



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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WOTUS. On September 8, the Environmental Protection Agency (“EPA”) released an updated version of its rule to revise the definition of the Clean Water Act (“CWA”) term “waters of the United States” also known as WOTUS. The rule comes as a response to the U.S. Supreme Court decision *Sackett v. EPA* which limited the definition of WOTUS to waters that are “relatively permanent” and commonly understood as streams, rivers, and lakes. The ruling also determined that only those wetlands that share an unbroken surface water connection with a covered water could be included in the WOTUS definition. EPA’s updated WOTUS definition has removed all references to the “significant nexus” test which the *Sackett* decision explicitly overturned, and adjusted the definition of wetlands to be more inline with the Court’s decision. The updated WOTUS rule went into immediate effect upon publication in the Federal Register, and is available **here**. To learn more about the updated rule, click **here** to read NALC article “WOTUS Update: EPA Revises 2023 Rule in Light of *Sackett* Decision.”

- Webinar Opportunity: Brigit Rollins, Staff Attorney, National Agricultural Law Center, will present a webinar on the updated WOTUS rule, and the long-term effects of the *Sackett* decision. Webinar and registration information are available **here**.

ESA-FIFRA. EPA has agreed to complete its strategy to address the impacts of herbicides on species listed under the Endangered Species Act (“ESA”) by May 2024, and to complete a similar strategy for insecticides by early 2025. The agreement is part of a **settlement to resolve a long-running lawsuit** between EPA and environmentalists who claimed that EPA’s existing practices for ensuring that pesticide registration activities complied with the ESA were insufficient to protect listed species. A draft copy of EPA’s strategy to address the impacts of herbicides on listed species is available **here**. EPA is accepting public comment on the draft through October 22.

- Webinar Opportunity: Brigit Rollins, Staff Attorney, National Agricultural Law Center, will present a webinar on ESA-FIFRA regulations in early 2024. The webinar will soon be listed on our Webinar Series page **here**.

Right to Repair. The California state Senate passed the Right to Repair Act (**SB 244**) with a 38-0 bipartisan vote. This act, proposed by Sen. Susan Eggman, is the furthest a Right to Repair bill has advanced in the state. The goal of the bill is to expand consumers' and independent repair shops' access to parts, tools, and service information needed for repairing consumer electronics and appliances. By increasing the ability for consumers to repair goods, SB 244 aims to increase competition, consumer choice, and environmental sustainability. The bill now moves to the State Assembly for further consideration.

Plant-Based Meat. Turtle Island Foods SPC, the maker of Tofurky plant-based meat products, has filed a lawsuit in federal court to challenge **a new Texas labeling law** for plant-based meat. The law, which was passed in May, requires all plant-based and cell-cultured meat products to include disclaimers on the front labels stating that the products are not meat. In its lawsuit, Turtle Island Foods claims that the Texas law creates an "unreasonably burdensome" barrier to trade by imposing "vague and unnecessary" restrictions on labeling plant-based meat products. To read the full complaint, click [here](#).

CAFOs. A coalition of environmental groups have filed a petition with the Ninth Circuit Court of Appeals claiming that EPA is not acting quickly enough to address pollution from concentrated animal feeding operations ("CAFOs"). Specifically, the plaintiffs are asking the court to reject EPA's denial of a 2017 petition asking the agency to expand and strengthen water pollution permitting requirements for CAFOs. The plaintiffs' petition to the court is available [here](#). To learn more about the 2017 petition submitted to EPA, click [here](#) to read NALC article "Enviro Groups Ask EPA to Revisit CWA CAFO Rules."

Labor: H-2A. The Department of Labor is proposing a new rule that would strengthen protections for farm workers in the H-2A program. Specifically, the new rule would add additional protections for worker self-advocacy, clarify when a termination is "for cause", make the foreign labor recruitment process more transparent, make wages more predictable, and improve worker access to transportation. A pre-publication copy of the proposal is available [here](#). Once the proposal is published in the Federal Register, it will be open for public comment for 60 days.

Genetically Modified Foods. The Center for Food Safety (CFS) has launched an appeal in the 9th Circuit, continuing its legal battle with the USDA regarding genetically modified (GMO) food disclosure rules. CFS is challenging what it sees as a "loophole" that permits most GMO foods to remain unlabeled. CFS previously sued the USDA over these regulations and won a **district court ruling in 2022**. However, the group is appealing a portion of that ruling that supported the USDA's decision not to require disclosure of highly refined ingredients that cannot be detected in foods. CFS attorney Meredith Stevenson argues that the 2022 ruling effectively approved the USDA's exclusion of highly refined foods like sodas and oils from labeling, using unfamiliar terminology, which leaves consumers with limited information about how their food is produced. The appeal can be found [here](#).

Public Trust. Conservation groups have filed a lawsuit against the Utah government, alleging that excessive water diversions for agriculture, industry, and other uses have caused the rapid decline of the Great Salt Lake. In their **complaint**, the plaintiffs invoke the Public Trust Doctrine, asserting that states must protect shared resources like lakes and lands. The plaintiffs are asking the court to find that Utah has violated its public trust duty, and to order the state to restore the lake's health. The plaintiffs claim that the drying lakebed has already caused dust storms and public health concerns, which they argue will worsen without intervention. To learn more about the Public Trust Doctrine and how it is used in environmental lawsuits, click [here](#) to read NALC article "The Public Domain: Basics of the Public Trust Doctrine."

California: Insurance. The California state Senate passed **SB 505** on August 24 with broad bipartisan support. The bill, authored by Sen. Susan Rubio and co-sponsored by the California Department of Insurance, would make changes to California's fair access to insurance requirements (FAIR) Plan, which is widely regarded as the state's insurer of last resort. Currently, the FAIR Plan implements a clearinghouse program to help reduce the number of existing FAIR Plan insurance

policies by allowing admitted insurers to offer homeowners' insurance policies to existing FAIR Plan policyholders. Under SB 505, a similar clearinghouse program would be created for commercial policies. Proponents of the bill say that it will give agricultural producers who have turned to the FAIR Plan experiencing wildfire damage the opportunity to return to the competitive insurance market.

California: Neonics. Legislation to ban the nonagricultural use of neonicotinoid pesticides in California has passed the state legislature and is on its way to the Governor's desk. Initially, Asm. Rebecca Bauer-Kahan introduced **AB 363** to expedite the Department of Pesticide Regulation's assessment of these insecticides in lawns and gardens. The bill has since been amended to prohibit the sale, possession, or use of neonics for nonagricultural purposes by 2025, and it mandates DPR to establish its own restrictions by July 2029. Governor Newsom vetoed a previous attempt to ban backyard neonics in 2022, and it is currently unclear whether this new bill will receive the same fate. As a reminder, California is not the only state to take action targeted against neonicotinoids. Earlier this year, the New York legislature passed a law that will ban the use of neonics on lawns, and the sale of seeds treated with neonics. The text of that law is available [here](#).

Oregon: Meat Inspection. The State of Oregon is providing \$9 million to the Oregon Department of Agriculture to conduct state meat inspections for meat products produced for shipment within the state. Oregon and USDA's Food Safety and Inspection Service reached a cooperative agreement in 2022 allowing Oregon to develop and enforce inspection requirements "at least equal" to those implemented at the federal level. Oregon's Inspection program covers the slaughter and processing of cattle, swine, sheep, goats, and certain exotic species. The \$9 million is expected to fund the program for the next two years. To learn more about state meat processing laws, click [here](#).

Klamath Basin. Federal water managers have confirmed that farmers in the Klamath Basin will not face water cuts in the month of September. This decision follows earlier warnings of potential shortages. The Bureau of Reclamation attributed this stability to improved hydrology, future conservation efforts, and stakeholder agreements, maintaining water allocations at 260,000 acre-feet. This decision came after earlier concerns were raised in mid-August, but specific reasons for the change were not provided. The Klamath Basin has grappled with water disputes due to drought and competing interests, including agriculture and endangered species protection.

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