



# The Feed

*Recent Developments in Ag Law & Policy*

The Feed is a bi-weekly publication highlighting recent legal developments affecting agriculture.

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**FY23 Approps, Elections, & Ag.** In late 2022, the Consolidated Appropriations Act of 2023 was signed into law, available [here](#), which included approximately \$25 billion in agriculture-related spending spread across areas including rural development, conservation programs, producer assistance, and heirs property. Additionally, Senate Ag Committee Chairwoman Debbie Stabenow announced, [here](#), that she will not seek re-election in 2024.

The impact of these and other 2022 election developments will be discussed in a Jan. 25 NALC webinar, "Looking Ahead: Impact of the 2022 Elections on Ag Law & Policy" presented by Hunt Shipman, Principal & Director, Cornerstone Government Affairs. Register [here](#).

**WOTUS.** In late December, EPA announced its highly-anticipated final rule to redefine the term "waters of the United States," or WOTUS, under the Clean Water Act. For more background on this latest rule, you can access "WOTUS Update: EPA Releases Highly Anticipated Final Rule to Redefine 'Waters of the United States,'" available on the NALC website [here](#). For additional resources on the Clean Water Act, visit the NALC Clean Water Act Reading Room [here](#).

On March 15, NALC Staff Attorney Brigit Rollins will present "What's Up with WOTUS: An Overview of 'Waters of the United States' and Why it Matters to Agriculture." Register [here](#).

**Foreign Ownership of Ag Land.** The issue of restricting foreign ownership/investment

in agricultural lands continues at both state and federal levels. So far in 2023, state-level proposals have been or are expected to be formally introduced in at least six states, including Florida (**planned legislation**), Missouri (**SB 9, SB 55, SB 76, SB 144, SB 332, SB 334, HB 430, HB 465, HB 499**), North Dakota (**HB 1135**), South Carolina (**H 3566**), South Dakota (**planned legislation**), and Texas (**SB 147, HB 1075**).

The Consolidated Appropriations Act of 2023 included language that directs USDA to establish an electric filing system for individuals and entities required to disclose their ownership interests in farmland under AFIDA, as well as create an online database that contains the data obtained from these disclosures. Additionally, several federal proposals were introduced in the 117th U.S. Congress that will likely reappear in the 118th U.S. Congress.

On Jan. 18, NALC Staff Attorney Micah Brown will present "Foreign Ownership of Ag Land: Federal & State Legislative Update." Register [here](#). For other resources and information, see "Foreign Investments in Agricultural Land: FAQs & Resource Library," available [here](#).

**Arizona Alfalfa, Saudi Money.** The newly-elected Arizona Attorney General Kris Mayes seeks to terminate lease agreements for Arizona farmland between the state of Arizona and a company headquartered in Saudi Arabia. For a local video news story on this issue, click [here](#) (12News Arizona).

**Pesticides: Paraquat Update.** The 9th U.S. Circuit Court of Appeals granted EPA's request to pause a lawsuit filed by environmental interest groups challenging EPA's interim registration decision to approve the pesticide paraquat. Paraquat has been the subject of several lawsuits in recent years, along the same line as the litigation trend involving glyphosate. The pause allows EPA two years to review certain aspects of its decision. For background on this legal action, see "Paraquat Receives Interim Registration Decision, Faces Legal Challenges," available [here](#).

**Pesticides: Sulfoxaflor Update.** A decision issued by the 9th Circuit once again found that EPA's registration of the pesticide sulfoxaflor was in violation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as well as the Endangered Species Act. This ruling mirrors the decision issued by the 9th Circuit in 2015. The sulfoxaflor registration will remain in place while EPA conducts a review. Click [here](#) to access the NALC publication, "States, Environmental Groups Challenge EPA Over Sulfoxaflor." The Ninth Circuit decision is available [here](#).

**Pesticides: FIFRA Preemption.** The 11th U.S. Circuit Court of Appeals has agreed to rehear a case concerning whether or not state law failure-to-warn claims are preempted by the Federal Insecticide, Fungicide and Rodenticide Act. In 2022, the 11th Circuit ruled, [here](#), that state law failure-to-warn claims were not preempted by FIFRA. A different ruling in this rehearing could help send the issue to the U.S. Supreme Court. For more background on this issue, see "Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits," available [here](#).

For additional resources on pesticides, visit the NALC Pesticides Reading Room [here](#).

**Right to Repair.** The latest shoe to fall in the ongoing right to repair issue is the Memorandum of Understanding, available [here](#), entered into between the American Farm Bureau Federation and Deere & Co. The MOU addresses the extent to which farmers and independent mechanics can identify and repair issues with Deere equipment. The agreement comes as the company faces a class action lawsuit filed by various farmers who allege that the company has monopolized the repair market for its farm equipment. For a NALC webinar providing background on right to repair issues, click [here](#).

**Crop Insurance.** The 6th U.S. Circuit Court of Appeals held that a corn and soybean farmer was required to return crop insurance payments he had previously been paid. The federally reinsured company asserted that the payments were overpayments. Read the Court's decision [here](#). For additional resources on federal crop insurance, visit the NALC Disaster Assistance/Crop Insurance Reading Room [here](#).

**Court Orders Wetlands Restored.** The 3rd U.S. Circuit Court of Appeals has directed a Pennsylvania farmer to restore approximately 18 acres of wetlands. According to the 3rd Circuit, the farmer had been in violation of a 1996 consent decree between himself and the government since 2016. To read the court's decision, click [here](#).



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