Ag Law Potpourri
Women in Agriculture
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topics

- federal portability rule: make ag estate planning easier
- Des Moines nitrate lawsuit: farmers liable for nitrate pollution of city water supplies?
- Nebraska livestock development matrix: make county zoning laws more livestock friendly?
- climate change & ground water management
Portability rule

- issue: before portability rule, families had to do estate planning in order for married couple to get double estate tax exemption
- Portability rule: any federal estate tax exemption not used in first spouse’s estate can be used in second spouse’s estate
- in 2017, federal exempt amount is $5.49 million
  - up from $5.45 million in 2016
  - basically is $5 million indexed for inflation
  - will assume $5 million exemption in my examples 😊

Portability examples

- (1) no portability & no estate planning
  - dad dies, leaves $8 million farm to mom
  - mom pays no federal estate tax—spouse exemption
  - mom dies, leaves $8 million farm to kids
  - kids pay about $1.1 million in federal estate taxes
- (2) no portability with estate planning
  - mom & dad divide their estate, and each leaves their share in trust to kids with income to surviving spouse
(2) estate planning, no portability con’t
- dad dies, leaves his $4 million share of farm in trust to kids with income to mom
  - no federal estate tax due—exemption is $5 million
- mom dies, leaves her $4 million share in farm to kids
  - no federal estate tax due—exemption is $5 million
- trust is dissolved and kids have $8 million farm with no federal estate taxes paid
- estate planning saves kids $1.1 million from #1

(3) no estate planning with portability
- dad dies, leaves $8 million farm to mom
  - no federal estate tax due—spousal exemption—so dad’s entire $5 million credit available when mom dies
- mom dies—leaves $8 million farm to kids
  - no federal estate tax due--$5 million exempt for mom plus $5 million unused exemption from dad
  - actually $10.98 million exempt in 2017
portability, con’t

- need to have attorney work with you to make sure your estate qualifies for both exemptions!
  - must file federal estate tax return for first spouse’s estate even though no federal estate taxes paid
- may need help in working through business succession plan for operation and in determining what is fair for farm and off-farm heirs—not simple!
  - if left up to kids & they can’t agree when mom & dad both gone, likely auction the farm/ranch
- also important--planning for long term care expenses

Des Moines nitrates lawsuit

- Des Moines water works (DMWW) suing Iowa ag drainage districts for high-nitrate water pollution of Des Moines, Raccoon rivers (DMWW sources of drinking water)
  - lawsuit filed after Iowa Gov Branstad vetoed extra funding for ag conservation cost-share program to reduce nitrate runoff
- general issues (1) are drainage districts liable for DMWW costs to remove nitrates from drinking water and (2) are drainage districts subject to Clean Water Act (CWA) permitting & water treatment requirements
nitrates

- January 2017 Iowa Supreme Court ruled that drainage districts not liable to DMWW for water treatment costs
  - governmental immunity
- trial in federal court later 2017 will determine whether drainage districts are subject to CWA permitting & water treatment requirements
- issue important because nitrate issues from ag runoff is a common corn belt drinking water quality issue that needs to be addressed sooner or later

if drainage districts subject to CWA, what could it mean?
- how can farmers reduce high-nutrient runoff?
  - vegetative buffers between fields & streams
  - cover crops to increase off-season nitrate uptake
  - “bioreactors” to clean nitrates out of field runoff
  - nutrient management plans to limit nutrient application to crop requirements
    - report soil tests, nutrient application, crop yield etc.
  - reduce or stop fertilizer application to fields with high phosphorous or nitrogen levels
Denitrifying Bioreactors

- Removes nitrate-N from field tiles
- Divert water through wood chips
- 30 – 100 acre drainage areas
- Small footprint
- 10 – 15 year lifespan

Image from John Petersen
NRD fertilizer use regulations

- most Natural Resource Districts (NRDs) have 1-3 or 1-4 phases with increasing restrictions as nitrate levels in groundwater increase
  - 10 ppm EPA drinking water limit for nitrates
- Phase I (0-5 ppm nitrate): voluntary best management practices (BMPs) & fertilizer use certification (education)
- Phase II (5-9 ppm nitrate): mandatory certification
  - required soil sampling for nutrient content
  - required reports on fertilizer application & crop yield
- Phase III (over 9 ppm nitrate): restrictions on fall, winter fertilizer application—often inhibitor use required
many in ag would like to see additional livestock production in Nebraska

state DEQ environmental permitting not a real limitation

county zoning regulation of new or expanded operations has been a limitation in some counties

state livestock zoning matrix—state guidelines for counties to consider in evaluating livestock zoning permit applications
livestock zoning

- based on Madison county zoning matrix for livestock operations
- basically a checklist where application gets points based on how well the application meets county zoning requirements
- e.g. 30 points for meeting county setback requirements or default separation distance if county doesn’t have one
- can get bonus points for exceeding county minimum requirements
  - e.g. for doing extra to reduce odors

zoning matrix

- matrix does not override county zoning requirements
- matrix is state recommendation, not state requirements
- matrix is very good checklist of what county livestock zoning regulations should address
- matrix does not require counties to change their separation distances—would have been much more controversial
- county can adopt matrix, can modify matrix before adopting it, or can not have anything to do with matrix
livestock groups may encourage county officials to adopt, similar to the livestock friendly program

possible unanticipated consequence: if a county has a point system for proposed livestock developments and a proposal has more than the minimum points required

- makes it harder for county to turn the proposal down
- if it is turned down, gives the operator a better shot in court of overturning the adverse zoning decision
- e.g. if minimum is 75 points and your proposal has 85 points, can argue denial is “arbitrary and capricious”
Dr Don Wilhite, UNL professor emeritus, said very possible that 2012 drought conditions could become the new norm in Nebraska by 2041-2070.

Temperatures have already increased 1991-2012 compared to 1901-1960 and will continue to increase—issue is how much will they increase.

Projected temperature increases from 4-5°F in low emission scenarios to 8-9°F in high emission scenario (2071-2099).

- Low emission scenario—significantly reduce GHG emissions through more wind, solar power generation, energy conservation requirements, etc.
- High emission scenario—business as usual (no significant GHG reductions)—most likely outcome.

Climate models predict dramatic increase in high temperature days in both high & low emission scenarios.

Current high temperature days of 100°F or above:
- Omaha 2.1 days/yr
- Lincoln 4.6 days/yr
- Grand Island 3.5 days/yr
- McCook 10.9 days/yr
- Scottsbluff 5.3 days/yr

High temperature days would increase from 13-16 additional days/yr (low emission scenario) to 22-25 days/yr (high emission scenario) by 2041-2070!

2012 drought had 10-21 high temp days in eastern Neb and 21-37 high temp days in western & southwestern Neb.
climate change & irrigation

- Could lead to ground water policy choice between maintaining current cropping pattern of continuous irrigated corn/soybeans and ground water depletion
- If crop ET (evapotranspiration) rates increase (due to increased temperature and many more very hot days), continuous irrigated corn/soybean production would likely lead to falling ground water levels
  - unless development of more drought-resistant crop varieties keep pace with climate changes
- Possibly avoid long-term depletion by ground water allocations that force an irrigated-dryland crop rotation
  - Drip irrigation? Other irrigation improvements?
- Or else pump what is needed even if depletion occurs

any questions? 😊

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