# MEETING MINUTES

## AGRICULTURAL PRODUCER SECURITY COUNCIL

April 17, 2017

The Agricultural Producer Security (APS) Council held a meeting on Monday, April 17, 2017, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

### Attendance

Eight council members were present: Doug Cropp, Dave Daniels, Nick George, Don Hamm, John Manske, Jeremie Pavelski, John Umhoefer, and Jim Zimmerman.

Council members Louise Hemstead and Craig Myhre participated by phone.

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

### Agenda Item I Call to Order

Chair John Manske called the meeting to order at 1:07 p.m.

### Agenda Item II Officer Elections

Jeremy McPherson opened nominations for the position of APS Council Chair. Nick George nominated John Manske and Louise Hemstead seconded the nomination. There were no other nominations. Jeremy McPherson requested a motion to close the nominations and cast a unanimous ballot electing John Manske as Chair. Louise Hemstead so moved, Jeremie Pavelski seconded, and the motion passed unanimously.

John Manske opened nominations for the position of Vice-Chair. John Umhoefer nominated Dave Daniels and Nick George seconded the nomination. There were no other nominations. John Manske requested a motion to close nominations and cast a unanimous ballot electing Dave Daniels as Vice-Chair. Jeremie Pavelski so moved, Jim Zimmerman seconded, and the motion passed unanimously.

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

### Agenda Item III Approve Minutes

John Umhoefer requested that that the minutes be more detailed and that specific council members be identified with regard to questions or issues raised. Staff acknowledged the concern and agreed to provide more detail in future meeting minutes. Nick George moved to approve the minutes from the December 6, 2016, meeting. The motion was seconded by

Dave Daniels. The motion passed unanimously.

John Manske asked if there were objections to modifying the order of the agenda to discuss item V (administrative rule draft language) ahead of item IV (annual Fund report). Nobody objected.

**Agenda Item V Draft Administrative Rule language: ATCP 99, 100, 101**

Jeremy McPherson began by explaining the draft language is being presented separately now to capture the changes, but the proposed hearing draft rule will combine all 3 of the rules in one rulemaking document. The proposed changes to each rule were then discussed:

ATCP 99 – Grain Dealer/Grain Warehouse Keeper: Currently the grain dealer portion of the Fund is very close to reaching its statutory maximum balance of $6 million. This proposal would reduce grain dealer assessments if, by May 31st of the current year, the grain dealer portion of the Fund is at or above $6 million. The reduction would mean all grain dealers would pay the minimum assessment of $100, 200, or $500, and deferred payment assessments would be reduced by 75%. However, the deferred payment assessment reduction would be delayed by a year, because licensees have already collected the full deferred payment assessment from producers. The reduced assessment would remain for the entire license year, even if the fund balance falls below $6 million. If the fund balance was below $6 million on May 31st in a subsequent year, assessments would revert back at the start of the next license year. This change would reduce assessment revenue for the grain dealer program by about $822,000 (regular assessments ~ $222,000 and deferred payment assessments ~ $600,000) in any year in which the grain dealer portion of the fund is at or above $6 million. This provision could be impacted by the proposed statutory changes that would combine the grain dealer and grain warehouse keeper fund balance requirements. The new maximum would be $7 million combined instead of $6 million for grain dealers.

ATCP 100 – Milk Contractor: Under this proposal, milk contractor assessment rates would be reduced by 20%, subject to the current statutory minimums. Two thirds of licensed milk contractors would not be affected by this change because they already pay the minimum. The 20% reduction would decrease assessment revenue by about $237,000 per year. The Fund would still grow by approximately $137,000 per year. This change was prompted by a conclusion from the actuarial study that indicated milk contractor contributions were higher than the other industries when compared to expected losses. John Manske commented that the actuarial study didn't specifically suggest a reduction amount. Staff agreed and indicated that the amount was determined based on an internal analysis of the projected growth in each industry. John Umhoefer asked about when the draft administrative rule changes would be in effect. Staff said we are hopeful the rule will be in effect by the start of the next milk contractor license year, May of 2018. Since it is doubtful the rule would be implemented in time for vegetable contractor renewal (Feb. 1st), staff suggested the possibility of another emergency rule.

ATCP 101 – Vegetable Contractor: As a result of the large negative balance created by the Allens default, DATCP is statutorily required to adjust assessments to bring the vegetable contractor balance back to a minimum of $800K within a "reasonable amount of time." The proposed rule would reverse the emergency rule, reverting back to the old assessment formula, and add a surcharge. The surcharge would be the lesser of $50,000 or 0.2% of total contract obligations. The proposed rule also creates an incentive for vegetable contractors who

pay all growers within 30 days. For those contractors, the total assessment would be reduced by 50%. John Manske clarified that this language is very different from the current emergency rule. Staff commented that the emergency rule resulted in all vegetable contractors being assessed using "first year rates." DATCP received feedback from industry that new contractors should not be assessed the same as contractors that have been participating in the program for years. The permanent rule addresses that issue. Staff estimate that, under this proposal, the vegetable portion of the fund would grow by about $287,000 per year, and the minimum statutory balance will be met in approximately 18 years. Staff also estimated that the maximum assessment for any one contractor would be about $59K. John Umhoefer asked about the $50K cap. Staff indicated that the cap only applied to the surcharge, not the original formula. Dave Daniels asked about the 30 day terms. Staff said this provision was created as a result of a council recommendation and is intended to reduce risk to the fund and increase the possibility of additional protections under the Perishable Agricultural Commodity Act (PACA). John Manske wondered if this was enough to influence vegetable contractors to implement 30 day payment terms.

Chairman Manske asked if there was any other discussion for this agenda item. Jeremie Pavelski stated that no one liked fee increases but it is necessary. John Umhoefer asked if there are any efforts being made to reclaim some money from past defaults. John Manske said this subject will be coming up later in the agenda. Nick George said he is waiting to hear back from some of his members. Jeremy McPherson said the DATCP Board is scheduled to take up the hearing draft at its May 25th meeting. John Umhoefer suggested we try to schedule another council meeting before the DATCP Board meeting so they could see the full document. John Manske stated that it would be good to have council input on the language prior to the Board meeting. He suggested that the group could also discuss the draft legislation, assuming it was back from the Legislative Reference Bureau. It was agreed to consider a conference call meeting to revisit the Hearing Draft shortly before the May 25th DATCP Board meeting.

**Agenda Item IV Agriculture Producer Security Fund – Annual Report**

Eric Hanson opened with an apology for the delay in releasing the annual report. Last year's state-wide conversion to a new accounting system created delays in reconciling account balances and obtaining information needed to produce the detailed schedules within the report. Eric added that, due to the delay, staff took the opportunity to streamline the presentation of information and eliminate redundancy. He then reminded everyone that all previous annual reports, along with Council meeting minutes, are on the Department website.

This year's report shows revenues and expenses remaining steady from year to year and any big differences are mainly due to default payments from previous years. John Manske asked about the current Grain Dealer fund balance. Eric said it was just under $6 million. Eric also pointed out that this is the first year since 2007 that Grain Warehouse has ended the year with a positive balance. Dave Daniels asked about the increase to supplies and services. Jeremy McPherson indicated that the increase was due to costs for the actuarial study. John Umhoefer asked why the financials no longer show monthly license fee credits for milk contractors. Staff said that consolidating schedules eliminated the need to show the credits as a reduction from the indemnity side and an increase to the administrative side, but that the credits are still reflected in note 5 on pages 11 and 12. John Umhoefer asked if there was a way to highlight them directly on the schedule. Staff made a note for future reports. Doug Cropp commented

that, in note 7, the total grain warehouse licensed storage capacity was down but there are only 3 fewer licensees. Staff said that several factors affect changes to the number of licensees and total licensed capacity, but industry consolidation is a primary reason. John Umhoefer said he appreciates the effort put into creating the Annual Report, to which others agreed.

## Agenda Item VI Recent Defaults and Enforcement Activity

Jeremy McPherson opened by saying that we don't normally talk about specific compliance issues but due to recent media stories further discussion is appropriate.

First, Wisconsin Sheep Dairy Cooperative (WSDC) has been in the media regarding not being able to purchase producer milk. DATCP received a default claim last summer, and the subsequent investigation revealed that they were unable to pay producers. As a result, DATCP suspended WSDC's milk contractor license. We have agreed to reinstate the license once they demonstrate the ability to pay producers within the statutory timeframe.

Scenic Central Milk Producers Cooperative has also been in the media recently about not being paid by its out of state buyer. The out of state buyer voluntarily relinquished its milk contractor license. We have confirmed that all producers have been paid, and we continue to monitor the situation.

Grassland Dairy Products, Inc. and Nasonville Dairy, Inc. gave notice that they will stop taking milk from a number of producers. While Ag. Producer Security does not have a direct role in this issue, other areas of DATCP are working hard to assist.

Department of Justice was able to recover $75,000 from a 2013 default of GB Elevator in which DATCP paid producers about $130,000.

Larson Agri Service was a licensed grain dealer and an exempt warehouse. Larson ceased operations last year, and DATCP received a claim from one producer who was not paid for grain. DATCP's audit of the claim revealed that it was not timely filed. Therefore, no coverage was available from the fund. During the course of the investigation, auditors learned that Larson was also significantly short of depositor grain. DATCP continues to work to resolve the shortage.

Other general compliance issues have been identified by our grain auditors. Our auditors are finding that some grain dealers are not reporting deferred price contracts as deferred payment obligations as required under the statute. This could lead to insufficient security on file or underpayment of assessments. Another issue our auditors have identified is that some exempt grain warehouse keepers are not complying with statutory requirements to maintain sufficient grain in storage and/or not keeping sufficient or accurate records. Even though small (under 50K bu.) warehouses are exempt from licensing, they are still required to comply with the statute. DATCP staff will work with WABA to include information in its industry newsletter regarding these issues.

Dave Daniels asked if contracts between producers and milk contractors are reviewed during the licensing process. Staff explained that they are not, but premium schedules, supply

contracts, and forward contracts are examined during field audits.

John Umhoefer informed the group that he had been contacted about whether the APS Fund could be used to help producers that are being released by Grassland and Nasonville Dairy. Jeremy McPherson replied that any use of APS funds for any purpose other than the administration of the APS program would require a statute change. Don Hamm suggested that there could be additional default potential if milk contractors who are agreeing to pick up this milk don't have a market for it. John Umhoefer added that the amount of money available in the fund would not last long enough to provide any meaningful relief to these producers.

**Agenda Item VII Adjourn**

John Manske stated that council members should anticipate a conference call meeting scheduled before the DATCP Board meeting on May 25th to discuss the Hearing Draft and (hopefully) the legislative proposal currently being drafted.

Motion to adjourn the meeting was made by Dave Daniels, with a second by Nick George. Motion was unanimously approved. The meeting was adjourned at approximately 2:33 p.m.

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Craig Myhre, Secretary

John Manske

John Manske, Chair