



# 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 23

December 14, 2023

**Thank you** to all our subscribers! Please forward **the subscription link** to your network. All previous issues of The Feed are available **here**. Send any questions, concerns, or suggestions to **NALC Director Harrison Pittman**.

Follow us on social:



Registration Will Open in January!

### Agricultural & Environmental Law Conferences

Mid-South

June 6-7, 2024

University of Memphis School of Law

Western

June 13-14, 2024

University of Nevada, Reno



Livestream option available for both conferences.



**Foreign Ownership of Land.** This year, 36 states proposed legislation seeking to restrict certain foreign investments in land located within their state, 12 of which enacted a law. At the federal level, several proposals were introduced in Congress which seek to increase transparency of agricultural land ownership and impose prohibitions on some foreign investments in U.S. land. In 2024, increasing oversight and restricting foreign investments in U.S. land will continue to be a policy issue considered by both federal and state policymakers. Specifically, at least twelve states have proposed or have plans to propose foreign ownership legislation for the upcoming legislative session. To read NALC articles discussing foreign ownership, click **here**. For NALC resources on foreign investments and ownership of U.S. land, click **here**.

**Arkansas Investigating Foreign Land Ownership.** Recently, Arkansas Secretary of Agriculture Wes Ward asked the state's attorney general to investigate two companies that may be in violation of the state's foreign ownership law because of their possible ties to the Chinese government. In 2023, the Arkansas state legislature passed **SB 383**, which restricts certain countries, including China, from acquiring or holding land within the state. Under the law, the state's attorney general has authority to investigate potential violations and bring an enforcement action against prohibited foreign landholders. In October, Arkansas became the first in the nation to enforce a state foreign ownership law when the state's attorney general ordered a subsidiary of Syngenta Seeds, a company ultimately owned by a Chinese state-owned enterprise, to divest itself of about 160 acres of farmland it owned within the state. Two NALC articles discussing Arkansas' recently enacted foreign ownership law are available **here** and **here**.

**California Water.** The Imperial Irrigation District, the largest user of Colorado River water in California, unanimously approved an agreement to conserve up to 100,000 acre-feet of water in 2023. This decision activates \$70 million in Interior Department funding for projects addressing toxic dust at the drying Salton Sea. The agreement is part of a larger effort among Arizona, California, and Nevada to conserve 3 million acre-feet of water through 2026. The multi-state agreement can be found **here**.

Meanwhile, California water agencies serving 27 million people will receive only 10% of their requested water from state supplies for the start of 2024 due to a relatively dry fall, despite healthy reservoir levels. The Department of Water Resources cited limited rainfall in October and November for the conservative allocation, with hopes that conditions might improve. While the initial allocation is low, it is an improvement from recent years, and officials plan to monitor and adjust allocations monthly based on changing conditions. For more NALC resources on water law, click [here](#).

**Black Vultures.** The black vulture is a vulture species found throughout North and South America that feeds on carrion as well as newborn animals, including newborn livestock such as cattle. While estimates suggest that black vultures are responsible for the loss of thousands of calves every year, the bird is protected under the Migratory Bird Treaty Act and may not be killed without a permit. In an effort to help cattle ranchers protect their herds from black vulture depredation, a group of Republican senators have introduced the **Black Vulture Relief Act** which would allow livestock producers to take black vultures without a permit so long as the take is necessary to protect livestock. A **similar bill** was introduced in the House of Representatives earlier this year.

**Livestock Confinement.** Senator Josh Hawley (R-Mo.) has introduced a bill known as the **Protecting Interstate Commerce for Livestock Producers Act** in order to prevent state governments from enforcing laws that conflict with livestock laws and regulations in other states. The bill is a direct response to **California's Prop 12**, which prohibits the sale of pork, eggs, and veal calves in the state if they do not meet specific space requirements, irrespective of their origin. If passed, the legislation would prevent states and local governments from enforcing bills that regulate the production of livestock when that livestock is produced outside of the state's borders. While Prop 12 did face legal challenges for regulating producers located outside of California, the Supreme Court ultimately upheld the law. For more information, click [here](#) to read NALC article "What's Cooking with Proper 12?: SCOTUS Decision."

**Trespass Convictions.** Animal activist and attorney Wayne Hsiung, co-founder of Direct Action Everywhere ("DxE"), has been sentenced in California to 90 days in jail and two years of probation for felony trespassing during "open rescues" of birds on local poultry farms. The charges stemmed from activist protests at Sunrise Farms in 2018 and Reichardt Duck Farm in 2019. Hsiung and DxE argue for a "right to rescue" animals that are ill or in distress, akin to saving an animal from a hot car. This defense led to Hsiung being successfully acquitted in Utah for the theft of two piglets, but did not succeed in North Carolina, where he was found guilty of taking a baby goat from a ranch. Hsiung has announced his intention to appeal the California verdict.

**Pesticides: Enlist.** The U.S. Fish and Wildlife Service ("FWS") has released a **draft biological opinion** ("BiOp") for the pesticides Enlist One and Enlist Duo, concluding that use of the two herbicides will not jeopardize the continued existence of 22 endangered species. However, applicators in specific counties must follow mitigation measures to safeguard federally protected plants and animals. The BiOp comes almost a year after EPA introduced early mitigation measures for the Enlist pesticides in order to protect endangered species that the agency found were highly vulnerable to pesticide impacts. At that time, EPA prohibited the use of Enlist in certain counties due to species concerns. Following this BiOp, **EPA has stated** that "off-labeling" counties is no longer needed. The agency intends to update the Enlist labels ahead of the 2024 growing season. To learn more about EPA's recent efforts to introduce early mitigation measures to reduce pesticide impacts to vulnerable species, click [here](#) to read NALC article "EPA Proposes Vulnerable Species Pilot Project."

**Pesticides: Sulfoxaflor.** The Ninth Circuit has declined to reconsider a previous decision criticizing but not vacating the EPA's approval of the insecticide sulfoxaflor, rejecting appeals from beekeepers and environmentalists. The original decision found the EPA's reapproval of sulfoxaflor in 2019 violated environmental laws but did not vacate the approval. Despite disappointment from environmental groups, the court emphasized the EPA's legal breach and highlighted the agency's opportunity to rectify the situation on remand. To learn more about the original lawsuit, click [here](#) to read NALC article "States, Environmental Groups Challenge EPA Over Sulfoxaflor."

**Pesticides: Glyphosate.** A coalition of environmental and farmworker groups have submitted a petition to EPA asking the agency to cancel the federal registration for glyphosate, one of the most widely used herbicides in the United States. Glyphosate has come under fire in recent years after the International Agency for Research on Cancer published a 2015 study concluding that glyphosate is “probably carcinogenic to humans.” Since then, numerous lawsuits have been filed against both EPA and Bayer, the current manufacturer of glyphosate, in an attempt to either strengthen warnings on products containing glyphosate or to remove it from the market entirely. Canceling the federal registration for glyphosate would make the herbicide unavailable for use. While EPA is unlikely to grant the petitioners’ request, denying or failing to respond to the petition within a certain time frame could leave the agency vulnerable to future lawsuits. Click [here](#) to read the petition. For more NALC resources on glyphosate, click [here](#).

**Pesticides: Roundup.** A federal court in California has dismissed a lawsuit filed by consumers alleging that ingredients in Roundup pesticide products could form a dangerous cancer-causing substance. Specifically, the plaintiffs had claimed that that glyphosate in Roundup would degrade into N-Nitrosoglyphosate (“NNG”), a known carcinogen, and that Bayer had deliberately concealed this information. The court concluded that the plaintiffs failed to show that Roundup had actually degraded into dangerous amounts of NNG. The court dismissed the claims with prejudice, a decision which the plaintiffs plan to appeal. Click [here](#) to view the court’s decision.

**Pesticides: Streptomycin.** On December 13, the Ninth Circuit Court of Appeals issued a decision to vacate EPA’s amended registration for streptomycin sulfate which allowed use of the antibiotic on citrus trees to combat citrus greening. In its decision, the Ninth Circuit noted that EPA had failed to assess the impacts that amending the streptomycin registration would have on endangered species. Additionally, the court found that EPA had failed to demonstrate that streptomycin would actually prevent citrus greening. To read the court’s decision, click [here](#).

**CWA: Section 401.** Eleven states have filed a lawsuit to challenge a Clean Water Act (“CWA”) rule adopted by EPA which allows states to block federally-issued CWA permits over potential water resource impacts. The rule was issued pursuant to CWA section 401 which gives states the authority to grant or deny proposed CWA licenses or permits that will result in any discharge of pollutants into navigable waters located within the state. In 2020, EPA issued a new section 401 rule to replace regulations that had been in place since 1971. The 2020 rule made numerous changes and limited the scope of state authority. EPA’s updated 401 rule, which went into effect last month, reverses these changes. In their lawsuit, the plaintiffs argue that the rule change increases the workload of state environmental agencies and leaves states at risk of lawsuits for not considering every possible “water-quality related” impact of a project. Click [here](#) to read the complaint. To learn more about section 401, click [here](#) to read NALC article “Court Vacates CWA Section 401 Certification Rule.”

**Biogas Capture.** A North Carolina state court of appeals unanimously affirmed state regulators’ authority to issue permits for hog farm operators to install systems that capture biogases from waste without considering if it is the least adverse option or if the cumulative effects of issuing the permit are reasonable. Environmental groups challenged the permits for Smithfield Hog Production, arguing they were issued without adequate consideration of harmful effects to water quality. The court upheld the state’s alternative permitting process for animal waste management systems in its [opinion](#), stating the process minimizes regulatory burdens while protecting air and water quality. The environmental groups are reviewing the opinion and considering next steps.

**Right-to-Repair.** A federal court has rejected Deere & Co.’s motion to dismiss a lawsuit filed against it by farmers claiming that the company has illegally conspired to restrict services to maintain and repair the agricultural machinery Deere & Co. manufactures. The court concluded that the plaintiffs had sufficiently established their allegations and that the case could continue. This decision represents the latest action in a growing right-to-repair movement that has been gaining momentum over the last year. To learn more, click [here](#) to read NALC article “Update on Right-to-Repair.” For the court’s ruling on Deere & Co.’s motion to dismiss, click [here](#).

**Food Additives.** A New Jersey state lawmaker has introduced [S. 4103](#) to the state legislature. If

passed, the bill would ban the sale, distribution, and manufacture of foods containing red dye no. 3 within the state of New Jersey after January 1, 2027. Earlier this year, California became the first state to pass a similar law which banned red dye no. 3 along with three other food additives. Since then, other states have introduced similar proposals, including New York and Illinois.

**Gray Wolves.** Two cattle industry groups have filed suit against the Colorado Division of Parks and Wildlife and FWS to prevent the reintroduction of gray wolves to the state of Colorado. In 2020, voters in Colorado approved a referendum to begin reintroducing gray wolves to the state by December 31, 2023. Ahead of that deadline, the Gunnison County Stockgrowers' Association and Colorado Cattlemen's Association have filed suit, claiming that that the reintroduction plan violates both the Endangered Species Act and that National Environmental Policy Act because the plan fails to take into account the full impacts of gray wolf reintroduction. Click [here](#) to read the complaint.

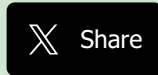
## Thank You to Founding Supporters of *The Feed*



## Thank You to Supporters of *The Feed*



## Share This Issue of The Feed:



**National Agricultural Library**  
U.S. DEPARTMENT OF AGRICULTURE

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**

National Agricultural Law Center | University of Arkansas, 2549 N. Hatch Ave., Fayetteville, AR 72704

[Unsubscribe nataglaw@uark.edu](mailto:nataglaw@uark.edu)

[Constant Contact Data Notice](#)

Sent by nataglaw@uark.edu powered by



Try email marketing for free today!