



Ag Decision Maker

A Business Newsletter for Agriculture

Vol. 9, No. 8 www.extension.iastate.edu/agdm July 2005



Farm leasing arrangements

Tim Eggers, field extension economist, Iowa State University, teggers@iastate.edu

Farm leasing arrangements are a dominant area of discussion for Iowa State University Extension field economists and their clients. News releases, fact sheets, and meetings provide annual updates regarding the current issues and relevant numbers. One product developed in 2003 that adds to the stream of information on this topic is the online Farm Leasing Arrangements course. It is constantly updated, and an online description is available at www.extension.iastate.edu/ames.

This article will describe each module in the course and provide additional resources. The Agricultural Management e-School (A.M.E.S.) courses rely on Ag Decision Maker resources and other land grant university sources. Over 575 students from 89 Iowa counties and 24 other states have taken A.M.E.S. courses.

Cash farm leases

Cash farm leases are the most popular type of farm lease. As a result, our first module in the course cov-

ers the topic. A significant resource used in this course is Cropland Leasing Practices -- C2-15. Out-of-state Iowa landowners are part of the target audience for the course and are likely to focus on this module. Because of that, Mike Duffy's PM 1983 *Farmland Ownership and Tenure in Iowa 1982-2002: A Twenty-Year Perspective* is also referenced in the module. Decision Aids in the Cash Lease module focus on formulas and different approaches for reaching a leasing rate resulting in a contract that both sides can easily agree to.

Crop share leases

The 50-50 share lease is not the only way that Iowa farmland can be leased on shares. This module helps students to think through the possibilities of how costs and income can be shared. Decision tools are combined with research results to help analyze ways in which returns to landowners can be sufficient to retain the positive risk management benefits of share leasing to tenants.

Communication is important for any type of leasing arrangement, but a constant stream of communication is particularly important for crop share situations. This module strives to help landowners understand the questions they can and should ask. It also reminds tenants of the benefits of clear and timely communication. Students are reminded that a termination and switch to a cash lease are often only an undocumented invoice away.

Flexible cash leases

While flexible cash leases are not common, they do provide a nice transition from crop share leasing for landowners who want to retain risk without a constant stream of in-

continued on page 2

Inside . . .

- What will happen to the value of farmland over the next several years? Page 3
- Supreme Court rules that beef check-off is government speech; but check-off litigation may not be over Page 4

Farm leasing arrangements, continued from page 1

voices. Decision tools with examples help to overcome confusion regarding the calculation of the base rate and final payment under a variety of formulas.

Custom farming

Custom farming is an ever present alternative to leasing. From a tenant's perspective, this module explains the responsibilities involved in performing the field operations for someone else's farm. A sample contract is provided. Iowa Farm Custom Rate Survey -- A3-10 is emphasized as a good starting point in determining payment rates. This module attempts to make the point that rates need to be checked for profitability for both parties.

Renting hay and pasture land

There are areas in the Midwest that are not suitable for row crops. In parts of Iowa hay and pasture leases dominate. It can be difficult for absentee landowners to understand that non-crop acres are treated differently than land rented out for corn and soybeans. This module goes over those differences. Commonly used hay and pastureland leases are explained. Examples of average rental rates and methods to calculate the rates in different areas are given.

Renting farm buildings

Changes in farming and shifts in types of operations result in buildings and livestock facilities that outlast the owner's needs. With good information, the assets may be able to generate a sufficient return. Tenants can get the use and benefits of buildings and facilities without the large investment of building new. The owners also benefit by getting income from the facilities that are sitting unused on their property. This module provides decision aids and helps to determine rental rates for farm buildings. It also provides example contracts to emphasize the importance of "getting it in writing."

Legal and tax considerations

A lease agreement is a legal contract and includes obligations for both parties. Reasons for a written lease, oral lease considerations, and lease termination open the discussion. Material participation, tax implications, and landlord liens round out the discussion.

A very common legal issue is responsibility for fences. A summary of fencing laws from the Iowa Code is included to help students understand their rights and responsibilities related to fences. References for further study include links to the National Ag Law Center and sample farm lease forms.

Environmental and conservation concerns

Of particular concern for some absentee landowners is the effect of farming operations on the environment. This module helps to expose students to programs designed to entice producers to adopt new practices. The breakdown of different environmental programs and what they could mean for a landowner is a primary topic in this module.

Alternative options such as sustainable agriculture practices and organic operations also are covered. Examples are included to show how individuals have customized lease agreements for different types of production. This module concludes with weed control and other environmental concerns that should be considered. References to environmental agriculture Web sites are listed along with links to organic crop research results.

Owner and tenant relations

Stress reduction, productivity increase, and simple relationship maintenance enhancement are the concepts dominating this module. Tips and methods of keeping a constant communication stream open are provided. Common questions based on situations that may arise with a landlord are in the evaluation component of this module.

USDA agencies and programs

The final content module is a basic overview of the many USDA agencies and programs available to agricultural producers. Links are included to agency websites along with explanations of payment programs. The purpose of this module is for the student to see options they may not have known about and to give more information on how government programs can benefit their operation financially.

Rogers Family Case Study: Renting the farm right

The application module for this course asks the student to use information from throughout this course and apply it to a realistic farm situation. The student decides on goals for the farm, selects a lease plan, and selects a tenant. Video clips are included that explain possible plans for the case farm. This case study helps the student apply concepts discussed in the course.

More information on the Farm Leasing Arrangements course and A.M.E.S. courses can be found at www.extension.iastate.edu/ames. The fee for most A.M.E.S. courses is \$100.



What will happen to the value of farmland over the next several years?

by Mike Duffy, extension economist, (515) 294-6160, mduffy@iastate.edu

As always, the future is hard to predict, but in this case it is especially difficult. There are several factors that will have an immediate impact on land values and other longer-term factors that will determine the future performance of land.

Several critical factors will influence land values and returns over the next few years. The first relates to the future of the government farm programs. As noted, farmers are the primary purchasers of farmland and net farm income influences how likely farmers are to entertain thoughts of buying land. Over the past several years, the majority of net farm income has come from direct government payments. While the 2002 Farm Bill will continue to provide a relatively high level of government payments, investors must consider whether those payments have already been factored into the cost and how long the payments will continue.

The second major unknown is the performance of the stock market over the next few years. If the market resumes its decline, it will have a decided impact on investor interest in farmland. Land that was purchased for recreational purposes could be returned to the market and depress prices. If the Federal Reserve takes steps to prevent major problems in the overall economy, mainly raising interest rates, land values will be affected. Finally, a declining stock market may encourage investors who are looking for a safer place for their money to consider land purchases. There could be positive and negative effects on land values from a prolonged decline in the stock market. At this time it is not possible to know which economic and social factors will exert the most pressure.

Interest rates are closely related to stock market performance. Today's historically low interest rates make long-term investments such as land more attractive.

Land values are always influenced by the returns available. The financial returns are affected by the levels of production and demand. Weather and technological changes have a tremendous influence on the supply. And, in the global economy, changes in supply and demand conditions around the world can impact Iowa land values.

In the longer term, there are changes occurring in agriculture that will have an influence on land values. One of these is the structural change of increasing farm size. If this trend continues, there will be fewer farms and farmers. This will alter many aspects of the rural countryside, including land values.

Another element of change is the increasing age of Iowa farmland owners. Based on Iowa State University studies, 48 percent of Iowa farmland was owned by people over the age of 65 in 2002. This means that over the next few years a sizeable percentage of Iowa farmland will change hands. Will it enter the market, will family members retain control, or will it be divided? No one knows for sure, but this is likely to have an impact on land values.

The relative performance of the land and stock markets has varied over the past 50 years. Timing has been the key to which investment produces the highest returns.

What are the future trends? What will happen to land values? These questions are difficult to answer. At present, in my opinion, land values will continue to hold steady with only slight changes. There will be year-to-year variations, depending upon the current conditions and outlook for agricultural returns. In the long run, I think that land values will increase. But, for how long and by how much, no one knows. And, there is always the potential for downside risk if government support programs change substantially.



Supreme Court rules that beef check-off is government speech; but check-off litigation may not be over

by Roger McEowen, associate professor of agricultural law, (515) 294-4076, mceowen@iastate.edu

On May 23, 2005, the U.S. Supreme Court upheld the federally-mandated beef promotion program against a First Amendment challenge on the basis that the program constituted government speech. The Court, however, left open the possibility that the beef check-off could be successfully challenged on First Amendment grounds if it can be shown on remand that the advertisements attribute their generic pro-beef message to the plaintiffs. As such, the Court’s ruling does not necessarily end the beef check-off litigation, and is not entirely precedential for the pork check-off litigation that awaits a determination as to whether the Supreme Court will hear the case.

The statutory framework

The Beef Promotion and Research Act (Act) was passed by the Congress as part of the Food Security Act of 1985. Under the statute, the Secretary of Agriculture (Secretary) was directed to issue a Beef Promotion and Research Order (Order). The Act also directed the Secretary to appoint a Cattlemen’s Beef Promotion and Research Board (Board) which convened an Operating Committee (Committee) and imposed a \$1 per-head assessment (the “check-off”) on all sales or importation of cattle, which is to be used to fund beef related projects, including promotional campaigns designed by the Committee and approved by the Secretary.

It is clear from the legislative history of the Act that the program was only intended as enabling legislation to establish an industry “self-help” program.

The government speech issue

The case involved (in the majority’s view) a narrow facial attack on whether the statutory language of the Act created an advertising program that could be classified as government speech. That was the only issue before the Court. While the government speech doctrine is relatively new and is not well-developed, prior Supreme Court opinions not involving agricultural commodity check-offs indicated that to constitute government speech, a checkoff must clear three hurdles - (1) the government must exercise sufficient control over the content of the check-off to be deemed ultimately responsible for the message; (2) the source

of the check-off assessments must come from a large, non-discrete group; and (3) the central purpose of the check-off must be identified as the government’s. Based on that analysis, it was believed that the beef check-off would clear only the first and (perhaps) the third hurdle, but that the program would fail to clear the second hurdle. Indeed, the source of funding for the beef check-off comes from a discrete identifiable source (cattle producers) rather than a large, non-discrete group. The point is that if the government can compel a targeted group of individuals to fund speech with which they do not agree, greater care is required to ensure political accountability as a democratic check against the compelled speech. That is less of a concern if the funding source is the taxpaying public which has access to the ballot box as a means of neutralizing the government program at issue and/or the politicians in support of the program. While the dissent focused on this point, arguing that the Act does not establish sufficient democratic checks, Justice Scalia, writing for the majority, opined that the compelled-subsidy analysis is unaffected by whether the funds for the promotions are raised by general taxes or through a targeted assessment. That effectively eliminates the second prong of the government speech test. The Court held that the other two requirements were satisfied inasmuch as the Act vests substantial control over the administration of the check-off and the content of the ads in the Secretary.

Unresolved issue

The court did not address (indeed, the issue was not before the court) whether the advertisements, most of which are credited to “America’s Beef Producers,” give the impression that the objecting cattlemen (or their organizations) endorse the message. Because the case only involved a facial challenge to the statutory language of the Act, the majority examined only the Act’s language and concluded that neither the statute nor the accompanying Order required attribution of the ads to “America’s Beef Producers” or to anyone else. Thus, neither the statute nor the Order could be facially invalid on this theory. However, the Court noted that the record did not contain evidence from which the Court could determine whether the actual application

Supreme Court rules that beef check-off is government speech; but check-off litigation may not be over, continued from page 4

of the check-off program resulted in the message of the ads being associated with the plaintiffs. Indeed, Justice Thomas, in his concurring opinion, noted that the government may not associate individuals or organizations involuntarily with speech by attributing an unwanted message to them whether or not those individuals fund the speech and whether or not the message is under the government's control. Justice Thomas specifically noted that, on remand, the plaintiffs may be able to amend their complaint to assert an attribution claim which ultimately could result in the beef check-off being held unconstitutional. If those facts are developed on remand, and the ads are found to be attributable to the complaining ranchers or their associated groups, the beef check-off could still be held to be unconstitutional.

Implications of the decision

It seems clear from the opinion that the Secretary now must take steps to affirmatively exercise the authority vested in the Secretary under the Act, and run the check-off as the government program the Court says it is. Likewise, organizations that purport to speak for ranchers must actually represent them – failure to do so, coupled with receipt of check-off dollars (or indirect benefit from check-off dollars), will bolster a constitutional claim by members of non-check-off recipient cattle organizations (who must pay the assessment) on freedom of association grounds.

The opinion also is not entirely precedential for the pending pork check-off litigation. That case involves not only a government speech issue, but also a freedom of association claim. Thus, the pork case contains a remaining open claim on the compelled association issue.

The opinion may prove ultimately to not be that useful of a precedent on the government speech issue. Only four of the six justices that formed the majority in the case really believe that the beef ads constitute government speech. Justice Ginsburg concurred separately and stated that while she did not believe the beef ads amounted to government speech, the majority reached an adequate decision for the wrong reason. Justice Breyer also concurred separately and stated his continued belief that the beef check-off is a permissible form of economic regulation, but that the majority's government speech theory was an acceptable solution.

In any event, the majority opinion would appear to expand the application of the government speech doctrine. Apparently it is no longer the rule that permissible compelled public support for speech is limited to situations where the government does not exercise control over the speech and takes a viewpoint-neutral approach that lets private parties determine the content of the speech being supported.

What remains clear is that check-off funds cannot be used to promote the check-off itself.

What's next?

The Court remanded the case to the Federal District Court in South Dakota. The Livestock Marketing Association will have to decide whether it will continue the litigation on the ad attribution rationale suggested by Justice Thomas. Beyond that, it is difficult to determine why the Court seemingly expanded the government speech doctrine. Clearly, Justices Scalia, Thomas and Rehnquist (all part of the majority) are sympathetic to the government speech analysis in the context of abortion, and they may have ruled as they did in the beef case to expand the government speech doctrine for application in a case they will decide next term involving a federal law (known as the Solomon Amendment) that removes federal funds from institutions of higher education that do not permit military recruiters on campus. That case has been positioned as a government speech case (among other claims), and in late 2004 the United States Court of Appeals for the Third Circuit ruled that the Solomon Amendment was unconstitutional because it forced schools to agree with the government's policy of allowing gays to serve in the military only if they do not openly declare their sexual orientation.

* Reprinted with permission from the June 3, 2005 issue of Agricultural Law Digest, Agricultural Law Press Publications, Eugene, Oregon. Footnotes not included.

Farmland purchase analysis program and beef cow share agreement analysis decision Aids are available on-line

Two new computer programs are available from Ag Decision Maker and Iowa State University Extension. The first is an electronic spreadsheet for prospective purchasers of farmland that examines both the economic and financial consequences of an investment. It helps answer questions such as what is the economic value of a parcel of land based on agricultural production, what financing terms are necessary to make the purchase generate a positive cash flow, and what rate of return on equity can be expected.

The second spreadsheet looks at beef cow sharing agreements for cattle. It examines various inputs for both parties and provides the expected contributions and profits for each. This decision aid coordinates with the new information file C2-36, Beef Cow Joint Agreements.

Both the Farmland Purchase Analysis and the Beef Cow Share Agreement Analysis can be found in the Ag Decision Maker Decision Aids library.

Handbook updates

For those of you subscribing to the handbook, the following updates are included.

Historic Hog and Lamb Prices – B2-10 (2 pages)

Historic Cattle Prices – B2-12 (2 pages)

Please add these files to your handbook and remove the out-of-date material.

Internet updates

In addition to the Handbook updates, the following updates have been added to www.extension.iastate.edu/agdm.

Beef Cow Joint Agreements–C2-36 (3 pages)

Decision aids

Beef Cow Share Agreement Analysis

Farmland Purchase Analysis

... and justice for all

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Many materials can be made available in alternative formats for ADA clients. To file a complaint of discrimination, write

USDA, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964.

Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Stanley R. Johnson, director, Cooperative Extension Service, Iowa State University of Science and Technology, Ames, Iowa.

Permission to copy

Permission is given to reprint ISU Extension materials contained in this publication via copy machine or other copy technology, so long as the source (Ag Decision Maker Iowa State University Extension) is clearly identifiable and the appropriate author is properly credited.