



Answers to Frequently asked Questions concerning “Other White Meat” Contract

Background:

The U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) has completed its review of the 2006 asset purchase agreement between the National Pork Board and the National Pork Producers Council (NPPC) for the purchase of four trademarks. The trademarks include the word “pork” in distinctive lettering set against a pork loin silhouette and “The Other White Meat” in various forms.

As a result, AMS is approving continuing annual payments of \$3 million under the terms of the agreement.

Questions:

What did the National Pork Board originally agree to do?

The Board agreed to purchase the trademarks from NPPC for \$34,597,000, with the Board paying an annual principal and interest payment of \$3 million per year for 20 years. The Board agreed to pay interest of 6.75 % per year.

The Board reserved the option to cancel the agreement for any reason with 1 year’s notice but would forfeit ownership interest in the trademarks. The remaining principal balance for the trademarks under the agreement is \$20.5 million.

Why was the National Pork Board’s action reviewed?

In 2012, the Humane Society of the United States (HSUS) filed a lawsuit challenging USDA’s February 8, 2006, approval of the agreement and annual payments, especially since the Board had not been using “The Other White Meat” in marketing campaigns.

In December, 2015, HSUS and USDA entered into a stipulation agreement whereby HSUS dismissed the parts of its complaint seeking that USDA recover the funds already paid to NPPC under the agreement. USDA agreed to review the agreement and payments consistent with

its own independent judgment and authority. USDA invited both HSUS and NPPC to have an opportunity to submit information for AMS' consideration during this review.

What occurred with regard to SRR's valuation?

As part of its review, AMS directed the Board to contract for an independent valuation of the current value of the trademarks. AMS provided a list of contractors to the Board and, after discussions with the Board, identified Stout Risius Ross (SRR) as the most qualified company.

SRR concluded that, as of January 1, 2016, the investment value of the four trademarks is between \$113 million and \$132 million using the cost approach, one of several acceptable and recognized approaches for determining valuation.

Did any other firms place value on the trademarks?

Both HSUS and NPPC submitted valuation reports by their respective experts. CONSOR, HSUS's expert, valued the trademarks between \$2,553,595 and \$17,558,403 as of July 1, 2006, using the relief from royalty analysis based on the Board's revenues. Cupitor, NPPC's expert, valued the trademarks at \$175 million as of December 31, 2015, using both the cost and relief from royalty approaches.

Why did AMS find that SRR's valuation was the most reliable estimate?

SRR explained why the cost approach was used over other approaches.

Weston Anson, the Chairman of CONSOR, noted in his book *The Tangible Assets Handbook* that of the three accepted approaches for determining valuation, the market approach should be used in all instances where comparable sales or transactions similar to the intangible asset being valued can be identified; the cost approach, using either replacement or reproduction value, is often used as a secondary method to measure an asset's value; and the income approach and/or relief from royalty approach are used where specific income streams of real or imputed royalties can be identified.

After evaluating these and two other valuations that were deemed unreliable or unhelpful, AMS determined that SRR's range of \$113 million to \$132 million was the most reliable estimate of the investment value of the trademarks to the Board.

How does this amount compare to the amount the National Pork Board agreed to pay for the trademarks?

This valuation far exceeds the purchase price for the trademarks and the remaining principal balance under the agreement.

What happens now?

Based on SRR's valuation far exceeding the agreement balance of \$20.5 million and the fact that these trademarks are still in use by the Board and some state pork councils, AMS is approving the continuing payments under the agreement.

How are these trademarks being used and protected?

The Board continues to use one trademark ("pork" in distinctive lettering set against a chop silhouette) in its primary advertising campaign, features all trademarks on its Web site, may use all trademarks in any form in the future, and is also able to prevent others from using the trademarks. In addition, state pork councils also use the trademarks. Requiring the Board and state pork councils to desist from using these trademarks would be costly and disruptive.

Was it appropriate for the Board to ask Secretary Vilsack to take action regarding the lawsuit?

On March 10, 2016, the Board's Chief Operating Officer sent a letter to Agriculture Secretary Tom Vilsack regarding the HSUS lawsuit. In that letter, the COO shared an advisement from the National Pork Board Delegate Body and urged the Secretary to mount a vigorous defense in the case. The USDA General Counsel advised the Board that the advisement from the Delegate Body, the Board's entertaining of it, and the COO's letter to Secretary Vilsack were in violation of the Pork Promotion, Research, and Consumer Information Order, AMS Guidelines, and direct AMS counsel during the Delegate Body meeting.

What does the Board need to do now?

Within 30 days, the Board must provide to AMS a thorough accounting that includes the percentage of time that the advisement was discussed and acted upon at the Delegate Body meeting, any subsequent Board time or funds related to the Delegate Body action, and documentation that all Board funds have been reimbursed from other sources.

Do any additional steps need to be taken?

USDA's General Counsel also strongly suggested that the COO, Board officers, and any other critical staff should attend remedial training on the proper use of pork checkoff funds. AMS and the Office of the General Counsel will be available to provide this training.

What are Research and Promotion Programs?

Research and promotion programs are industry-funded, were authorized by Congress, and date back to 1966. Since then, Congress has authorized the establishment of more than 20 research and promotion programs. They empower stakeholders to leverage their own resources to develop new markets, strengthen existing markets, and conduct important research and promotion activities. AMS provides oversight, helping to ensure fiscal responsibility and program integrity.

Where can I find out more?

For more information, contact the Livestock, Poultry, and Seed Program, AMS, USDA; 1400 Independence Avenue, SW.; Room 2096-S, STOP 0249; Washington, D.C. 20250-0249.