

KANSAS FARM BUREAU LEGAL FOUNDATION

Carbon Markets

Imagine making some environmentally conscious decisions on your farm that not only have the effect of reducing inputs and increasing outputs, but also provide an additional revenue source. That is exactly what is being promised to many landowners considering selling carbon credits. Seller beware. Many of the carbon contracts in circulation create onerous reporting requirements, uncertain payment terms, and long-term commitments for operations. This may be one time where being an early participant in the market might not be beneficial.

Contract Considerations

As with most other contracts impacting agricultural land, the financial incentive is important, but it is only one small component of the deal, and can often be outweighed by the burden to the land or operation. It is critical to pay attention to contract details, and to negotiate for more favorable terms. If the promise is important to you, make sure it makes it into the written contract. Here are *some* key things to look out for in a carbon contract:

How long is the contract term?

- Some contract obligations could be as short as 5 years, while others appear to propose perpetuity.

How are carbon credits generated?

- Is the program focused on water or soil? What practices are eligible/required? The types of practices often included are reduced tillage, diversification of crop rotations, grazing changes, cover crops, and nitrogen.

When are carbon credits generated?

- Some contracts base credits off of past practices, while others require future management changes.

How are credits verified?

- This could require soil testing, or other on-site analysis, sometimes at the cost of the landowner.

If the government regulates carbon markets, how might that impact the contract?

How will the carbon contract impact government program participation?

- Check with your local FSA/NRCS office prior to signing any contract.

What farm acreage will be enrolled?

- Make sure that the legal description only covers those acres that will be contributing credits to the program.

When and how will payments be made?

What events could result in a reduction in the number of credits accrued or financial payments made?

- Does the landowner have control over these, or might they be impacted by rainfall, or other uncontrolled factors?

What program costs are the responsibility of the landowner?

- Some companies pass along administrative fees to the landowners.

What party has presented the contract?

- Is the party an aggregator of credits, without a known purchaser? Is there a credit purchaser dictating the terms of the agreement?

The Right Advisors

It is strongly recommended to have an attorney review a carbon contract before signing it. While very few attorneys in Kansas are versed in carbon contracts (because these types of contracts are so new), you can find a competent attorney who is experienced in agricultural and real estate contract issues. Landowners should also seek guidance on tax issues from their accountant.

Other Carbon and Ecosystem Market Resources

We have a great deal of resources on carbon and ecosystem markets, generally, and contracts, specifically, collected on our Legal Foundation website. You can use this QR code to be directed to that webpage:



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