

MEETING MINUTES

AGRICULTURAL PRODUCER SECURITY COUNCIL

December 6, 2023

The Agricultural Producer Security Council held a meeting on Wednesday, December 6, 2023 in the Board Room at 2811 Agriculture Drive, Madison.

Attendance

Eight Council members were in attendance: Jason Culotta, Dave Daniels, Don Hamm, Howard Hartmann, Jerry Lippert, Randy Fleishauer, Tina Hinchley and Jennifer Wickman.

DATCP staff members attending included Jeremy McPherson, Sally Sutherland, David Woldseth, Michelle Reinen and Paul LaZotte. Secretary Randy Romanski attended at the beginning of the meeting.

Agenda Item I Call to Order

Chair Dave Daniels called the meeting to order at 1:30 p.m.

Agenda Item II Introductions

Recognizing that a new member has been appointed to the Council, introductions were made.

Agenda Item III Remarks from Secretary Romanski

Secretary Randy Romanski addressed the Council and welcomed the newest Council member, Randy Fleishauer. Secretary Romanski thanked everyone for their service on this important Council. He recognized staff and emphasized the Department's goal of being a resource to industry. Secretary Romanski highlighted efforts being undertaken to improve the Department's use of technology. Secretary Romanski also discussed the Department's major policy initiatives and his recent trade mission to Kenya.

Dave Daniels commented that he, along with the organization that he represents, appreciates the Department's efforts and the resources it provides. He mentioned that the previous Budgets have been helpful to the industry and hopes to continue the progress being made.

Agenda Item IV Election of Officers

Dave Daniels transferred control of the meeting to Jeremy McPherson who opened nominations for the position of APS Council Chair. Don Hamm nominated Dave Daniels, and Jerry Lippert seconded the nomination. There were no other nominations. Jeremy McPherson requested a motion to close the nominations and cast a unanimous ballot electing Dave Daniels as Chair. Jason Culotta so moved, Jennifer Wickman seconded, and the motion passed unanimously.

Dave Daniels resumed control of the meeting and opened nominations for the position of Vice-Chair. Jason Culotta nominated Don Hamm, and Howard Hartman seconded the nomination. There were no other nominations. Dave Daniels requested a motion to close nominations and cast a unanimous ballot electing Don Hamm as Vice-Chair. Jerry Lippert so moved, Jennifer Wickman seconded, and the motion passed unanimously.

Dave Daniels opened nominations for the position of Secretary. Jerry Lippert nominated John Umhoefer, and Jason Culotta seconded the nomination. There were no other nominations. Dave Daniels requested a motion to close the nominations and cast a unanimous ballot electing John Umhoefer as Secretary. Howard Hartmann so moved, Jennifer Wickman seconded, and the motion passed unanimously.

Agenda Item V Approve Minutes from December 9, 2021 meeting

Chair Dave Daniels asked if there were any comments or corrections to the minutes from the December 14, 2022, meeting. Jason Culotta moved to approve the minutes as drafted. Jerry Lippert seconded the motion. The motion was passed unanimously.

Agenda Item VI Agricultural Producer Security Fund – Annual Report

Sally Sutherland reviewed the Agricultural Producer Security Fund Annual Report, starting with the Statement of Revenues, Expenses, and Cash Balances. She highlighted the increases in assessment revenues and interest, slight declines in expenses, a reimbursement for a prior default payout, and an increase in the overall Fund Balance for the Fiscal Year 2023. Sally also discussed individual results for each licensing program. Specifically, she noted that the cash balance increased in each program, which is mostly due to higher than expected interest. In the Grain Dealer and Grain Warehouse Programs, salary and fringe expenses were down a bit due to position vacancies. Sally pointed out an increase in Milk Contractor revenue due to new Milk contractors becoming licensed and an increase in the use of Deferred Payment contracts. She noted that more producers appeared to be taking advantage of the option to defer a portion of their milk checks. Sally also mentioned that the vegetable program benefited by a reimbursement received from a prior default. Jeremy McPherson reminded the group that the Fund paid a significant amount to producers after a vegetable contractor, Allens, Inc., defaulted and filed for bankruptcy in 2013. After almost 10 years, the bankruptcy concluded and we received a relatively small distribution. Sally highlighted the various triggers that are built into the program to limit revenues when the Fund balances hit certain thresholds, which are all working as

designed. She pointed out license fee credits used by Milk Contractors and Grain Dealers. She mentioned that Grain Warehouse Keepers received License Fee Credits for the first time this license year, which will be reflected in the next Annual Report. She highlighted Security that is being held by the Department for certain Milk Contractors and Grain Dealers. She then discussed the license history for each program, noting that while the grain dealer and warehouse keeper programs are experiencing fewer licensed contractors, overall bushels purchased and total storage capacity is remaining consistent. Sally noted that the number of Milk Contractor licenses went up this year, along with an increase in obligations and use of Deferred payment. Sally finished her report by discussing past defaults and recoveries, noting that amounts recovered from prior defaults have exceeded defaults paid over the last 5 years, including \$216,000 recovered this year after the finalization of the Allens Canning bankruptcy. Sally also pointed out that the Department has an active Default preceding ongoing involving a Milk Contractor, Hastings Creamery, and hopes to pay producers by the end of the year.

Jerry Lippert asked about the default by Hastings Creamery, LLC, and how the fact that the company is based in Minnesota impacted the program. Jeremy explained that out-of-state companies that purchase from Wisconsin producers are generally regulated by Wis. Stat. ch. 126. Jeremy said that the fund will only cover the Wisconsin producers, but the Department has been in contact with the Minnesota Dept. of Agriculture.

Dave Daniels noted the increase to the number of licensed milk contractors, and asked about the new licensees. Sally responded that some were out-of-state contractors purchasing milk from Wisconsin producers, others were existing milk contractors that changed hands. Jeremy also reminded everyone that licenses and fees do not transfer. If a merger or acquisition results in a new legal entity, a new license is issued, and the new contractor starts at year one with regard to assessment fee calculations and the accumulation of license fee credits.

Jerry Lippert asked if one of these companies was Dairy State Cheese, formerly known as Wisconsin Dairy State Cheese. Sally confirmed that Wisconsin Dairy State Cheese is now licensed as Dairy State Cheese.

Dave Daniels asked about deferred payment use for Milk Contractors. Sally replied that the use of deferred payment in the milk industry has been increasing. Jeremy added that the annual report doesn't necessarily reflect current use of deferred payment, because there is a lag between when Milk Contractors report deferred payment, when deferred payment assessments are paid, and when that revenue appears on the annual Fund report. For example, producer payments that were deferred at the end of calendar year 2022 are reported on the May 2023 license renewal application. Milk Contractors then pay assessments on those deferred payments during the 2023 license year. Most of that assessment revenue will appear on the Fiscal Year 2024 annual report.

Sally concluded by saying that, overall, the Fund is healthy and stable.

Chair Daniels thanked the staff for the thorough report.

Agenda Item VII Agriculture Producer Security Program Update

Jeremy McPherson provided a general update on Agricultural Producer Security program. He noted that the program was still working through several staffing changes that started in 2021 with the departure of two longtime employees. He reported that the program is currently fully staffed, but all grain auditors have less than one year experience, so a significant amount of time is being spent training new employees. While the program was still able to complete all statutorily required grain warehouse keeper audits last year, some Grain Dealer audits were delayed as a result. However, Grain Dealer audits are being prioritized this winter.

Jeremy reported that the third full year of license renewals using the new CRM system was just completed. Between 85% and 90% of all licensees are using MyDATCP to pay their fees electronically and/or complete their application online.

Jeremy provided more information about the Department's default proceeding against Hastings Creamery, LLC, a Milk Contractor that defaulted in payments to its producers last summer. Hastings is a Minnesota company that was purchasing milk from Wisconsin producers. He pointed out that our goal is always to complete a default proceeding in 3 to 6 months. In this case, the default is taking longer due to extensive efforts required to obtain records. The hope is that payments will be made to producers by the end of the year, unless there are objections to the Proposed Decision.

Jerry Lippert noted that Hastings had other regulatory issues in Minnesota, especially in regards to waste water disposal. He wondered if the Department had been in contact with the state of Minnesota and whether Minnesota has a program, like Wisconsin's, to protect producers. Jeremy said that the Department had been in contact with Minnesota, and they were made aware when we suspended the milk contractor license. Jerry then asked if we would be covering any Minnesota producers under our program. Jeremy said that the fund will only be covering Wisconsin producers. He added that, when out-of-state contractors are involved, coverage generally comes down to where title to the milk passed from the producer to the contractor. In most cases, if the contractor accepted milk in Wisconsin, Wis. Stat. ch. 126 applies and Wisconsin producers are covered. Sally added that we are aware of several Minnesota producers not being paid by Hastings. She said that Minnesota has recently started an Indemnity Fund for grain producers, but we are not aware of a similar milk program.

Jeremy discussed efforts to recover money from defaulting contractors when payments are made from the APS Fund. He said that attempts are almost always made to recover money from the contractor. The specific action depends on the situation, but the first step generally includes a reimbursement demand issued to the defaulting contractor. The Department may then ask the Dept. of Justice (DOJ) to represent the Department in collection actions or bankruptcy/receivership proceedings, as necessary. In addition to the \$216,000 recovery from the 2013 Allens Canning default mentioned in Sally's report, Jeremy mentioned the Southwestern Dairy Goat Products Cooperative (SWDGPC) default in 2020, in which \$211,000 was paid out of the Fund. The company continued to operate as an "exempt producer agent," and as such, they did not require a

Milk Contractor license. SWDGPC ignored numerous attempts the Department made to recover the amount it paid to producers. The Department then asked DOJ for help in collecting this debt. The DOJ filed an action in Crawford County Circuit Court and received a judgement, including civil forfeitures. However, the Department does not expect to be able to collect on this judgement.

Jason Colutta asked for additional information about the Allens Canning recovery. He was under the understanding that Allens had not been operating for the last several years. Jeremy clarified that, although Allens ceased operations many years ago, the bankruptcy took almost 10 years to complete.

Other Business

Jeremy mentioned that scheduling the annual Council meeting has been challenging over the last several years, due to a number of year-end association meetings and conferences this time of year. He requested that members set a tentative date for year's meeting. The Council tentatively selected December 10, 2024, at 10:30 for the next meeting date.

Agenda Item VIII Adjourn

Jerry Lippert moved to adjourn the meeting at 3:05 p.m. Jason Culotta seconded the motion. The motion was passed unanimously.

John Umhoefer, Secretary

Dave Daniels, Chair