



# 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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Mid-South

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**USDA Debt Relief.** The United States Department of Agriculture (“USDA”) recently announced a new round of debt relief aimed at distressed farmers with guaranteed Farm Loan Programs loans. This relief is funded by \$3.1 billion from the **Inflation Reduction Act** that is intended to provide relief to distressed borrowers with USDA loans. To be eligible for this latest round of relief, borrowers must be guaranteed loan recipients who didn't receive payment under the October 2022 IRA assistance. Lenders with delinquent loans as of October 18, 2022, as well as loans that were restructured between March 1, 2020, and August 11, 2023, and certain deferred loans under \$100,000 will qualify. About 3,500 borrowers are expected to qualify for this assistance. For more information from USDA, click **here**.

**Foreign Ownership Legal Challenge.** Recently, four Chinese citizens who reside in Florida filed a lawsuit (*Shen v. Simpson*, No. 4:23-cv-208 (N.D. Fla. 2023)) against the state of Florida and asked the judge to issue a preliminary injunction to prevent the state from enforcing its newly enacted foreign ownership law. On August 17, a federal judge denied the plaintiffs’ motion because they did not show a substantial likelihood of successfully winning the lawsuit. Recent NALC articles discussing the Shen case are available **here**, **here**, and **here**.

**CWA: Dredge and Fill Permits.** The Environmental Protection Agency (“EPA”) is proposing its first major revision to Clean Water Act (“CWA”) section 404 Tribal and State program regulations since 1988. Specifically, the proposed rule addresses the requirements that States and Tribes must meet to assume and manage CWA section 404 permitting programs for dredged and fill material discharges. The proposed revisions aim to streamline the assumption process by making procedures and requirements transparent and straightforward, while maintaining flexibility in meeting these standards. The proposed rule also clarifies the criminal negligence standard for both CWA section 402 and section 404 programs. EPA will accept comments on the proposal through October 13. Click **here** to read the proposal and submit a comment.

**CWA: CAFO Regulations.** EPA has declined [a petition](#) for stricter regulation of concentrated animal feeding operations (“CAFOs”) and instead plans to establish a federal advisory committee to address the issue. In response to concerns about CAFOs being a significant source of water pollutants, EPA will set up a subcommittee to gather input from various stakeholders on effective ways to reduce pollutants from CAFOs. EPA will also conduct a comprehensive evaluation of potential improvements to the CWA's National Pollutant Discharge Elimination System program for CAFOs. The decision comes after the EPA agreed to settle a lawsuit filed against EPA by environmental groups who alleged that the agency wrongfully delayed response to a 2017 petition submitted by the groups asking EPA to issue stronger CWA regulations for CAFOs. To learn more about the underlying lawsuit, click [here](#) to read NALC article “Enviro Groups Ask EPA to Revisit CWA CAFO Rules.”

**Climate Change.** A Montana state court has ruled that an amendment to the Montana Environmental Policy Act (“MEPA”) which would prevent Montana’s state agencies from considering the impact of greenhouse gas emissions when making permitting decisions violates the Montana State Constitution which grants a constitutional right to a clean and healthful environment. The ruling was issued in a case filed by youth plaintiffs who initiated the suit in 2020, arguing that Montana's emphasis on fossil fuel development and amendments to MEPA violated their future prospects. This is the first youth-led climate lawsuit to result in a court ruling that a state government violated its constitution by prioritizing fossil fuel development. Similar youth-led climate suits are ongoing in various states. The state of Montana intends to appeal the ruling. Click [here](#) to read the decision.

**Pesticides: Proposed Restrictions.** EPA has proposed to increase protections for the endangered Taylor’s checkerspot butterfly by imposing strict pesticide limits across large portions of western Oregon and Washington. Both farming and environmental groups find the limits excessive and unnecessary, while EPA defends the approach as vital for safeguarding vulnerable species. The proposal is part of EPA’s Vulnerable Species Pilot Project which seeks to minimize the effects of pesticides on endangered species. Under the proposal, aerial and broadcast spraying of all conventional pesticides would be restricted on one million acres of land across portions of Oregon’s Willamette Valley and areas surrounding Washington’s Puget Sound. EPA plans to implement the program next year, with potential for adjustments based on feedback. Click [here](#) to read the proposal and submit a comment.

**Rusty Patched Bumble Bee.** A federal judge in Washington, D.C. has ruled that the U.S. Fish and Wildlife Service (“FWS”) acted inappropriately by refusing to designate critical habitat for the endangered rusty patched bumble bee. The court rejected the claim from FWS that designating critical habitat was unnecessary because doing so would not be beneficial to the species. According to the court, that was not the correct legal standard that FWS is supposed to apply when determining whether to designate critical habitat. The judge vacated the FWS's 2020 rule and returned the matter to the agency for reconsideration. The court’s decision is available [here](#).

**California Water Rights.** The Biden administration will investigate California's water management practices after Native American tribes and environmental groups filed a [civil rights complaint](#) with EPA, alleging that the state's policies are “rooted in white supremacy.” The tribes argue that outdated rules have led to toxic algae overgrowth, preventing them from practicing their cultural and religious traditions. California has a complex water system based on seniority of rights that does not recognize historical tribal water usage. While the California State Water Resources Board (“the Board”) is currently in the process of reviewing and revising its water rules, the tribes that have petitioned EPA claim that they have been left out of the process. EPA has agreed to investigate the Board to determine whether it has acted appropriately. The Board has yet to formally respond to the tribes’ allegations.

**Industrial Hemp.** At least two state attempts to ban the sale of Delta-8 THC, a psychoactive compound found in hemp plants, are being challenged by members of the hemp industry who argue that the bans violate federal law. In Indiana, hemp industry members have [filed suit](#) to challenge an [opinion](#) issued by the Indiana Attorney General which concluded that under state law, Delta-8 is considered a Schedule I narcotic and anyone who sells Delta-8 products could face level 2 felony charges. In Arkansas, [a similar lawsuit](#) has been filed to challenge [a new state law](#) that prohibits

the sale of all “intoxicating substances derived from industrial hemp.” The plaintiffs in both cases argue that state attempts to ban Delta-8 and other hemp derivatives violates the 2018 Farm Bill which legalizes the production and sale of hemp. For more National Agricultural Law Center resources on industrial hemp, click [here](#).

**Colorado River.** The Biden administration is **reducing water cutbacks** for the Colorado River Basin states for the 2024 water year due to improved drought conditions for Lake Mead. The Bureau of Reclamation has shifted the reservoir’s status from Level 2 to Level 1 Shortage Condition, reflecting better hydrology from above-average precipitation and conservation efforts. Despite the improvement, Arizona and Nevada will still face shortages, and the Lower Basin drought plan remains in effect. Lake Mead is projected to release its lowest amount of water in 30 years by year-end, and both Lake Mead and Lake Powell are at just 36% capacity. Reclamation Commissioner Camille Calimlim Touton noted that the improved situation offers more time to address long-term sustainability solutions.

**Maryland CAFOs.** The Maryland Supreme Court issued a ruling on August 9 upholding a CWA general discharge permit issued by the Maryland Department of the Environment (“MDE”) for animal feeding operations (“AFOs”). The plaintiffs in the case argued that the general permit violated the CWA by requiring technology based effluent limitations in the form of best management practices that would be specifically tailored to each AFO operating under the general permit instead of requiring uniform water quality based effluent limitations that would be applied identically to each covered AFO. In its opinion, the Maryland Supreme Court found that the general discharge permit complied with the CWA because the CWA gives MDE the authority to establish permitting procedures that require technology based effluent limitations. Click [here](#) to read the court’s decision.

**Horse Inspection.** A newly proposed regulation from the Animal Health and Plant Inspection Service (APHIS) would amend existing horse protection regulations by providing that APHIS will screen, train, and authorize qualified individuals to conduct inspections at horse-related events, such as shows, exhibitions, sales, and auctions. The goal is to ensure compliance with the **Horse Protection Act**, which seeks to prevent the practice of soring and promote fair competition. These amendments are intended to strengthen regulations and enhance the protection of horses while eliminating unfair practices in line with the Act’s objectives. Comments on the proposed rule will be accepted through October 20. To read the proposal and learn how to submit a comment, click [here](#).

**Agritourism.** U.S. Representative Dan Newhouse, R-Washington, and U.S. Rep. Jennifer Wexton, D-Virginia, are co-sponsoring federal legislation that would establish an “Office of Agritourism” within USDA. This legislation, known as the **AGRITOURISM Act**, aims to support and consolidate resources for agritourism businesses while fostering growth and sustainable marketplaces. The act is intended to benefit diverse activities such as winery and brewery tours, fee fishing and hunting, bed-and-breakfast inns, and more, while also aiding economic development in rural areas and preserving agricultural traditions. For more resources on agritourism, click [here](#).

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