



The Feed

Recent Developments in Ag Law & Policy

The Feed highlights recent legal developments affecting agriculture, with issues released twice a month.

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Foreign Ownership of Ag Land: Proposals. 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 Michigan (**HB 4881**) and Wisconsin (**SB 348**). 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**; Vol. 1, Issue 6 (March 22) **here**; Volume 1, Issue 7 (April 14) **here**; Volume 1, Issue 8 (April 28) **here**; Volume 1, Issue 9 (May 12) **here**; Volume 1, Issue 10 (May 25) **here**; Volume 1, Issue 11 (June 15) **here**; and Volume 1, Issue 12 (June 28) **here**.

Foreign Ownership of Ag Land: Enacted. Recently, Louisiana Governor John Bel Edwards signed into law **HB 537**, which restricts certain foreign investments in real property located within the state, and vetoed **HB 125**, which sought to restrict certain foreign investments in the state's agricultural land. Governor Edwards' veto letter is available **here**. Additionally, Ohio Governor Mike DeWine signed into law portions of **HB 33**, which contains a provision that restricts some foreign investments in

agricultural land within the state. For more information on foreign ownership of land, read NALC's "Foreign Ownership of Agricultural Land: FAQs & Resource Library" available [here](#).

- Webinar Opportunity: Micah Brown, Staff Attorney, National Agricultural Law Center, will present a webinar on the various foreign ownership laws enacted during the 2023 legislative session. Webinar and registration information are available [here](#).

Torres Small Confirmed. Xochitl Torres Small, a former New Mexico congresswoman, has been confirmed by the Senate as USDA's deputy agriculture secretary. This appointment elevates her to the number 2 position at USDA. Prior to her confirmation, Torres Small served as USDA's undersecretary for rural development. Torres Small was confirmed 84-4, with bipartisan support from lawmakers and additional support from various farm groups throughout the nation.

USDA Tackles Discrimination. USDA has opened its application process to allow producers who experienced discrimination in farm leading programs to receive assistance. **According to USDA**, assistance is available for "farms, ranchers, and forest landowners who experienced discrimination by USDA in its farm loan programs prior to January 1, 2021 and/or are currently debtors with assigned or assumed USDA farm loan debt that was the subject of USDA discrimination." The application process is open until October 31, and is free for all applicants. For more information on how to apply, click [here](#). The assistance program was authorized last year as part of the Inflation Reduction Act ("IRA"). To learn more about assistance programs in the IRA, click [here](#) to read NALC article "Ag & the IRA: Debt Relief and Financial Assistance Provisions in the Inflation Reduction Act."

WOTUS: Judges Halt Lawsuits. The judges in two different lawsuits challenging the Environmental Protection Agency's ("EPA") 2023 rule to define the Clean Water Act term "waters of the United States," also known as WOTUS, have granted EPA's request to pause the cases while the agency updates the rule following the U.S. Supreme Court's ruling in *Sackett v. EPA*. The first stay was granted by the Sixth Circuit in a lawsuit filed by the state of Kentucky, and the second stay was granted by a Texas federal judge in a lawsuit filed by the state of Texas. Litigation in the two cases will be paused while EPA and the Corps finalize a new WOTUS definition, which EPA expects to have ready by September 1. EPA has also asked for a third lawsuit filed in a North Dakota federal court by a coalition of states, including North Dakota and West Virginia to be halted. The judge in that case has yet to respond to EPA's request. To learn more about the legal challenges to the 2023 WOTUS rule, click [here](#) to read NALC article "WOTUS Update: 2023 Rule Enjoined in 27 States."

Pesticides: Federal Preemption. The full Eleventh Circuit has remanded a plaintiff's claim that exposure to glyphosate caused him to develop cancer back to the initial three-judge panel that heard his case with directions for the panel to revisit its analysis of whether the plaintiffs' state law failure to warn claims are preempted by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). The panel had determined that FIFRA did not preempt the plaintiff's state law claims when it first considered the case. However, after en banc review, the Eleventh Circuit has determined that the panel erred in how it reached that conclusion. Click [here](#) to read the court's decision. To learn more about preemption in pesticide injury lawsuits, click [here](#) to read NALC article "Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits."

Carbon Sequestration. USDA has announced that it will be investing \$300 million from the Inflation Reduction Act in strategies aimed at improving "measurement, monitoring, reporting and verification of greenhouse gas emissions and carbon sequestration in climate-smart agriculture and forestry." Along with the announcement, USDA published a draft report titled Federal Strategy to Advance Greenhouse Gas Measurement and Monitoring for the Agriculture and Forest Sectors which presents a strategy for improving accuracy in greenhouse gas measurements. USDA's overall goal with this new investment is to improve the data and measurement of greenhouse gas in the agriculture sector to generate more accurate data on the impact farming practices have on greenhouse gas emissions. USDA is seeking comment on the draft report. To view a copy of the draft, click [here](#).

Water Law. The Tenth Circuit Court of Appeals upheld the Bureau of Reclamation's ("Reclamation")

environmental analysis on a water contract between the agency and the state of Utah that will allow Utah to draw water from the Flaming Gorge Reservoir instead of from the Green River which is part of the Colorado River Basin system. According to the court, Reclamation's analysis took the appropriate "hard look" at the plan and reasonably concluded that the contract would not have a significant impact on the quality of the human or natural environment. To read the court's decision, click [here](#).

Corps Seeks Comments. The U.S. Army Corps of Engineers ("the Corps") is seeking public comment on its plan to reduce flooding in the Yazoo Basin area of Mississippi. The project, referred to as the Yazoo Backwater Area management project, would utilize pumping to protect farmers who experience frequent crop damage in the approximately 1 million-acre Yazoo Backwater Area. Comments on the Corps' proposal to prepare an Environmental Impact Statement for the project must be submitted by August 8. Click [here](#) to view the proposal and learn how to submit a comment.

Oregon: Estate Tax. Both chambers of the Oregon state legislature have passed **S.B. 498**, which creates a tax exemption for family farm estates valued up to \$15 million. Currently, farm families in Oregon can use a state tax credit to reduce their estate up to \$7.5 million, but only if the inherited assets are worth below \$15 million and consist of at least 50% natural resource properties such as farm or forest land. Under S.B. 498, the tax credit would be available to farm families regardless of the estate's total worth or the amount of natural resource properties within the estate. The bill is currently awaiting signature from Oregon Governor Tina Kotek.

Massachusetts: Question 3. In 2016, Massachusetts voters approved a referendum known as the **Act to Prevent Cruelty to Farm Animals**, or Question 3, a bill that imposes housing standards for pork sold in the state. Question 3 is similar to California's Prop. 12, a voter referendum that also imposes housing standards for pork products sold within the state, which was approved by voters in 2018 and upheld by the U.S. Supreme Court earlier this year. Although Question 3 was set to go into effect in 2022, the federal judge overseeing a legal challenge to Question 3 determined that the law should be put on hold until at least 30 days after the Supreme Court issued its ruling on Prop. 12. In a recently issued ruling, the judge has extended that stay until August 23 to allow the parties time to determine whether any issues remain unresolved following the Supreme Court's ruling.

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