The National Agricultural Law Center

University of Arkansas
System Division of Agriculture
NatAgLaw@uark.edu • (479) 575-7646

An Agricultural Law Research Article

Corporate Farming Restrictions in California: False Hope for the Family Farm

by

Barbara J. Greaver

Originally published in SAN JOAQUIN AGRICULTURAL LAW REVIEW
2 SAN JOAQUIN AGRIC. L. REV. 67 (1992)

www.NationalAgLawCenter.org

Corporate Farming Restrictions in California: False Hope for the Family Farm

Corporate farming restrictions, currently existing in nine states, require corporate entities, but not individuals who are incorporated, to divest themselves of farmlands. Such restrictions have withstood constitutional challenges and could be enacted in any state. An analysis of the possible effects on California, if similiar restrictions are enacted, is thus presented. Although the restrictions are enacted to obstensibly protect the small farmer, this comment evaluates whether small farms are actually protected. The comment concludes that such restrictions on corporate farming fail to shield family farmers from corporate influences, primarily because of economics.

INTRODUCTION

Nine states have prohibited or restricted corporate farming[1] in the belief that corporate farm operators harm the land, take competitive advantage over family farmers, and divert farm revenue from rural communities.[2] These anti-corporate statutes have survived equal protection-based constitutional challenges and therefore could be enacted by any state. This comment considers what effect an anti-corporate farm statute would have on California family farmers and concludes that the family farmer would not benefit from an anti-corporate statute.

I. DEFINING THE FAMILY FARM

The corporate restriction statutes are intended to protect the family farm[3] and are enacted with popular support.[4] To the general public,

---

[1] IOWA CODE §§ 172C.1-.15 (1989); KANSAS STAT. ANN. § 17-5902-5904 (1989); MINN. STAT. § 500.24 (1990); MO. ANN. STAT. §§ 350.010-.030 (1989); N.D. CENT. CODE §§ 10-06-01 to -15 (1985); OKLAHOMA STAT. tit. 18 §§ 951-56 (1989); S.D. CODIFIED LAWS ANN. §§ 47-9A-1 to -23 (1990); WIS. STAT. § 182.001 (1988); and NEB. CONST. art. XII, § 8.

[2] MSM Farms, Inc. v. Spires, 927 F.2d 330 (1991). Affidavits of George William Burrows, at 2 and Neil Oxton, at 6 (on file at REVIEW offices).

[3] FRED MORRISON & KENNETH KRAUSE, ECONOMIC RESEARCH SERVICE, U.S. DEPARTMENT OF AGRICULTURE, AGRICULTURE ECONOMIC REPORT NO. 284, STATE

preserving the family farm is tantamount to preserving the ideals of independence, self-reliance and enterprise; values which Americans admire.

The preservation of the family farm, however, does not necessarily mean the preservation of those ideals. The family farm, as it is perceived by the general public, has become a national symbol with no basis in economic reality due to the changing nature of farming.

Although it evokes a strong symbol, the family farm eludes a common definition necessary for effective protection of the law. Some of the several definitions that exist will be examined in the following section.[5]

A. *Corporate Restriction Laws*

State corporate farm restriction statutes define the family farm as any farm other than a farm organized as a corporation. The statutes, however, allow families who farm to incorporate. In fact, all nine states restricting corporate farming exempt family farm corporations.[6] The exemptions permit corporate ownership if the stockholders are related, living on the farm, and earn at least sixty percent of the corporation's income from farming.[7] The exemptions vary in the degree of family relationship necessary and the number of stockholders allowed.[8] The corporate restriction laws do not use physical size or wealth to define the family farm or family farm corporation. The lack of size or revenue limitations illustrate that corporate farming restriction statutes are

---

AND FEDERAL LEGAL REGULATION OF ALIEN AND CORPORATE LAND OWNERSHIP AND FARM OPERATION at 44 (1975).

[4] *MSM Farms*, 927 F.2d 330; Affidavits of Burrows, *supra* note 2, at 5 and Oxton, *supra* note 2, at 5.

[5] Thomas Carlin & John Crecink, *Small Farm Definition and Public Policy*, AMER. J. AGR. ECON., Dec., 1979, at 933. The definitions vary from number of acres farmed, gross farm revenue, type of organizational structure and off-farm work days. *Id.*

The Farmers Home Administration defines the family farm as one that produces enough agricultural commodities to distinguish it from a rural residence. It also must provide enough farm income to pay living expenses, maintenance and debts, is managed by the borrower and uses a reasonable amount of full-time hired and seasonal help. 7 C.F.R. § 1980.106(7) (1991).

[6] IOWA CODE § 172C.4 (1989); KANSAS STAT. ANN. § 17-5904(a) (1989); MINN. STAT. § 500.24 subd. 3(b) (1990); MO. ANN. STAT. § 350.015(2) (1989); N.D. CENT. CODE § 10-06-07(2) (1985); OKLAHOMA STAT. tit. 18 §§ 951 A 3 & 955 A 4b (1989); S.D. CODIFIED LAWS ANN. § 47-9A-13 (1990); WIS. STAT. § 182.001(1)(a) (1988); NEB. CONST. art. XII, § 8 cl. A.

[7] *Id.*

[8] *Id.*

aimed to protect the family farm, regardless of how it is organized. The statutes fail to recognize that many family farms today are similar in size and structure to corporate farms, and do not resemble the small, independent family farm of the past. The family farm is not protected from the effects of competition with corporate family farms because, despite their size, they are exempted from the corporate restriction statutes.

B. U.S. Department of Agriculture (USDA)

The USDA defines a family farm as an agricultural business in which the farmer is a risk-taking manager.[9] In addition, family members provide the capital and more than half the labor for the farm.[10] The USDA does not limit non-farm income, type of organizational structure, or acreage farmed,[11] but may exclude the small farmer who hires contract labor two or three times a year to harvest, spray or prune.[12] The exclusion of hired labor effectively limits the family farm to a small size, as the larger farm needs more labor to produce a crop.

C. University of California, Small Farm Center

The University of California Small Farm Center defines a family farm as one controlled or operated by family members and which provides a large portion of the family income.[13] The family must supply at least half the farm labor (except in peak seasons); and the farm's gross sales must be less than $100,000 annually.[14] As in the USDA definition, the Small Farm Center does not limit the family farmer to a specific number of acres or to an organizational type. Contrary to the USDA, the Small Farm Center allows hired labor in peak seasons. Accordingly, the average size of a family farm at the Small Farm Center may be larger than under the USDA definition.

---

[9] SUZANNE VAUPEL, SMALL FAMILY FARMS IN CALIFORNIA: THE DEFINITION DILEMMA at 2 *an issue of* FAMILY FARM SERIES (Small Farm Center, University of California, Davis, July 1986).

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] CALIFORNIA GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, SMALL FARM VIABILITY PROJECT, THE FAMILY FARM IN CALIFORNIA (1977).

[14] VAUPEL, *supra* note 9, at 1, 2.

D. Bureau of Reclamation

In California, irrigation is the predominate use of scarce water supplies. Initially, reclamation projects were designed to aid in settling the West by supplying water at reduced costs.[15] The Reclamation Law of 1902 was designed to protect and encourage family farmers by denying water subsidies to farms which did not meet size and residence requirements.[16] "The object of the Reclamation Act is not so much to irrigate the land as it is to make homes."[17]

The Reclamation Reform Act of 1982 changed the definition of a family farm by increasing the acreage and eliminating the residence requirement.[18] According to Reclamation requirements, the definition of a family farm today is one of 960 acres or less, owned by individuals, families, or corporations not benefiting more than twenty-five persons, who individually own not more than 640 acres.[19] The Reclamation definition does not require residence on the farm, labor by the farmer, or a minimum level of farm revenue.

E. Federal Estate Tax

The Internal Revenue Service (IRS), allows family-held farmland to qualify for a special use valuation for estate tax purposes. It is valued according to its use as a farm, rather than at fair market value.[20] The IRS defines family farms as land used for farming that is passed from a decedent to a qualified heir.[21] The IRS requires material participation by the decedent or a member of his family in operating the farm. The IRS definition does not qualify the definition by acreage, type of organization, farm revenue or labor by the farm family.

---

[15] MEYER ET AL., AGRICULTURAL LAW, CASES AND MATERIALS, at 823, 824 (2d ed. 1985).

[16] DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, DOC. B-125045, COMPTROLLER GENERAL'S REPORT TO THE CONGRESS: CONGRESS SHOULD REEVALUATE THE 160-ACRE LIMITATION ON LAND ELIGIBLE TO RECEIVE WATER FROM FEDERAL WATER RESOURCES PROJECTS (Nov. 30, 1972).

[17] *Will the Family Farm Survive in America?: Joint Hearings before the Select Committee on Small Business and the Committee on Interior and Insular Affairs*, 94th Cong., 1st Sess. (1975) (Statement of F. H. Newell, first Commissioner of the U.S. Reclamation Service, now the Bureau of Reclamation).

[18] Reclamation Reform Act, 43 U.S.C. § 390 (1982).

[19] *Id.*

[20] 26 U.S.C. § 2032A (1990).

[21] *Id.*

F. Lack of a Clear Family Farm Definition Inhibits Protection

Without a common definition of the family farm, the effectiveness of legislation designed to protect it is diminished. Laws using one definition will help some family farms, and hurt others. Nevertheless, because of the mythology of the family farm, politicians have long supported legislative protection. The family farm mythology arises from nostalgic memories of pastoral tranquillity and values of hard work, simplicity and honesty. As stated by one author; "we don't get misty at the sight of a chain store framed against a prairie landscape or take comfort in knowing that each morning thousands of lawyers head out into the predawn darkness to tend their lawsuits."[22] Thus, the family farm has become symbolic of the virtues of America and provides an easy contrast to the ills of a complex urban society.

However, the nostalgic view of the family farmer as an independent, self-reliant owner of farmland, is no longer true. Today, most family farmers are not self-sufficient; off-farm income rose from 17 billion dollars in 1970 to 57.5 billion dollars in 1989.[23] Furthermore, farmers are no longer independent; they must pay others to transport and market their produce at prices they cannot control. Additionally, most farmers rely on loans, are heavily indebted,[24] and often rely on government subsidies for revenue.[25] Finally, most farmers do not own the land they farm. For example, full ownership of farmland has decreased from fifty-one percent in 1900 to thirty-three percent in 1987.[26] U.S. Department of Agriculture statistics report that the nation's farmland has fewer owners than at any other time in this century.[27] Thus, laws intending to protect the family farmer as defined by tradition, symbology or nostalgia, cannot succeed because the traditional view of farming

---

[22] Greg Easterbrook, *Making Sense of Agriculture*, THE ATLANTIC MONTHLY, July 1985, at 63.

[23] U.S. DEPARTMENT OF AGRICULTURE, MISC. PUB. NO. 1063, 1990 FACT BOOK OF AGRICULTURE at Table 22 [hereinafter, 1990 FACT BOOK].

CLAIR CHRISTENSEN & CHRISTIE WYMAN, CALIFORNIA SMALL FARM PROFILE at Table 11 *an issue of* FAMILY FARM SERIES (Small Farm Center, University of California, Davis, July 1985). Almost 50% of small farm operators (under $100,000 gross income) worked off-farm more than 200 days in 1982.

[24] U.S. DEPARTMENT OF AGRICULTURE, AGRICULTURAL STATISTICS 1989 at Table 544. Real estate debt increased from $39.8 billion in 1973 to $83 billion in 1988.

[25] 1990 FACT BOOK, *supra* note 23. Government payments to farmers increased from $3.72 billion in 1970 to $10.89 billion in 1989.

[26] AGRICULTURE STATISTICS 1989, *supra* note 24, at Table 536.

[27] Jennifer Dixon, *Land-Ownership Concentration Stirs Concern*, FRESNO BEE, Jan. 26, 1992, at C6, col. 3.

contrasts with the present reality of farming.

Corporate farm restrictions limit protection to non-corporate farms, historically regarded as the traditional family farm. The statutes imply that family farms will flourish without corporate competition. The statutes prevent family farms from competing in a free market with all producers, a situation which normally would eliminate inefficient farms and lower costs for consumers. However, elimination of one entity from the marketplace cannot save the family farm, due to the complex factors affecting farmers in production and distribution of agricultural goods.

II. Constitutionality of Corporate Farm Restrictions

The corporate restriction statutes not only attempt to protect an entity which cannot be defined and may no longer exist, but also defy logic by favoring some corporations over others. While stating that corporations are the scourge of the family farm, the statutes allow family farm corporations to farm. Although corporations may not own farmland or operate farms, family farm corporations and qualified farm corporations are exempt. Table 1 provides a brief summary of the exemptions provided for specific industries.

Table 1

ITEM	OK	MN	KA	SD	WI	MI	IA	NB	ND
YEAR LAW ADOPTED	1971	1973	1973	1974	1974	1975	1977	1982	1932
EXEMPTIONS FOR SPECIFIC INDUSTRIES:									
Feedlots		X	X		X			X	X
Poultry	X		X			X		X	
Research	X	X	X		X	X	X	X	
Swine, rabbits			X						
Timber	X		X	X					X
Grain			X					X	X

A. *Equal Protection Challenges*

Farm corporations have challenged the exemptions provided to family farm corporations through the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution on the basis that a corporation may not farm, yet a family farm corporation may farm. Section I of the Fourteenth Amendment to the United States Constitution directs

the states to provide equal protection of the laws to all persons,[28] and the U.S. Supreme Court has held that corporations are entitled to the same protection.[29]

The constitutionality of restrictions is presumed if the law involves no suspect class or fundamental right.[30] In addition, corporate restriction statutes are economic in nature,[31] and the U.S. Supreme Court has left little room for application of the Equal Protection clause in the area of economic legislation. Thus, corporate restriction statutes face a lesser scrutiny than laws involving, for example, race or religion.

Economic measures such as the corporate farming prohibition, offend the Equal Protection clause only when "the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that. . .the legislature's actions were irrational."[32] Consequently, corporate farming restrictions must be analyzed to determine if protecting the family farm is a legitimate goal, and also, whether those restrictions are related to achieving that goal.

1. Corporate Restrictions as a Legitimate Goal

The corporate farming restrictions represent an assessment by each state that the family farm is threatened by corporate farming.[33] Although the goal of the statutes is commonly recognized to be family farm protection, only a few states acknowlege that goal in the statutory language.[34] The South Dakota legislature "recognizes the importance of the family farm to the economic and moral stability of the state, and. . .recognizes that the existence of the family farm is threatened by conglomerates in farming."[35] The Minnesota legislature found that "it is in the interests of the state to encourage and protect the family

---

[28] U.S. CONST. amend. XIV, § 1: "[N]or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[29] Grosjean v. Am. Press Co., 297 U.S. 233, 244 (1936).

[30] New Orleans v. Dukes, 427 U.S. 297, 303 (1976).

[31] State *ex rel.* Webster v. Lehndorff Geneva, 744 S.W.2d 801, 806 (Mo. 1988) (en banc).

[32] Kadrmas v. Dickinson Pub. Schools, 487 U.S. 450, 463 (1988) *citing* Vance v. Bradley, 440 U.S. 93, 97 (1979).

[33] *Webster*, 744 S.W.2d at 806.

[34] S.D. CODIFIED LAWS ANN. § 47-9A-1 (1990); MINN. STAT. § 500.24, subd. 1 (1990); NEB. CONST. art. XII, § 8, as stated in the objective of the Initiative 300 Petition.

[35] S.D. CODIFIED LAWS ANN. § 47-9A-1 (1990).

farm. . . ."[36]

One of the earliest Equal Protection challenges was brought in North Dakota, the state with the oldest corporate farming restriction.[37] That statute was challenged by a foreign corporation required to divest farmland, unlike its domestic counterpart.[38] The U.S. Supreme Court found that the Equal Protection clause was not violated and held that prohibiting non-farming corporations from owning North Dakota farmland was a legitimate goal. The Court further found that the varying treatment was a valid exercise of legislative power to achieve that goal.[39]

While *Asbury Hospital v. Cass County, N.D.* did address the legitimacy of the goal to protect the family farm, the court did not address whether the exemption provided to family farm corporations furthered that goal. However, the Missouri Supreme Court subsequently rejected an Equal Protection argument brought by a domestic corporation challenging the family farm corporation exemptions.[40] The court found a legitimate purpose in protecting traditional farming entities from large, diversified corporations because of the legislative belief that the superior financial resources of a large corporation operated to the disadvantage of the family farmer in depressed markets.[41] This decision mistakenly implied that the family farm corporation is a traditional, small farming entity which bears no resemblance to other corporations in terms of financial resources.

More recently, the U.S. Court of Appeals for the Eighth Circuit upheld Article XII, section 8(1) of the Nebraska Constitution and its family farm corporation exemption against an equal protection challenge raised by an investment corporation formed by two unrelated persons.[42] Supporters of the amendment believed that a rise in corporate farming would lead to the decline of the family farmer.[43] This would occur, supporters believed, because the family farmer is unable to compete fairly with the ability of corporations to raise capital and benefit from favorable tax laws.[44] The court ruled that the attempt to prevent the

---

[36] MINN. STAT. § 500.24, subd. 1 (1990).

[37] Asbury Hospital v. Cass County, N.D., 326 U.S. 207, 214 (1945). North Dakota's law was first enacted in 1932.

[38] *Id.* at 215.

[39] *Id.*

[40] *Webster*, 744 S.W.2d at 806.

[41] *Id.* at 805.

[42] *MSM Farms*, 927 F.2d at 331.

[43] *Id.* at 332-33.

[44] *Id.* at 333.

concentration of farmland in the hands of non-family corporations was legitimate. It also affirmed the lower court's order for the corporation to comply with the statute by divesting its farmland within two years.[45]

The legitimacy of the corporate restriction's goal to protect the family farmer has been upheld by the courts. In so doing, the courts believe that they uphold the values of self-sufficiency and enterprise attributed to family farms. Despite the questionable legitimacy in protecting the family farm which exists only in the imagination of the voter, the protection given by statute will not be overturned by the courts.

2. Corporate Restrictions: A Rational Relationship to State Goals

Although protecting the family farm may be a legitimate goal, the statutes restricting corporate farms must also bear a rational relationship to achieving that goal of protection.[46]

Demonstrating that the law is incorrect or will not meet its objectives is not sufficient to overturn a corporate farming restriction. This is because "the legislatures, not courts,"[47] decide the wisdom and utility of legislation. The courts will not second-guess the legislature, but will allow voters to eliminate unnecessary or ineffective laws.

For example, the Court of Appeals for the Eighth Circuit rejected a challenge to the Nebraska Constitutional Amendment stating, "[w]hether in fact the law will meet its objectives is not the question: the equal protection clause is satisfied if the people of Nebraska could rationally have decided that prohibiting non-family farm corporations might protect an agriculture where families own and work the land."[48]

Thus, the courts will not question the wisdom of the legislature or voters in setting the goal to protect the family farm and the courts will not question whether the goal will be achieved. The sole question for the courts is to determine whether the legislature or voters reasonably could have believed the statute might protect the family farm. The use of the least restrictive tier of review insures that corporate farm restrictions will survive constitutional challenges in every state.

III. California Farming Operations

Although the courts believe that a corporate restriction statute protects the family farm, corporate restrictions would create harmful

---

[45] *Id.* at 334.

[46] Minnesota v. Clover Leaf Creamery, 449 U.S. 456, 461-63 (1981).

[47] Ferguson v. Skrupa, 372 U.S. 726, 729 (1963).

[48] *Clover Leaf Creamery*, 449 U.S. at 466.

repercussions in California agriculture.

A. *Effect of Corporate Restrictions on Agriculture*

The first to feel the effect of a corporate restriction statute would be the corporations directly addressed by the statute. Of the 83,217 farms in California,[49] 12,127 operate as partnerships,[50] 690 as non-family farm corporations[51] and 104 as family farm corporations with more than ten shareholders.[52] Consequently, if a law similar to those in effect in the midwest was passed, with no grandfather clause, 12,921 farms would be prohibited from owning or operating farmland. These farms would be required, if the mid-western states' laws were followed, to divest the farmland within a short time or face civil or criminal penalties.[53] These 12,921 organizations farm thirty-one percent of the total farmland in California[54] and contribute more than thirty-eight percent to the total agricultural revenue in California.[55]

One of the probable effects of corporate farmland divestment would be to put thirty-one percent of California farmland on the market and eliminate thirty-eight percent of the state agricultural productivity. Although family farmers may take the place of these organizations, California could suffer a drop in agricultural revenue until new farmers could meet the production lost to corporate restrictions. In addition, prices of farmland may drop with the increase of available land in the

---

[49] U.S. DEPARTMENT OF COMMERCE, 1987 CENSUS OF AGRICULTURE FOR CALIFORNIA at Table 49.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] N.D. CENT. CODE § 10-06-13 (1985): One year.

OKLAHOMA STAT. tit. 18 § 953 (1989): Reasonable period of time.

NEB. CONST., art. XII, § 8: Two years.

MINN. STAT. § 500.24(d), subd. 5 (1990): Five years.

IOWA CODE § 172C.5(3)(a) (1989): One year and a $50,000 penalty.

MO. ANN. STAT. § 350.030 (1989): Two years.

KANSAS STAT. ANN. § 17-5904(13)(c) (1989): One year and a $50,000 penalty.

WIS. STAT. § 182.001(4) (1988): Reasonable period of time and $1,000 per day of non-compliance.

S.D. CODIFIED LAWS ANN. § 47-9A-22 (1990).

[54] 1987 CENSUS OF AGRICULTURE, *supra* note 49. 30,598,178 total acres in California is farmland. Corporations, partnerships and family farm corporations with more than 10 shareholders farm 9,474,840 acres.

[55] *Id.* California had $13,922,234 in gross agricultural sales while the three entities restricted had $5,329,233.

agricultural real estate market.[56] Furthermore, the high cost of acquiring or expanding farm operations may lead to an increase in tenant rather than owner-operated farms.[57] Finally, more individual or closely-held corporate investors may buy farmland, thereby frustrating the very purpose of the statute to keep family farmers on the land.[58]

B. *Effect of Corporate Restrictions on Family Farms*

1. Increase in Farm Size for Existing Farmers

The adoption of corporate farming restrictions could mean nine billion acres of farmland available for purchase by California family farmers.[59] Thus, the family farm could theoretically increase the size of its operation. Arguably, undersized and inadequate family units could potentially convert into farms of more efficient size and of a scale sufficient to generate a satisfactory income.

However, net farm income does not necessarily increase with size. While the number of farms have decreased since 1977, the size of the average farm has grown from 427 to 461 acres in 1990.[60] Farmers must farm more land today to sustain their income level. While profit remains stable, production costs have increased. The constant net income per acre forces farmers to increase the size of their farms to meet higher costs caused by inflation.[61]

In addition, mechanical advances require a farmer to expand in order to efficiently use technology[62] and supermarket chains with mass-buying practices favor growers with large, specialized production.[63] Furthermore, disease resistant, high yield crops increase supply and force prices down, requiring the farmer to farm more land to maintain constant revenue.[64]

---

[56] However, the decrease would be minimal if a 5-10 year divestiture period was allowed. Interview with Professor Neil Harl, Iowa State University, July 3, 1991.

[57] *Id.*

[58] *Id.*

[59] 1987 CENSUS OF AGRICULTURE, *supra* note 49.

[60] U.S. DEPARTMENT OF AGRICULTURE, AGRICULTURAL STATISTICS 1990 at Table 533.

[61] A. REED, THE ECONOMIES OF SCALE: HOW THIS PHENOMENON AFFECTS SIZES OF FARMS IN CALIFORNIA at 1 (Division of Ag Science, University of California, June 1976).

[62] *Id.*

[63] Wade Greene, *How Durable is the Small Farm, in* UNCERTAIN HARVEST: THE FAMILY FARM IN ARKANSAS at 8 (Ozark Institute, 1980).

[64] Carol Nuckton, *How Society Profits from Research Dollars Multifold*, WESTERN GROWER AND SHIPPER at 38 (Jan. 1980).

a. Application of Economies of Scale to Farming

An analysis of the economies of scale also demonstrates that in farming, growth is worthwhile. In general business enterprises, larger firms have an advantage over smaller firms in cost of production: The larger the enterprise, the less cost per unit of production.[65] However, a large non-farming firm will reach a point where additional production will not yield greater profits. Thus, the small firms are, to a point, under economic pressure to increase their size to compete in the marketplace.[66]

Unlike other industries, when farms reach a certain size, the cost of production per unit remains constant. Thus, incremental growth results in greater net revenue and creates an incentive for the small family farmer to grow.[67]

Economies of scale are, however, offset by inefficiency in large operations. Absentee decision making, multiple levels of management and administrative staff, increased labor and higher capital investment all reduce efficiency.[68] Nevertheless, large farms are more profitable than small farms because production costs do not increase with growth.[69] This profitability encourages small family farmers to expand.

The factors encouraging the family farmer to grow, such as a constant net income, higher costs and greater yielding crops, influence all family farms regardless of the form of ownership. Corporate restrictions will therefore not promote economic growth.

b. Marketplace Factors

The marketplace also causes inefficient, large farming operators to be more profitable than efficient, small family farmers. Marketplace factors are crucial because food raising is only one aspect of agriculture. In most cases, a farm's customers are not consumers, but processors and handlers.[70]

Actually, more agribusiness corporations control the processing and marketing of crops than grow food.[71] Consequently, processors, handlers and brokers will control the farmer's access to markets even if

---

[65] REED, *supra* note 61, at 3.
[66] *Id.*
[67] *Id.*
[68] James Hightower, *The Case for the Family Farmer*, THE WASHINGTON MONTHLY at 27 (Sept. 1973).
[69] REED, *supra* note 61, at 3.
[70] Hightower, *supra* note 68, at 28.
[71] *Id.*

corporations divest farmland.[72] While corporate farms must also pay for these services, they often control one or more steps in the process, such as handling, which lessens their costs. This vertical integration allows for control from harvest to the marketplace.[73] Since the corporate farmer handles all stages of the business, further efficiency is obtained. Because most family farms are not vertically integrated, profits are reduced. The middleman must receive his cut.[74]

In addition to vertical integration, forward contracting (contract of sale before delivery of the product) also lessens the control the farmer has in marketing a crop. Between 1970 and 1980, forward contracting increased from seventeen to twenty-three percent and vertical integration from five to seven percent.[75] The increase in forward contracting means that more farmers are negotiating a price for their crop before delivering to market. This early negotiation may represent security to the farmer, but also prevents the farmer from taking advantage of future price increases. Forward contracting therefore decreases profit for the family farmer.

Some family farmers are not affected by vertical integration or forward contracting. This is particularly true of farming in the North Central states,[76] where farmers have alternatives in marketing and production not available to farmers in California.[77] Midwest farmers, involved in grain, hog and dairy production, have not experienced the drastic changes in production and marketing experienced in the western states.[78]

Corporate farming restrictions also decrease vertical integration because farming must be the corporation's principal business.[79] Although the family farmer would not face competition from a corporate vertical integrator, it would still have to pay the processor, handler and broker. Since the farmer will always face the costs of getting the product to the

---

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] 1990 FACT BOOK, *supra* note 23, at 46.

[76] W. Sundquist & H. Guither, ***The Current Situation and the Issues*** at 3 *in* WHO WILL CONTROL U.S. AGRICULTURE (Cooperative Extension Service, College of Agriculture, University of Illinois at Urbana-Champaign, 1972).

[77] *Id.*

[78] *Id.*

[79] IOWA CODE § 172C.1(9) (1989); KANSAS STAT. ANN. § 17-5903-(j)(1) (1989); MINN. STAT. § 500.24, subd. 2(c) (1990); MO. ANN. STAT. § 350.010(5) (1989); N.D. CENT. CODE § 10-06-07(8) (1985); OKLAHOMA STAT. tit. 18 § 951-A-2 (1989); S.D. CODIFIED LAWS ANN. § 47-9A-15 (1990).

market, elimination of vertical integration through corporate restrictions will not lessen the costs of doing business for family farms.

c. *Specialty Farms and Direct Marketing*

Small farms can thrive in areas not directly competitive with corporate farms.[80] The small family farm is best suited to grow labor-intensive specialty crops because it can provide the individual attention needed to make those crops profitable. Typical crops suitable for family farms include young radishes, heirloom tomatoes, specialty lettuces, radicchio, cut sweet peas and specialty cherry tomatoes.[81]

Direct marketing of fruit and vegetables at roadside stands is another niche the family farmer can fill without corporate competition.[82] The direct sale of produce eliminates handlers and brokers and increases the family farmer's profit. However, these ventures are not for all family farmers. Direct marketing requires the farmer to be proficient in sales and knowledgeable of applicable marketing regulations.[83] In addition, location of the store is crucial to the profitability of a direct marketing operation[84] and may require negotiation of a land lease.

Because of these drawbacks, not all family farms will attempt these alternatives to the traditional marketplace. However, a family farm which does not compete with specialized crops or direct marketing will find little protection from corporate farming restrictions. Processors, handlers and brokers still control the marketplace, and family farms that do not control that step in the process will find their profits limited.

2. Cost of Increasing Farm Size

The cost of land acquisition and production also affects profitability. Corporate divestiture of farmland may provide an opportunity for the family farm to expand and for non-farming families to enter farming. However, both face the problem of raising initial capital and earning

---

[80] Eric Gibson, *Small Farm Specialties*, CALIFORNIA FARMER, Feb. 3, 1990, at 10, 11.

[81] *Id.* at 11.

[82] ERIN CHAPMAN, RESEARCH/EDUCATION NEEDS OF SMALL-SCALE FARMERS IN CALIFORNIA *an issue of* FAMILY FARM SERIES (Small Farm Center, University of California, Davis, 1988).

[83] KAREN KLONSKY & PATRICIA ALLEN, CONSIDERATIONS IN ENTERPRISE SELECTION at 4 *an issue of* FAMILY FARM SERIES (Small Farm Center, University of California, Davis, Mar. 1990).

[84] *Id.*

enough income to repay debt and operating costs.[85] New farmers often cannot get loans because they do not have enough risk-bearing ability or farming experience.[86] The ability to bear risks means collateral or equity to which the lender can resort should the farm fail.[87] Consequently, a new farmer will be unable to purchase divested farmland unless collateral from another source can be obtained.

Additionally, operating capital, cash flow and machinery costs may determine the competitiveness of a family farmer.[88] For a new farmer, these costs are often overwhelming and could prevent success even if initial capital funds are found. Implementation of corporate farm restrictions would likely create an increase in tenant farming because more farmers would be able only to lease or rent rather than buy land.[89] Thus, the high costs of farming mean that corporate divestiture will only decrease the number of independently owned and operated family farms.

3. Elimination of Corporate Competition

Because corporate farming restrictions would eliminate the non-family corporate competitor from the marketplace, the family farmer would be protected from a competitor having unlimited life, greater access to capital, shareholder protection and favorable tax laws. The family farmer would also have protection from diversified or vertically integrated corporations which may acquire or merge more profitable divisions if the farming operation experiences a loss.[90]

However, the elimination of corporate farms is contrary to a capitalistic marketplace. Capitalism encourages competition and forces noncompetitive participants from the marketplace. The effects of a free

---

[85] SUSAN SALADONES, PRESERVING THE FAMILY FARM: STATE INITIATIVES, NATIONAL GOVERNORS' ASSOCIATION at 9 (1980).

[86] KAREN KLONSKY, HOW TO FINANCE A SMALL FARM at 5 *an issue of* FAMILY FARM SERIES (Small Farm Center, University of California, Davis, 1989).

[87] *Id.*; W. SHEESLEY & E. YEARY, SO YOU WANT TO FARM IN THE WESTLANDS WATER DISTRICT (Fresno County Cooperative Extension, University of California, 1976).

[88] GEORGE ELY ET AL., SMALL SCALE FARMING IN THE WESTLANDS: A RURAL LAND APPRAISAL at 29 (Institute of Governmental Affairs, University of California, Davis, 1977).

[89] Interview with Professor Tim Wallace, University of California, Berkeley (June 3, 1991).

[90] V. James Rhodes & Leonard Kyle, *A Corporate Agriculture* at 2 *in* WHO WILL CONTROL U.S. AGRICULTURE (Cooperative Extension Service, College of Agriculture, University of Illinois at Urbana-Champaign, 1972).

market forces all but the most efficient farms out of business. Corporate farming restrictions also create an artificial marketplace, thereby allowing the family farmer to remain in business. The result is an inefficient allocation of resources and, ultimately, higher consumer costs. The consumer does not recognize this result however, and supports legislation which protects the traditional concept of the family farm.

Battles to save a traditional way of life are not new. For example, in the 1950's, family grocery stores were threatened by corporate supermarket competition.[91] While few dispute the efficiency of the supermarket today, some would argue there has been a loss of personal service. However, convenient access to a multitude of products outweighs the need to maintain a way of life for one sector of our society. Indeed, the neighborhood store did not disappear, but gave way to family-run convenience markets that consumers turn to for small or spontaneous purchases.

Similarly, free corporate competition will eliminate the inefficient family farmer. Those family farmers that remain will fill the need for labor intensive crops and direct marketing organizations.

4. Lack of Interest in Farming Occupations

Despite the mythology, a career in agriculture is not glamorous, but is built on risk and hard work. Erratic weather adds uncertainty to the family farm enterprise which is known for long hours and hard labor. These realities, coupled with the decline in farm income have diminished the farm population. Farm residents now number about 5.2 million and are a small minority in the rural population.[92] In 1975, 4.1% of the total population was farming; by 1989, the percentage had decreased to 1.9%.[93] The differences between rural and urban incomes are substantial. In 1979, the median income for rural families, $16,987, was nineteen percent below the median urban family income of $21,100.[94] Rural areas also have a higher percentage of population below the poverty level. In 1989, the incomes of 15.7% of rural residents were below the poverty level, while only 12% of urban dwellers had

---

[91] Patricia P. Brooks, Note, *An Equal Protection Analysis of the Classifications in Initiative 300: The Family Farm Amendment to the Constitution of the State of Nebraska*, 62 NEB. L. REV. 770, 813 n.252 (1983).

[92] U.S. DEPARTMENT OF AGRICULTURE, MISC. PUB. NO. 1063, 1989 FACT BOOK OF AGRICULTURE at 113.

[93] AGRICULTURAL STATISTICS 1990, *supra* note 60, at Table 546.

[94] 1990 FACT BOOK, *supra* note 23, at 62.

incomes below the poverty level.[95] Currently, three-quarters of the jobs available in agriculture are in agribusiness, not in farming.[96] Finally, as farm incomes declined, family members have been forced to find work in urban areas.

While rural living holds some attractions, there are also many difficult economic and social problems to confront.[97] Not only is per capita income low and poverty high, but social and economic services are lacking in quantity and quality.[98] Rural local governments face special problems in providing services, such as specialized help for the handicapped, because the low population density means higher per unit cost of services.[99]

The lower income of farm families as compared to urban families dissuades potential farmers. In addition, those who are used to a wide variety of available government services are not likely to be satisfied with the limited services available in rural areas. A final obstacle preventing families from returning to the farm are the long work days and the high risk in an enterprise dependent on the vagaries of the weather.

CONCLUSION

Legislators heed the voters cry to "save the family farm" by enacting restrictions on corporate farm ownership. The statutes are enacted with the belief that the family farm in the United States must be provided with governmental protection and encouragement to survive. However, the restrictions are enacted without a clear description of who is to benefit and with public support based on ambiguous perceptions of the family farm. Those who view the statutes as "saving" the family farm will be disappointed as the success of the family farmer is not assured by the elimination of corporate farms. Although corporate farms do have economic advantages, a family farm's success depends on lack of debt, government subsidies, and on those who control the marketplace.

The courts have upheld the goal to protect the family farm despite the exemptions allowed and without questioning whether the statutes will have the desired effect. Actually, the statutes will not achieve their

---

[95] *Id.*

[96] D. Wolf, *Beyond the Farm Gate: An Abundance of Career Opportunities*, *in* 1986 YEARBOOK OF AGRICULTURE, RESEARCH FOR TOMORROW at 305.

[97] WILCOX ET AL., ECONOMICS OF AMERICAN AGRICULTURE at 481 (Prentice-Hall, 1974).

[98] *Id.*

[99] 1990 FACT BOOK, *supra* note 23, at 66.

goal because they focus on the elimination of an entity which has very little to do with the success or failure of the family farm.

Progress in farm technology and increases in crop production, combined with stable prices and spiraling costs, force the family farmer to expand. As the farm grows, vertical integration becomes a method to cut costs. The growth in size provides an incentive to incorporate and thus, the family farm becomes the very entity the statutes attempt to legislate against.

Such restrictions in California would create havoc among all farms, including family farms. California would experience a drop in agricultural revenues and farm land prices, while tenant and investor farming would increase. The passage of a corporate restriction statute suggests that urban dwellers would gladly return to a rural farming life. However, even if farm income and government services improved, few would be willing to undertake such a high risk, labor intensive way of life.

Beyond the actual economic and social effects rendering corporate restrictions no longer effective, lies the irony of a capitalistic society giving economic protection to one particular business. Agriculture should welcome unfettered competition to eliminate inefficient operations and decrease consumer costs.

Corporate restriction statutes do not protect the family farm, but their presence gives comfort to those who do not understand the other factors implicated in the survival of the family farm. Although in other states the passage of such statutes may be mere political posturing, in California, such a statute would place the family farmer in a precarious position and seriously impair the future of agriculture.

BARBARA J. GREAVER