

## **MEETING MINUTES (Corrected)**

### **AGRICULTURAL PRODUCER SECURITY COUNCIL**

February 18, 2016

#### **Call to order**

The Agricultural Producer Security (APS) Council held a meeting on Wednesday, February 18, 2016, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

#### **Attendance**

Nine council members were present: Doug Cropp, Dave Daniels, Don Hamm, John Manske, Craig Myhre, Jeremie Pavelski, John Umhoefer Jim Zimmerman, and Nick George (arrived late).

One council member, Louise Hemstead, was absent.

DATCP staff members present were Eric Hanson, Jeremy McPherson, Lori Ronnerud and Lauren Van Buren. Tom Bressner from the Wisconsin Agri- Business Association, Inc. and David Ward from Cooperative Network were also in attendance.

#### **Agenda Item I      Call to Order**

Chairman John Manske called the meeting to order at 9:38 am.

#### **Agenda Item II      Approve Minutes**

John Manske clarified his comment on page 5 of the 12/16/15 minutes regarding segregating the Fund as representing the position of CROPP rather than that of WI Dairy Products Association (DPA). John spoke with DPA's Executive Director, Brad Legreid, who confirmed this comment. Jeremie Pavelski moved to approve the minutes from the December 16, 2015 meeting with the clarification made by John Manske. The motion was seconded by Jim Zimmerman. The motion passed unanimously without discussion.

#### **Agenda Item III      Officer Elections**

Jeremy McPherson opened nominations for the position of Council Chair. Dave Daniels nominated John Manske and John Umhoefer seconded the nomination. There were no other nominations. Jeremy requested a motion to close the nominations and cast a unanimous ballot electing John Manske as Chair. Doug Cropp so moved, Don Hamm seconded, and the motion passed unanimously.

Chairman Manske then opened nominations for the position of vice-chair. Jim Zimmerman nominated Dave Daniels and Doug Cropp seconded the nomination. There were no other nominations. Chairman Manske requested a motion to close nominations and cast a unanimous ballot electing Dave Daniels as Vice-Chair. Jeremie Pavelski so moved, Craig Myhre seconded, and the motion passed unanimously.

Nominations were opened for the position of Secretary. Jeremie Pavelski nominated Craig Myhre and Dave Daniels seconded the nomination. There were no other nominations. Chairman Manske requested a motion to close the nominations and cast a unanimous ballot electing Craig Myhre as Secretary. Jim Zimmerman so moved, Dave Daniels seconded, and the motion passed unanimously.

#### **Agenda Item IV    Emergency Rules**

Jeremy McPherson reported that there is one emergency rule currently in effect involving assessments for vegetable contractors. A hearing was held regarding the emergency rule, and Eric reported that there were no appearances or testimony provided at the hearing. Jeremy said that written testimony would be accepted until March 2, 2016. This rule moves all vegetable contractors to year 1 assessment rates and will last for two years. No one will pay over \$50,000 in the first year. Jeremy said that several contractors were caught off guard by the impact of going back to year 1 rates. John Manske asked when we anticipate a permanent rule. Jeremy responded that staff will begin working on a scope statement but we'd like to proceed with all rulemaking changes at the same time, including changes currently being considered by the Council. The rulemaking process takes about two years to complete. Chairman Manske asked if there were any other questions or comments. Jeremie Pavelski said much of the direction provided on the rule will depend on policy discussion of separating the Funds.

Jeremy McPherson reported that we will be asking the DATCP Board to approve a scope statement for an emergency rule for milk contractors at the March Board meeting. A scope statement for grain will be presented at a later date. Jeremy stated that the new emergency rule for milk contractors is very similar to the one from last year, which extended Assessment Holidays.

John Umhoefer commented that it is good we are looking at reform and are serious about making changes. However, he doesn't understand why milk contractors have a \$6 million minimum balance required to receive an assessment holiday while the emergency rule requires only a \$5 million minimum balance for the overall Fund.

#### **Agenda Item V    Milk Contractor Payment Terms**

Eric Hanson stated that a general memo was sent out recently to all milk contractors reiterating the statutory requirement that all milk purchased from producers must be paid for twice a month. DATCP had recently found a handful of milk contractors entering into contracts with some milk producers to defer payment for milk. Eric indicated that the issue with this practice is that financial statement requirements, Fund assessments, and security requirements are based on the risk presented by current statutory payment terms. Although grain dealers are allowed to defer payments to producers, they must meet specific contracting and reporting requirements, as well as pay higher assessments.

John Umhoefer asked about patronage checks. John M. said those checks reflected profits and were considered a patronage dividends, and not payment for milk. Discussion ensued about different issues related to milk payments. John U. said both parties like the situation so why not continue it. Jeremy responded that we are not opposed to the idea but it would require a statutory change and we'd have to restructure assessments to reflect the additional risk.

John Manske said he appreciates the discussion and mentioned that David Ward received some feedback from members. David expressed concern that milk producers would no longer be given the option to defer payments for milk into the next calendar year for tax purposes. A number of milk producers were very concerned that they would not be afforded this option any longer. Producers benefit from these deferred payment contracts; therefore, they want to continue to have that option. David also mention that this could make us less competitive with other states where this practice is allowed.

John M. asked if the payment terms could be changed by rule. Jeremy responded that payment terms were statutory and can't be modified by rule. David realized that a Statute change would take time. He also acknowledged the additional risk relating to deferred payment contracts. However, he wondered if producers could waive their rights to a claim against the Fund rather than paying additional assessments. Don Hamm suggested that it would open the door for others to request waivers for other reasons.

John Manske said the cooperative network will be working with members and bring back ideas to the council. He also expressed hope that this issue could be considered along with the other new policies being considered.

John Umhoefer asked how we handled situations in which we discovered milk contractors using deferred payment during our audits. Jeremy said that the focus was on compliance moving forward. So long as contractors agreed to come into compliance, no action would be taken regarding past violations. To cause the least amount of disruption to the industry, we allowed contracts to be honored with the understanding that they would be paid promptly and that similar contracts would not be offered in the future.

## **Agenda Item VI Potential Policy Changes**

John Manske reviewed policy issues discussed at the 12/16/15 APS Council meeting, which included:

- Segregating the Fund, for which support was split: 3 in favor, 3 against, and 3 undecided (with Louise absent).
- Merging grain dealer and grain warehouse keeper programs, which seemed to have general support.
- Shortening vegetable contractor payment terms.

Jeremie Pavelski said that at the WPVGA board meeting, it was discussed that the fund did what it's supposed to do. They looked at results from the actuarial study and it seems clear that the risk factor increases with a segregated Fund. It just so happened that the large default happened in the vegetable program, but it could happen next in any other program. He recognizes that vegetable assessments need to increase, but otherwise we should maintain the status quo.

Craig Myhre said that at their January meeting, Farmer's Union passed motion to maintain the status quo.

John Manske asked Jeremie Pavelski about whether their membership would be supportive of

more restrictive payment terms. Jeremie said he would leave it for Nick George and his membership to address that issue.

John Manske reported that he is aware that Nick's membership is not in favor of more restrictive payment terms.

Dave Daniels asked for a summary of payment terms in each industry and suggested that vegetable payment terms be limited to 30 days. Jeremy McPherson said milk contractors are required to pay twice monthly; grain dealers are required to pay within 7 days or enter into written deferred payment contracts; most vegetable contractors follow provisions that allow extended payment terms with written contracts, usually making payment between 2 to 6 months later. In most situations the law requires vegetable contractors to pay no later than Jan 31<sup>st</sup> of the year following harvest/delivery.

John Manske inquired about another vote to segregate funds.

Jim Zimmerman said he has meetings coming up in March with his organizations at which he plans to address the issues brought forth by the Council. Until then, his vote would not change. Jim added that he had anticipated getting specific questions from today's meeting that he could present to his Boards. John Manske replied that maybe coming out of this meeting we would have a list of questions. Jim Zimmerman suggested that the questions be very straight forward so he could present them to his Board and they could ascertain what the risks may be regarding the policy options.

Jeremy offered to have staff give presentations of the study to organizations to help facilitate discussions. John Manske said DATCP staff have been excellent at making themselves available to attend meetings.

John Umhoefer suggested staff provide answers to the questions we come up with today that Council members can provide to their membership.

John Manske asked Jim if a 2-3 page Q&A document summarizing impact on costs and coverages based on Milliman's conclusions would satisfy his needs.

Nick arrived at 10:55

The group took a few minutes to summarize earlier discussion.

Nick George said Jeremy and Eric are going to attend the meeting with his membership the next week. He confirmed that his members would not welcome more restrictive payment terms in the vegetable program.

Discussion continued regarding how to segregate the Fund, given Vegetable Contractor's negative balance. John Umhoefer pointed out that the vegetable program will take a long time to pay back their default and asked about the possibility of forgiving the debt if the Fund were to be segregated.

Jeremy M. discussed how Milliman approached splitting the remaining Funds for their study, but indicated this was just one possibility.

Jeremy M. also discussed other issues pointed out in the Milliman report: the potential for

combining Grain Dealer and Grain Warehouse; the finding that milk assessments were higher relative to the other industries; that assessments rates appeared appropriate to cover expected losses for each industry, but perhaps grain limits be increased to better align with milk; and the fact that the vegetable program will need a significant assessment increase to meet its minimum fund balance anytime soon.

Tom B commented on the issue of merging grain dealer and grain warehouse keeper programs. He noted that there not a consensus among his membership because some grain dealers are federally licensed warehouses. Tom added that, while WABA is not taking a position on this issue, they will support the position of the Council.

Dave Daniels had to leave at 11:00.

The Council finalized the questions for which it is looking for answers:

1. How do we address the \$4.8 million negative balance vegetable balance in order to segregate Funds?
2. What happens to coverage amounts and cost if the Fund were segregated?
3. How do balances change if coinsurance (producers' share of the default) were increased to 50%?
4. How would vegetable contractor risk change by shortening payment terms?

The next Council meeting was scheduled for April 19<sup>th</sup> at 9:30 am.

#### **Agenda Item VII Adjourn**

Motion to adjourn the meeting was made by Nick George and seconded by Jim Zimmerman. Motion unanimously approved at 11:30 am.