

California Farm Futures

Spring 2010

The newsletter of California FarmLink, a non-profit organization working to promote family farming and preserve farmland through facilitating farm transfers



Congressman Joe Baca receives California FarmLink's "Steward of Family Farming" Award



Last month, California FarmLink was proud to honor Congressman Joe Baca with its "Steward of Family Farming" Award at the California Small Farm Conference, for his leadership and commitment to helping immigrant and beginning farmers have fair access to USDA programs and resources.

The Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

(OASDFR), through its successful grant recipients, allows socially disadvantaged producers to successfully acquire, own, operate, and retain farms and ranches, and to assure equitable participation in the full range of USDA programs. Congress has appropriated more than \$18 million to the OASDFR program since 2002, and as a result, the program presently has approximately 55 active projects in 26 states.

Generally, socially disadvantaged producers who participate in OASDFR-funded projects develop profitable new farming or ranching practices, receive loans more rapidly, increase their farm or ranch income, continue farming or ranching longer, and are less likely to go out of business.

The program has supported California non-profits including California FarmLink, Agriculture Land Based Training Association, National Center for Appropriate Technology, University of California Cooperative Extension, Cachuma Resource Conservation District, Hmong American Community, and others.

"I thank California FarmLink for this recognition, and am proud to serve as a voice for beginning and socially disadvantaged farmers in Congress. The good work done by California FarmLink and other advocates is essential to ensuring the future of family farming in our great state. I look forward to continuing our work together as we fight for increased opportunity and equality for all of America's farmers", says Representative Baca.

"Representative Baca's independence and leadership within the agricultural community and Latino Caucus have consistently proven to deliver for minorities, women, and immigrant farmers, which in turn strengthen the broader agricultural community," explains Schwartz.

Representative Baca has served in Congress since 1999, representing the 43rd District of California. He serves on the House Agriculture Committee and is Chair of the Subcommittee on Departmental Operations, Oversight, Nutrition and Forestry. He helped pass record breaking funding levels for food stamps and nutrition programs and was key in the fight for increased funding in the 2008 Farm Bill.

FarmLink blankets the state with workshops and conferences!

Workshops were held across the state in the last four months, including Santa Cruz, Stockton, San Joaquin, Placer, San Mateo, Elk Grove, Sonoma and Marin counties. Two of the workshops focused on reaching South East Asian farmers in Central Valley. Topics ranged from access to land and capital, passing the farm to next generation, preserving farmland through conservation easements, and a finance expo – one stop shopping for farmers with lenders on hand to answer questions. Almost 300 attendees absorbed a wide range of information at these workshops.

A couple of these events garnered FarmLink some good press: The California Report: <http://www.californiareport.org/archive/R912030850/b>; Santa Cruz Sentinel on passing on the farm: http://www.santacruzsentinel.com/ci_14496435. The Marin 2-day workshop, with support from the "Farm LASTS Project", focused day one on aspiring "linking" organizations giving them valuable tools with which to grow, and the second day on cutting edge tools such as affirmative easements for use by land preservation entities.

From the Executive Director

With the many workshops and mixers we've hosted over the last few months, one recurring theme is change in the external environment that impacts farmers' viability. Food safety legislation and changes in the estate tax are on many farmers' minds. These issues are balanced with excitement about new opportunities to market produce locally and a drop in land prices on smaller properties. At our February 4th workshop in Humboldt County, we felt the shift in a physical way, with a 6.0 earthquake whose epicenter was only 40 miles offshore!

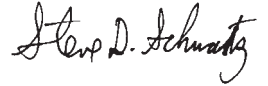
One big change at California FarmLink is with our Board. Our Chairman Keith Abeles has stepped down after several years of excellent service. During his tenure, he embraced many challenging tasks for our non-profit. Abeles brought his experience as a farmer, and also as former staff for a larger non-profit. His perspective reflected a blend of calm, wisdom and humor. We thank you, Keith! Long-time board member Brett Melone has taken the role of Chair.

I've been encouraged to see the energy in the policy arena over the last several months around beginning farmer issues in anticipation of the 2012 Farm Bill. At the National Sustainable Agriculture Coalition's Washington D.C. "fly-in" and the Drake Forum on America's New Farmers, the Beginning Farmer and Rancher IDA Pilot Program was highlighted as an important

tool to help new farmers, with its matching savings and investment building. It's a tough year to secure funding for a new program, but essential to demonstrate the potential impact of it going forward.

Please call your Congressional representatives to show your support. The action alert is available at <http://www.californiafarmlink.org>.

With all these changes, I continue to be inspired by our "next generation" farmers. David, in Tulare County, has worked with his parents for many years to demonstrate his commitment to farming, and clarify his role in transitioning the leadership on their diverse family farm. For him, a breakthrough came at the end of FarmLink's recent two-day Fresno Succession Conference. Persistence like David's, helps inform our work going forward.



Brett Melone – ALBA, Eleazar Juarez – Farmer, Devin Rhinerson – Feinstein's Aide, Steve Schwartz – CFL, Rebecca King – Farmer
Photograph by Jess Daniel, Intern at NSAC

Could you Mentor a New Farmer? Or Do You Seek a Mentor to teach you?

California FarmLink is now offering to bring farmers together for on-farm teaching and learning the business end of farming. A FarmLink Needs Assessment survey found an overwhelming majority of beginning farmers were interested in on-farm mentoring on record-keeping, cash-flow budgeting, financial management, marketing, and more. We've also identified experienced farmers willing to share their skills and knowledge.

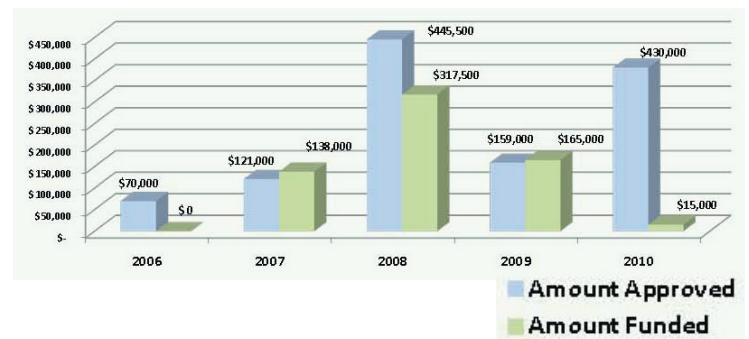
For a farmer just starting out, the chance to visit and learn about how a mature farm operates is priceless, and could help prevent mistakes. An experienced farmer-mentor who visits with beginning farmer once every quarter (or month, or year) can provide much-needed guidance on business management decisions, helping his or her "mentee" move ahead.

We launched our mentorship program with workshops addressing ways to effectively transfer farm business skills to the next generation, sharing mentorship agreement models, and information on effective mentorships. Our next step is to begin linking mentors with beginning farmer mentees.

If you know someone you would like to work with, or you're willing to mentor farmers in your area, please get in touch with your Regional Program Coordinator. We'll be glad to assist linking mentors to mentees, negotiating and writing mentorship contracts, translation for non-English speakers, suggested curriculum for mentors to transfer business skills, and more.

FarmLink's Revolving Loan Fund Enters its 5th Year

This chart shows the overall activity of the loan program since 2006. The information includes the loans approved and loans funded.



CCOF certification fee waivers for five farmers!

CFL has an opportunity to offer five CCOF certification fee waivers on a first come first serve basis to FarmLink clients who've not previously been certified. Priority will be given to FarmLink clients. This means a farmer who's been on a tour, gotten linking technical assistance, attended a workshop, or been in our database prior to 2010. Farmers who get certified could be bringing that "something extra" to the landowner they're leasing from. Contact your Regional Coordinator for further details!

The Farm Intern Conundrum

by Reggie Knox



Over the last several years, an increasing number of small farms in California and Oregon have been fined or shut-down by state labor bureau officials for having intern programs. In most circumstances the 1938 Federal Fair Labor Standards Act is a protective mechanism for employees, but should it apply to all farm internships?

This January, FarmLink helped organize a workshop at the Eco-Farm Conference to explore this topic. The panel included

an Oregon and a California farmer who had tangled with labor law officials. The third panelist was attorney and farmer Neil Hamilton, director of the Agricultural Law Center at Drake Law School in Iowa, and an advisor to USDA Secretary of Agriculture Vilsack.

Both farmers had learned how to farm through internships, and later started their own programs to give new farmers that same "practical" experience. The Oregon farm's 25-year old apprenticeship program treated its apprentices as employees, taking out employment taxes and worker's comp. It paid \$1,000/mo. plus room and board, a \$50/mo. bonus for working to the end of the season, \$30 per farmer's market, and a performance bonus of up to \$2,000 – by most standards a high-end intern compensation package.

However, a 2006 apprentice was unhappy about not receiving a performance bonus and filed a claim with Oregon's Bureau of Labor and Industries (BOLI) seeking back wages. The farm responded with detailed accounting showing that the value of food and lodging, stipend and bonuses bettered minimum wage. BOLI didn't accept this and informed the Oregon farmer in 2008 that he owed the claimant over \$5,600. The same apprentice filed a worker's comp and civil rights claim with OSHA. The farm passed a surprise OSHA inspection and the discrimination claim was dismissed.

"There is no entry level position for small farmers. A prospective farmer with no experience cannot compete with someone who has been farming for several years, so it's cost prohibitive to pay a brand new farmer minimum wage. We need more farmers, so the law needs to shift to reflect the dilemma of how to train more farmers," said the Oregon farmer.

The California farmer received an unannounced visit from a state labor official in 2008. At the time, he and his business partner farmed four acres with three interns and two part-time employees to supply a 90-member CSA, roadside stand, and restaurant accounts. The official questioned the owners about their workers, and then interviewed each worker separately. The interns were receiving room, partial board and a stipend of \$300 to \$400 a month for 40 hours a week. "It was a mutually agreed upon package. They were there to learn about farming through hands-on practical training. There were no complaints and everyone was happy," said the farmer.

The day of the shutdown was peak tomato harvest. The labor official – a Deputy Labor Commissioner from California's Department of Labor Standards Enforcement (under the Dept of Industrial Relations) - issued a stop work order, along with two citations and two notices to discontinue labor law violations. There were 14 violations for the three interns. The farmers were required to do a self-audit and pay all back wages

and all taxes for all volunteers for the past three years.

Furthermore, the labor official told them if they chose to continue having interns without coming into compliance they would either be fined \$10,000 or go to jail for 60 days. "We decided not to go to jail," said the California farmer. "Instead, we ran the farm by ourselves for five days, came into compliance, forked out a lot of money and hired back our interns as employees at minimum wage".

Last year their farm had 82 applications for two minimum wage apprenticeship positions! To reduce the number of applicants, the farm now only accepts apprentices with one or two years of experience. Coming into compliance cost the partners half their net income and forced them to double in size to accommodate the cost of the upgrade.

These examples illustrate why farms with internship programs should be concerned. Since that workshop, we've learned of at least five additional labor standards enforcement actions on California farms with internship programs in Marin, San Mateo and San Diego counties.

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Labor Laws

The federal Department of Labor provides a six-factor test to determine if a "trainee" is not an employee and thereby exempt from hour and wage requirements:

1. The training is similar to that which would be given in a vocational school.
2. The training is for the benefit of the trainees.
3. The trainees do not displace regular employees, but work under close observation.
4. The employer providing training derives no immediate advantage from the activities of trainees, and on occasion his operations may actually be impeded.
5. The trainees are not necessarily entitled to a job at the completion of the training period.
6. The employer and the trainees understand the trainees are not entitled to wages for the time spent in training.

The California Labor Department's Policy and Interpretation Manual states that, "to be exempt from wage and hourly requirements, the intern training must be an essential part of an established course of an accredited school or institution approved by a public agency, that the program must not be for the benefit of any one employer and that the training must be supervised by a school or a disinterested agency."

Whether it's called an apprenticeship, internship or volunteer program, the bottom line is whether or not your state labor department views the relationship as an employee-employer relationship. If an intern can be classified as an employee they must be paid a minimum wage. It seems that many internship programs on farms do not meet more than one or two of the standards in the six-factor test. Furthermore, both Oregon and California labor laws appear to prohibit volunteers from working on farms. For more information, contact your state labor bureau for trainee and volunteer criteria.

After this disconcerting news from the two farmers, panelist Neil Hamilton provided historical context for the issue, and explored possible solutions.

For Hamilton's research project at Drake Law, they interviewed farmers in six states to discuss internships. Oregon and California have been the hotbed of this issue developing. "Although the structure of internships on all the farms varied greatly," said Hamilton, "each farmer had the sense they were doing important work by providing a training opportunity, and each had concerns about the risks and legal aspects of what they were doing."

Ten years ago, when Hamilton authored *The Legal Guide to Direct Farm Marketing*, how to address farm internships was already a question. There had been some problems, mostly with housing interns on farms and "it was clearly a confusing and poorly developed issue that existed in the shadows" said Hamilton. Since then, "there has been a surge in interest in better food, significant recognition in the role of local foods and small farms, and growing interest by young people in becoming farmers... These forces have combined to create a growing demand and opportunity for small farms and direct markets and have led to a greater need for labor. The things this movement has worked for have borne significant fruit and internships are in many ways the heart and soul of this movement."

According to Hamilton, what has become more complicated, is the lack of formal legal structure to address internships and the need for agriculture training.

Possible Solutions

"For most farmers", said Hamilton, "the bottom line is that your primary job is farming and even though you can play an important role in being an educator or trainer, your farm is not a school". Developing a formalized educational system requires significant time. "It's not just a labor issue – it's in many ways also a liability and insurance question."

The most direct way to go is to treat all interns as employees, pay at least minimum wage and comply with employment standards. Have employees keep records of their hours, and sign their timesheets to verify accuracy even if they are salaried.

If you choose to have an apprenticeship program, consider working with an established, accredited institution such as a community college.

A CPA in the audience had seen several farms set up separate businesses for the educational component of the farm, as in the case of a dude ranch that is a working cattle ranch and also a hotel. Clients pay money to move cattle, but don't do it very well. The business owner sells his consulting knowledge and reports it on Schedule C, while farm income goes on Schedule F.

Have a contract between the apprentice and farmer that gives the apprentice a plot of land and lets him/her take full responsibility for it, filing his/her own tax return and showing his/her own expense and income for that plot. The intern may be doing various things on the larger farm, but will be running his/her own business on the leased plot. The lease can state that the intern is using your equipment, or your barn and this is reflected in the rent payment.

Washington State just passed legislation in March creating an internship category within state labor laws and a process where farm employers and employees can apply and be designated as internships. This may be a direction we want to explore in California. www.islandguardian.com/archives/00003167.html

Resources

Oregon Extension agent and farmer Maud Powell is working with farmers to develop new internship models that comply with labor laws. This group wrote the *Farm Internship Curriculum and Handbook* with a grant from the Western Sustainable Agriculture Research & Education (SARE). See http://attra.ncat.org/intern_handbook/

The Rogue Farm Corps in Oregon assists apprentices and farmers, by developing curriculum and addressing legality. They partner with a community college and have both classroom and farm components as well as a step-by-step "checklist" for hiring employees.

The next edition of Neil Hamilton's *Legal Guide to Direct Farm Marketing*, soon to be released, will include a more developed component on internship issues.

Ask FarmLink for a copy of the "To Do List for Farm Employers" developed by an Oregon farmer.

Cultivating a New Crop of Farmers: Is On-Farm Mentoring Right for You? Comprehensive guide with worksheets, published by New England Small Farm Institute: www.smallfarms.org/bookstore/order.pdf

Recommendations

If offering food and housing as part of a compensation, package look into the legalities. The deduction authorization may be very specific.

The employer may be allowed to deduct the fair market value of housing from wages provided to the intern. It may be even better to have the intern pay the employer for lodging, rather than deduct the cost of lodging from the intern's paycheck. Don't expect the labor department to accept any monetary value for an educational experience offered even if the employee attests to it.

Recognize that periodically you will have bad relationships - people may not like the work and may leave. If you have paid them and complied with legal requirements, you have minimized your exposure.

If you're going to have an educational program, put it in writing and have a written agreement describing it. Work first to establish a competent group of core employees and then consider how to manage your educational program. A good educational program will take time to develop and no one approach will suit every farm or potential farmer.

Pay all pay roll and other taxes, worker's compensation insurance and meet OSHA requirements. Do whatever you can to reduce risks on your farm operation, including training people to use equipment or machinery.

Ask your state labor bureau's technical assistance department about legally required postings.

One farmer asked whether a farm that is a non-profit is allowed to have volunteers. Non-profits have employees and are subject to labor laws like any other business. How you're organized from a tax standpoint doesn't affect employee labor issues or liability with insurers.

Have adequate farm liability insurance and consider a limited liability corporation (LLC) or other corporate structure that protects your personal assets. Tell your insurer what is taking place on the farm so that they can get you the insurance you need.

Central Coast: Monterey County, 6-acre lease near Prunedale (ID# 1002):

Owner lives on this ten-acre site and has three acres above and three acres below for lease. Property has been fallowed and mowed regularly since 1992 and is eligible for organic certification. Soil is well-drained and mostly sloping. Good well and irrigation system, including 5,000 gallon tank and buried mainline to both fields. Property shares a driveway with neighboring flower growers.

Central Valley: Tiny but Lucrative Turn-key Farm, Sacramento (ID # 1156):

Juke Marshall, spunky, classy, middle-aged Thai woman has thriving business to pass down. In the early 2000's, on just a few acres, Marshall started a farm called "Please Eat the Daisies." She raised high-value, gourmet vegetables, herbs, and edible flowers, marketing mostly to restaurants. Cultivating her reputation for high quality, she stayed with products that pay. After investing in a greenhouse, barn with walk-in cooler, refrigerated diesel truck, compost, irrigation and mulching supplies, she made a good living on less than an acre. She still distributes dry goods to restaurants, but is ready to leave the business to someone with more energy. There are fruit trees and roses, a good vegetable plot, and infrastructure. She would like to lease or sell the business. The house (3 bedrooms, 2 baths) may also be for rent. Best of all, this skilled savvy retiring farmer is willing to mentor!

Central Valley

A beginning rancher in Sacramento started his grass-fed cattle business on grazing land he found through California FarmLink. Case Hoogland apprenticed for a successful rancher who also markets grass-fed beef, and then he was ready to build his own herd. Landowner Dave Whitlow attended FarmLink's Fall Mixer in Elk Grove, seeking a producer to use his rural property which was ready for grazing. It has a fenced pasture and year-round pond. Central Valley Outreach Coordinator, Kendra Johnson introduced them and then helped work out the details of their lease, running it by a Sacramento attorney before it was signed.

Housing development is springing up around this property, and Whitlow intends to sell the land in the not-too-distant future. For Hoogland though, even six to twelve months is enough for him to get started.



Beginning rancher Case Hoogland and landowner Dave Whitlow shake after signing new grazing lease.

North Coast

Dustin Dougherty, a young farmer with a strong business plan, found a place to farm in Orleans, on property owned by Tony and Allen Burroughs, non-farmers who live in San Jose. Andrea Krout, our North Coast Outreach Coordinator, facilitated their lease agreement. Dougherty will lease 20 acres of this 50 acre ranch for vegetables. He calls his farm "Home Plate Farm" and blogs on freshmanfarmer.com.

Kevin and Shae Lynn (pictured on right) are aspiring farmers looking for land in Sonoma County. Kevin told us, "To my fiancé and I, farming is an opportunity to work in a job that incentivizes and rewards devotion to family and community while producing a product that enhances the land and respects our animals. We are looking for a piece of land that we can care for and hopefully pass on to our children."



FarmLink in the News

Debut on NPR's The California Report

<http://www.californiareport.org/archive/R912030850/b>

Great story on retiring farmer to young farmer transition (this also ran in San Jose Mercury News and Oakland Tribune)

http://www.santacruzsentinel.com/ci_14496435

California Small Farm Conference in San Diego

<http://www.sdn.com/sandiego/2010-03-23/lifestyle/dont-give-up-the-farm-annual-conference-addresses-agricultural-hardships>

Farm families' struggle with succession – Fresno Bee

<http://www.fresnobee.com/2010/03/25/1873321/are-valley-family-farms-a-dying.html>

Recent Op/Ed Piece in San Francisco Chronicle on Federal funding for IDAs, by one of FarmLink's IDA recipients

http://www.sfgate.com/cgi-bin/blogs/opinionshop/detail?blogid=42&entry_id=59786#ixzz0j7reXIsK



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Farm Tours

The Central Coast Office hosted two day-long farm tours this February in Santa Cruz and San Mateo Counties. On February 19th, eight aspiring farmers came out to tour eight properties in Santa Cruz and Watsonville areas. One property owner has been linked with a Santa Cruz aspiring farmer on a small plot of land perfect for large market garden and orchard. On the second tour, nine farmers braved the wind and rain to visit four properties around Pescadero and San Gregorio.



Tours from our Davis office focused on the Sacramento region due to renewed activity there. Sixteen new landowners posted opportunities in Sacramento County this linking season!

FarmLink Programs

- Linking beginning farmers and ranchers to landowners and retiring farmers
- Farm Opportunities Loan Program – infrastructure, equipment, land purchase
- Technical Assistance – including business planning and finance, land tenure, farm transition/succession.
- Workshops and conferences on above topics

For current information, go to our website:
<http://www.californiafarmlink.org>

Donate – How you can help.

As a small non-profit organization, we welcome your support. Your contribution, no matter how small, makes a difference! You can now donate on line through PayPal, or by mailing your check to us at P.O. Box 2224, Sebastopol, CA 95473.

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