



# 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 7

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All previous issues of The Feed available [here](#).

**Right to Repair, Ag, & Colorado: First-Ever Law?** On April 12, the Colorado legislature passed the **Consumer Right to Repair Agriculture Equipment Act**. The measure has been sent to the Governor. If signed by the Governor, this will become the first right-to-repair legislation in the nation that allows, subject to certain conditions and requirements, farmers to repair their own agricultural equipment. To watch a NALC webinar about right to repair click [here](#).

**Right to Repair: Attorneys General.** On March 24, 27 State Attorneys General submitted a **letter** to the Chair and Ranking Member of the U.S. House Energy and Commerce Committee and the Chair and Ranking Member of the U.S. Senate Committee on Commerce, Science, and Transportation "to pass

expansive Right-to-Repair legislation targeted at automobiles, agricultural equipment, and digital electronic equipment to protect our consumers and farmers across the nation.”

**Alternative Protein Labeling.** The Fifth Circuit has **released its ruling** in a challenge to the Louisiana law limiting packages using the label of “meat” or “meat products” to those derived from animals. The District Court had previously ruled that the law was unconstitutional because it violated the plaintiff’s First Amendment right to commercial speech. After hearing arguments in February 2023, the Fifth Circuit reversed the district court ruling and upheld a “narrow reading” of the law. Specifically, it allowed enforcement of the law, but only against those companies who “actually intend” to mislead consumers. To learn more, a series of NALC publications about these types of statutes and the cases challenging them is available **here**.

**WOTUS Update: 2023 Rule Still in Place.** On March 29, the U.S. Senate voted 53-43 to pass a resolution overturning the 2023 “waters of the United States” rule. After passage, the resolution went to President Biden who issued an expected veto. Because neither the House nor the Senate appear close to having the two-thirds majority necessary to override a presidential veto, the 2023 WOTUS rule will remain in place. The rule officially went into effect on March 20, and is the target of multiple lawsuits. To learn more about the process Congress used to pass the resolution, read NALC article, **The Congressional Review Act: How it Works, Why it Matters**.

- Webinar opportunity: Brigit Rollins, Staff Attorney, National Agricultural Law Center, will present a webinar titled “What’s Up with WOTUS: A Look at the Current WOTUS Definition and Recent Supreme Court Decision” on July 19. Registration is available **here**. This is the second webinar in a two-part series on WOTUS. Click **here** to view the first part which provides an overview of WOTUS and why it matters to agriculture.

**WOTUS Update: Court Decisions.** Recently, two federal courts considered whether to enjoin the 2023 WOTUS rule. A federal judge in Kentucky dismissed, **here**, a challenge to the 2023 WOTUS rule, determining that the plaintiffs failed to establish standing. Meanwhile, a federal judge in North Dakota blocked, **here**, the 2023 WOTUS rule from remaining in effect for 24 states. Together with Texas and Idaho, where the rule was enjoined last month, the 2023 WOTUS rule is currently blocked in a total of 26 states. In these states, WOTUS will be interpreted according to the pre-2015 regulatory regime. For information on what’s in the 2023 WOTUS rule, click **here**. For information on the pre-2015 WOTUS regulatory regime, click **here**.

- Conference opportunity (May 4-5, livestream available, “Early Bird” deadline is April 18): Robert P. Soran, Partner, Downey Brand, & 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**.

**Dicamba: Bayer Sues Farmers.** Bayer has filed lawsuits against six farmers in Missouri for illegally spraying the pesticide dicamba, and for saving seeds from Bayer’s dicamba-tolerant crops. Specifically, Bayer claims that the farmers were spraying older versions of dicamba directly onto dicamba-tolerant soybeans, which is not an approved use for older dicamba formulations. Bayer states that both illegal spraying of dicamba and the act of saving seeds are violations of the license agreement which farmers must sign when purchasing its dicamba-tolerant soybean seeds. Click **here** to read one of the complaints. For more information on the litigation surrounding dicamba, click **here** for NALC’s on-going publication series, The Deal with Dicamba.

**Sulfoxafloor: Enviro Groups Appeal.** A coalition of environmental and beekeeper groups have asked the Ninth Circuit to revisit its December 2022 decision not to vacate EPA’s decision to approve

sulfoxaflor. In its opinion, the Ninth Circuit found that EPA's 2019 decision to approve sulfoxaflor violated both the Endangered Species Act, and the Federal Insecticide, Fungicide, and Rodenticide Act. The court sent the decision back to EPA for review, but let the approval remain in place. The environmental plaintiffs have asked the court to reconsider its decision and overturn the registration. The petition for rehearing is available [here](#). Visit the NALC Reading Room for Pesticides, [here](#), and the Endangered Species Act [here](#). Click [here](#) for NALC publication, "States, Environmental Groups Challenge EPA Over Sulfoxaflor."

**PRIME Act Revisited.** The Processing Revival and Intrastate Meat Exemption Act ([S. 907](#)), proposed again by Sen. Angus King (I-ME), would allow for the intrastate sale of meat from animals that were slaughtered without continuous inspection. A NALC webinar discussing the landscape of slaughter and processing (including a prior version of the PRIME Act proposal) is available [here](#). Click [here](#) for the NALC publication, "Meat Processing Laws in the United States: A State Compilation."

**Foreign Ownership of Ag Land.** Since January 2023, 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 537](#)), Michigan ([SB 260](#)) New York ([A 6410](#); [A 6444](#)), and North Carolina ([HB 463](#)). 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](#); Volume 1, Issue 5 (March 9) [here](#); and Vol. 1, Issue 6 (March 22) [here](#).

**Foreign Ownership: Idaho.** On April 3, Idaho's [H 173](#) was signed into law, which restricts foreign governments and government-controlled business entities from acquiring an interest in agricultural land, mineral and water rights, and mining claims within the state. Idaho is the second state in 2023, behind Utah's enactment of [HB 186](#), to enact a law aimed at restricting certain foreign investments in their state's farmland. Proposals in Arkansas ([SB 383](#)), Montana ([SB 203](#)), North Dakota ([HB 1135](#)), and Virginia ([SB 1438/HB 2325](#)) have been passed by the legislature but are not yet fully enacted.

- Conference opportunity (May 4-5, livestream available, "Early Bird" deadline is April 18): [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](#).

**Missouri Supreme Court Issues CAFO Ruling.** On March 21, the Supreme Court of Missouri issued a decision finding that a 2021 state law that prohibits counties from adopting any rules for concentrated animal feeding operations that are "inconsistent with, in addition to, different from, or more stringent than" any rules adopted by the state does not violate the Missouri Constitution. The court determined that various county ordinances that regulated industrial farms beyond regulations imposed by the state were invalid. Click [here](#) to read the court's opinion.

**Meat and Poultry Label Requests.** Perdue Farms [has asked](#) USDA's Food Safety and Inspection Service (FSIS) to establish rules separately defining "free range" and "pasture-raised" on approved meat and poultry labels. This joins other pending requests for FSIS to alter its labels in some way, including PETA's [2022 request](#) for the agency to remove itself from approving any kind of "animal raising claims." Click [here](#) for the NALC Food Labeling Reading Room.

**EPA Reviews CAFOs.** EPA has announced that it will respond to a petition submitted by various environmental groups in 2017 asking the Agency to draft stronger rules for the regulation of concentrated animal feeding operations (CAFOs) under the Clean Water Act. The announcement is part of a settlement agreement reached between EPA and the environmental groups who filed suit against

EPA last October after the Agency failed to respond to the petition. In their petition, the environmental groups have claimed that EPA has underregulated CAFOs by failing to require certain monitoring, ignoring various “pollutants of concern,” and by allowing a broad reading of the agricultural stormwater exemption. For more background on this issue, read NALC article [Enviro Groups Ask EPA to Revisit CWA CAFO Rules](#).

**Farm Loans & NEPA Review.** A federal judge has issued an order overturning a Farm Service Agency (FSA) 2016 regulation that categorically exempted loans granted to medium-sized concentrated animal feeding operations (CAFOs) from National Environmental Policy Act (NEPA) review. According to the judge, FSA failed to provide adequate public notice before adopting the regulation. The judge did not address whether the exemption of farm loans to medium-sized CAFOs was invalid under NEPA, and instead ruled purely on FSA’s failure to go through the notice-and-comment rulemaking process. Click [here](#) to read the court’s decision.

**Endangered Species Act: Lesser Prairie-Chicken.** The State of Texas has filed a lawsuit against the Fish and Wildlife Service (FWS) over its recent decision to list two populations of the lesser prairie-chicken under the Endangered Species Act. In its lawsuit, Texas argues that FWS misapplied its listing policies, and failed to appropriately consider the voluntary conservation efforts being taken to protect the lesser prairie-chicken. Texas has asked the judge to vacate the listing decision. Read NALC article, [Texas Sues FWS Over Decision to List the Lesser Prairie-Chicken Under the Endangered Species Act](#) to learn more. To read the complaint, click [here](#).

**Public Lands.** The Bureau of Land Management (BLM) has published a proposed rule that contemplates a variety of policy changes aimed at promoting conservation initiatives on the federal land managed by the Bureau. One of the programs introduced in the proposed rule would establish “conservation leases” which would grant time-limited leases to parties interested in carrying out conservation activities on public land. Comments on the proposal are due by June 20. The text of the rule, and information on how to submit a comment are available [here](#). Be sure to check the NALC website and social media for a forthcoming summary of the proposed summary.

- NALC presentation/outreach opportunity: The NALC will provide outreach on BLM and other public lands issues as part of its efforts to expand partners and outreach to the ag industry in Western states. If you are interested, or know someone interested, in presenting on these issues, contact NALC Director Harrison Pittman at [hmpittm@uark.edu](mailto:hmpittm@uark.edu).

**Colorado River.** On April 11, the Department of Interior’s Bureau of Reclamation released a draft supplemental environmental impact statement (draft SEIS) that proposes unprecedented cuts to the amount of water that California, Arizona, and Nevada receive from the Colorado River. The proposal is aimed at preserving the Colorado River Basin after decades of drought and overuse. The draft SEIS puts forward three options on how to proceed: one option would result in cuts to Arizona and Nevada while preserving water for California’s farmland, the second option would apportion out cuts evenly between the three states, and the third option is to take a “no-action” approach and do nothing. The draft SEIS will be published in the Federal Register on April 14, opening a 45-day public comment period. A copy of the draft SEIS is available [here](#).

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Additionally, information regarding conference sponsorship levels and benefits is

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## 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.

The "Early Bird" registration deadline is **NEXT WEEK!** Register by April 18 for bonus online CE/CLE. The block room rate deadline is also April 18.

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



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