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TOP TEN AGRICULTURAL LAW DEVELOPMENTS OF 2008

by Roger A. McEowen*

1. The 2008 Farm Bill made changes to existing commodity programs, including a new "ACRE" program as an option the direct and counter cyclical payment programs. While many farmers will consider how the ACRE program may work for them, others could be impacted by reduced levels in payment limitations, as a result of a change in the definition of "adjusted gross income" for the operator and the owner, and the elimination of the "three entity rule." The Farm Bill also included numerous tax provisions of importance to farmers, including partial relief from self-employment tax for CRP payments for some recipients. The Food, Conservation, and Energy Act of 2008, H.R. 6124, Pub. Law. No. 110-234.

2. A federal appellate court ruled that livestock sellers will not have to prove that buying practices of a meat packer adversely impacted competition. In a case brought against Pilgrim's Pride, the court held that the Packers and Stockyards Act did not require a producer to prove lack of competition on a price manipulation claim. *Wheeler v. Pilgrim's Pride Corp., 536 F.3d 455 (5th Cir. 2008).*

Note: The court's opinion was followed by a Federal District Court case in *White, et al. v. Pilgrim's Pride Corporation, et al., No. 2-07-CV- 522 (TJW), 2008 U.S. Dist. LEXIS 74793 (E.D. Tex. Sept. 29, 2008).* The court's opinion is contrary to U.S. Circuit Courts of Appeal opinions from the Seventh, Eighth, Ninth, Tenth and Eleventh Circuits. With the Fifth Circuit's contrary opinion, the U.S. Supreme Court may be asked to resolve the conflict (cont. on page 2)

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DOMESTIC PRODUCTION ACTIVITY DEDUCTION FOR MEMBERS OF COOPERATIVES

by Philip E. Harris*

Farmers are receiving Form 1099-PATR as well as statements about the pass-through of the domestic production activities deduction (DPAD) from their cooperatives. These forms and statements have generated a number of questions from farmers and their income tax preparers. While the rules are confusing, they do have a significant positive effect on the tax returns of members of cooperatives that elect to pass the DPAD through to their members.

The most common question is how the increased amounts being reported in box 3 of the Form 1099-PATR should be reported on the farmer's income tax return. To address that question and related issues, this article begins with a discussion of the DPAD as it applies (cont. on page 3)

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between the Circuits.

3. In a case primarily of interest to western landowners, a federal appeals court ruled that it will not be as inclined as in recent years to accept complaints from environmental groups that challenge activities on public lands. In the particular case, the court held that it was not a scientific body qualified to decide a logging dispute, deferring to the regulatory agency. *The Lands Council, et al. v. McNair, 537 F.3d 981 (9th Cir. 2008).*

Note: On three occasions, the Federal District Court for the Eastern District of California has followed the Ninth Circuit's opinion. See *People v. United States Department of Agriculture, No. 2:05- cv-0211-MCEGGH, 2008 U.S. Dist. LEXIS 72817 (E.D. Cal. Aug. 18, 2008); Pacific Rivers Council v. United States Forest Service, No. 2:05-cv-00953-MCE-GGH, 2008 U.S. Dist. LEXIS 85403 (E.D. Cal. Sept. 18, 2008); California Forestry Association, et al. v. Bosworth, et al., No. 2:05-cv-00905-MCE-GGH, 2008 U.S. Dist. LEXIS 77079 (E.D. Cal. Sept. 23, 2008).*

4. As of the end of 2008, the IRS had lost all of the legal issues presented in several cases involving a provision contained in the 2005 overhaul of the bankruptcy code as applied to Chapter 12 farm bankruptcy. That provision changed the priority status of governmental claims in a Chapter 12 bankruptcy to general unsecured, non-priority status if the debtor receives a discharge. The courts have ruled that IRS was not following the intent of Congress regarding the liquidation of assets and how they are to be taxed after the bankruptcy filing. *In re Knudsen, 389 B.R. 643 (N.D. Iowa 2008); In re Dawes, 382 B.R. 509 (Bankr. D. Kan. 2008); In re Hall, 393 B.R. 857 (D. Ariz. 2008) and In re Schilke, No. 4:07CV3283, 2008 U.S. Dist. LEXIS 68176 (D. Neb. Sept. 9, 2008).*

5. The Swampbuster rules were included in the conservation provisions of the 1985 Farm Bill and bar farm program payment eligibility for cropping a wetland. But, in 2008, one court ruled against USDA in a case involving farmland that had only water-loving plants as the evidence of a wetland. The court held that there must also be wetland soils and wetland hydrology to meet the definition of a wetland. *B & D Livestock Co. v. Schafer, No. C 07-3070-MWB, 2008 U.S. Dist. LEXIS 90038 (N.D. Iowa Nov. 5, 2008).*

6. In some respects, by the end of 2008 "mad cow" disease had faded from the headlines. But, a major case remains in the courts, and a 2008 federal court held in favor of USDA when it prevented a private livestock operation from conducting its own testing program and privately selling beef to foreign buyers. The court, in a highly questionable opinion that reversed the trial court, said USDA can stop private testing in lieu of spot testing throughout the entire packing industry. But "stay tuned" on this one, because it remains in litigation. *Creekstone Farms Premium Beef, L.L.C. v. Department of Agriculture, 539 F.3d 492 (D.C. Cir. 2008).*

Note: The case is not over. The court remanded the case to the trial court to rule on whether the USDA acted arbitrarily and capriciously in refusing to allow the plaintiff to test its cattle in violation of the Administrative Procedures Act.

7. Two federal appellate courts, over the past decade, have addressed the question of whether USDA must pay attorney fees in cases where it is determined that the USDA's legal position was not justified by the law. In 2008, a third federal appellate court held that USDA must pay attorney fees when USDA applies its regulations in error. *Five Points Road Joint Venture, et al. v. Johanns, 542 F.3d 1121 (7th Cir. 2008).*

Note: The Eighth Circuit case is *Lane v. United States Department of Agriculture, 120 F.3d 106 (8th Cir. 1997)*, and the Ninth Circuit case is *Aageson Grain and Cattle, et al. v. United States Department of Agriculture, 500 F.3d 1038 (9th Cir. 2007).*

8. For many cash basis farmers, deferral of crop income to the year following the year of harvest is a common tax-planning technique. Deferral is also available for crop insurance and disaster proceeds if the farmer has a business practice of deferring the crop income. IRS has said that requires a business practice of deferring more than 50 percent. In 2008, the Tax Court ruled that the IRS interpretation of the statute was correct. *Nelson, et al. v. Comm'r., 130 T.C. 70 (2008).*

9. In 2008, independent cattlemen won a court battle with the USDA that focused on a USDA rule allowing cattle over 30 months old to be imported from Canada as part of an overall effort to prevent "mad cow" disease. The court determined that USDA developed the rule without engaging in the proper notice and comment procedures as required by federal law. As a result, the USDA's rule was remanded with instructions to the agency to engage in proper rulemaking procedures. *Ranchers Cattlemen Action Legal Fund ; United Stockgrowers of America, et al. v. United States Department of Agriculture, 566 F. Supp. 2d 995 (D. S.D. 2008).*

10. USDA's controversial premises registration requirement for livestock producers to identify their facilities for the alleged purpose of tracing movement of diseased livestock has been a contentious issue for several years. USDA, in September of 2008, mandated registration for producers engaged in interstate movement of livestock. But, in December of 2008, USDA rescinded the requirement when opponents challenged it, also under USDA's public notice requirements. *USDA APHIS-VS Memo. No. 575.19 (Dec.22, 2008), rescinding USDA APHIS-VS Memo. No. 575.19 (Sept. 22, 2008).*

* * * * *

"It is common sense to take a method and try it. If it fails, admit it frankly and try another. But above all, try something."
-Franklin D. Roosevelt

to cooperatives and their members and then directly addresses the questions raised by the forms and statements sent by cooperatives.

Background

I.R.C. § 199 allows taxpayers to claim a deduction on their income tax return based on their net income from production activities in the United States. The domestic production activities deduction (DPAD) for tax years beginning in 2009 is limited to the lesser of:

• 6% of the qualified production activities income (QPAI);

• 6% of the entity's taxable income without regard for I.R.C. § 199 (modified adjusted gross income for individual taxpayers); or

• 50% of Form W-2 wages paid during the year by the taxpayer.

The 6% rate increases to 9% for tax years beginning after 2009. (The deduction rate was 3% in 2005 and 2006.) QPAI is equal to domestic production gross receipts (DPGR) reduced by the sum of the following:

• cost of goods sold (CGS) allocable to DPGR;

• other deductions and expenses directly allocable to DPGR; and

• a share of other deductions and expenses that not directly allocable to DPGR or another class of income.

DPGR are receipts derived from the lease, rental, license, sale, exchange, or other disposition of qualifying production property that is manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States [I.R.C. § 199 (c)(4)]. Qualifying activities include cultivating soil, raising livestock, and fishing as well as storage, handling, and other processing (other than transportation activities) of agricultural products [Treas. Reg. § 1.199-3(e)(1)].

QPAI for many farmers is the sum of their net income reported on Schedule F (Form 1040), Profit or Loss from Farming, and net gain from sale of raised livestock reported on Form 4797, Sales of Business Property. However there are exceptions to this general rule.

Wages

For some farmers, the 50% of wages limitation is the binding constraint on their DPAD because they have very little on no paid labor. Wages for which withholding is not required are excluded from "Form W-2 wages." Therefore, wages paid in commodities, wages paid for agricultural labor to a child of the proprietor (or all partners) who is under age 18, and compensation paid in nontaxable fringe benefits are not included in "Form W-2 wages." For tax years beginning after May 17, 2006, only the wages allocable to DPGR are qualified wages for the 50% of wages limitation.

Patrons of Cooperatives

The DPAD is a confusing issue for members of cooperatives. Unlike the treatment of owners of other pass-through entities such as partnerships and S corporations, the DPAD deduction for products sold by a cooperative is calculated at the entity level and the cooperative can elect to pass part or all of the DPAD through to its members based on their patronage [I.R.C. § 199(d)(3)]. Because the DPAD is calculated at the cooperative level and the deduction passes through to the members of the cooperative, the deduction on the member's tax return is not limited by the member's adjusted gross income or Form W-2 wages.

Cooperative's DPAD

A cooperative engaged in marketing agricultural and horticultural products is treated as having produced any products that are produced by its patrons and marketed by the cooperative [I.R.C. § 199(d)(3)(D) and Treas. Reg. § 1.199-6(d)]. In determining the pass-through DPAD, the cooperative's taxable income and QPAI are computed without taking into account any deductions for patronage dividends, per-unit retain allocations, and nonpatronage distributions under I.R.C. § 1382(b) and (c) [I.R.C. § 199(d)(3)(C) and Treas. Reg. § 1.199-6(c)].

This rule led many cooperatives to take a closer look at how they characterize their payments to members for the members' commodities. The characterization depends on the member agreement with the cooperative. The IRS examined those agreements in five letter rulings (PLR 2008-38-011 September 19, 2008; PLR 2008-43-015, October 24, 2008; PLR 2008-43-016, October 24, 2008; PLR 2008-43-023, October 24, 2008; PLR 2008-52-022, December 26, 2008), and ruled in each of them that the cooperatives' payments to the members for their commodities were advance per unit retains payments in money (PURPIM). Consequently, the cooperatives do not have to deduct those payments from their DPGR to compute their QPAI. Treating the payments for commodities as PURPIM significantly increases the cooperative's QPAI and potentially the DPAD the cooperative can elect to pass through to its members.

Example 1

Ruraltown Farmer's Cooperative is a marketing cooperative that had $5,000,000 in gross receipts in 2008 from the sale of corn its members delivered to it, who are the farmers that produced the corn. Ruraltown paid $4,000,000 to its members at the time they delivered the corn and another $500,000 in patronage dividends after the close of the 2008 tax year. Ruraltown also had $500,000 of other expenses that includes $120,000 of wages.

Historically, Ruraltown treated the payments to its members at the time they delivered corn as payments for the purchase of the corn. However, after reviewing its membership agreement in light of the letter ruling issued by the IRS, Ruraltown concluded that those payments are PURPIM. Therefore, it did not deduct those payments from DPGR to compute its QPAI for 2008 and it included those payments in box 3 of the 2008 Forms 1099-PATR it sent to its members.

Because Ruraltown marketed grain produced by its members, all of its receipts are DPGR. Consequently all of its expenses are allocable to DPGR, and its QPAI is $4,500,000 ($5,000,000 - $500,000). (If Ruraltown's payments to members at the time they delivered corn were purchases of the corn, the $4,000,000 cost of the corn would be an expense that is deducted from the cooperative's DPGR, which would reduce the cooperative's QPAI to $500,000 ($5,000,000 - $500,000 - $4,000,000).

Ruraltown's DPAD is $30,000, which is

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the least of:

1. 6% of its $4,500,000 QPAI, which is $270,000,

2. 6% of its $500,000 taxable income, which is $30,000, or

3. 50% of its $120,000 wages, which is $60,000.

Member's DPAD

The member's deduction is the DPAD of the cooperative that is allocable to the following:

• Patronage dividends paid to the patron in money, a qualified notice of allocation, or other property (except a nonqualified written notice of allocation), and

• Per-unit retain allocations that are paid to the patron in qualified per-unit retain certificates.

I.R.C. § 199(d)(3)(A)(ii) requires the cooperative to designate the patron's portion of the income allocable to QPAI in a written notice mailed by the cooperative to the patron no later than the fifteenth day of the ninth month following the close of the tax year.

Example 2

Joe Corngrower, a member of Ruraltown Farmer's Cooperative from the previous example, marketed 50,000 bushels of corn through Ruraltown in 2008, which was 2% of all the grain Ruraltown marketed that year. Ruraltown elected to pass its entire $30,000 DPAD through to its members and allocated 2% ($600) of it to Joe. Joe reports that $600 DPAD on line 21 of his 2008 Form 8903, Domestic Production Activities Deduction. Joe can deduct that full $600 regardless of his adjusted gross income (AGI) or Form W-2 wages because a DPAD that is passed through from a cooperative is not subject to the 6% of AGI or 50% of wage limitations on the member's income tax return.

No Double Counting

Treas. Reg. § 1.199-6(l) states, "A qualified payment received by a patron of a cooperative is not taken into account by the patron for purposes of section 199." Therefore, patronage dividends paid to the patron in money, a qualified notice of allocation, or other property (except a nonqualified written notice of allocation) or in per-unit retain allocations that are paid to the patron in qualified per-unit retain certificates are not included in a member's DPGR.

It is important to note that this rule excludes the listed items from the member's DPGR whether or not the cooperative elects to pass part or all of its DPAD through to its members. Therefore, the cooperative's election to pass through DPAD to its members has no effect on the members' DPGR.

Example 3

Joe Corngrower from the previous examples cannot include the payments he received from Ruraltown in his DPGR because Ruraltown has characterized those payments as PURPIM and patronage dividends. He cannot include those payments in his DPGR even if Ruraltown passed none of its DPAD through to its members.

Effect of 5% Safe Harbor

There is no guidance on the interaction of Treas. Reg. § 1.199-6(l) and the safe harbor under Treas. Reg. § 1.199-1(d)(3)(i) that allows a taxpayer to treat all receipts as DPGR if less than 5% of the taxpayer's total gross receipts are non-DPGR. If a patron qualifies for the 5% safe harbor, can he or she include qualified payments from a cooperative in DPGR because all receipts are included? Or does Treas. Reg. § 1.199-6(l) override the 5% safe harbor and exclude the qualified payments from the patron's DPGR?

Under general rules of statutory interpretation, a more specific rule takes precedence over a more general rule if they are in conflict. Treas. Reg. § 1.199-6(l) is the more specific rule in this case and would take precedence over the 5% safe harbor under that rule of statutory interpretation.

Cooperative's DPAD is not reduced

I.R.C. § 199(d)(3) and Treas. Reg. § 1.199-6 do not explicitly state the effect of a cooperative's election to pass its DPAD through to it patrons on the DPAD the cooperative can claim. They do not require the cooperative to reduce its DPAD deduction but do not state that it does not have to reduce its deduction. However, Example (2) of Treas. Reg. § 1.199-6(m) allows the cooperative, to deduct the full amount of the DPAD that it passed through to its patrons. P.L.R. 2008-38-011 (September 19, 2008) states, "the cooperative remains entitled to claim the entire section 199 deduction on its return (provided that it does not create or increase a patronage tax loss)."

I.R.C. § 199(d)(3)(B) and Treas. Reg. § 1.199-6(b) require the cooperative to reduce the deduction it would otherwise claim against its taxable income under I.R.C. § 1382(b) for per-unit retain allocations and patronage dividends by the amount of the DPAD that it elects to pass through to its patrons. The reduction of that deduction has the same effect on the cooperative's taxable income as reducing the cooperative's DPAD by the DPAD passed through to the cooperative.

Reporting on Farmers' Tax Returns

Based on the preceding analysis, the questions raised by the Forms 1009-PATR and DPAD statements sent to farmers by cooperatives can be addressed.

Question 1: The original 2008 Form 1099-PATR my client received from her cooperative reported $10,000 in box 3, which is the per unit retain that she received in January 2008 based on the grain she marketed through the cooperative in 2007. An amended 2008 Form 1099-PATR increases the amount reported in box 3 by the $100,000 of grain that she delivered in 2008 and for which she was paid in 2008. If I report this entire amount on line 5b of Schedule F (Form 1040), the grain sales will be included in income twice. How should the amount in box 3 be reported?

Answer 1: By reporting the $100,000 the member received for grain sales in box 3 of Form 1099-PATR, the cooperative is stating that the payment for grain is a per unit retain paid in money (PURPIM). That determination is based on the membership agreement. Because of that determination, the $100,000 from the cooperative for the grain should not be reported as grain sales on line 4 of Schedule F (Form 1040). It should be included on both lines 5a and 5b of Schedule F (Form 1040).

Reporting the $100,000 for grain as part of the PURPIMs on line 5b of Schedule F (Form 1040) is consistent with the Treas. Reg. § 1.199-6(l) statement that those payments are not included in the member's DPGR. Your client's 2008 DPGR does not include the $100,000 she received for the grain.

Question 2: This same client received a statement from her cooperative that says it has elected to pass through 60% of its DPAD to its

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members, and my client's share of the pass-through is $3,600. The $3,600 is reported in box 6 of her 2008 Form 1099-PATR. I understand that the $3,600 is reported on line 21 of my client's 2008 Form 8903, Domestic Production Activities Deduction. Because that amount is only 60% of the DPAD that the cooperative could have passed through to my client, can I include 40% of her $100,000 milk sales in her 2008 DPGR to calculate her DPAD?

Answer 2: No, because the cooperative has determined that its payments for members' grain are advance payments of PURPIMs, those payments are not included in the members' DPGR regardless of the cooperatives election to pass through some, all, or none of its DPAD.

Question 3: My client received a 2008 Form 1099-PATR with $270,000 in box 3. That amount matches the $20,000 he received in PURPIMs in 2008 and his $250,000 of milk checks that he received in 2007. I reported that $250,000 as milk income on his 2007 income tax return. How should I report the $270,000 shown in box 3 on his 2008 income tax return?

Answer 3: Some cooperatives calculated the 2008 DPAD that they passed through to their members based on the commodities the member delivered in 2007. They then reported the 2007 payments for commodities in box 3 of the 2008 Form 1099-PATR so that it is consistent with the DPAD that is passed through in box 6 of the 2008 Form 1099-PATR. With hindsight, they agree that the 2007 payments should have been reported in box 3 of the 2007 Form 1099-PATR. However, they are not sending amended Forms 1099-PATR.

To work around this reporting problem, you should report the full $270,000 from box 3 of Form 1099-PATR on line 5a of the 2008 Schedule F (Form 1040) but report only $20,000 on line 5b. Attach a statement to the return that says the $250,000 was reported as milk income on your client's 2007 income tax return.

If you included the $250,000 of milk income in your client's DPGR to calculate his 2007 DPAD, you should tell your client that he should amend his 2007 tax return to report a DPAD that is based on DPGR without the $250,000 of milk income. That is true whether or not the cooperative elected to pass its DPAD through to its members. The cooperative's determination that the 2007 payments for milk are advance payments of PURPIM excludes those payments from the members' DPGR without regard to the cooperative's DPAD pass-through election.

Summary

The tax rules for a cooperative's DPAD are complicated and different from the rules for other entities. The differences among cooperatives add to the confusion. Some of the more confusing issues are:

1. Payments from cooperatives for members' commodities have traditionally been reported by the cooperative and the members as a sale of the commodity to the cooperative. The DPAD rules have caused cooperatives to look more closely at that characterization because of the tax benefits of treating those payments as per unit retains paid in money (PURPIM). Many cooperatives have concluded those payments are PURPIM and therefore do not have to be subtracted from the cooperative's DPGR to compute their QPAI. Another consequence of that characterization is that the members cannot include the payments they receive from the cooperative in their DPGR when they compute their own DPAD.

2. The cooperative chooses how much, if any, of its DPAD that it passes through to it members. The cooperative's choice has no effect on its members DPGR because members cannot include PURPIM or patronage dividends in their DPGR regardless of the cooperatives choice of how much DPAD is passed through to members.

3. Some cooperatives have calculated their 2008 DPAD based on commodities delivered to them in 2007 while others have computed their 2008 DPAD based on commodities delivered to them in 2008. The year on which the DPAD is based affects the members of the cooperative because, in most cases, that is the first year the cooperative has treated all of its payments to its members as PURPIM or patronage dividends and therefore is the first year the members must exclude all payments from the cooperative from their DPGR.

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AGRICULTURAL LAW BIBLIOGRAPHY: 4th Quarter 2008

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Administrative Law

Note, Sunstein's Blunder; or, the Perils of Reconstructing Precaution, 20 Geo. Int'l Envtl. L. Rev. 473-497 (2008).

Agricultural Law: Attorney Roles and Educational Programs

Kershen, What is Agricultural Law? Proposing Production Agriculture as the Core, 25 Agric. L. Update 1-5 (12-2008).

Animals — Animal Rights

Geyer & Mitchell, Prendre La Chevre – When the State "Gets your Goat", 25 Agric. L. Update 1, 4-5 10-2008.

Aquaculture

Howarth, Aquacultural Possibilities and Legal Obstructions: Salmon Ranching in the United Kingdom, 4 Int'l J. Estuarine & Coastal L. 1-25 (1989).

Howarth, Fish Farming and Agriculture: Some Legal Contrasts, 67 J. Agric. Soc. 114-136 (1986).

Howarth, The Legal Status of Fish Farming, 1987 J. Plan. & Env't L. 484-496 (1987).

Howarth, Agricultural Pollution and the Aquatic Environment in W. Howarth & C. Rodgers (eds.), Agriculture, Conservation And Land Use 52-72 (Univ. Wales Press, 1992).

William Howarth, The Law Of Aquaculture pp. 271 (Blackwell Scientific Pubs., 1990).

Springsteen, State-Level Catfish Labeling

(cont. on page 6)

*Professor of Law, The University of Oklahoma

Laws (National AgLaw Center Publications) 10-2008, http://www.nationalaglawcenter.org.

Biotechnology

Comment, Regulating the Regulators: The Increased Role for the Federal Judiciary in Monitoring the Debate over Genetically Modified Crops, 25 UCLA J. Envtl. L. & Pol'y 333-369 (2007).

Glenn, "Government Wrongs": Civil Liability for GMO Regulation in Canada, 18 J. Envtl. L. & Prac. 169-194 (2008).

Peck, Plant Biotechnology Law after Geertson Seed Farms: Potential Impacts on Regulation, Liability, and Coexistence Measures (National AgLaw Center Publications) 9-2008, http://www.nationlaglawcenter.org

Energy Issues

Colares, A Brief History of Brazilian Biofuels Legislation, 35 Syracuse J. Int'l. L. & Com. 293-308 (2008).

Comment, Are Biofuel Crops the Next Kudzu?, 17 San Joaquin Agric. L. Rev. 247-277 (2008).

Foy, The Renewable Fuels Standard Provisions under the Clean Air Act: Overview and Recent Developments (National AgLaw Center Publications) 7-2008, http://www.nationalaglawcenter.org.

Student Note, Can Biofuels Solve the Problems of American Foreign Oil Dependence?, 16 Southeastern Envtl. L. J. 457 (2008).

Symposium, Emerging Trends in Agricultural Law: The Law and Policy of Ethanol, 53 S.D. L. Rev. 425-547 (2008).

• Duffield, Xiarchos & Halbrook, Ethanol Policy: Past, Present, and Future, 425-453.

• Broin, et al., Legal Issues Involving Ethanol Production in South Dakota, 454-514.

• Henry, Chaney & Hopkins, A Call to Farms: Diversify the Fuel Supply, 515-537.

• Long, Alternative Energy Policy in a Season of Political Acrimony: a Survey of the Montana 2007 Legislature's Approach to Biofuels Legislation, 538-547.

Student Article, The Environmental Protection Agency's "Major Emitting Facility" Definition and its Effect on Ethanol Facilities: A Review of the Amended Rule and its Potential Pitfalls and Successes in South Dakota, 53 S.D. L. Rev. 548-579 (2008).

Environmental Issues

Centner, Courts and the EPA Interpret NPDES General Permit Requirements for CAFOs, 38 Envtl. L. 1215-1238 (2008).

Comment, From Sewer to Farmland: Does the Dormant Commerce Clause Require a Farming Community to Accept Big City Sludge as a Fertilizer for Crops?, 17 San Joaquin Agric. L. Rev. 59-83 (2008).

Comment, Protecting Farmers from Global Warming: California Faces Legal Challenges Regulating Greenhouse Gases, 17 San Joaquin Agric. L. Rev. 135-151 (2008).

Comment, Constitutional Standing Based on California's Agricultural Industry, 17 San Joaquin Agric. L. Rev.153-170 (2008).

Comment, Methamphetamine and Cocaine Manufacturing Effects on the Environment and Agriculture, 17 San Joaquin Agric. L. Rev. 343-359 (2008).

Howarth, Regulating Agricultural Water Pollution, 72 J. Agric. Soc'y 101-125 (1992).

Note, Managing Manure: Using Good Neighbor Agreements to Regulate Pollution from Agricultural Production, 61 Vanderbilt L. Rev. 1555-1595 (2008).

Searchinger, Cleaning Up the Chesapeake Bay: How To Make an Incentive Approach Work for Agriculture, 16 Southeastern Envtl. L. J. 171-205 (2007).

Farm Labor

General & Social Welfare

Comment, Love's Labors Lost: Achieving the Promise of California Agriculture by Cultivating an Improved Response to California's Theft of Labor Problem, 17 San Joaquin Agric. L. Rev. 171-200 (2008).

Comment, Farm Labor Vehicle Safety in California, 17 San Joaquin Agric. L. Rev. 201-226 (2008).

Comment, Extreme Weather Events and Heat-Related Illnesses in Outdoor Employment, 17 San Joaquin Agric. L. Rev. 321-342 (2008).

Food and Drug Law

Adams, et. al, Déja Moo: Is the Return to Public Sale of Raw Milk Udder Nonsense?, 13 Drake J. Agric. L. 305-346 (2008).

Jones, Guide to Compliance with the Japanese Positive List (National AgLaw Center Publications) 9-2008, http://www.nationalaglawcenter.org.

Loureiro, Liability and Food Safety Provision: Empirical Evidence from the US, 28 Int'l. Rev. L. & Econ. 204-211 (2008).

Roberts, International Legal Issues Concerning Animal Cloning and Nanotechnology – More of the Same or Are "The Times They are A-Changin" (National AgLaw Center Publications) 12-2008, http://www.nationalaglawcenter.org.

van der Meulen & Freriks, The Emergence of a Multi-Layered Controls System in the European Food Sector, 2 Utrecht L. Rev. 156-176 (2006).

Zedalis, Labeling of Genetically Modified Foods, 35 J. World Trade 301-302 (2001).

Forestry

Comment, The Future of Logging in the Giant Sequoia National Monument, 17 San Joaquin Agric. L. Rev. 277-292 (2008).

Hunting, Recreation & Wildlife

Wagner, Kaiser & Kruetter, Managing the Commons Texas Style: Wildlife Management and Groundwater Associations on Private Lands, 43 J. Am. Waterworks 698-711 (2007).

Wagner, Kaiser & Wilkins, Collective Action and Social Capital of Wildlife Management Associations, 71 J. Wildlife Mgt. 1729-1738 (2007).

International Trade

Zedalis, GMO Food Measures as "Restrictions" under GATT Article XI(1), 11 European Environmental L. Rev. 16-28 2002

Zedalis, United States/European Communities Biotech Products Case: Opportunity for World Trade Organization Consideration of whether Internally Applied Non-Tax Measures Fall within the Scope of the General Agreement on Tariffs and Trade Article XI(1)'s Reference to "Other

(cont. on page 7)

Measures," 38 J. World Trade 647-659 2004.

Land Reform

Miller & Tolina, Land to the Tiller Redux: Unlocking Ethiopia's Land Potential, 13 Drake J. Agric. L. 347-376 (2008).

Rosato-Stevens, Peasant Land Tenure Security in China's Transitional Economy, 26 B.U. Int'l. L. J. 97-141 (2008).

Land Use Regulation

Land Use Planning and Farmland Preservation Techniques

R. Corbett (ed.), Protecting Our Common Future: Conflict Resolution Within The Farming Community 109 pp. (1990).

J. Keene & J. Freedgood, Saving American Farmland: What Works (American Farmland Trust) (1997).

Nelson, Economic Critique of U.S. Prime Farmland Preservation Policies, 6 J. Rural Studies 119-142 (1990).

Richardson, Conservation Easements and Ethics, 17 San Joaquin Agric. L. Rev. 31-58 (2008).

Winter, Does a Williamson Act Contract Have Constitutional Status?, 17 San Joaquin Agric. L. Rev. 1-29 (2008).

Marketing Boards, Marketing Orders, Marketing Promotion, & Marketing Quotas

Crespi & McEowen, The Constitutionality of Generic Advertising Checkoff Programs, Choices 61-65 (2nd Q. 2006).

Patents and Other Intellectual Property Rights in Agriculture

Note, Super Crops or a Super Problem? The Battle over Bt Corn (Monsanto Company v. Bayer Bioscience N.V., 514 F.3d 1229, 2008), 15 Mo. Envtl. L. & Pol'y Rev. 531-553 (2008).

Pesticides, Herbicides, Insecticides, Fungicides, Fertilizers

Comment, Market Share Liability Shouldn't Die: Proposed Application to Agricultural Pesticides and the Need to Refine the Apportionment of Liability, 17 San Joaquin Agric. L. Rev. 85-108 (2008).

Public Lands

Wrabley, Cowboy Capitalism or Welfare Ranching? The Public Lands Grazing Policies of the Bush Administration, 29 Pub. Land & Res. L. Rev. 85-122 (2008).

Rural Development

Mirus, States' Agritourism Statutes (National AgLaw Center Publications) 8-2008, http://www.nationalaglawcenter.org.

Note, "I Miss Mayberry:" Revitalizing American's Rural Downtowns, 13 Drake J. Agric. L. 419-436 (2008).

Surveys

M. Olexa et. al, A Handbook Of Florida Agricultural Laws, UF/IFAS Cir. 1224, 61 pp. 2004.

Sustainable & Organic Farming

Comment, The Cost of Low-Price Organics: How Corporate Organics Have Weakened Organic Food Production Standards, 59 Ala.. L. Rev. 799-830 (2008).

Comment, Got Organic milk? "Pasture"-ize It!: An Analysis of the USDA's Pasture Regulations for Organic Dairy Animals, 14 Animal L. 237-264 (2008).

Comment, Massachusetts v. Environmental Protection Agency and the Organic Movement: Can the "USDA ORGANIC" Label Save Us from Nitrous Oxide, 17 San Joaquin Agric. L. Rev. 109-134 (2008).

Hamilton, Feeding our Green Future: Legal Responsibilities and Sustainable Agricultural Land Tenure, 13 Drake J. Agric. L. 377-399 (2008).

Krueger, Hushed Up: Confidentiality Clauses in Organic Milk Contracts pp. 8 (FLAG) 4-2008.

Krueger, When Your Processor Requires More than Organic Certification: Additional Requirements in Organic Milk Contract pp. 12 (FLAG) 4-2008.

Redick and Bligh, A Twisting Path Toward a National Standard for Sustainable Agriculture, 25 Agric. L. Update 1, 3-6 (11-2008.

Torts and Insurance

Comment, Honeybee Nice to Your Neighbors: Solutions to the Dispute Between Beekeepers and Citrus Growers in California's San Joaquin Valley, 17 San Joaquin Agric. L. Rev. 227-246 (2008).

Grossman, Anticipatory Nuisance and the Prevention of Environmental Harm and Economic Loss from GMOs in the United States, 18 J. Envtl. L. & Prac. 107-167 (2008).

Note, Genetically Modified Organisms: Who Should Pay the Price for Pollen Drift Contamination?, 13 Drake J. Agric. L. 401-418 (2008).

Veterinary Law

Note, What's Up Doc?: A Critique of Veterinarian Experts Addressing Toxic Torts in the Environment under the Daubert Threshold Inquiry, 22 J. Nat. Res. & Envtl. L. 55-68 (2007).

Water Rights: Agriculturally related

Bretsen & Hill, Irrigation Institutions in the American West, 25 UCLA J. Envtl. L. & Pol'y 283-331 (2007).

Howarth, Agricultural Water Rights in A. Lennon (ed.), Agricultural Law, Tax and Finance P1-P96 (Sweet & Maxwell, 1994).

Kaiser & Binion, Untying the Gordian Knot: Negotiated Strategies for Protecting Instream Flows in Texas, 38 Nat. Res. J. 157-196 (1998).

Kaiser, A Bibliographic Pathfinder on Water Marketing, 37 Nat. Res. J. 881-908 (1997).

Kaiser, Texas Water Marketing in the Next Millennium: A Conceptual and Legal Analysis, 27 Tex. Tech. L. Rev. 181-261 (1996).

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"Change is the law of life. And those who look only to the past or present are certain to miss the future."

-John F. Kennedy

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From the Executive Director:

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A reminder that the dates of the 2009 Annual Agricultural Law Symposium have been changed from October 16-17, 2009 to September 25-26, 2009.

Please make any adjustments to your calendars so that you won't miss this year's conference. President-elect Ted Feitshans is planning a very extensive program with a wide variety of topics and issues to be covered in a year of change and challenge for agriculture and agricultural law. If you would like to help with a presentation, contact Ted at ted_feitshans@ncsu.edu.

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