Rental agreements for cover crop grazing (2015)

Cover crops are becoming increasing popular throughout Nebraska and the surrounding region. As their name implies, cover crops cover the ground helping prevent soil erosion outside of the growing season for the primary crop. Below ground, cover crops also contribute to soil organic matter. Increasingly, people are looking at the above ground biomass produced by cover crops as a potential source of feed for cattle or other ruminant livestock. Technically, this would make them double cropped forages instead of cover crops but that is a topic for another day. For now, let's consider the fact that many of the crop producers currently engaged in using cover crops or thinking about becoming engaged in using cover crops don't have cattle but may be interested in obtaining income from this as a potential feed resource. Let's also consider the fact that many cattle producers are interested in making use of it as a potentially valuable source of feed. This creates a scenario where many folks are asking questions about what is a fair rental agreement for grazing cover crops.

Cover crop grazing, like crop residue grazing, is complicated by the cropland owner's desire to manage the land in such a way as to maximize crop profitability. There is no "one size fits all" lease agreement for these situations because the circumstances can vary considerably from one situation to the next. In the space that follows, we will outline the key questions to ask and answer when negotiating a lease agreement for grazing cover crops. It is important that these agreements be in writing and spell out specific roles and responsibilities as well as risk ownership in order to avoid disagreements or leave the parties exposed to more risk than they are comfortable assuming.

Cover Crop Management Responsibilities

Several key questions listed below should be asked and answered by mutual agreement of both parties in regard to cover crop management responsibilities:

1. How and when will cover crops be planted? What is the latest agreeable planting date?
2. What species of cover crops will be planted and at what seeding rate?
3. Who will pay for the cover crop establishment?
4. If Environmental Quality Incentives Program (EQIP) funds are being applied for, who receives the payment?
5. How and when will the cover crops be terminated?
6. Who will pay for cover crop termination?

Cattle Management Responsibilities

Key questions to be answered in regard to management of the cattle include the following:

1. Is there a fence present? Who is responsible for maintaining fences and the establishment of fencing if the desired fencing is not present?
2. Is there a reliable water source for the cattle? Who is responsible for providing water if a reliable source is not present? Who is responsible for maintaining water sources during the grazing period including breaking ice as necessary during the winter months?

3. Who is responsible for the daily care of the cattle? Providing minerals and salt? Monitoring animal health? Inventory counts? How often are these tasks completed?
4. In case of heavy snow or blizzard, what is the emergency feed source? Is feed available at the grazing location or at another site? Who is responsible for providing it?
5. Is the cattle owner required to carry liability insurance for potential damage caused by the cattle? What, if any, indemnification responsibilities does the cattle owner have to the crop farmer for damage caused by the cattle?

Land Use Management Responsibilities

Lease agreements should specify whether they are being established for fall or spring grazing. The fall grazing period lasts from the harvest of the primary cash crop until the beginning of March or end of the winter frost period. It requires harvest of the cash crop in a timely manner in order to establish the cover crop and allow time for reasonable forage growth prior to dormancy or death in the fall. The spring grazing period lasts from April or the end of the winter frost period until cover crop termination prior to planting the primary cash crop. There is the risk that a wet spring could make grazing difficult or a late winter could result in little spring growth prior to the cover crop termination date.

A number of questions need to be asked and answered up front to avoid disagreements on land use management in a grazing lease arrangement:

1. What is the start date for grazing?
2. How long are the cattle allowed to be on the fields?
3. How will the appropriate stocking rate be determined?
4. How much residual biomass (ground cover) must be left on the soil?
5. Will the cattle need to be moved while on the field (i.e. strip grazing)? Who is responsible for it?
6. Who makes the call for removing the cattle?
7. How far in advance does the cattle owner need to be notified before cattle must be removed?
8. What happens if high soil moisture prohibits grazing? Will the forage be mechanically harvested? Who is responsible for it? What are the compensation terms for this situation?

Risk Management Considerations

Answers to the above questions will go a long ways toward spelling out who is responsible for what in the leasing arrangement. There will likely be some risk management issues that still need to be taken into consideration and specifically addressed in the resulting leasing agreement. Crop insurance is one topic that needs to be covered.

1. What crop insurance requirements need to be met by the crop producer for the primary crop? Does the cover crop need to be terminated by a specific date each spring? Is there flexibility around this date that needs to be considered?
2. Is there crop insurance available for the planted cover crop forage? Who will be responsible for obtaining it, if it is available and desirable? How will the premium costs be handled? How will potential indemnities be handled? I
3. n the case where insufficient growth of the cover crop or high soil moisture prevents grazing, will the cattle owner be compensated and, if so, how will that compensation be calculated?
4. In the case of cattle death loss, severe sickness or injury issues while grazing, will the cattle owner be compensated and, if so, how will that compensation be determined?

Possible Leasing Arrangements

Pricing for the lease arrangement can be done a number of different ways.

Priced on a per head per month or AUM basis. In this case, the landowner assumes the risk for low forage production. The cattle owner assumes the risk of finding an alternative source of feed if forage production is not sufficient and only pays the land owner for actual grazing use.

Priced on a per acre basis. In this case, the cattle owner assumes the risk for low forage production. This type of arrangement is simple to administer but can have significant risk consequences if not specifically spelled out. The start date, end date, and stocking rate all need to be considered in detail in the agreement up front or the crop producer can be exposed to the risk of over grazing or delayed spring planting. The cattle owner could be exposed to the risk of paying for something he/she can't use. The planting date is extremely important under this type of agreement. The latest acceptable planting date can significantly affect fall as well as spring forage yields.

Priced on a share of gains basis. This arrangement is for growing cattle. A specific price per pound of gain is agreed upon to be paid by the cattle owner to the crop producer. Weighing conditions/arrangements should be specifically spelled out in the agreement. Both parties share equally in the production risk associated with forage production and cattle performance.

As the lease agreement is drafted, a key consideration will be whether or not the crop producer is currently using cover crops. If the answer to that question is no, it may make the most sense for the cattle owner to pay for the seeding and establishment of the cover crop in exchange for specific access to the fields to graze at their discretion within the parameters of the agreement. If weather prevents grazing from occurring as planned, the crop producer may agree to repay the cattle owner at least a portion of the cover crop establishment costs. The specifics may depend upon crop insurance details.

If the crop producer is currently using cover crops, it may make the most sense for the crop producer to continue paying for the seeding and establishment of the cover crop with input from the cattle owner in regard to the selected species and seeding rate. The cattle owner would then lease the land under one of the above-mentioned arrangements.

Regardless of the arrangement, pricing in the lease agreement should take into account the expected costs and returns to respective parties, individual commitment of services, their respective exposure to risk, and the cost of other potential forage sources for the cattle.

This resource is meant to provide a list of questions and issues to consider in drafting a lease agreement for grazing cover crops. It is intended for educational purposes. The details of any actual agreement are up to the parties involved and obtaining legal advice from a licensed attorney is encouraged in developing the actual agreement.

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