



The Feed

Recent Developments in Ag Law & Policy

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

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Thank you to everyone coast-to-coast who has subscribed so far! Be sure to forward the subscription link ([here](#)) to anyone in your networks. Questions, concerns, or suggestions for improvement can be sent to NALC Director Harrison Pittman at hmpittm@uark.edu.

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Animal Ag: Undercover Filming. On Feb. 23, the Fourth Circuit held that North Carolina is prohibited from banning undercover filming of animal farms. The ruling is the latest in a series of First Amendment-based decisions, and another legal victory for plaintiffs such as PETA, Animal Legal Defense Fund, and Center for Food Safety. Click [here](#) for NALC publication "Ag-Gag" Laws: An Update of Recent Legal Developments" (Aug. 2021). Click [here](#) for a suite of NALC publications that provide additional background surrounding this issue. Click [here](#) for the 2019 NALC webinar, "An Overview of 'Ag-Gag' Laws: In Arkansas and Beyond", presented by Senior Staff Attorney Elizabeth Rumley. Stay tuned for registration for

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an upcoming webinar to be held in August.

USDA FSIS: Meat, Poultry, Egg Product Labeling. USDA FSIS issued a **final rule** to, among other times, “expand the circumstances under which it will generically approve the labels of meat, poultry, and egg products.” The comment period closed Feb. 17 and the rule is set to become effective March 20. On July 12, from 12-1 EST, NALC will host a webinar on this topic, presented by **John G. Dillard**, Principal, USDA Practice Head, Olsson Frank Weeda Terman Matz PC. Registration will be posted soon **here**, and announced via the NALC **LinkedIn**, **Facebook**, and **Twitter** accounts.

Utah: Animal burglary bill. Utah is poised to enact the “Theft Defense Amendments” bill (**H.R. 114**), which “provides that it is not a defense to theft of livestock that the livestock is sick, injured, or a liability to the owner.”

Butcher Block Act. In Volume 1, Issue 3 (Feb. 8), it was reported that the Butcher Block Act was reintroduced on January 27, which authorizes USDA to make or guarantee loans for livestock and poultry processing facilities in rural areas. The text of H.R. 559 is now available **here**.

FDA Draft Guidance on Milk. FDA released **draft guidance** regarding the nutritional labeling of plant-based milk alternatives. The guidance document suggests allowing plant-based alternatives to continue using the word “milk” in their label while recommending voluntary labels describing nutritional differences between the plant-based alternative and milk. Comments on the draft guidance must be submitted by April 24, 2023 **here**. Click **here** for NALC publication “Plant Based ‘Milk’ Labeling” which discusses the background and some of the legal issues surrounding this issue.

Appeal: NCBA & National Advertising Division. The National Advertising Commission (NAD), a part of BBB National Programs, **recommended** that JBS USA Holdings, Inc. discontinue claims relating to its goal of reaching “net zero” emissions by 2040. Registration for an upcoming webinar discussing this issue, what is NAD, and its impact in this and other ag sectors, presented by **Kim Bousquet**, Counsel, Davis Wright Tremaine, will be posted soon **here**, and announced via the NALC **LinkedIn**, **Facebook**, and **Twitter** accounts.

Foreign Ownership of Ag Land. Since January, more than half of states have proposed one or more bills to restrict foreign ownership. New proposals have been filed in Arizona (**HB 2676**; **HB 2761**), Arkansas (**HB 1479**) Florida (**HB 835**; **SB 924**), Georgia (**SB 132**; **HB 246**; **HB 452**), Iowa (**HF 211**), Kentucky (**HB 500**), Maryland (**HB 842**; **HB 968**), Michigan (**HB 4134**), and West Virginia (**HB 3436**; **HB 3493**). For prior bills, see Issue 1, Volume 1 (Jan. 11) **here**; Issue 1, Volume 2 (Jan. 25) **here**; and Issue 1, Volume 3 (Feb. 8) **here**. The Virginia legislature passed **SB 1438**. Click **here** for a suite of NALC resources on foreign ownership of land.

- Conference opportunity: **Marisa Bocci**, Partner, K&L Gates, will present “Navigating Foreign Ownership Laws in the Wild, Wild West: Latest Trends and Developments,” as part of the NALC’s inaugural **Western Agricultural & Environmental Law Conference**.

Ag Labor: H-2A. On Feb. 16, a federal court **ruled** against the National Council of Agricultural Employers on their lawsuit stating the DOL had violated that APA by promulgating a new regulation called **Temporary Agricultural Employment of H-2A Nonimmigrants in the United States**. This new rule addresses several issues such as worker conditions, expanded use of enforcement tools and modified the H2A process that the DOL oversees. To learn more about NALC resources on agricultural labor and the laws relating to the H2A program click **here**.

Right to Repair. On Feb. 13 the DOJ filed a **statement of interest** in the Illinois lawsuit involving

farmers suing Deere & Company over the right to repair tractors and farm equipment. This is a procedural motion where the DOJ is asking the court not to grant Deere & Company's motion to dismiss. This would allow the class action lawsuit against Deere & Company to continue forward if the statement of interest persuades the court to not grant Deere & Company's motion. This has been an ongoing issue for several years as various state legislatures have debated right to repair laws for farm equipment. Click [here](#) for NALC webinar "Right to Repair Statutes: Overview, Issues Presented, and Current Status of State Legislation" (Sept. 16, 2020).

Right to Farm Proposals. Arkansas ([HB1434](#)) has joined the list of states with pending Right to Farm proposals with an amendment stating that the party suing the agricultural operation has the burden of proof. The type of changes being proposed vary significantly between the state bills. For example, Oklahoma [HB1457](#) merely removes marijuana operations from the protection provided from nuisance litigation while Nebraska [LB662](#) would significantly increase the protection for agricultural operations. For prior 2023 bills, see Issue 1, Volume 3 (Feb. 8) [here](#). Click [here](#) to see your state's current right to farm law. To see how the various statutes compare with one another, click [here](#).

Farm Bill & Climate: USDA Payments and Crop Insurance. As Congress continues development of the 2023 Farm Bill, GAO issued a [report](#) recommending that USDA farm program payments and crop insurance be linked to climate practices. Click [here](#) for a recording of "Looking Ahead: Impact of the 2022 Elections on Ag Law and Policy" (Jan. 2023), presented by Hunt Shipman, Principal & Director, Cornerstone Government Affairs. Keep up with all Farm Bill developments via Agri-Pulse Communications, Inc. Click [here](#) for trial subscription options.

Water Rights v. ESA. In *Yurok Tribe v. U.S. Bureau of Reclamation*, a California federal district court ruled that the Oregon Water Resources Department could not prevent the federal Bureau of Reclamation from making releases of water from the Upper Klamath Lake for the purpose of endangered species conservation. This is the latest case where a judge has found that Reclamation must comply with the Endangered Species Act when operating water projects in the Western United States. Click [here](#) to read the NALC publication titled, "Judge Issues Ruling in Klamath River Dispute".

- Conference opportunity: Karen Budd-Falen, Senior Partner, Budd-Falen Law Offices LLC, will present *Cooperative Conservation Under the Endangered Species Act: What Lenders, Landowners, & Lawyers Need to Know*, as part of the NALC's inaugural **Western Agricultural & Environmental Law Conference**.

Lawsuit Challenges Pesticide-Treated Seeds. An environmental interest group has filed a lawsuit in the state of California, challenging the California Department of Pesticide Regulation's (DPR) policy towards pesticide-treated seeds. Currently, DPR does not regulate treated seeds as though they were pesticides. The environmental plaintiffs have asked the judge to end this policy, and direct DPR to begin regulating treated seeds the same way they regulate pesticides. The plaintiff's complaint is available [here](#).

EPA to Reinstate Pesticide Spray Protections. EPA has released a pre-publication of a proposed rule that would repeal the 2020 application exclusion zone (AEZ) requirements of the Agricultural Worker Protection Standard and reinstate some pre-2020 requirements. In general, the AEZ requirements establish "buffer zones" around pesticide application sites where only trained pesticide handlers may be present during a pesticide application. The 2020 AEZ rule would have prevented these zones from extending beyond the boundaries of the agricultural operation where a pesticide is being applied.

Pesticides: Sulfoxaflor. EPA has opened a comment period on a new application to use the pesticide

sulfoxaflor in compliance with an order from the Ninth Circuit Court of Appeals finding that EPA should have sought public comment when it expanded the number of crops to which sulfoxaflor could be applied in 2019. The comment period will be open until March 27. Click [here](#) to see EPA's proposal and find out how to submit a comment.

- Conference opportunity: NALC Staff Attorney Brigit Rollins will present *Pesticides in the Mid-South: Litigation and Regulatory Update*, as part of the **10th Annual Mid-South Agricultural & Environmental Law Conference** online/bonus "Early Bird"

Conservation Programs: CRP Signup. USDA has **announced** that it will be accepting applications for the Conservation Reserve Program general signup from Feb. 27 to April 7. More than 23 million acres are currently enrolled in the program, and USDA is hoping to enroll an additional 27 million this year. Click [here](#) to read the NALC publication titled, **Building Blocks: Basics of CRP**. Click [here](#) to visit the NALC Conservation Programs Reading Room.

Additionally, USDA **has also announced** that it is releasing the first round of funding for conservation programs that was provided in the Inflation Reduction Act to encourage "climate-smart" conservation on agricultural land. Check out NALC publication, "Ag & the IRA: Conservation Provision in the Inflation Reduction Act" [here](#) for more information on IRA conservation funding.

CWA: Congressional Review Act. Republican legislators in both the Senate and the House have proposed a Resolution of Disapproval pursuant to the Congressional Review Act aimed at invalidating the Revised Definition of "Waters of the United States" issued by the Environmental Protection Agency in December. Because the Congressional Review Act allows Congress to void regulations adopted by federal agencies, if passed the Resolution of Disapproval would overturn the new WOTUS rule. The Senate proposal is available [here](#), and the House proposal is [here](#). To view a NALC publication on the timeline of WOTUS over the decades click [here](#).

- Webinar opportunity: Register [here](#) for upcoming NALC webinar, *What's Up With WOTUS: An Overview of "Waters of the United States and Why It Matters to Agriculture*.

CWA: Ninth Circuit Reinstates 2020 Rule. The Ninth Circuit issued a **ruling** to reinstate a Clean Water Act regulation adopted in 2020 that limited the power of states and tribes to effectively veto National Pollutant Discharge Elimination System permits issued by the Environmental Protection Agency. The Ninth Circuit held that the lower court failed to find that the 2020 rule was unlawful before overturning it. Click [here](#) for the NALC publication titled, *Court Vacates CWA 401 Certification Rule*, which discusses the lower court's ruling.

Conservation Easement Limitation. Montana has a current bill (**SB 357**) which would cap conservation easements that use state funds to a maximum of forty years subject to some carve outs such as land used for "core habitat" under the ESA, tracts of land less than 1,500 acres, and other miscellaneous exceptions.

- Conference opportunity: Jesse Richardson, Professor of Law at the West Virginia College of Law will present *Conservation Easements & Legal Ethics Considerations*, as part of the **10th Annual Mid-South Agricultural & Environmental Law Conference**.

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The **Western Ag & Environmental Law Conference** is a first-of-its-kind program, focusing on legal issues important to the agricultural industry in the western U.S. It will include up to 14 hours of continuing education credit, including two hours of legal ethics. A livestream option is also available.

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

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