



# 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 6

March 22, 2023

**Thank you** to everyone coast-to-coast who has subscribed so far! Be sure to **forward the subscription link** to anyone in your network. Questions, concerns, or suggestions for improvement can be sent to **NALC Director Harrison Pittman**. Be sure to follow us on social:



**THANK YOU to Western Growers, Gold Sponsor for the #NALCWestern23!**



On March 29, NALC will host student-focused webinar titled, "Growing Careers in Agricultural & Food Law for Law Students: Ebony Woodruff", a partnership effort of the **American Agricultural Law Association** and the NALC. Information and registration available **here**.

On April 5, NALC Director Harrison Pittman will present a webinar titled, "Expanding Partners & Outreach: Strategic Update on the Future of the National Agricultural Law Center." Information and registration available **here**.

All previous issues of The Feed available **here**.

**WOTUS Update: New Rule Takes Effect.** On March 20, EPA's latest WOTUS definition went into effect across most of the country. The day before, a federal judge issued an injunction preventing the rule from taking effect in the states of Texas and Idaho. Additional injunctions are possible as plaintiffs in two other on-going lawsuits have asked a judge to enjoin the rule while litigation is on-going. To learn more about the new WOTUS rule and related legal challenges, check out NALC publications,

“WOTUS Update: EPA Releases Highly Anticipated Final Rule to Redefine ‘Waters of the United States,’” available [here](#), and “WOTUS Update: 2022 WOTUS Rule Faces Legal Challenges,” available [here](#).

- Conference opportunity: Robert P. Soran, Partner, Downey Brand, and Nicole E. Granquist, Partner, Downey Brand will present “Moving Targets in Muddied Waters: Advising Farmers, Landowners, and Lenders Regarding Waters of the United States,” as part of the NALC’s inaugural **Western Agricultural & Environmental Law Conference**.

**Water Rights at the Supreme Court.** Also on March 20, the Supreme Court heard arguments in a lawsuit concerning whether the Navajo Nation has implied water rights to the Colorado River. The case came to the Supreme Court as an appeal on a decision from the Ninth Circuit which would have allowed the Navajo Nation to amend its 2003 lawsuit arguing that the Department of Interior is required to make a full review of the tribe’s water needs. However, the Supreme Court could decide to exercise its original jurisdiction and rule on the merits of the case. The case comes during a period of intense pressure on the Colorado River, where existing apportionments are seen as exceeding the amount of water available.

- 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 NALC’s inaugural **Western Agricultural & Environmental Law Conference**.

**Poultry Lawsuit Extended.** As reported in **Volume 1, Issue 2** (Jan. 25), 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 initial deadline of March 17 for the parties to reach an agreement on remedies has been extended by 90 days, with a joint status report due by June 9.

**Pesticides: Glyphosate.** The full Eleventh Circuit Court of Appeals heard oral arguments in a lawsuit filed by a plaintiff claiming that exposure to glyphosate caused him to develop cancer. Specifically, the court heard arguments on whether the plaintiff’s claims that the defendant had failed to warn consumers that using glyphosate could cause cancer were preempted by the Federal Insecticide, Fungicide, and Rodenticide Act which does not allow states to alter registered pesticide labels. If the court rules that the claims are preempted, it would create a circuit split that could put the issue before the Supreme Court. For a closer look at the different arguments, click [here](#) for NALC publication, “Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits.”

- 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**.

**Pesticides: Cyantraniliprole.** April 2 is the final day to submit comments on EPA’s draft “Biological Evaluation Effects Determination for Endangered and Threatened Species and Designated Critical Habitats” for the insecticide known as cyantraniliprole. EPA first registered products containing cyantraniliprole in 2014, after which the agency was sued for failing to complete mandatory ESA evaluations. The draft biological evaluation is part of the ESA process, and the final version will determine whether EPA begins a formal ESA consultation that could result in mitigation requirements. The draft biological evaluation is available [here](#), and comments may be submitted [here](#). Click [here](#) for the NALC Pesticides Reading Room and [here](#) for the NALC Endangered Species Act Reading Room.

**Pesticides: Organophosphates.** EPA has announced that it is asking the manufacturers of four organophosphate pesticides - diazinon, ethoprop, tribufos and phosment - to voluntarily submit label amendments that would cancel some pesticide uses in order to better protect workers and applicators.

All four pesticides will be up for registration review in the next several years, but EPA believes that early action is necessary “to protect farmworkers and uphold [the agency’s] commitment to environmental justice.” For more information on EPA’s decision, click [here](#) (goes to EPA website). Click [here](#) for the NALC publication, “EPA Releases New Environmental Justice Document.”

**Pesticides: Herbicide Drift.** The Texas Supreme Court issued its opinion in a lawsuit brought by a cotton farmer against a pesticide applicator, claiming that pesticides sprayed by the applicator drifted off target and damaged the farmer’s cotton crops. The court ultimately issued a “take-nothing” judgment, meaning that the plaintiff was not entitled to compensation. The ruling provides insight to how Texas courts may treat future cases. For more on the court’s ruling, click [here](#) to read the article “Texas Supreme Court Analyzes Herbicide Drift Case,” from NALC partner Tiffany Dowell Lashmet, Agricultural Law Specialist at Texas A&M AgriLife Extension Service.

**PFAS.** EPA has issued the first regulatory limits on per- and polyfluoroalkyl substances (known as PFAS) in drinking water. Under the proposed rule, public water systems would be required to monitor levels of perfluorooctanoic acid (known as PFOA) and perfluorooctanesulfonic acid (known as PFOS), and notify the public if levels are found to exceed 4 parts per trillion. A pre-publication draft of the rule is available [here](#). Additionally, Senators Susan Collins (R-ME) and Angus King (I-ME) have re-introduced the Relief for Farmers Hit with PFAS Act that, if passed, would provide financial assistance to farmers affected by PFAS contamination. The official bill text is not yet available, but a sponsor press release is available [here](#). A sponsor press release for a companion bill filed in the House is available [here](#).

**Federal Ag Research Funding.** On March 16, The Advancing Cutting Edge (ACE) Agriculture Act “to support high-risk, high-reward agricultural research and development” at USDA was proposed. The sponsor press release is [here](#), and link to the bill text is [here](#).

**Right to Repair: MOU.** On March 9, the American Farm Bureau Federation entered into an **Memorandum of Understanding** with Case IH and New Holland that is designed to allow producers to make repairs to their own farm equipment. A similar MOU was entered into between AFBF and John Deere Co. in January 2023, see Volume 1, Issue 1 (Jan. 11) [here](#) to read about the MOU with John Deere Co.

**Right to Repair: Colorado. HB 1011,** the Consumer Right to Repair Agricultural Equipment Act seeks to allow Colorado producers to make repairs to their own farm equipment. The bill was passed by the House in February and recently passed the state Senate. However, the House did not concur on the Senate amendments, which could significantly delay bill consideration. Notably, the current version of the bill provides that, in general, “[i]f an agricultural equipment manufacturer enters into, or is covered under, a nationwide memorandum of understanding regarding a right to repair agricultural equipment, the memorandum of understanding governs an owner’s right to provide services, or to engage the services of an independent repair provider, for that manufacturer’s brand of agricultural equipment.”

**New York Carbon Farming: Proposed Tax Credit. S4270A** proposes to create a “carbon farming” tax credit “[t]o create a new financial incentive for land management practices under-taken by farmers which help improve soil health and reduce green-house gas emissions, making New York a leader in promoting new agricultural strategies that combat climate change.” The bill has not yet passed either chamber.

**2023 Farm Bill: SNAP.** Hearings and debate over the 2023 Farm Bill continue. Perhaps the most high

profile issue at this point is whether the work requirements should be modified for the Supplemental Nutrition Assistance Program (SNAP). A key example is the America Works Act, introduced by Senator Dusty Johnson on March 14. The official bill text is not yet available, but the sponsor press release is available [here](#). For additional context, click [here](#) for the NALC webinar “Looking Ahead: Impact of the 2022 Elections on Ag Law and Policy,” presented by Hunt Shipman, Principal & Director, Cornerstone Government Affairs.

**CBD and Dietary Supplements.** Two bills for regulating the use of cannabidiol products were introduced before Congress. The **CBD Product Safety and Standardization Act of 2023** has been reintroduced (to see previous version click [here](#)) and would require FDA to regulate CBD as it would other food items. The second bill, the **Hemp and Hemp-Derived CBD Consumer Protection and Market Stabilization Act of 2023**, would require FDA to regulate hemp-derived cannabidiol as a dietary supplement so long as they meet other requirements under the Federal Food, Drug, and Cosmetic Act. To learn more about the issues surrounding CBD in food products, click [here](#) for the NALC webinar “Industrial Hemp Regulation under the 2018 Farm Bill,” presented by NALC Senior Staff Attorney Rusty Rumley. Click [here](#) for the NALC Industrial Hemp Reading Room.

**COOL-ish:** USDA has issued a **proposed rule** to define the conditions under which the labeling of meat, poultry, and egg products may include voluntary label claims indicating that the product is of United States origin. It would allow those claims if the product was the result of an animal “born, raised, slaughtered and processed in the United States.” Previously, that label was also allowed on products from animals that were imported from a foreign country and slaughtered in the U.S., as well as on meat that was imported and repackaged or further processed. For additional background on COOL, visit the NALC Country of Origin Labeling Reading Room [here](#).

**Right to Farm Update.** On March 13, New Jersey enacted **S 428** which amends their existing right to farm protections to cover certain shellfish commercial farm operations. On March 15, South Dakota strengthened their statute (**HB 1090**) by limiting potential damages from nuisance lawsuits, adding in “agrotourism” to protected activities, restricting potential plaintiffs to those owning or leasing property within one mile of the alleged nuisance. Other states with pending bills include AR (**HB 1434**), FL (**HB 1361** and **SB 1472**), NE (**LB662**), NJ (**A5347**), OK (**HB 1457**), RI (**SB 353**), TX (**SB 1421**, **HB 2308**, and **HB 1750**). For prior bills, see Volume 1, Issue 3 (Feb. 8) [here](#). For a 50-state survey chart of states’ right to farm laws, visit the NALC website [here](#).

**Foreign Ownership of Ag Land.** Since January, 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 (**HB 125**) and Michigan (**HB 4283**). 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](#); and Volume 1, Issue 5 (March 9) [here](#). On March 16, the Arkansas House passed **HB 1479**, which seeks to restrict certain purchases of agricultural land by entities associated with China. This bill is currently being considered in the Arkansas Senate.

- 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 NALC’s inaugural **Western Agricultural & Environmental Law Conference**.

**Reporting Foreign Interests.** On March 8, South Dakota Governor Kristi Noem signed into law **HB 1189**, which requires certain business entities that own farmland within the state to disclose “foreign beneficial ownership” interests. Specifically, entities owning farmland must disclose nonresident individuals, foreign businesses, and foreign governments that hold an interest in the reporting entity.

Most states do not have a state-level reporting requirement for foreign ownership. To see which states have foreign ownership reporting laws, see NALC publication "Statutes Governing Ownership of Agricultural Land", [here](#).

**State-Level Assistance with Federal Crop Insurance.** The Delaware Agricultural Production Assistance Program (**HB 87**) would provide "a subsidy of up to 30% of the premium for eligible producers' multi-peril crop insurance premium, or whole farm revenue protection premium up to a maximum of \$10.00 per acre," paid for qualified producers directly by the Delaware Department of Agriculture to the Federal Crop Insurance Corporation. For more information on federal crop insurance, visit the NALC Crop Insurance/Disaster Assistance Reading Room [here](#).

## Thank You to Founding Supporters of *The Feed*



## Thank You to Supporters of *The Feed*



## 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.

Additionally, information regarding conference sponsorship levels and benefits is available online:

[Western Sponsorship Info](#)

[Mid-South Sponsorship Info](#)

## Water rights. Foreign ownership. Pesticides. The Farm Bill.

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](#).



Follow the National Agricultural Law Center on social:



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

**The National Agricultural Law Center | [NationalAgLawCenter.org](http://NationalAgLawCenter.org)**