



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

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**THANK YOU** to **Downey Brand LLP** for becoming a **Founding Supporter** of The Feed. Their support as a Diamond Sponsor of the Inaugural Western Agricultural & Environmental Law Conference is integral in allowing the National Agricultural Law Center to expand its research and information activities to the agricultural industry in the western United States.

Downey Brand LLP joins the **National Association of State Departments of Agriculture (NASDA) Foundation** for becoming a **Founding Supporter** of The Feed, which was announced in **Volume 1, Issue 2** of The Feed. Thank you!

**USDA Discrimination.** On Jan. 26, the Justice for Black Farmers Act of 2023 (**S. 96**) was introduced. The proposal seeks, among other things, to create an independent civil rights board to investigate claims and review appeals of discrimination by USDA, place a moratorium on foreclosures while such claims are in process, provide additional funding to address heirs' property. Click [here](#) for NALC webinar "Civil Rights Developments for USDA" (Nov. 16, 2022).

**Competition in Livestock/Poultry.** Sen. Cory Booker (D-N.J.) has called for strengthening the **Packers and Stockyards Act of 1921** ("PSA"), which would change currently accepted practices in livestock and poultry production. His proposal, part of the Justice for Black Farmers Act of 2023 described above, would alter the "tournament

system” used in vertically integrated poultry production, as well as the spot market of non-contracted animals. Additionally, it would allow successful PSA plaintiffs to recover attorney fees. It would also eliminate any requirements that plaintiffs must prove harm to competition in order to prevail in their claims. Further, Booker also recently introduced **S. 271**, which would make similar changes to PSA requirements. These proposals are in line with the Biden Administration’s two proposed regulatory changes to the PSA (discussed in more depth [here](#)), as well as its third **announced-but-not-yet-proposed** PSA regulation, specifically addressing the harm to competition component.

**IRA Distressed Loan Borrowers and Tax Relief.** The Inflation Reduction Act of 2022 offers financial assistance and debt relief to certain “distressed borrowers” whose farming operations are at “financial risk”. The Family Farmer and Rancher Tax Fairness Act (**S. 93**) would exclude distressed borrower payments made under the IRA from gross income for federal income tax purposes. A press release from bill sponsors is [here](#). More information about the distressed borrower provisions in the IRA, a blog post by NALC Staff Attorney Micah Brown, is available [here](#).

**Small-scale meatpacking.** The **Butcher Block Act** was reintroduced on January 27, which was passed by the House in the 117th Congress. The Amplifying Processing of Livestock in the United States Act (**H.R. 530**) was also introduced that same day, which would amend the PSA to allow livestock auction owners to have an interest in a small meatpacking business. First peek: in upcoming proposals, look for the Strengthening Local Processing Act, which (**in its previous form**) would have boosted federal cost share for state-inspected meat processing facilities and create grant programs intended to increase small-scale processing. Click [here](#) to learn more about state meat inspection programs.

**Mandatory COOL.** On Jan. 24, the **American Beef Labeling Act of 2023** was introduced. Along with Sen. Booker’s **Farm System Reform Act**, these proposals promise a revival of the ongoing debate over mandatory country of origin labeling for beef in the midst of the 2023 Farm Bill process. Additional background and resources are available in the NALC Country of Origin Labeling Reading Room [here](#).

**Clean Water Act: Citizen Suit Provisions Challenged.** A South Carolina farm has asked the United States Supreme Court to review a decision from the Fourth Circuit Court of Appeals which clarified when and how a citizen suit may be brought under the Clean Water Act. For more information about the underlying case, click [here](#) to read NALC article “Clean Water Act Citizen Suits Before Fourth Circuit.”

- **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.”

**Foreign ownership of farmland.** In 2023, at least 21 states have proposed laws to restrict certain foreign investments and acquisitions in private land, especially agricultural land. See Volume 1, **Issue 1** and Volume 1, **Issue 2** of The Feed for prior

updates. New proposals have been filed in Arkansas (**HB 1255**), Colorado (**HB 23-1152**), Illinois (**HB 1267**; **HB 2125**), Kansas (**SB 100**), New Jersey (**A 5120**; **S 3534**), North Dakota (**SB 2371**), Oklahoma (**SB 212**; **SB 464**; **SB 1051**), and Texas (**SB 711**). A few measures (**H.R. 212**; **H.R. 344**; **H.R. 809**; **H.R. 840**) were recently introduced in Congress that seek to restrict certain foreign investors from obtaining an interest in U.S. land. Also, Congress is considering the “FARM Act” (**S. 68/H.R. 513**) which seeks to require the Committee on Foreign Investment in the U.S. (“CFIUS”) to consider agriculture-specific criteria when determining whether a foreign investment poses a risk U.S. national security. Click [here](#) for NALC webinar “Foreign Ownership of Ag Land: Federal & State Legislative Update” (Jan. 18, 2023). Click [here](#) for NALC publication “Foreign Investment in Agricultural Land: FAQs & Resource Library.”

- **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**.

**Antibiotics: Livestock Lawsuit.** Plaintiffs in **Alliance of Nurses for Healthy Environments v FDA (No. 8:23-cv-176)**, argue that a petition to prohibit the use of medically important antibiotics for disease-prevention or growth promotion purposes was unlawfully denied, and that the current voluntary structure for limiting subtherapeutic antibiotic use is not sufficient. Given that the FDA will be transitioning medically important antimicrobial drugs out of OTC status to require veterinary oversight in June via another **voluntary guidance document**, the concept of mandatory v. voluntary changes is one that continues to draw interest.

**Cattle Markets:** Continuing the focus on competition in the livestock industry, the recently reintroduced **Cattle Price Discovery and Transparency Act of 2023** would establish minimum levels of fed cattle purchases made through approved pricing mechanisms in regions across the country, as well as permanently authorize a library of marketing contracts used by covered packers. This bill was first proposed in the 117th Congress, and passed through the Senate on a voice vote last June 2022.

**Right to Farm Proposals.** Several states have recently proposed amendments to their right to farm statutes, including Missouri (**SB 84**), Oklahoma (**HB 1457**), Nebraska (**LB662**), New Jersey (**S 3246**, **A 4766**, **A 4243**, **S 2669**, and **S 2908**), New York (**S 656**), South Carolina (**H 3432**), Virginia (**SB 678**), and Wyoming (**SF 134**). Click [here](#) to see your state’s current right to farm law. To see how the various statutes compare with one another, click [here](#).

**Pesticides: California Looks to Restrict Use.** The State of California has released a **policy roadmap** that outlines how the state could transition from conventional pesticides to “sustainable pest management” by 2050. While the policy map considers a more global approach to reducing pesticide use, California has also taken recent actions to reduce the use of specific pesticides, including introducing **proposed regulations** to restrict the use of 1,3-D. Click [here](#) to read NALC article “California Takes Steps to Reduce Pesticide Use in State.” In a similar effort to reduce the use of pesticides, Sen.

Cory Booker (D-N.J.) has reintroduced the **Protect America's Children From Toxic Pesticides Act of 2023** which would restrict pesticide use at the federal level. The bill proposes a ban on certain pesticides, including neonicotinoids, and would alter the federal pesticide registration process.

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

**FDA & Cannabis.** FDA recently **announced** that it denied three citizen petitions that had requested FDA to conduct rulemaking to allow CBD products, primarily derived from industrial hemp, to be marketed as dietary supplements, citing potential health risks to the usage of the CBD. In so doing, FDA shifted the burden of addressing the issue to Congress. To learn more about laws surrounding the cultivation of industrial hemp click **here**. To watch a NALC webinar by Senior Staff Attorney Rusty Rumley on hemp, which includes a segment on FDA and CBD, click **here**.

**Endangered Species Act: Irrigation Lawsuit.** In late 2022, an environmental group filed a **lawsuit** against the Bureau of Reclamation, claiming that its water operations on the Middle Rio Grande River violated the ESA by jeopardizing three listed species and their designated critical habitat. The Middle Rio Grande Conservancy District has moved to intervene in the case, stating that any change in water operations would harm the federally recognized tribes and agricultural producers that rely on the Middle Rio Grande for irrigation.

**Colorado River.** Jan. 31 was the deadline for the seven states that depend on water from the Colorado River to submit a plan to the Bureau of Reclamation for how to conserve at least 2 million acre-feet of Colorado River water. Six of the states **submitted a proposal** that would require each of the seven states to make cuts in water use. The seventh state, California, **submitted its own plan** that would require each state except for California to reduce its water use. Without an agreement from the states, the federal government is expected to step in.

- **Conference Opportunity:** James Eklund, Member, Sherman & Howard, will present "Running on Empty & Into the Sun: Legal & Political Update on the Colorado River Basin" as part of the inaugural **Western 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**.

**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 online:

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