QUESTIONS FROM TIFFANY'S DESK: FREQUENT AGRICULTURAL LAW QUESTIONS FROM TEXAS LANDOWNERS

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Tiffany grew up on a family farm and ranch in Eastern New Mexico, received her Bachelor of Science in Agribusiness (Farm and Ranch Management) summa cum laude at Oklahoma State University, and her law degree summa cum laude at the University of New Mexico. Prior to joining Texas A&M AgriLife Extension, Tiffany worked for four years at a law firm in Albuquerque practicing civil litigation. She is licensed to practice law in New Mexico and Texas. She lives in the Texas Panhandle with her husband, Ty, and her children Braun and Harper.

TABLE OF CONTENTS

QUESTIONS FROM TIFFANY'S DESK: FREQUENT AGRICULTURAL LAW QUESTIONS FROM TEXAS LANDOWNERS

In my work with Texas A&M AgriLife Extension, I constantly field questions from Texas landowners around the state. Three of the most common topics I have received questions related to in the past year have been easements and landlocked property, carbon contracts, and direct beef sales.

I. EASEMENTS & LANDLOCKED PROPERTY

The topic on which I receive the most questions is easily easements and landlocked property. This has only continued to increase in recent years as more and more rural land continues to be fragmented and to change ownership.

A. Easements

An easement is a means by which a landowner grants another person the right to use the landowner's property for a specific purpose. *See Greenwood v. Lee*, 420 S.W.3d 106 (Tex. Ct. App. – Amarillo 2012). The land on which the easement is granted is referred to as the "servient estate," and the land the easement benefits is referred to as the "dominant estate." For example, if Amy granted Brett an easement to cross her land to reach his own property, Amy's land would be the servient estate, and Brett's would be the dominant estate. An easement does not convey ownership of the property itself but instead conveys the right to do what is expressly granted and any rights reasonably necessary thereto. *See id.*

Generally, unless otherwise modified by the parties, the person to whom an easement is granted owes a duty to use ordinary care in using the easement and a duty to maintain the easement. *See Roberts v. Friendswood Dev. Co.*, 886 S.W.2d 363 (Tex. Ct. App. – Houston [1st Dist.] 1994). The party who grants the easement owes a duty to not interfere with the dominant estate holder's use of the easement.

Generally, there are two categories of easements: Express and Implied.

1. Express Easements

An express easement is affirmatively granted by the servient estate owner. The terms of this easement are governed by the language creating the easement, rather than by the actions of the parties. *See Kearney & Son v. Fancher*, 401 S.W.2d 897 (Tex. Ct. App. – Ft. Worth 1966). Landowners granting an easement should be careful in the exact wording included in the granting document, as this could greatly impact the rights of the servient estate. For example, in one Texas case, the dominant estate owners granted an easement deemed a "ranch road" and tried to limit use when the servient estate owners built a development on their property and allowed residents to utilize the roadway. *Boerschig v. Southwestern Holdings*, 322 S.W.3d 752 (Tex. Ct. App. – El Paso 2010). The court held merely using the term "ranch road," without offering a more detailed limitation, was insufficient to limit the use of the road. Importantly, express easements should always be reduced to writing and, in order for them to be enforceable against third parties such as new owners of one of the properties at issue, should be recorded in the county deed records.

2. Implied Easements

An implied easement is an easement created not by express grant, but instead one implied by law when certain conditions are satisfied. In this situation, the landowner of a servient estate does not have to agree to give an easement. Instead, the law will imply an easement exists. In order to obtain an implied easement, the party seeking the easement is required to go to court, prove each of the required elements for the type of implied easement sought, obtain a court order granting the easement, and file the court order in the county deed records. As noted above, express easements are always recommended given the ability to avoid the expense, time, and uncertainty of the process to obtain an implied easement. The various types of implied easements include easements by necessity, prior use easements, easements by prescription, and easements by estoppel.

a. Easement by necessity

An easement by necessity arises when a grantor either conveys or retains a parcel of land and fails to expressly provide for a means of access. In this situation, courts have made an assumption that the initial landowner had intended to so do and will imply an access easement. For example, assume Amy owned 100 acres and offered to sell the back 50 acres, which had no other means of access, to Brett. This is the type of scenario where a court would likely conclude an easement by necessity should be implied. In order to prove an easement by necessity to cross another's property, the party seeking the easement must prove: (1) unity of ownership of the alleged dominant and servient estates prior to severance (in other words, the landlocked property and tract across which access is sought must have, at one time, been owned by the same person); (2) the claimed access is a necessity, not a mere convenience; and (3) the necessity existed at the time the two estates were severed. *Hamrick v. Ward*, 446 S.W.3d 377 (Tex. 2014). Unless all three of these elements can be shown by the landlocked owner, an easement by necessity will not be recognized. As one might imagine, these elements may be difficult to prove,

especially if the severance of the two parcels took place some time ago. Finding witnesses who can testify about the existence of a necessity at the time of severance can prove difficult, and even impossible, in some circumstances.

b. Prior use easement

Another type of implied easement is one based upon prior use. This type of easement was recognized by courts after finding the necessity framework was ill-suited for other improvements, such as powerlines or utility pipelines. *See id.* In order to prove a prior use easement, the party seeking an easement must show each of the following elements: (1) unity of ownership of the alleged dominant and servient estates prior to severance; (2) the use of the claimed easement was open and apparent at the time of severance; (3) the use was continuous, so the parties must have intended its use pass by grant; and (4) the use must be necessary to the use of the dominant estate. *See id.* For example, in a case where a landowner sold 1 parcel while retaining ownership of another, yet failed to reserve any water lines to service his home, the court held that a prior use easement existed. *See Holstrom v. Lee*, 26 S.W.3d 526 (Tex. Ct. App. – Austin 2000).

c. Prescriptive easement

Prescriptive easements are essentially like obtaining an easement through adverse possession, which is a concept discussed below. Unlike necessity or prior use easements where the landowner's consent was assumed, prescriptive easements can only exist when there is no such permission to use the easement. Because courts tend to disfavor this type of easement, each element will be strictly scrutinized. In order to obtain a prescriptive easement, the person claiming the easement must prove that he or she has used the easement for at least 10 years and the use was: (1) hostile; (2) open and notorious; (3) continuous and uninterrupted; (4) exclusive; and (5) adverse. *See Wiegand v. Riojas*, 547 S.W.2d 287 (Tex. Ct. App. – Austin 1977). One example of these elements being satisfied was a case involving a rural road on a landowner's property where the neighbors used it without permission for over forty years, did not allow any other persons to use the road, maintained the road, and enclosed the road with a fence and gate at the end. *See Boerschig v. Southwestern Holdings*, 322 S.W.3d 752 (Tex. Ct. App. - El Paso 2010). While possible to acquire a prescriptive easement, these elements are generally very difficult for the party seeking the easement to adequately prove.

d. Easement by estoppel

An easement by estoppel arises when one person acts in reliance on being told an easement exists. The elements required are: (1) a representation; (2) belief in the representation; and (3) reliance on the representation. *See Horner v. Heather*, 397 S.W.3d 321 (Tex. Ct. App. – Tyler 2013). Again, in order to enforce this type of easement, the landlocked owner would be forced to file a court action, to prove each element, and to get an order from a judge. A fairly recent Texas case illustrates a situation where this type of easement was granted. In *Cores v. Laborde*, the court held an easement by estoppel existed with regard to a road where prior landowners had utilized the road for years without objection, the purchasing landowner was told by the seller that he was able to use the road, and the seller rebuilt cattle pens next to the road. *See* No. 13-17-0011-CV, 2018 WL 3062478 (Tex. Ct. App. – Corpus Christi June 21, 2018). With these facts, the court found that the owner purchased the property in reliance on the ability to use the roadway.

B. Landlocked Property

One common legal myth that circulates in coffee shops around Texas is that property cannot be landlocked because a neighboring landowner is required to allow entry. This is simply not true. Understanding this can be important for both landlocked owners and neighboring landowners as well so that each party understands his or her rights and obligations.

Under Texas law, absent an easement or other right of access legally obtained, property certainly can be landlocked. *See, e.g., McClung v. Ayers*, 352 S.W.3d 723 (Tex. Ct. App. – Texarkana 2011) (upholding jury verdict of no access to property). This can cause problems for a landowner in regard to the marketability of the property. First, title companies are usually unwilling to insure title to a property that lacks access, so without access, the property will likely be difficult to sell to any party desiring title insurance. Second, without insurable title, a lender is very unlikely to loan money against the property. Given this, it is prudent for a landowner to seek some sort of legally enforceable access right to the land. Although there is no automatic right to access landlocked property, there are a number of options a landowner may consider and seek to utilize in order to obtain legal access to property.

1. Obtain an express easement.

Likely the easiest way to obtain access to landlocked property is to obtain an express easement from a neighboring landowner. As noted above, this easement should be in writing, signed by the grantor, specifically identify the property and details of the allowed easement use, and filed in the county deed records. Some neighboring landowners may grant this type of easement without requiring compensation, while others may seek some sort of payment for the right to cross their land. If a neighbor refuses to grant this type

of express easement, a landlocked owner will likely be forced to look elsewhere for access.

2. Determine if there may be an easement by necessity.

In the event an express easement cannot be obtained, an easement by necessity may be a method by which a landlocked owner can obtain access. As noted above, however, there are specific facts which must be proven in order to obtain an order granting this type of easement. The party seeking the easement must show each of the following elements: (1) unity of ownership of the alleged dominant and servient estates prior to severance (in other words, the landlocked property and tract across which access is sought must have, at one time, been owned by the same person); (2) the claimed access is a necessity, not a mere convenience; and (3) the necessity existed at the time the two estates were severed. *See Hamrick v. Ward*, 446 S.W.3d 377 (Tex. 2014). As one can see, an easement by necessity is limited to fairly specific circumstances and will not serve as a method of access in every situation. There may be landlocked owners who cannot prove their land was previously owned jointly with land of a neighbor. Additionally, it can frequently be difficult to prove necessity existed at the time of severance, especially if severance occurred many decades before. One important note here is the Texas Supreme Court has held that where the easement being sought involves accessing a landlocked, previously unified parcel, a prior use easement is unavailable, and the party may, instead, seek a necessity easement. *See id.*

3. Determine if there may be a prescriptive easement.

Another option for a landlocked property owner may be to consider the elements of a prescriptive easement. Again, these would only apply in narrow circumstances. Importantly, if a landowner had permission to use the easement, there can be no finding of a prescriptive easement. As noted above, a person claiming the prescriptive easement must prove he or she has used the easement for at least 10 years, and the use was: (1) hostile; (2) open and notorious; (3) continuous and uninterrupted; (4) exclusive; and (5) adverse. *See Wiegand v. Riojas*, 547 S.W.2d 287 (Tex. Ct. App. – Austin 1977). Several of these elements are often problematic. First, the exclusivity requirement means only the person seeking the easement made this use; if the road was used by the owner of the property which it crosses or by any other person, this element is not satisfied. Second, if permission to cross the land was granted to the current landowner or prior landowners upon whose use the party seeking the easement relies, then no easement by prescription will be recognized. If a landlocked owner can prove each of these elements in court, he or she may be able to obtain a legal prescriptive easement which can be filed in the deed records.

4. Determine if there may be an easement by estoppel.

In the event the person seeking to obtain an easement can show a representation an easement existed and detrimental reliance on that representation, an easement by estoppel may be a possible solution. For example, if a person purchased landlocked property and began building a house based upon a promise from a neighbor that the purchaser could cross the neighbors land to access the property, but then the neighbor denied the promised access, that could potentially create an easement by estoppel.

5. Consider a provision allowing a statutory easement to be granted by a commissioners court.

Finally, another option for landowners may be a statute in the Texas Transportation Code that allows a landlocked landowner to seek a public road from the commissioners court. *See* Tex. Transportation Code § 251.053. Texas Transportation Code Section 251.053 provides that "a person who owns real property to which there is no public road or other public means of access may request an access road be established connecting the person's real property to county public road system…" In order for this action to be taken, the landlocked owner must file a sworn application with the county commissioners' court, notice must be given to each property owner who would be affected, and a hearing on the application will be held. If the commissioners' court determines the landowner has no access to their land, the court may issue an order creating a public road. Damages to affected property owners will be provided in the same manner as for other public roads, and the county pays all costs in connection with proceedings to open a road. The county is required to make the road initially suitable for use as a public access road but is not required to subsequently maintain the road. Note that in the statute, if the factors are met, the commissioners' court may issue an order creating a public road–they are not required to do so. It is within the commissioners' discretion as to whether to do so. Additionally, there may be some reason for concern over whether a road created under this section could potentially be an unconstitutional taking of private property. The Texas Supreme Court held a prior version of this statute unconstitutional as it found a commissioners court could not take private property for a private use. *See Maher v. Lasater*, 354 S.W.2d 923 (Tex. 1962). Although the current version of the statute was passed 30 years after that decision and has never been challenged, due to the similarity of the statutes and rationale of the court, this is at least a concern that landowners and county commissioners should consider.

II. NEGOTIATING AND EVALUATING CARBON CONTRACTS

A current hot topic is agriculture is carbon contracts. These are voluntary agreements between an agricultural producer or landowner and a company offering payment to the producer/landowner if certain carbon-friendly practices are undertaken. In reviewing such contracts currently being offered to Texas producers, there are a number of issues of which attorneys and landowners/producers should be aware prior to entering into this type of agreement.

1. Key Concepts

When reviewing a carbon contract, producers and landowners may notice it seems to speak a different language than most agricultural contracts. Understanding some of the basic concepts related to carbon contracts is an important starting place. Importantly, each contract will likely have specific definitions of these terms. It is critical for landowners and producers to carefully review the definitions in any contract before signing.

A. *Additionality* – The concept of additionality refers to some companies only paying for new carbon-sequestering practices. If additionality is required, the farmer or rancher would have to undertake a new practice—such as converting from conventional farming to no-till farming, for example, to qualify. A producer who has already adopted carbon-sequestering practices would need to seek a contract that pays for these previously adopted practices or allows a look-back period and does not have an additionality requirement.

B. *Carbon market* – Currently, most carbon markets are voluntary programs where brokers essentially serve as an intermediary between companies seeking carbon credits and farmers and ranchers willing to generate these credits. A producer agrees to undertake certain practices which sequester carbon or reduce carbon emissions, the company pays the producer, and then claims the carbon credit generated by the producer helps to offset the carbon footprint of the company.

C. *Carbon practices* – These are farming or ranching practices having the ability to reduce carbon emissions and/or sequester carbon. The most common carbon practices include no-till farming, planting cover crops, crop rotation, planting buffer strips, and regenerative grazing.

D. *Carbon credit* – A carbon credit is a frequently used measurement unit to quantify carbon. Typically, one carbon credit is equal to one metric ton of carbon or carbon equivalent that is sequestered.

E. *Carbon emissions* – The release of carbon into the atmosphere.

F. *Carbon sequestration* – The process of capturing carbon from the atmosphere.

G. *Permanence* – The length of time a carbon reduction lasts. Some contracts may require a producer to abstain from certain activities for an extended period of time to ensure the continuation of storing carbon that has been sequestered.

H. *Stacking* – The concept of stacking refers to one producer enrolling the same land in more than one program or contract. Many contracts prohibit stacking, meaning the producer may enter into only one carbon contract for a specific piece of property. The breadth of a stacking prohibition can vary greatly by contract, with some prohibiting only other carbon contracts, while others may prohibit participation in any government programs as well.

I. *Verification* – The process of confirming carbon reduction or sequestration.

2 Key Contract Terms to Consider

A. *Control of land* – Brokers or companies seeking carbon agreements will likely require some proof the party entering into the contract either owns or controls the land. This may include a copy of a written lease agreement, for example. Some companies or brokers may require both the tenant and the landowner sign any contractual agreement. This is particularly true if the lease in place is for a shorter timeframe than the carbon contract will be.

B. *Data ownership* – Data collection is a requirement for any carbon contract, and a carbon agreement should address issues related to the ownership and use of such data. Issues like who will be given access to the data, how the data may be used, and who has ownership rights in the data should all be addressed.

C. *Indemnification* – Indemnification clauses essentially shift potential liability and costs from one party in the contract to another. These clauses are an agreement to reimburse another party for damages they sustained as a result of the indemnifying party's actions. It is critical to analyze the breadth of an indemnity clause. First, indemnification clauses should be mutual, meaning each party agrees to indemnify the

other. Second, some provisions may be so broadly written as to require a landowner to indemnify the company for any damages or injury which are not a result of the developer's contract, including actions taken by third parties over whom the landowner has no control.

D. *Impact on energy production* – Producers should carefully consider what impact a carbon contract may have on energy production on the land. Depending on the mineral ownership or the potential energy production activities, this may require identifying carve out areas where oil or gas wells, or potentially even wind turbines or solar panels can be placed.

E. *Land title implications* – Producers should be careful to determine if there are contractual provisions that may impact their ability to sell or otherwise transfer ownership of the land. For example, contracts may allow the purchaser to place a restrictive covenant or a lien on the property, or require the landowner to enter into a conservation easement for the term of the contract. Certainly, these types of limitations could impact the marketability and potential sales price for the land.

F. *Negotiation costs* – Some companies and brokers are offering to pay a certain portion of a producer's legal fees associated with negotiating a carbon contract. This would likely be an agreement separate from the contract itself but might be worth producers requesting from the company or broker. Regardless, a producer should consider using an attorney to assist with reviewing or drafting any carbon contract.

G. *Other allowable uses* – Producers may wish to make other uses of the property at issue in a carbon contract. Many farms and ranches have added various agritourism activities as ways to diversify income. For example, many producers may wish to reserve the right to hunt or fish on the land. The contract should address any desired allowable uses for the producer to ensure both parties are on the same page.

H. *Payment* – The payment provisions of the contract are extremely important for the producer. There are several different potential payment methods which could be included in an agreement. There could be a per-acre payment for adopting certain carbon practices. There could be a payment per metric ton of carbon as measured and verified. Another option could be a payment based on the carbon market at an identified time. Producers should ensure the contract sets forth the exact details about how payment will be calculated. For any contracts based on actual carbon sequestered, producers should investigate the amount of carbon likely to be sequestered in their particular area. For example, agronomists report the amount of carbon likely to be sequestered in the Texas Panhandle and South Plains to be far less than the one ton of carbon per year it takes to create a carbon credit. Also important is to determine what costs or expenses may be deducted from the producer's payment. Ensure the provision also addresses when and how payments will be made.

I. *Parties* – A producer should certainly do his or her homework to investigate any party with whom they will enter into a carbon agreement. Understand the party's position in the market. Many contracts are being offered by brokers or aggregators, but there are also ag retailers offering these types of contracts. Try to speak to other producers who have entered into contracts with the company to ask about their experience.

J. *Penalties* – All contracts contain penalties if certain conditions are not met. It is important to understand these penalties and the risk associated with them. For example, if a party agrees to undertake a certain practice but there is an external reason such as weather preventing them from doing so for an amount of time, there could be a specific penalty for that. Some contracts may require a certain increase in the amount of carbon in the soil and include a penalty if that amount is not realized or is released during the term of the contract. Carefully review the contract to understand under which circumstances a producer could potentially be liable if this occurs. Contracts will likely also contain early termination penalties if the producer is unable to comply with the contractual requirements for the term of the contract.

K. *Required practices* – An agreement will set forth the required practices a producer agrees to undertake as part of the contract. Again, this differs by contract and must be carefully reviewed. Some contracts may list very specific requirements, while others may contain a more general description such as conservation practices. Producers should be careful to analyze the additional costs which may come with adopting a required practice as compared to the potential carbon contract

payment they would receive. Finally, producers should pay attention to whether the required practices are set through the entire contract, or whether they may change from year to year.

L. *Stacking prohibition* – Often, carbon contracts will include a prohibition on stacking—meaning a producer may not enroll the same land in multiple carbon contracts or programs. It is important to carefully review any stacking prohibitions in a contract, as some may be worded broadly enough to prohibit participation in other government programs as well, such as EQIP or CRP, for example.

M. *Term of the agreement* – It is important to understand the length of the contractual agreement. An agreement will likely set forth a given number of years practices must be undertaken. Keep in mind that lengthy contracts may have estate planning implications as well. Some agreements may require the continuation of identified practices even once the term of the agreement ends to ensure permanence. Also watch for any opt out provisions, allowing parties to terminate the contract prior to the end date if certain requirements are met. Some contracts allow either party to cancel merely by giving notice. Others may require certain conditions to be met. On the other hand, there could be provisions allowing for extensions to be granted, so watch for those provisions as well.

N. *Verification* – Provisions regarding measurement and verification are some of the most important in a carbon agreement. As an initial matter, the contract should set forth exactly what is being included in the measurements. For example, will the verifier simply measure the carbon in the soil, or will the entire system be looked at, including the impacts of livestock on the property or the impacts of using nitrogen fertilizer, for example? Understanding exactly what will be measured is critical. Next, parties should agree upon who will conduct any testing and verification, what methodology will be used to do so, and when and where such data collection will occur. Some contracts may offer payments based on modeling, while others will take actual measurements. Measurements may be done in a number of ways including algorithmically, by taking actual physical soil samples, and by using satellites. The manner in which samples are taken can have impacts on the results, and considerations related to the time of year (and even time of day), location in the field, and soil depth are all important to consider and understand. Parties should consider who will bear the costs of the data collection and verification, and generally, these costs falls to the purchaser. Finally, the producer may want to ensure there is a provision allowing an audit of the data and payments to ensure requirements are being followed and a process for how a producer can challenge or appeal determinations they believe are inaccurate.

III. CUSTOM HARVEST AGREEMENTS

In recent years, the number of cattle producers selling beef directly to the consumer has greatly increased. *See, e.g.*, Greg Ibendahl, Junehee Kwon, Travis O'Quinn, and Yue Teng Vaughan, *Opportunities to Improve Beef Producers Profitability Through Direct Marketing*, Kansas State University Department of Agricultural Economics (March 25, 2022).

One common way that cattle producers enter into the direct beef sales world is by selling a live calf to the consumer and then delivering the calf to a custom processing facility where it will be processed. This approach can be attractive to producers as it allows them to avoid many of the additional requirements that come when selling beef, as opposed to selling the live animal.

For example, if Bob in Dallas wants to purchase beef from ABC Ranch located in Amarillo. If ABC Ranch wanted to sell beef by the pound to Bob, the slaughter and processing of the animal would have to occur in an inspected facility since the owner of the animal (ABC Ranch) would not be the end consumer. ABC Ranch would also need to deal with licensing, labeling, and additional insurance considerations as it would be selling beef. However, if ABC Ranch sold the live calf to Bob prior to slaughter, then custom exempt processing would be allowed because Bob is both the owner of the animal and the consumer of the beef. If Bob wanted to purchase less than a whole beef, the producer could sell the remaining percentage of the animal to another person. So long as this transaction occurs before slaughter, then the custom exempt processing option would be available.

Any producer utilizing this sales method should have a custom harvest agreement for each of these types of transactions. This agreement is simply a contract between the beef producer and consumer laying out the terms of the sales agreement.

The following topics should be considered when drafting a custom harvest agreement.

A. *Names and contact information of the parties* – List the names of the parties to the agreement and their contact information.
B. *Description of product being sold* – Be clear in the agreement that it is the live animal being sold to the consumer, not the processed beef. Be clear on what percentage of the animal the customer is purchasing. For example, is the sale for a whole animal or 1/4 share of the animal. If selling a specific animal, be sure to include the eartag number or other description of the animal.
C. *How will payment be calculated?* – Be clear exactly how the price for the animal will be calculated. Will it be a flat, pre-set price? Will it be a per-pound price and, if so, will that be based on the live weight or hot carcass weight of the animal?
D. *Educational information* – One thing many cattle producers find when beginning direct beef sales is the lack of education many consumers have about purchasing and cooking beef. This agreement may be a good place to include some of that information in order to avoid surprises later. For example, it may be helpful to explain the difference between live animal weight and boxed beef weight and manage expectations so that the consumer does not think that just because the calf weighs 1,200 pounds there will be 1,200 pounds of boxed beef. Giving consumers a ballpark range of what calves typically weigh when delivered to the processor and what the typical yield percentage is, with the caveat that these are only ballpark estimates and actual measurements and costs will be based on their specific animal, can be helpful. Information on how much freezer space is typically needed for a quarter, half, or whole beef may also be useful. Having a sample cut sheet for people to review may also provide added value.
E. *When and how will payment be due?* – Will a deposit be required and, if so, when and how much? When will completely payment be due? What payment methods are accepted– can a consumer pay by cash, check, card, Venmo or other app? What is the result of failure to remit timely payment?
F. *Processing fees* – Make sure the parties are clear on whether the processing fees are included in the selling price or whether the customer will be responsible for paying the processing fees directly to the processor.
G. *Obligations of the parties* – Who will be responsible to deliver the animal to the custom processing facility? Who will pick up the beef once processing is complete? Who will pay the processing fee to the facility? Who will complete the cut sheet?
H. *Reselling/donating meat from the animal is prohibited* – Make clear in the custom harvest agreement that the beef from this animal may not be resold or donated. This is based on the fact that any beef processed at a custom harvest facility may not be sold or donated, and the purchaser needs to be clear on that limitation.
I. *Point at which animal is property of the buyer* – Make clear at which point in time the animal officially becomes the property of the buyer. Certainly, this has to be done at least by the point in time when it is delivered to the custom processing facility. But is it when the initial deposit is made? Is it when the animal is loaded into the trailer to head to the facility? This may be important if there is an injury or the death of an animal before it is delivered to the processing facility.
J. *Dispute resolution clauses* – In the event of a legal dispute, the parties may wish to agree to dispute resolution. This would typically be either mediation or arbitration.

Choice of law/venue clauses – When the parties may be from another county or another state, the parties may want to agree on which state's law will apply to any legal dispute and determine where any lawsuit must be filed.