes place, the tribal leadership and the enterprise stakeholders must be on the same page and realistic measures of success must be in place. When financing discussions begin, the specific goals must be clear.

If we take a look at the agriculture sector and financing considerations, simply stated, the term "agriculture" includes crop farming, livestock production, artisanal fishing and aquaculture, and forestry. That is a very broad definition and range of activities, so one can understand how difficult a sector it is to predict returns. For these reasons, agriculture and related enterprises are considered a high-risk investment and thus, financing an agriculture project results in a high cost of capital.

Agribusiness is also capital intensive, meaning it requires large cash sums to establish the operations, buy/lease the equipment and develop processing or other supply chain capabilities. It is universally understood that agriculture is by its nature a very difficult proposition. Furthermore, the cash flows are not like that of the gaming sector, so some tribal officials, and even banking professionals, may be reluctant to enter the market. Yet, abundant opportunities exist for tribal enterprises. Finding trustworthy, knowledgeable lending sources is key to seeing success. Without quality sound lending advice, projects can suffer financial burdens due to poor business planning and strategic missteps.

When one examines economic development in Indian Country, an uneven landscape appears. This holds true when looking at tribe-to-tribe development and even sector-to-sector. Agribusiness resembles the gaming sector in certain ways, and the energy sector in others. A quick analysis of these other forces in Indian Country is provided below.

The Gaming Paradigm: The Indian Gaming Regulatory Act of 1988 created the tribal gaming industry and tremendous economic expansion throughout Indian Country, particularly in areas in close proximity to large urban areas. Equally important is the concurrent growth and building of tribal internal capacity and capabilities. Since the birth of the Indian Country gaming sector, tribes are seeing the number of Native gaming professionals increase, what we refer to as the building of a gaming professional class. Financing arrangements have matured to the point where the market provides many lending opportunities, including access to the bond market.

The Energy Paradigm: It's been said that the future of Indian Country lies in the extraction and development of its energy resources. For that to hold true, there will be a lot of difficult work ahead to make it happen – from environmental and regulatory work, long-term financing development, large-scale project planning and management and long time horizon risk assessments. There are enormous capital costs in developing energy projects, and fortunately, the federal government has a strong role in the energy sector through development grants. However, unlike gaming, there is not a well-developed Native energy professional class and that means most tribes do not have the internal capacity to develop their own resources, thus the need to access outside expertise. There are a few examples of successful tribal energy projects, but the tribal energy sector remains nascent and uneven in terms of development.

Moving back to agribusiness, tribal project development will certainly depend on internal sector capabilities, including hiring outside expertise when necessary, and the development of a financing plan. In the private sector, the principal in charge of putting the team together and deciding bank and bond financing structures is normally the corporate development officer. A corporate development office handles such issues as whether to use bank financing or go to the bond market – or some combination thereof. Other considerations include: project risk assessment(s); credit risks; and, project management with subject-matter expertise.

Therein lies one of the key barriers to agribusiness development in Indian Country: most tribal nations do not have the internal capabilities and capacities to develop strong, viable and sustaining agriculture projects. The need to draw on outside expertise is not only expensive, but does not serve the tribal nations well in the long term. What Indian Country needs is twofold: to develop Native expertise in such professions as credit, agricultural economics, crop insurance, financial services, rural infrastructure management, crop/livestock/fisheries/forestry management experts, storage/food-processing/marketing experts, research/extension/training capabilities and general medium and large scale enterprise development capacities. The second need is to build that professional class through engagement with a trusted financing partner beginning today, so that the "incubator" if you will for the professional class is within their own communities on the own operations but with strong mentoring links to other successful off-reservation agricultural business enterprises.

**The Business Entity: The importance of Section 17 federal corporations in Indian Country**

Many complexities attach to tribes doing business in the area of food and agriculture. Not the least of which is the initial question of how these entities will be organized under applicable law and what business entity form a tribe or group of tribes or tribal individuals may choose as the guiding structure for their business planning. Available to tribes and no other entities under federal or state law, is the "Section 17" business entity, a federally chartered corporate entity. The enabling statute creating this unique form of business entity structure states:

> The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: Provided, that such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own,

> hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law; but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.[xxv]

Regulations promulgated by the Department of the Treasury reflect the following:

> An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes.[xxvi]

Just because the Section 17 corporate structure is available, it might not always be the best structure for use. As with any "choice of business entity" selection process, the following areas should be carefully examined: ease of formation, governance and management, state and federal tax treatment, income tax immunity of the entity, availability of tax incentives for the project, and state income and sales tax considerations. In addition, the ease or difficulty of facilitating financing and access to capital is of concern as is immunity and limitation of liability, protection of tribal assets through sovereign immunity, limitation of liability for non-tribal owners and how resolution of disputes will be handled by the business. When a tribe is selecting a choice of business entity for an agriculture operation, the list of considerations becomes a bit larger, taking into consideration whether the tribe wishes to do business under uniquely agricultural-type corporate structures such as the agricultural cooperative structure.

When engaging in agriculture as a tribal government or a tribal government-owned business, additional considerations come into play, such as: whether the tribal government as a governmental entity will be performing the food and agriculture business functions (as an arm of the government); whether an unincorporated agencies, division, enterprise or instrumentality of the tribal government will be performing the food and agriculture business functions or whether a political subdivision of the tribal government will perform the food and agriculture business functions.

The IRS has consistently ruled that tribes are not taxable entities and that income derived from any business operated directly by a tribe on or off the tribe's reservation will be non-taxable. However, the federal excise tax exemptions are generally limited to essential governmental functions. In addition, federally recognized tribal governments also have some access to tax-exempt or tax-favored financing operations such as tax exempt bond financing authority, which is generally limited in use to essential governmental functions and clean energy renewable bonds and tribal economic development bonds, which while not used for essential governmental functions, are allowed upon application by the tribe to the Treasury for an allocation. The concepts of bond financing have been discussed previously in this report and generally do not apply to individual American Indian farmers and ranchers use of business entities or access to capital or taxation functions.

If a tribe chooses to create a food or agriculture business entity as an unincorporated agency or division of the tribe, they may operate the business enterprise tax free through such agency, division or instrumentality as an arm of the tribal government and not as a distinct legal entity. These governmental units are formed under tribal law for governmental purposes and share the same legal characteristics as the tribal government itself. These types of units are usually controlled by the tribal government itself through the tribal council, may have a board of directors which in some cases is the tribal council itself (such as a "farm board" made up solely of the tribal council), and generally has a hired day-to-day manager of the business entity. These types of entities have sovereign immunity from lawsuits (as does the tribe itself as a governmental entity) and these types of business units cannot be sued absent a clear waiver of immunity; however this type of business approach clearly creates uncertainty and risk on the part of lenders and non-tribal partners in the business.

However, even in the case of tribal farm boards that access credit, the business history of the entity and the ability to repay as well as negotiate specific terms in the lending relationship can come into play and not create an automatic barrier to building a lending relationship. Given the breadth of these entity selection characteristics, advantages and disadvantages and taxability and immunity, the decision-making process for this very fundamentally sound "first step" in a business launch decision process becomes a very complicated journey very quickly for the tribal food and agriculture enterprise. Most of these decision processes have to date been relatively unexplained in comprehensive depth and detail to the tribal individual or tribally owned entity. A significant need exists in Indian Country to provide these unique business-related advisory services. The type of business entity selected by a tribe or tribal individuals will immediately place the entity on certain paths, some quite time consuming and complicated, just to ensure proper footing for the tribal business enterprise is contemplated and developed as a logical first step in business development.

If Section 17 incorporation is sought by tribes venturing into food and agriculture they must pass a tribal resolution or petition to create the entity, draft the charter, seek and obtain approval by the tribe, file the petition/resolution with the Department of Interior, ratify the corporate charter. If properly undertaken, tribes are then free to engage in longer lease arrangements and take steps to engage in leases and mortgages of tribal lands without approval. These characteristics of Section 17 corporations have been incorporated into recent Congressional acts like the HEARTH Act of 2012 which likewise allows tribes to engage in longer-term, more stable lending and mortgage/leasing arrangements provided proper entities are involved and the tribe has adopted required rules that control those relationships. However, if properly followed and approval obtained, the Section 17 charter once issued cannot be revoked absent an act of Congress, which provides much needed long-term stability and certainty in the business. Very few tribes have used Section 17 in the food and agriculture business entity creation context and even fewer have used the cooperative incorporation model as their chosen business entity.

**The Importance of the Next Generation**

When contemplating the future of Indian agriculture, inevitably the conversation will turn to "the next generation," as it should. Young people already show interests in playing a growing role in Indian Country food and agriculture. The examples of that interest abound. They range from the 12,000 Native youth already involved in FFA in over 200 chapters nationwide and include the over 50,000 Native youth involved in 4-H nationwide.[xxvii] According to the National Congress of American Indians, Native youth under age 25 make up 42 percent of the American Indian and Alaska Native single-race population, while youth only make up 34 percent of the US population. There are 1.2 million American Indian and Alaska Native young people under age 25. There is a large bubble in the 15-19 aged groups for the AI/AN population. According to NCAI:

> This sizeable young population represents an unprecedented moment of opportunity. Providing youth with the tools, resources, encouragement, and positive environment they need to thrive is an incredibly important investment tribal leaders have prioritized to ensure a strong future for their community.
>
> Native youth sit at the confluence of where our past joins with present and future; and tribal leaders often work to create experiences for their youth that celebrate Native culture while exposing youth to new knowledge. As essential culture and tradition bearers, preparing youth for the future may not just mean preparing them to walk in two worlds, but preparing them for the "one world" of tomorrow by ensuring that they feel strong in their Native cultures and that they feel confident engaging with other cultures.[xxviii]

Native youth face challenges in the areas of suicide, health and wellness, access to education and opportunity, and difficulty in accessing the necessary resources that can help them create thriving food and agriculture businesses. Oftentimes their challenges are unique to them - - as discussed previously in the context of land tenure and access to credit opportunities. If these challenges are left unaddressed, a painful picture in food and agriculture will be painted. But, if the two joint focus areas of: 1) creating a pipeline of food and agriculture professionals in Indian Country; partnered with 2) addressing issues related to access to credit and structural difficulties in accessing the necessary resources to build food enterprises, that future does not have to look bleak.

We have positive examples. There has been for many years a program called "George Washington Carver Interns" program. It was conceptualized and launched through a consortium of 1862 and 1890s located in the South. The Carver Program was designed to create a pipeline of support for African American students who weren't making it into the large 1862 land grant campuses for pursuit of 4-year and post-graduate or professional training in the agricultural sciences. Carver, as the history books will tell you, was a noted African

American scientist who made significant breakthroughs in agriculture sciences and technology. Everyone knows his name - - and his was the path to follow for the African American community. Since the creation of the Carver program, their reach has expanded to include Hispanic students as well. However, the focus of the Carver program has not yet effectively extended into Indian Country.

What is needed for the American Indian and Alaska Native "Carvers of the Future" is a new effort, branded in a way to provide meaning and context for American Indian students but basically designed along the same pathway as the Carver program. Identifying young food and agriculture (or STEM) scholars from the AI/AN community and following them throughout their educational careers in order to ensure the next generation of Native professionals in food and agriculture is created and provided the tools to soar. This process has begun with the inaugural Native Youth in Food and Agriculture Summer Leadership Summit that launches in July 2014 at the University of Arkansas Fayetteville School of Law in partnership with the Farm Credit Council, the national FFA organization, and the Intertribal Agriculture Council. By focusing on the educational needs of the next generation, we can ensure that the mistakes and challenges of the past are not repeated and that we begin teaching the next generation at a very early age the complexities of farming and ranching with success in Indian Country. The partnership of Farm Credit Council and the system of Farm Credit institutions in this overarching youth-focused effort will lay important groundwork for the lending relationships that must be created in order for food and agriculture projects to develop and grow in Indian Country.

## Conclusion

The issues and challenges, opportunities and barriers, data and history described in this report are just the beginning of a long road of focused effort that those involved with this project have undertaken. We are committed to this vision for our interrelated future. We are from three different Tribes, but we share a common purpose that Indian Country's future in food and agriculture is rich, firmly rooted in our history and traditions, but established with the ability to soar well into the future and build strong and resilient diversified economies for all our relations.

[i] Vince Logan, Stacy Leeds, Janie Hipp, project authors.

[ii]An Introduction to Indian Nations in the United States; http://www.ncai.org/about-tribes/Indians_101.pdf.

[iii] Reservations: 18 USC 1151(a); dependent Indian communities: 18 USC 1151(b); allotments: 18 USC 1151(c); informal reservations: Oklahoma Tax Commission v. Chickasaw Nation, 515 US 450 (1995) and Oklahoma Tax Commission v. Sac & Fox Nation, 508 US 114(1993)). It is also important to note that many federal statutes may expand or diminish the concept of Indian Country when providing enabling language creating a particular program.

[iv] Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs; http://www.bia.gov/idc/groups/xofa/documents/document/idc012038.pdf.

[v] The American Indian and Alaska Native Population: 2010; http://www.census.gov.

[vi] National American Indian Heritage Month: Facts & Figures from the Census Bureau. (2010, November 4). http://www.americanindianreport.com.

[vii] The Public Health Crisis of Native American Youth Suicide; http://nas.sagepub.com.

[viii] The Indian Health Service fact sheets (2011, January);. http://www.ihs.gov.

[ix] Obesity Prevention/Strategies in Native Youth; http://www.nihb.org/public_health/obesity_prevention_youth.php.

[x] Native American Youth 101, a publication of the Center for Native American Youth; retrieved from www.aspeninstitute.org.

[xi] Estimates suggest that world population will increase from 7 to 9 billion people by the year 2050, in addition to the challenge of achieving a current unmet goal by the World Food Summit of halving the number of hungry in the world, currently at 870 million, and increasing caloric and quality demands of an emerging global middle class.

[xii] Bell-Sheeter, A, (2004*). Food Sovereignty Assessment Tool,* First Nations Development Institute.

[xiii] Report, Centers for Disease Control and Prevention (2009).

[xiv] Ag Census 2007, USDA NASS

[xv] Preliminary Report; Released February 2014, National Agricultural Statistical Service USDA; www.nass.usda.gov.

[xvi] Keepseagle v. Vilsack, No. 1:99CV03119 (D.D.C.); http://www.indianfarmclass.com/Documents/SettlementAgreement.pdf

[xvii] The Office of Tribal Relations was made permanent within the Office of the Secretary in the final language of the 2014 Farm Bill.

[xviii] The 2014 Farm Bill also included a provision allowing the USDA and BIA to work together to avoid duplicative appraisals. However, it is likely that full implementation of that provision will take several months, if not years.

[xix] General Allotment Act, Act of Feb. 8, 1887 (24 Stat. 388, ch. 119, 25 USCA 331).

[xx] See Appendix A for a visual representation of the difficulties with land fractionation in Indian Country. See also, https://www.iltf.org/land-issues/fractionated-ownership

[xxi] Cobell v. Salazar, No. 1:96CV01285-JR (D.D.C); for a full listing of all documents related to the Cobell litigation, including settlement documents and current status see, www.indiantrust.com

[xxii] The full report can be found at: http://www.doi.gov/cobell/commission/upload/Report-of-the-Commission-on-Indian-Trust-Administration-and-Reform_FINAL_Approved-12-10-2013.pdf and the entirety of proceedings convened by the Commission can be found at www.doi.gov/cobell/commission/index.

[xxiii] http://www.fca.gov/about/fca_in_brief.html

[xxiv] 25 USC Section 3701 et seq.

[xxv] 25 U.S.C.A. § 477, 25 USCA § 477

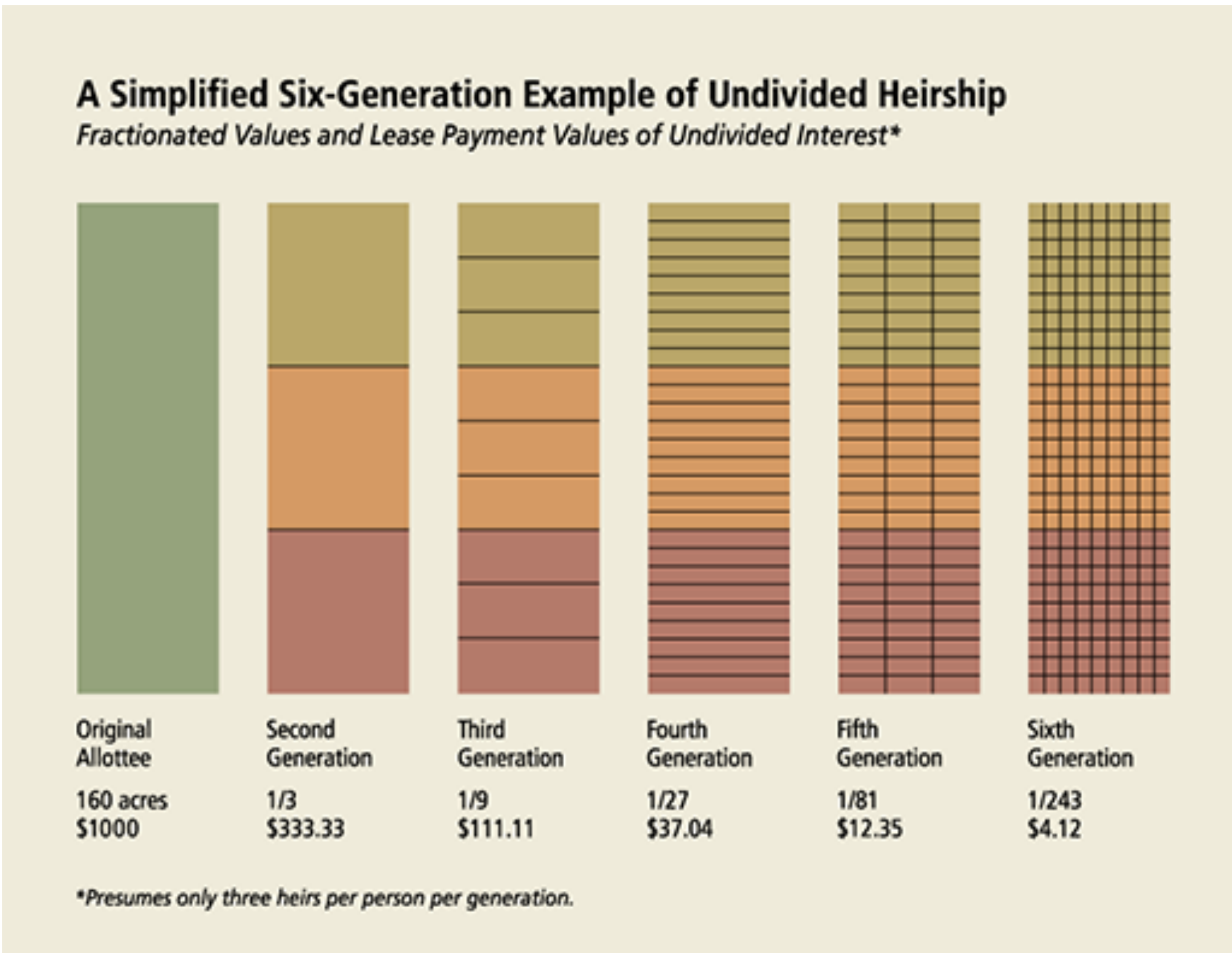
[xxvi] 26 C.F.R. § 301.7701–1, Treas. Reg. § 301.7701–1§ 301.7701–1; Classification of organizations for federal tax purposes. Effective: December 22, 2011.

[xxvii] See Appendix B (Source: National FFA Organization 2012). The representational map attached as Appendix A provided by the national FFA organization depicts the location of Native youth involved in FFA in the time period of 2009-2011. The authors of this report are working closely with FFA on an ongoing basis to launch ideas to support these youth as they move forward into the work force or in furthering their education. Appendix A map shows the location of these students; each dot on the map equals 10 students. We derive our 4-H statistics form the 4-H National headquarters website and databases (2013) but do not yet have a chapter mapping resource developed for 4-H Native membership.

[xxviii]See, publications associated with Native Youth initiatives at the NCAI website; www.ncai.org.

Appendix A

Example of land fractionation effects in Indian Country (www.iltf.org), with associated administration costs related to the lands borne by the Bureau of Indian Affairs, the Tribe and the landowners.



Appendix B

Map of Native FFA students by Local Chapter (2009-2011); each dot represents 10 students.