



The Feed

Recent Developments in Ag Law & Policy

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

Volume 1, Issue 9

May 12, 2023

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Supreme Court Issues Ruling in Case on Prop 12. The United States Supreme Court has issued its highly-anticipated ruling in a case challenging California's Proposition 12 (Prop 12) which bans the sale of pork born from sows kept in confined housing. The National Pork Producers Council together with American Farm Bureau Federation initially filed a lawsuit challenging Prop 12, arguing that the law violated the United States Constitution by regulating in-state and out-of-state actions the same way. According to the plaintiffs, Prop 12 violated a Constitutional doctrine known as the "dormant Commerce Clause" which the Supreme Court has interpreted as prohibiting states from passing laws that unduly restrict interstate commerce. A federal court in California dismissed the challenge to Prop 12, determining that the voter-approved ballot initiative did not violate the dormant Commerce Clause. The Supreme Court has agreed. Going forward, pork born from sows kept in confined housing may not be sold in the state of California. To read the Court's decision, click [here](#).

Food Labeling: Federal. A bipartisan group of federal legislators have reintroduced a bill known as the Food Date Labeling Act of 2023 which would help establish a standard system of food labeling. Specifically, the bill would require food labeling to use standardized language to communicate expiration dates. The phrase “best if used by” would indicate the date when food quality begins to deteriorate, while the phrase “use by” would indicate that food should not be used after that date. The Food Date Labeling Act is meant to eliminate confusion around the various terms currently used in food labeling such as “sell by,” “use by,” “expires on,” etc. The text of the bill is available [here](#), and additional NALC food labeling resources can be found [here](#).

Food Labeling: California. The federal government is not the only place where food labeling bills are being considered. The California state legislature is currently considering **AB 660** which eliminate “sell by” language from food labels and instead require food manufacturers to use either “best if used by” or “used by” labels. If AB 660 should pass, it would likely apply to out-of-state food manufacturers shipping products into California. Following the Supreme Court’s decision in the Prop 12 lawsuit, it is also likely that courts would find AB 660 to be legally permissible.

Chevron Deference Before High Court. The United States Supreme Court has agreed to hear a case that asks the court to revisit the decades-old precedent known as *Chevron* deference, the doctrine of judicial deference granted to federal agencies. Under *Chevron* deference, courts will defer to an agency’s interpretation so long as that interpretation is not unreasonable and Congress has not directly spoken on the issue at question. The case now before the Supreme Court concerns an order from the National Marine Fisheries Service which interprets the Magnuson-Stevens Act to require fishing companies to pay for a federal inspector on board fishing vessels. The ruling on this case could provide major implications for future environmental and other regulations. To read the complaint before the Court, click [here](#). Click [here](#) to read the Supreme Court decision establishing *Chevron* deference. More NALC resources on Administrative Law are available [here](#).

WOTUS Update: 2023 Rule Enjoined in Kentucky. The Sixth Circuit Court of Appeals has issued an injunction blocking the 2023 WOTUS rule from taking effect in the state of Kentucky while a challenge to the rule brought by Kentucky and a coalition of business groups is litigated. This decision follows a temporary stay of the rule issued by the Sixth Circuit in April. While the 2023 rule is enjoined, Kentucky will interpret WOTUS according to the 1980s regulations. The Sixth Circuit’s decision is available [here](#), and additional NALC resources on WOTUS can be found [here](#).

Colorado: Water Rights. The Colorado Supreme Court has issued a decision concluding that the State Engineer, who is tasked with administering water rights in the state, had the authority to impose requirements on a large cattle feedlot company that had been using its wells for unapproved purposes. The wells at issue were approved for irrigation use, however the company had instead been using the wells for its cattle feeding operations for at least thirty years. Among the requirements imposed by the State Engineer is that the feedlot company replace all the water used for unapproved purposes. The Colorado Supreme Court’s decision is available [here](#).

Idaho: Groundwater Curtailment. A recent water methodology order issued by the Idaho Department of Water Resources could result in 900 eastern Idaho groundwater users losing access to water. The order applies to a portion of the Eastern Snake Plan Aquifer, and affected parties could see their water curtailed if they do not have a mitigation plan in place or are not in compliance with a previously established plan. Farmers and ranchers in the affected area are not confident they will be able to water crops and irrigate land this year. The curtailment has been put on hold until a hearing in

early June. Click [here](#) to read the methodology order, and [here](#) to access more Water Law resources from NALC.

Texas: Right to Farm. Two different right to farm bills have cleared the Texas legislature in the last few weeks. **HRJ 126** is a proposed constitutional amendment which would affirm that Texas citizens have the right to engage in farming, ranching, timber production, or wildlife management on any property that they own or lease. Because HRJ 126 is a constitutional amendment, it will now head to the statewide ballot on November 7. Missouri and North Dakota have enacted similar constitutional provisions. To read more about the Missouri amendment click [here](#). **HB 2308** is aimed at protecting agricultural operations by preventing private citizens from bringing a nuisance action or any other actions intended to restrain agricultural activity against any agricultural operation that has been operating lawfully for at least one year. This bill has passed both chambers and is on the governor's desk. Finally, a third right to farm bill has passed the Texas House of Representatives and is currently awaiting hearing from the Senate. If adopted, **HB 1750** would reduce the ability for city governments to pass laws restricting agricultural activity within city limits. To see your state's right to farm law click [here](#).

Foreign Ownership of Ag Land: Proposals. Since January 2023, more than half of states have proposed one or more bills to restrict foreign ownership. In the past few days, new proposals have been filed in Louisiana (**SB 91**), New Jersey (**A 5383**), and Wisconsin (**SB 264**). For prior bills, see Volume 1, Issue 1 (Jan. 11) [here](#); Volume 1, Issue 2 (Jan. 25) [here](#); Volume 1, Issue 3 (Feb. 8) [here](#); Volume 1, Issue 4 (Feb. 24) [here](#); Volume 1, Issue 5 (March 9) [here](#); and Vol. 1, Issue 6 (March 22) [here](#); Volume 1, Issue 7 (April 14) [here](#); Volume 1, Issue 8 (April 28) [here](#). NALC's "Foreign Ownership of Agricultural Land: FAQs & Resource Library" is available [here](#).

Foreign Ownership: Enacted. Recently, Florida (**SB 264**), Montana (**SB 203**), and Tennessee (**HB 40**) enacted laws which seek to restrict certain foreign investments in land located within their state. These states join Arkansas, Idaho, Utah, and Virginia to enact a foreign ownership law in 2023. Also, North Dakota enacted a law (**HB 1135**) which amends the state's foreign ownership law to restrict foreign governments from acquiring or holding an interest in the state's agricultural land. To view states' laws restricting foreign ownership of private agricultural land, click [here](#).

Amending Corporate Farming Law. The North Dakota state legislature recently enacted **HB 1371**, which amends the state's corporate farming law to provide more flexibility to certain livestock operations under the state's corporate farming law. Overall, this amendment authorizes certain livestock farm corporations and limited liability companies with 10 or fewer shareholders or members to purchase and lease up to 160 acres of farmland or rangeland. Click [here](#) for the NALC Corporate Farming Laws Reading Room.

Pesticides: Neonicotinoids. The Environmental Protection Agency (EPA) has recently published an analysis of effects that the neonicotinoid pesticides clothianidin, thiamethoxam, and imidacloprid have on species listed as threatened or endangered under the Endangered Species Act (ESA). According to that analysis, the neonicotinoids may jeopardize the continued existence of between 9% and 11% of species listed under the ESA. EPA will provide its analysis to Fish and Wildlife Services for further determinations. The report from EPA is available [here](#).

Klamath River. On May 10, a federal court in California heard oral arguments on a motion for preliminary injunction filed by the Yurok Tribe that, if granted, would prevent irrigation activity in the Klamath River Basin until the Bureau of Reclamation could demonstrate that it had satisfied

Endangered Species Act requirements for three listed fish species in the Klamath Basin. While the judge indicated that he did not see a basis for issuing an injunction, he did direct the Bureau of Reclamation to submit a final 2023 operations plan for the Klamath Basin, after which the parties may ask the court for some kind of relief. The motion for preliminary injunction is available [here](#). To learn more about this lawsuit, read NALC article [Judge Issues Ruling in Klamath River Dispute](#).

Lake Erie. A federal judge in Ohio has approved a consent decree settling a lawsuit between environmental groups, Ohio environmental regulators, and the Environmental Protection Agency (EPA). The lawsuit concerned pollution in Lake Erie, including phosphorous and nutrient runoff, which has caused toxic algae blooms in the Lake every summer for decades. Under the consent decree, the Ohio Environmental Protection Agency will develop Total Maximum Daily Loads to reduce runoff into Lake Erie from industry, sewer plants, and animal feeding operations. The consent decree is available [here](#).

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June 8-9 · Memphis, TN

"Early Bird" Bonus CLE Online on May 24

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The **Mid-South Agricultural & Environmental Law Conference** will be held on June 8-9 at the iconic University of Memphis Cecil C. Humphreys School of Law. The annual "Beer & BBQ" networking dinner will be held at The Rendezvous on June 8 with the program itself on June 9. The in-person June 9 program is also available via livestream.

The "Early Bird" registration deadline is May 23 to receive 3 hours of free online CLE. NASDA CEO Ted McKinney will deliver the keynote address via the May 24 "Early Bird," moderated by Wes Ward, Secretary, Arkansas Department of Agriculture.

Agenda, registration, and continuing education information available [here](#).

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This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

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