



# 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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**THANK YOU** to the **National Association of State Departments of Agriculture (NASDA) Foundation** for becoming a **Founding Supporter** of The Feed. This support will help the National Agricultural Law Center expand its research and information activities to the agricultural industry in the western United States, as well as help establish the Scott E. Fancher Agricultural Law Scholarship for undergraduate and law students who are interested in careers in agricultural law. The NASDA Foundation is a Diamond Sponsor not only for the inaugural Western Agricultural & Environmental Law Conference, but the 10th annual Mid-South Agricultural & Environmental Law Conference as well. Thank you!

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**WOTUS.** The WOTUS final rule is officially published and its first legal challenge has been filed. EPA formally published the **final rule** on Jan. 18, which is set to go into effect on March 20. The American Farm Bureau Federation and a coalition of industry groups immediately filed a **lawsuit** challenging the rule. Click **here** to register for the March 15 NALC webinar: "What's Up with WOTUS: An Overview of 'Waters of the United States' and Why it Matters to Agriculture." Click **here** for NALC publication, "WOTUS Update: EPA Releases Highly Anticipated Final Rule to Redefine 'Waters of the United States.'" **Western Agricultural & Environmental Law Conference** session: "Moving Targets in Muddied Waters: Advising Farmers, Landowners, and Lenders Regarding Waters of the United States,"

**Foreign Ownership of Ag Land.** In 2023, at least 17 states have proposed laws to restrict certain foreign investments and acquisitions in private land, especially agricultural land. In the past few days, proposals were filed in California (**SB 244**), Hawaii (**HB 505**; **HB 929**), Illinois (**HB 1267**), Oklahoma (**SJR 10**), Washington (**HB 1412**), and Wyoming (**HB 88**; **HB 116**; **SF 124**). These states now join Florida, Mississippi, Missouri, Montana, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, and Virginia. Click [here](#) for NALC webinar (recorded Jan. 18), "Foreign Ownership of Ag Land: Federal & State Legislative Update." Click [here](#) to see the law in your state. **Western Agricultural & Environmental Law Conference** session: "Navigating Foreign Ownership Laws in the Wild, Wild West: Latest Trends and Developments," presented by Marisa Bocci of K&L Gates.

**Streptomycin: Antibiotic/Pesticide Litigation Continues.** On Jan. 23, **oral arguments** were held at the 9th U.S. Circuit Court of Appeals in a legal action challenging EPA's approval of the antibiotic streptomycin as a pesticide for certain citrus crops. Center for Biological Diversity and other plaintiffs initiated the **action** in March 2021, arguing that EPA "failed to ensure that the use of streptomycin would not cause unreasonable harm to human health or the environment" and that EPA failed to conduct a section 7 consultation under the Endangered Species Act.

**CWA Litigation: Slaughterhouses.** A coalition of environmental groups filed a **lawsuit** in federal district court to compel EPA to update its CWA water pollution regulations for slaughterhouses and rendering facilities. Specifically, the plaintiffs contend that EPA has failed to revise the effluent limitation guidelines for discharges of phosphorous and nitrogen from slaughterhouses and rendering facilities for over 18 years, despite the CWA directing EPA to revise such regulations annually.

**Right to Repair & the Clean Air Act.** A complaint was recently filed in the United States District Court for the District of Columbia, seeking a **writ of mandamus** to compel the EPA "to enforce the consumer protection provisions within the Clean Air Act as it pertains to the provision of electronic emission control systems currently withheld by certain manufacturers but required to be available to individuals, independent, or third-parties engaged in the repair, servicing, or diagnosing of motor vehicles or motor vehicle engines used in agriculture, construction, and forestry."

**Poultry Industry Decision Issued.** A federal judge issued a **215-page decision** in the longstanding legal action between the State of Oklahoma and several poultry companies predicated on allegations that poultry litter negatively impacted Oklahoma's water quality. The court concluded that "all defendants, by their conduct, have unreasonably interfered with the public's right to the use and enjoyment of the waters ... in Oklahoma." The court gave the parties a March 17 deadline to come to an agreement on remedies.

**Endangered Species Act: Safe Harbors for Bees.** The United States Fish and Wildlife Service recently **announced** expanded grant funding opportunities for imperiled bumble bees, building on the currently-in-place Candidate Conservation Agreement with Assurances for Monarch Butterfly on Energy and Transportation Lands program. **Western Agricultural & Environmental Law Conference** session: "Cooperative Conservation Under the Endangered Species Act: What Lenders, Landowners & Lawyers Need to Know," presented by Karen Budd-Falen of Budd-Falen Law Offices L.L.C.

**Endangered Species Act: Listing Delayed.** On Jan. 23, the U.S. Fish and Wildlife Service (USFWS) **announced** that it "is delaying the effective date of the final rule to list two Distinct Population Segments (DPS) of the lesser prairie-chicken under the Endangered Species Act" to March 27, 2023.

USFWS stated that the extension allows it “to finalize conservation tools and guidance documents to avoid confusion and disruption for landowners, federal partners, and industry within the lesser prairie-chicken’s five-state range.” For more background on the ESA, visit the NALC Endangered Species Act Reading Room [here](#).

**Environmental Justice.** On Jan. 11, EPA released the **document** “EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum.” The document examines the scope of EPA’s legal authority to consider the cumulative impacts of pollution on historically under-served communities when carrying out agency actions and is an update to EPA’s revised “Legal Tools to Advance Environmental Justice” ([here](#)) issued May 2022. The NALC **publication** “EPA Releases New Environmental Justice Guidance Document” provides additional background.

**Organic Regulations.** On Jan. 18, USDA published its **final rule**, “National Organic Program; Strengthening Organic Enforcement.” Highlights from the rule are that it requires more businesses in the supply chain (i.e., brokers and traders) to be verified as organic, that all organic imports receive an import certificate from USDA’s National Organic Program, and that all non-retail containers used to ship organic products be labeled as organic. For more NALC resources on the National Organic Program, go to the NALC National Organic Program Reading Room [here](#).

**PFAS: Pennsylvania Update.** On Jan. 14, Pennsylvania issued a **final rule** that addresses two per- and polyfluoroalkyl substances, also known as PFAS, and drinking water. This development is one part of an overall trend across the country. Click [here](#) for EPA’s “PFAS Strategic Roadmap: EPA’s Commitments to Action 2021-2024.” The NALC **publication** “EPA Releases PFAS Strategic Roadmap” provides additional background. Another excellent **resource** is “The Everywhere Chemicals,” written by Alexandra Dapolito Dunn of Baker Botts.

*The Inaugural*

# Western Agricultural & Environmental Law Conference

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

**Interested in becoming a conference sponsor?**

Sponsors of the 2023 NALC conferences will be promoted in upcoming editions of The Feed. Contact NALC Director Harrison Pittman for more information at [hmpittm@uark.edu](mailto:hmpittm@uark.edu).

Additionally, information regarding conference sponsorship levels and benefits is available for the Western [here](#) and Mid-South [here](#).

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