

Olson Ag Law Update

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This is the first issue of the Olson Ag Law Update for the New Year. The year promises to be another exciting one for farmers. Crop prices remain strong, and many farmers anticipate another banner year. But, despite recent rains, much of Georgia remains in the severe drought category, and another spring like last year's could severely tax already depleted water supplies. The beginning of a year is a good time to plan, not just for the challenges of the upcoming crop season, but also for things further down the road like retirement and the transfer of the farm to the next generation. This is also the year that Congress should enact the next Farm Bill, but we can only hope that they get the job done in time to plan for the 2013 season.

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FARM PROGRAM ENROLLMENT

2012 is the last year of the 2008 Farm Bill. Enrollment for the 2012 Direct and Countercyclical Payment Program (DCP) and the Average Crop Revenue Election Program (ACRE) began on January 23rd. The absolute last day to sign up for these programs is June 1, 2012. You cannot sign up after this date by paying a late fee as you could a few years ago. However, you can go to the FSA County Office no later than June 1, 2012 and ask to be placed on the “register.” This will buy you a few more days to complete your application. But, you can’t ask to be placed on the register after June 1, 2012. Miss the June 1 deadline and you are out of luck. You will receive no payments.

No advance direct payments will be made in 2012.

Congress has added a fourth Adjusted Gross Income Limitation for 2012. Sponsored by Senator Coburn of Oklahoma, the amendment prohibits farmers with a total AGI of \$1,000,000 (farm and nonfarm) from receiving direct payments. This is in addition to the existing \$750,000 limit on farm income (prohibiting direct payments), the \$500,000 limit on nonfarm income (prohibiting all payments except conservation) and the \$1,000,000 limit on conservation payments.

Future issues of the Olson Ag Law Update will look at the Farm Bill debate in Congress. For now, the only safe prediction is that direct payments will be gone in the next Farm Bill. Everything else seems to be on the table with little agreed on so far.

WATER LAW

Last year many irrigation wells went dry and had to be drilled deeper. 24/7 pumping of irrigation wells also caused nearby residential wells to give out. Ponds dried up and have still not refilled. If dry weather continues this year, the irrigation situation will certainly get worse.

Georgia’s Environmental Protection Division has recently received a bumper crop of new irrigation well permit applications. Permits are required for new wells and when farmers want to enlarge the acreage irrigated by existing wells. When cropland is sold, the new owner must apply to have the existing well permit transferred from the seller. New wells must be metered, and permits may be denied when the well does not meet statutory requirements or those of EPD regulations. In reviewing a permit application EPD considers the effect the well will have on other wells in the area. Special requirements apply in the Flint River “red zone.”

Permits must also be obtained from EPD for diversions from rivers, streams, lakes and ponds. Furthermore, use of surface water for irrigation is governed by several decisions of the Georgia Supreme Court and the Georgia Court of Appeals. Georgia is a riparian rights state that follows the natural flow rule as modified by the reasonable use rule. Irrigation is a permitted riparian use, and irrigation waters obtained by riparian owners may be applied to non-riparian land.

Water is a finite resource. Like land, we aren't making any more of it. New irrigators will find themselves competing for water both with existing irrigators and with non-agricultural water users. Water is also interconnected. Drawing down ground water may affect river levels, and diverting river water may lower wells. The next few years will likely see more water disputes and litigation.

FARM TRANSITION PLANNING

None of us is getting any younger, and this is particularly true of farmers. The average age of a farmer in Georgia and in most of the rest of the country is 59 or 60. Many farmers have not addressed the question of what is going to happen to their farm operations, their farmland, their other assets and their families when they are gone. Many put off even thinking about it, and even more put off doing anything about it. This can lead to family disputes, loss of property, higher taxes and much general unhappiness down the road. If you fail to plan, your children who get along now may eventually no longer speak to each other.

The first step to avoid these problems is to talk to your family about what you want to happen at your death and about what they want, both at your death and before. Is one child working with you on the farm while the rest have gone off to college and jobs in other places? What are the farm child's expectations? What is "fair" for him or her? And, what expectations do the off farm children have? How do they see the future of the farm as it relates to their inheritance? What is "fair" for them? Talk all this out.

The second step is to go see your lawyer, your accountant and any other planning professionals that the first two may recommend. Relate to them the conversations you have had with your spouse and children and ask for their opinions on how you can best meet your objectives and those of your family.

The third step is to follow up and get the wills, trusts, buy-sell agreements, family limited partnerships or whatever other documents the professionals may recommend prepared and executed. Nothing is binding until the documents are signed. But, also remember that as circumstances change, these documents can and often should be changed. Your "Last Will and Testament" is often not your last will and testament.

OLSON AG LAW PRACTICE AREAS

Most of you know that I do a lot of work on farm program matters including payment limitations planning, USDA administrative appeals and federal litigation. You may not know that my practice also includes the following:

- **Water Law**
- **Crop insurance arbitration and litigation.**

- **Conservation easement planning and drafting.**
- **Perishable Agricultural Commodities Act litigation.**
- **Farm finance planning and litigation.**
- **Chapter 12 farm bankruptcies.**
- **Farm transition planning.**
- **Representation of farmers in commercial disputes including landlord tenant matters.**
- **Advice and representation on other specialized areas of agricultural law.**

Please give me a call if you think I may be able to help you with any of these matters.

Disclaimer: All of the information provided in this Update is of a general nature and may not be applicable to your farming operation, transaction or dispute. This information should not be substituted for advice from a competent attorney who is familiar with the specific facts of your case, transaction or situation.