LAND STEWARDSHIP PROJECT

# LSP *Myth Buster* #48

An ongoing Land Stewardship Project series on ag myths and ways of deflating them.

Updated: March 2017

## ➔ *Myth*: Commodity Checkoff Programs are Accountable

## ➔ *Fact*:

It's the basis for any financial transaction: someone forks over money, and the party receiving that payment provides a product or service in return. And when the money is required by law to be handed over, the expectation is particularly high that the recipient of those funds will be forthcoming about how they are spent. In the case of the commodity checkoff system, when farmers sell, say, a hog or a bushel of soybeans, a certain percentage of that sale price goes to commodity boards overseen by the USDA's Agricultural Marketing Service. The idea behind this exchange of money is that these "checkoff funds" can be used for promotion and research related to commodities.

You've seen the results of this in advertising: the "Got Milk?," "Beef—It's What's for Dinner" and "Pork. The Other White Meat" slogans were all funded through checkoff funds provided by farmers and importers. Checkoff funds have also been used to promote an industrialized corporate-style system of agriculture, a fact that rubs a lot of average sized family farmers the wrong way.

In the case of the hog industry, the number of family-sized, independent pork producers has plummeted since the checkoff was made the law of the land in 1985, while large-scale, corporate-controlled factory farming has all but taken over the business.

The amount of money produced for these commodity boards can be significant. There are 22 federally-mandated checkoffs, which collect roughly $500 million annually from producers. In 2015, for example, hog producers paid 40 cents for every $100 worth of pork they sold to the checkoff program, generating over $75 million in revenue for the National Pork Board. Much of that money is handed over to "contractors" who are supposed to use it for research and promotion. These contractors, such as the National Pork Producers Council (NPPC), can conduct lobbying, but they're not supposed to do it with checkoff funds. See how things can get fuzzy fast?

No wonder farmers would like to know more about how their checkoff money is being spent. But the last thing commodity group executives want is accountability. They showed that last spring when 14 commodity groups were successful in getting the House Appropriations Committee to exempt commodity research and promotion boards from obeying the provisions of Section 552 of 5 U.S.C. In plain English, these groups do not want to have to adhere to the requirements of the Freedom of Information Act. Known as FOIA for short, this is one of the cornerstones of transparent governance, and has been used innumerable times to shine a light on how government programs are being run. FOIA requests, which can be made by anyone, have revealed everything from minor corruption to outright illegality.

### Blurred Boundaries

It's worth noting that the letter which prompted the legislation was not signed by the checkoff programs themselves, such as the National Pork Board and the U.S. Potato Board, which, remember, are not supposed to engage in lobbying. Rather, commodity groups closely aligned with these boards, such as the NPPC, National Cattlemen's Beef Association, American Soybean Association, the National Milk Producers Federation, United Egg Producers and the National Potato Council, drafted the memo. It was yet another sign that little separates the commodity boards from commodity groups themselves. Perhaps that's because so many checkoff dollars are eventually funneled to these commodity groups, which are allowed to lobby and have successfully carried out campaigns to, among other things, kill legislation related to country of origin labeling and outlawing packer ownership of livestock—moves that benefit large processors and mega-producers, but not the run-of-the mill farmer (or consumer).

This move to exempt commodity research and promotion boards from FOIA was prompted by an embarrassing episode in 2015, when e-mails obtained under FOIA showed the American Egg Board had waged a campaign against an egg-free mayonnaise producer. The revelation led to the early retirement of the Egg Board's CEO, and has prompted the USDA to investigate the matter.

A Senate committee eventually rejected the language to exempt commodity boards from FOIA, and in fact federal

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*This* **Myth Buster** *is brought to you by the members and staff of the Land Stewardship Project, a private, nonprofit organization devoted to fostering an ethic of stewardship for farmland and to seeing more successful farmers on the land raising crops and livestock. For more information, call 612-722-6377 or visit www.landstewardshipproject.org.*

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legislation has been introduced that would make them more transparent and unable to participate in anti-competitive activities. But the bottom line is this: what do these commodity boards, and their producer group partners, have to hide? Plenty, it turns out.

There have been several revelations over the years concerning the misuse of checkoff dollars. In some cases, these funds have been used to attack the very farmers who provide them. In 1997, agricultural journalist Alan Guebert revealed how the NPPC had hired a Washington, D.C., consulting firm to spy on "activist groups." One of those groups was the Land Stewardship Project, which, working with its farmer-members, has long been active in fighting factory farms and supporting family-sized livestock operations. It came to light this spying was part of an ongoing "monitoring" campaign funded by $100,000 in checkoff funds, which is illegal.

More recently, FOIA documents prompted a lawsuit brought against the pork checkoff over the Pork Board's $60 million purchase of the "Pork. The Other White Meat" slogan from the NPPC. Marketing experts have found the price to be vastly inflated, especially given that no other group was bidding for the slogan (which, by the way, was officially retired in 2011 and replaced with "Pork: Be Inspired"). Parke Wilde of Tufts University, who has studied checkoff programs extensively, says the FOIA documents show that basically the slogan's sale price was pumped up to, in effect, funnel checkoff money from an entity that cannot lobby (the Pork Board), to one that can (the NPPC). LSP ally Iowa Citizens for Community Improvement, along with others, filed a lawsuit over the sale of the slogan.

Perhaps the most ironic, or, more accurately, hypocritical, aspect of this whole effort on the part of checkoff boards to escape public scrutiny is the main argument they are using to justify these mandatory collections of cash. They claim checkoffs are not involved in "government speech" since they are funded by producers, not the government. As it happens, in 2005 the U.S. Supreme Court ruled that the beef checkoff was in fact "government speech" and used that as an argument to continue the program, despite calls on the part of farmers to end it. LSP and its allies paid close attention to the beef checkoff case, because previous to that the organization had worked with other members of the Campaign for Family Farms to end the pork checkoff. The culmination of that campaign was a nationwide vote by hog farmers in 2000 to terminate the program—more than 30,000 farmers voted and they chose to end the program by 5 percentage points. That vote was later thrown out in early 2001 in a backroom deal between then-Secretary of Agriculture Ann Veneman and the NPPC.

This rejection of the vote began a series of court cases. The Campaign for Family Farms and individual hog farmers, including LSP members Rich Smith and Jim Joens, argued in their lawsuit that the mandatory pork checkoff was unconstitutional because it infringes on hog producers' right to free speech and association by forcing them to pay into a program that supports factory-style hog production and corporate control of the industry, and thus is detrimental to their interests.

Courts at the federal, district and circuit levels agreed with this argument. However, the Supreme Court's decision on the beef checkoff trumped all those lower court arguments.

It turns out the commodity elite weren't done suppressing freedom of expression and transparency in 2005—even if it required doing an about-face on their reasoning.

## ➔ More Information

• The Food Politics website has extensive coverage of the issue related to attempts to suppress information on commodity checkoff programs. Go to www.foodpolitics.com and search the term "checkoff."

• Tufts University's Parke Wilde regularly writes about checkoff programs at http://usfoodpolicy.blogspot.com.

• *Fortune Magazine* has provided extensive coverage of the legislation related to checkoffs: http://fortune.com/2016/07/14/checkoff-program-reform-bill.

• The April/May/June 2005 issue of the *Land Stewardship Letter* (*page 14*) describes the Supreme Court decision on the beef checkoff and its ramifications for the pork checkoff: http://landstewardshipproject.org/about/landstewardshipletter.

## ➔ More Myth Busters

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