Carbon Farming

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- The National Agricultural Law Center is the nation's leading source for agricultural and food law research and information.
  - Created in 1987, the NALC is a unit of the University of Arkansas System Division of Agriculture
  - The Center also works in close partnership with the USDA Agricultural Research Service, National Agricultural Library

- We provide objective, non-partisan research and information regarding laws and regulations affecting agriculture

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Highlights of the Carbon Industry

- These are voluntary, incentive-based markets designed to sell offsets to companies that emit pollution (in this case carbon, but other markets exist on a more limited basis)
  - Not cap and trade…unless you are in CA

- 3rd parties are needed to quantify and verify these practices as well as the carbon that is sequestered in order to entice companies to buy the credits

Highlights of the Carbon Industry

- Payments are typically based on the amount of carbon sequestered so different practices can earn more or less money…this also can vary from company to company
  - Different soils can also have different carbon carrying capacities. There's a big potential difference between Illinois and Texas.

- There is a give and take for farmers. Farmers earn money by selling credits through a 3rd party in return for adopting sustainable practices AND agreeing to some form of monitoring and assessment.

3rd Parties in Carbon Markets

- There WILL need to be 3rd parties to aggregate acreages, quantify the amount of carbon sequestered and to verify that the contracted practices are maintained for the life of the agreement.

- There's a lot of people pushing and pulling on things that they may not understand…

Where are we in the Process?

- We are still in the early days.
- Lots of ongoing work quantifying practices and their effects.
- Likely to be variation in the amount of carbon that particular types of soil can capture
  - This could mean substantial differences in the ability of farmers to capture payments in some parts of the country…
- There seems to be substantial (voluntary) demand at present

Some Questions for Landowners to Ask Right off the Bat

- Do they know how to farm using the new practices that they'll have to adopt?
- Can they make/not lose money under this agreement?
- Are they okay with people coming onto their property for years to come to take soil samples?
- Do they know how the carbon company will calculate the pay?
- Are you able to get a copy of the agreement?

Start with the Money - Payments are based off of Carbon Sequestered

- Different companies may use different methodologies…
  - $15-$25 per ton is what we are seeing presently
    - 1 contract offered $3 per acre for no/minimum till and $6 per acre for a cover crop…
  - Nori is using their own cryptocurrency as well where they take 15% off of the top for their share
  - In one of them the landowner bids out what they'd like to be paid
  - About half of them don't tell you how the carbon sequestered is calculated…
- EX. Your client has 100 acres that she wants to enroll for a cover crop at $6 per acre so she'll be paid **$600**.
- Her estimated costs:
  - Red Clover seed - $2.50 per pound at 5 pounds per acre for 100 acres is **$1,250**.
  - Diesel?
  - Time?
  - Wear and tear on equipment?

How much Carbon **IS** being Sequestered?

- Contracts deal with this differently, but this is of critical importance
- How they (and their 3rd party verifiers) calculate carbon sequestered directly impacts how much your client will be paid!
  - Some contracts are completely silent on the topic
  - Here's sample language from one contract:
    - Carbon Company (CC) has the exclusive right, in its sole discretion, to select the methods, practices and manner (including without limitation, timing and frequency) in which it determines your eligibility and how it quantifies and verifies carbon credits that may be generated. You will not be entitled to review or have access to any confidential information or proprietary methods or models.
- Finding out ***how*** they arrive at the number they say you sequestered may not be something that you ever find.

What Practices are Covered?

- Different companies use (and value) different practices.

- Common ones include:
  - **Cover Crops**
  - **No-till or minimal till**
  - Buffer strips along streams (think EQIP)
  - Crop rotational practices
  - Rotational grazing practices
  - Digesters at CAFOS
  - Planting of trees/foregoing logging operations

Things to Consider for Farmers

- How much access will 3rd parties have to their property
- Many companies out there and not all will make it for the life of the agreement…
- What is to be done about the early adopters?
- Technical support for the new practices – Who teaches farmers how to transition to no-till, cover crops, etc…
- What data is going to be need to quantify the results and who will have access to it during the life of the contract and after it has run its course?

CO2 Pipelines – Overview of a Completely Different Issue!

- Concerns about carbon dioxide and global warming are pushing companies to lower their CO2 emissions.
  - Some companies in different countries can be penalized or excluded from the marketplace for emitting too much.

- Can be done in a myriad of ways, but the one we're talking about typically involves deep underground disposal.

- Carbon dioxide is transported from large plants that produce CO2 (ethanol, fertilizer, power, and manufacturing plants) to a disposal well or another type of facility that uses CO2.
  - The cheapest way to get it there is typically through a pipeline.

CO2 Pipelines

- Legal Issues (and understanding about) Pipelines
  - This <u>really</u> depends on where you are located. AR vs. IA
  - Is the pipeline solely in one state or does it cross state lines?
  - What is the state law regarding common carriers and does a company qualify?
    - This can vary significantly from state to state.
  - If they are a common carrier or cross state lines do they have the power of eminent domain?

Things to Consider for Landowners

- How much access will 3rd parties have to their property
  - A lot of access during construction, but typically very little afterwards unless they need to repair the pipeline

- What should farmers consider when a company comes a knocking?
  - How much are they paying and how much are your neighbors being offered
  - Can you say “No” …i.e. do they have the power of eminent domain
  - How deep will it be buried?
  - Will it be clearly marked?
  - What kind of damages for growing crops, damage to irrigation or drainage tile
  - Are they required to set aside top soil and put that back after covering the pipeline
  - How long does the easement last?
  - You cannot build anything on top of it!
  - Dangers of pipelines

Issues for States on Carbon

- Right to use Eminent Domain for CO^2 pipelines
- Ownership of “pore space” for deep sequestration
- Ownership of data after carbon sequestration contracts are over(?)
- Data transparency to make sure that landowners are being adequately compensated

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