Lease Considerations for Grazing Cover Crops on Non-Owned Land

Cover crops benefit the soil on crop ground by protecting against erosion and contributing to soil organic matter. The aboveground biomass also is a potential feed for cattle. However, not every crop farmer has cattle, and not every cattleman grows crops as well. With adequate planning, it is possible to develop an arrangement between the two farms, so that cover crops can be utilized for both their soil and livestock benefits.

To avoid disputes later down the road, such an arrangement should be documented as a written contract. Concerns to address include things such as wet springs that cause delays in grazing and planting and increase the likelihood of soil compaction, aberrant weather that may prevent sufficient forage growth, and to determine who pays for different portions of the cover cropping. It's important for all parties involved in the cropping and grazing operations to discuss rights, responsibilities, and "what ifs" for the planned agreement. Simply following a sample grazing or land lease may not adequately address the variability of cover crop grazing. Below are some issues that should be considered when developing leases to graze cover crop acres.

Land use and management

- Can it be grazed at all? If the crop farmer is renting the land from landowner, is sub-leasing allowed?
- Are there restrictions in place on how much crop residue must be left on the soil? Some leases specify a minimum stubble height, and some specify that the landowner (not the tenant) owns the aboveground plant material. Graziers should be clear about their plans to graze with the landowner, and should get written approval for those plans.
- Are there areas (such as wetlands or riparian areas) that should not be grazed? Who is responsible for fencing out these areas?
- Will the crop farmer be signing up for crop insurance? Crop insurance requires that grazing, haying, and other harvest be completed by a certain date each spring. If cover crops are slow to grow, is the crop farmer willing to forego crop insurance and wait for more growth for the grazier?
- What happens if high soil moisture or insufficient growth prohibits grazing? Will the grazier be allowed to chop or mechanically harvest what forage is available? Will the grazier be somehow compensated (for instance: cash payments, hay, or hay storage), particularly if they paid for some/all of the seeding costs?

Cattle management

- How many animals are allowed? How will the appropriate stocking rate be determined, since cover crop growth varies from year to year?
- Is there fence present? Who is responsible for installing and maintaining perimeter and interior fences?
- Is the grazier required to indemnify the crop farmer for damage caused by cattle and to carry liability insurance?
- Is there a water source for cattle? Who is responsible for installing and maintaining water systems?
- Who is responsible for daily care and management of the cattle?
- How long are cattle allowed on the pastures? Must they be moved every few days, or strip-grazed, or some other method?
- How far in advance does the grazier need to be alerted before he must remove the cattle?

Cover crop establishment and management

- How and when will cover crops be seeded? Who pays for application?
- What species of cover crops will be seeded? Who pays for seed?
- If EQIP funds are being received, who receives the money? Normally the landowner and tenant (if appropriate) are included on the EQIP forms. For a grazier to be included, he would have to have a control of land statement signifying a separate (sub)lease.
- Who pays for chemical or mechanical termination of the cover crop?

Some other considerations

- Leases could be set up with two terms: fall and spring. The fall term lasts from the harvest of the cash crop, through March first or the end of frost. The spring term lasts from freeze-thaw until cover crop termination and planting. During the fall term (low compaction risk), one set of grazing guidelines may apply; during the spring term, the rules may be different.
- Fall grazing: lower risk to crop farmer in terms of compaction, but receives less soil benefit if cover crop biomass is reduced going into the winter. Perhaps a minimum stubble height should be established; once this is reached the grazier removes the cows, and pays based on the number of cow-days grazed.
- Spring grazing: greater compaction risk to crop farmer, but may provide more growth for grazier. If soil is too wet for grazing, the grazier may be allowed to cut, chop, or otherwise mechanically harvest the forage for feed.

Some situations and possible arrangements

- Crop farmer is not currently using cover crops: grazier pays for seeding and chooses seed mix, at least for the first few years. The grazier is guaranteed access to the fields either in the fall, winter, or spring (depends on goals and needs) to graze or harvest at his discretion. If this cannot occur due to low yield or wet weather, the crop farmer repays at least a portion of the seeding costs or provides some other good or service (hay storage, hay, etc).
- Crop farmer is currently using cover crops: crop farmer pays for seeding and chooses seed mix (though grazier may pay for specific varieties or mixtures that he desires). The grazier rents the fields as pastures if and when there is sufficient cover crop mass, but the duration, intensity, and terms of grazing are established by the crop farmer.

These questions and issues are provided for educational purposes. Farmers and graziers interested in developing such a contract are encouraged to seek legal advice from a licensed attorney. This resource should help you negotiate with the other party, whether the farmer or the grazier, and to be prepared to explain the circumstances and concerns to a legal professional.