



# News & Views

*A Monthly Publication Dedicated to the Feed, Seed, Grain and Farm Supply Industries of Wisconsin*

## The Black Swan, Part 2 ■

**B**ack in the March '08 edition of *News & Views*, we discussed the concept of Black Swans. To explain briefly, let's define what a "black swan" is using the definition from that newsletter. "(It) is not an ordinary occurrence. Instead, it is an event that is unpredictable and carries a massive impact .... They, by definition, reside outside your model of risk management of your operation."

It looks like we've met that definition with estimates by UW Extension of five to 10% losses of planted acreage of corn in southern Wisconsin caused by the flood waters. Iowa has percentages (with correspondingly higher total acreage numbers) in the same ballpark. And with almost 50% of total US corn and soybean production in the flood affected states of Wisconsin, Iowa, Illinois, Indiana and Minnesota, it is going to be a challenging year.

Former USDA chief economist Keith Collins made comments earlier this month (Before the floods came!) that sum up the situation:

There's virtually no cushion for any type of significant weather-reduced crop - especially corn. The rest of the world needs grain and oilseed. I think they'll be looking toward the United States. If we don't pull a (good) crop, particularly corn, domestic users - both feed and fuel users - are highly vulnerable to serious financial problems. This could cause very serious disruptions to both livestock producers and ethanol production.

We concluded that earlier article with the following comment, "We are not even into any type of a weather market yet and we could see prices go even higher. How high? No one knows, but as prices climb higher from these levels, problems will compound. Please take the time to do some planning

and reassessing your policies to avoid finding your options limited and being only presented with unpleasant choices if we either continue at current or even higher price levels."

Although, the Association held a "town hall" meeting in March with legal and banking experts who provided their particular insights regarding ramifications of a price run-up to your operation, (and we've had great follow-up conversations with many members) we thought you should be aware of some additional points being made. (If you misplaced that March '08 edition and would like to review the topics and suggestions included in it, please contact the WASA office for a copy.)

Earlier this month, we attended a National Grain and Feed Association (NGFA) feed regulatory committee meeting. It was pointed out at the meeting that corn and soybeans aren't the only commodities increasing in price, with some feed ingredients outpacing grain in terms of percentage increases. The issue of contract compliance by suppliers honoring agreements in terms of price, agreed upon quantities and other terms was discussed; with more than one example being offered of disputes or non-fulfillment in just that small sample of dealers. To that point, you should be aware that NGFA has feed trade rules established, as well as grain trade rules, and both rules are eligible for binding arbitration through NGFA. In both cases, in order to access the NGFA arbitration process, one party to the dispute must be an NGFA member. However, you can still reference NGFA trade rules as applying or governing the contract, even if you are not a member of NGFA. Incidentally, copies of both sets of trade rules are in your WASA Directory under the Trade Rules tab.

At the same time there is a fairly active discussion in the agronomy industry to develop both more formal contract examples (for both dealer/supplier and

dealer/farmer transactions) and trade rules for the industry. Given the price escalation that has occurred in that industry, it's probably a good idea. We are aware that national trade organizations have been approached to sponsor and/or develop an arbitration system such as NGFA's for the ag input sector.

And lastly, in this world with almost daily new record high prices in all commodities, you may be surprised at the business opportunities and alternatives presented to you. As an example, a multi-location independent in western Iowa was bought last week by a direct competitor, a regional grain company. This isn't to say everyone will be in this position, but don't be surprised if a buyer or a seller comes knocking. And that individual could be someone you don't really know or it could even be a current competitor; stranger things have happened in this market.

### **Somebody Asked ■**

**Q.:** With all the flooding, do I need to be concerned, as a feed mill or grain manager, about handling forage crops, finished feed or grains that have been exposed to flood waters?

**A.:** FDA considers flood water to be inherently unsanitary and deems food, including grains, which have been in contact with flood water to be unfit for human consumption or animal feed, unless reconditioned. Plans for reconditions must be reviewed and approved by FDA.

FDA will consider *specific written proposals* to recondition flood water damaged grain intended for use in animal feed and human food. Since corn and soybeans may be marketed in Wisconsin for either food or animal use, grains exposed to flood waters should not be marketed through conventional grain marketing channels until reviewed by FDA.

Procedures for approval of reconditioned feed products are listed on a FDA website ([http://www.fda.gov/ora/compliance\\_ref/cpg/cpgvet/cpg675-200.html](http://www.fda.gov/ora/compliance_ref/cpg/cpgvet/cpg675-200.html)). This procedure indicates that requests for approval for feed use should be made to the FDA District Office in Minneapolis MN. The District office will transmit the requests to Division

of Compliance, Center for Veterinary Medicine for evaluation. The main contact persons with FDA in our region for questions on this issue has been identified as Tim Philips (612-758-7133) or Brian Garthwaite (612-758-7132).

While the FDA approval process is underway, in the short term, this will involve keeping these products separate from non-adulterated feeds and pursuing testing and approval procedures from FDA before marketing. Specific testing procedures will be identified by FDA, but could include tests for bacteria, mycotoxins, heavy metals, or pesticides. Blending of adulterated grain with other grain is specifically prohibited. Adulterated feed products marketed in commercial channels are regulated by FDA and DATCP. Adulterated feed products in commerce may be subject to regulatory action that could include withdrawal from distribution, or criminal penalties.

Grain and forage crops raised and intended to be fed on the producing farm are not subject to these regulations because the products are not in commercial distribution. However, it is recommended to segregate these feed products from other non-adulterated products and evaluate before feeding using appropriate tests to determine exposure of the grains to contaminants, including chemical, microbiological or microbial toxins.

*Thanks and a tip of the hat to Eric Nelson of DATCP for the answer.*

### **Estate & Succession Planning ■**

**P**rovided below is an article from attorney Dean Stange of the law firm Michel Best & Friedrich LLP. While not everyone may believe the article of immediate need, it should serve as good reminder to all to begin thinking of what your retirement plans may entail.

Now is an important time for Wisconsin farmers and owners of agribusinesses to implement and update estate plans. Given the significant increase in commodity prices, the ever-increasing price of land and improved milk price, it is likely that Wisconsin farmers, and owners of businesses that serve Wisconsin

farmers, have significantly increased their net worth in the last few years. At the same time, interest rates are at historic lows, which creates unique gift and estate planning opportunities for Wisconsin farmers and agribusiness owners to maximize assets passing to children and grandchildren while minimizing estate and gift taxes, or in some cases incurring no estate or gift tax.

1. Intra-Family Loans. Under federal law, an intra-family loan must bear interest at a minimum rate published by the IRS. The required interest rate depends on the duration of the loan. For example, the May, 2008 applicable federal rate (AFR) for intra-family loans of less than three years is 1.85%. The May, 2008 mid-term AFR for loans more than three years but less than nine years is 2.7%, and the long-term AFR for loans longer than ten years is 4.13%. If the children can use the loans to pay down higher rate debt or make investments which will yield a higher rate of return than the interest payable to parents, then this loan technique may have value. Note that the loan must be documented as in any arm's-length transaction or the IRS may attempt to argue the transfer of funds to the child was a gift.

2. Grantor-Retained Annuity Trust ("GRAT"). With a GRAT, a grantor transfers assets into a trust for a term of years. During the term of the trust, the grantor receives an annuity payment in either cash or trust assets. At the end of the trust term, any remaining principal will be distributed to the trust beneficiaries, typically the children and grandchildren of the grantor. If the trust's assets appreciate at a rate greater than the annuity rate required by the IRS, the excess appreciation will pass to the beneficiaries of the trust free of estate tax. For May, 2008, the interest required by the IRS is 3.2%. An asset expected to increase in value by more than 3.2% a year and that a parent desires to pass to children and grandchildren may be appropriate to use to fund a GRAT.

3. Installment Sales to Intentionally Defective Grantor Trusts ("IDGT"). With an IDGT, a sale of property is made to a trust in return for an installment note that bears interest at the minimum AFR discussed above. At the end of the trust term, any income or appreciation on the trust assets that exceeds the payments required to satisfy the note will pass to the trust beneficiaries (typically children and grandchildren) free of estate or gift tax. In addition, because the trust is "defective" for income tax purposes, there is no taxable gain on the sale of the asset to the trust.

If you have any questions regarding this article please contact Dean Stange at (608) 283-0104.

## **Annual Dues Notices**

We're getting dues renewals in at a healthy clip. Thank you for supporting YOUR Association. It is appreciated.

## **WASA Directory Update**

The following updates should be made to your WASA Directory.

**New:** **Whitebox Commodities**  
**3033 Excelsior Blvd.**  
**Minneapolis, MN 55416**  
**Phone: (612) 253-6001**

**Change:** **Clifton Gunderson LLP**  
**8215 Greenway Blvd.**  
**Middleton, WI 53562**  
**Phone: (608) 662-8668**

Changes are indicated in **bold**. As additions or changes are made throughout the year, we will notify you here in *WASA N & V*.

## **Looking Down the Road**

**Sept. 9** **WASA Golf Fore Scholarships**  
Wild Rock Golf Club at the  
Wilderness, Wisconsin Dells

**Route:**

- General Manager
- Feed Department
- Grain Department
- Agronomy
- Safety Director
- Personnel
- \_\_\_\_\_

**WASA Board of Directors**

Tom Lefeber, President  
(920) 773-2505

John Van De Wiel, Vice President  
(608) 744-2287

Kim Lamp, Secretary/Treasurer  
(920) 674-8513

Doug Cropp (608) 882-2620

Erik Huschitt (608) 329-3900

Tim Lange (608) 676-2255

Dennis Schultz (715) 654-5134

Steve Strachota (262) 626-3080

David Wiederholt (608) 739-3103

**WASA Staff** (608) 223-1111

John Petty, Executive Director

RB "Bob" Willder, Loss Control Dir.

Denise Poindexter, Office Manager

***WASA Offices will be closed  
Friday, July 4.***



***Have a Safe and  
Happy 4<sup>th</sup> of July Weekend.***