



Carbon Contracts for Lawyers, Lenders, & Landowners

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Disclaimer

This presentation is for educational purposes only as well as to give general information and a general understanding of the law, not to provide specific legal advice. This presentation does not create an attorney/client relationship and should not be used as a substitute for the advice of a licensed attorney.



Carbon Contracts



What Are We Even Talking About?



100% green
Carbon neutral by 2050.

What Are We Not Talking About?



General Thoughts

- Every contract is very different.
- Ask up front if the company is willing to negotiate.
- Numerous resources available to assist.
- Know your dealbreakers.
- I'm Switzerland.



Top Ten Carbon Contract Considerations



1.

Read the Contract

2. What practices are required?

- Typically see reduced or no till, strip till, cover crops, regenerative grazing
- Be sure you are clear on exactly what is required under the contract.
- Watch for terms like “conservation practices” that are undefined.
- Additionality issue—What if you’ve already adopted these practices? Can you still get paid? Some contracts may have lookback periods.

Example – Additionality

Seller represents, warrants, and covenants that Seller has not already implemented the Regenerative Practices more than 1 year from the Effective Date and would not implement the Regenerative Practices without the benefits of the Program and payments provided by [REDACTED]

3. How will payment be structured?

- Do not just look at the number.
- Understand what payment is based on:
 - Practice or Outcome?
 - Structure
 - Flat per acre fee or price per ton?
 - Set price per ton or market price?
 - What is included in measurements?
 - Carbon, C02e, GHGs?
- Understand potential for sequestration in your fields.

4. What is the term of the contract?

- How long will the agreement last?
- Watch for any extensions.
- Watch for any discussion of “permanence” that may require a producer to abstain from certain activity for a set period of time.
- What rights does either party have to terminate the contract?
 - Know you rarely can truly “just walk away.”
 - What are the penalties of an early termination?
 - Watch for “vesting.”

Examples - Termination

9.4. Insufficient Carbon Offsets, Data, or Market Conditions. If Carbon Offsets, Customer Data, or market conditions are deemed by [REDACTED], in its sole discretion, to be insufficient for purposes of the Project, [REDACTED] may terminate this Agreement upon written notice to the Parties.

5. PAYMENTS UNDER [REDACTED] ARE SUBJECT TO VESTING AND MULTI-YEAR OBLIGATIONS. You agree that (a) [REDACTED] payments are subject to vesting in five (5) installments over a period of five (5) calendar years, vesting annually for 50%, 20%, 10%, 10% and 10% of the total payment (in respective order), with the first payment to be made after verification and sale [REDACTED] of the applicable Carbon Credits, and annual payments thereafter; and (b) a number of events may result in the cessation of vesting and Your outright forfeiture of unvested payments, as set forth in the Additional Terms (such events include, without limitation, Your failure to meet Your obligations under, or the termination of Your participation in, [REDACTED]).

5. How will verification be done?

- Will this be based on modeling or measurements?
- Considerations for measurements?
 - When? How often? Where? How many sites? Notice?
- Who will conduct testing?
- What methodology will be used?
- Who will pay for the testing?
- Check for no-reversal clauses.
- Ability for landowner/producer to audit or appeal determinations?

6. What other uses can you make?

- Understand what can and cannot be done on the property.
- What about hunting?
- What about oil and gas production?
- What about wind or solar energy?



7. What penalties could be imposed?

- Be clear on what could trigger a penalty or liability for a producer/landowner.
- For example, some contracts say producer liable if additional carbon not stored.
- What about external factors like drought, fire, wind, etc?

8. How broad is the stacking prohibition?

- Producer may not enroll the same land in multiple carbon contracts/programs.
- See how broadly written these are.
- Some broad enough to exclude any government programs (i.e. ARC/PLC, EQIP, CRP)

Stacking - Example

Exclusivity; Need of carbon finance

Seller represents, warrants, and covenants that Seller will not accept any other third-party or governmental Carbon Credits or other forms of environmental credits or payments in exchange for undertaking the Regenerative Practices on the Covered Acres.

9. What data must you provide?

- Most have extensive data production requirements.
 - Fuel use
 - Calving dates
 - Birth weights
 - Conception percentages
 - Yield
 - Pesticide application volumes
 - Fire history
- Watch for blanket entry rights onto your property.
- Watch for aerial imaging/drone flights being allowed.



Drone - Example

Consent to Aerial Imagery; Data Collection and Sampling. You understand that some quantification or verification activities or other data collection activities may be completed using aerial imaging and monitoring, such as satellite imagery or drone imaging, and You consent to the use of such practices on and/or over Your Land and any other land that you may control and that may not be enrolled in [REDACTED]. You understand that to determine [REDACTED]

10. My Father's Favorite Section

- How are amendments handled?
- Rights to assign
- Attorney fee provision
- Payment for negotiation/drafting?
- Choice of law
- Venue clause
- Dispute resolution
- Understand class action waiver
- Check scope of waiver clauses



Sample Legal Terms

Governing Law and Resolution of Disputes

This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Florida. Any lawsuit or action arising out of this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of Florida located in Hillsborough County, Florida. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue.

SELLER AGREES THAT ANY CLAIM, DISPUTE, OR CAUSE OF ACTION AGAINST [REDACTED] AND THEIR RESPECTIVE DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONSULTANTS, CONTRACTORS, AND PERMITTED ASSIGNS [REDACTED] WILL BE ADJUDICATED ON AN INDIVIDUAL BASIS. SELLER IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO BRING OR PARTICIPATE IN A CLASS, COLLECTIVE, REPRESENTATIVE, OR OTHER JOINT ACTION WITH RESPECT TO ANY CLAIM, DISPUTE, OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT.









- (g) [REDACTED] reserves the right to amend the Terms and Conditions from time to time in its sole discretion, which amended Terms and Conditions shall apply to this Agreement. [REDACTED] will use reasonable efforts to disclose each amendment before such amendment becomes effective by publishing such amendment on [REDACTED] or otherwise making such amendment available to the Customer. The Customer is responsible to review [REDACTED] to obtain timely notice of any such posted amendments. The Customer may reject any such amendment by sending written notice within thirty (30) days of the change to [REDACTED] in which case the Services may be immediately terminated.

What Might Be Coming Next?

Protection Products

Damage Waiver	Included with reservation	Details 	 Included
Roadside Protection	Included with reservation	Details 	 Included

Equipment

Ski Rack  Bring your skis with you securely on our ski rack.	\$ 14.99 / day	Details 	+ Add
Sirius XM®  Listen to anything you want, everywhere you drive.	\$ 5.99 / day (\$ 49.98 max)	Details 	+ Add
Greenhouse Gas Emissions Offset  Join your fellow customers in helping to save the environment!	\$ 1.25 / rental	Details 	+ Add
Child Safety Seat  Travel with child safely and securely.	\$ 9.95 / day (\$ 60.00 max)	Details 	+ Add

order to

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Click for a hub of Extension resources related to the current COVID-19 situation. **COVID-19 Resources**

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January 29, 2021 Weekly Round Up

Posted on [January 29, 2021](#) by [tiffany.dewell](#)

Happy Friday! It's been a busy week here as I have been working with several of my colleagues in the Texas A&M Agricultural Economics Department on a series of educational videos on the legal and economic issues related to hemp production. If this is a topic of interest to you, be sure you subscribe to this blog as we will be releasing our videos and written materials within the next month! Here are some of the ag law stories in the news over the past couple of weeks...

[Read More →](#)

January 15, 2021 Weekly Round Up

Posted on [January 15, 2021](#) by [tiffany.dewell](#)

Happy 2021, friends! We hope you all had a happy, healthy holiday and we are excited to be back for our first Weekly Round Up of the year. Here are some of the major agricultural law stories in the news over the past couple of weeks. * Lawsuit filed seeking to overturn recent dicamba registration. On December 22, several environmental groups filed suit against the US Environmental Protection Agency challenging the recent approval of the use of over-the-top dicamba products through 2025. Specifically, the lawsuit claims that the...

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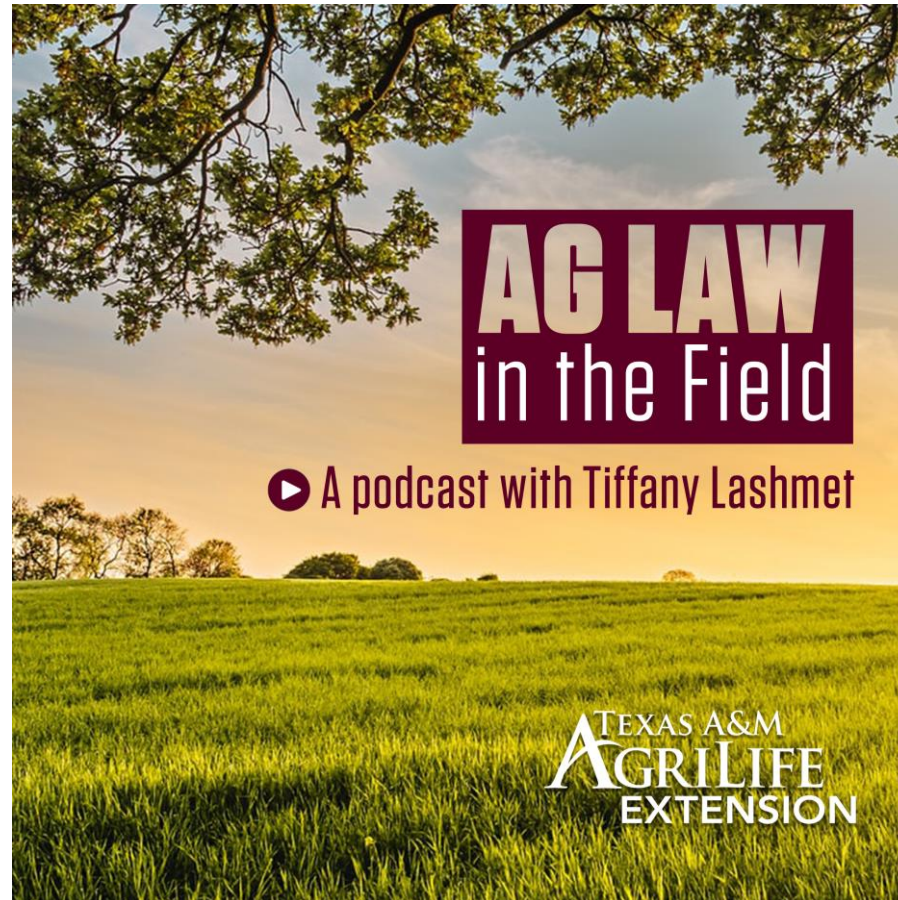
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Thank you!

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