



# The Feed

## Recent Developments in Ag Law & Policy

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

Volume 2, Issue 6

March 28, 2024

**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:



**Sage-Grouse.** The Bureau of Land Management (BLM) has released a draft of its latest plan to manage and conserve sage-grouse on public lands. Building off of previous sage-grouse management plans, the new draft plan would affect 69 million acres across 10 states, and describes five possible management strategies. Under BLM's preferred management alternative, there would be fewer restrictions on resources and more opportunities for mitigation efforts to offset impacts to sage-grouse habitat. The draft plan will be available for public comment through June 13. During the comment period, BLM will host a series of public meetings to provide opportunities for question and answer. To view the draft plan and learn how to submit a comment, click **here**.

**Food Additives.** State legislatures in both Missouri and Washington have introduced bills to ban four food additives, including brominated vegetable oil, potassium bromate, propylparaben, and red dye 3. Both bills mirror the recently passed **California Food Safety Act** which bans the same four additives. New York and Illinois have also introduced similar legislation. If the Missouri and Washington proposals become law, both would go into effect on January 1, 2027 and would prohibit the sale, delivery, and distribution of foods containing any of the four additives. Missouri's proposed bill can be found **here**. Washington's proposed bill can be found **here**.

**Dairy Marketing.** The Oregon Supreme Court is considering whether to allow a lawsuit against Tillamook County Creamery Association to proceed. The suit, filed as a class action, alleges that Tillamook misled the public about its livestock practices by using deceptive marketing. According to the plaintiffs, Tillamook's advertising led consumers to believe its milk is sourced from small, family-owned dairies when at least two-thirds of Tillamook's milk is sourced from a farm with 28,000 dairy cattle. The plaintiffs are seeking an injunction to prevent Tillamook from continuing with its allegedly deceptive marketing practices. Lower courts initially dismissed the lawsuit, finding that the case did not qualify as a class action. However, the plaintiffs appealed that dismissal and argued to the Oregon Supreme Court that the case should be allowed to proceed. Oral arguments were held on March 4, and it is unknown when the court will issue its opinion. The plaintiffs' second amended complaint and

demand for jury trial can be read [here](#).

**CARE Act.** A bill to amend the child labor provisions of the Fair Labor Standards Act was introduced to the U.S. Senate late last week. The bill, known as the **Children’s Act for Responsible Employment in Agriculture (CARE) Act**, would raise the minimum age at which children can work in agriculture from 12 to 14. The bill would also, for the first time, set limits on the number of hours that children employed in the agricultural industry can work each week. Exemptions for children working on family farms and in educational or vocational training programs would remain in place. The bill is currently before the Senate Committee on Health, Education, Labor, and Pensions. For more information on agricultural labor from the National Agricultural Law Center, click [here](#).

**Heat Protection.** The Florida Legislature has approved **HB 433**, a bill that prohibits local governments from establishing heat protections for outdoor workers. The bill would preempt local measures such as the one adopted by Miami-Dade County in 2023 that required agricultural and construction companies to provide water and rest breaks for outdoor workers when the heat index reached 95°F or higher. Along with preventing localities from adopting heat protections, HB 433 would also prohibit local governments from mandating wages above the state minimum wage for subcontracted workers. The bill now heads to the governor’s office for signing.

**Pesticides: Failure-to-Warn.** At least four states have introduced bills that would limit the ability of plaintiffs to bring claims that pesticide manufacturers failed to warn them about potential health risks of using pesticide products if the pesticide has a federally approved label that is consistent with either the most recent human health assessment for the pesticide or with the Environmental Protection Agency’s (EPA) carcinogenicity classification of the pesticide. State legislatures in **Florida, Idaho, Iowa, and Missouri** have all introduced similar bills aimed at providing some level of protection to pesticide manufacturers from state law failure-to-warn claims. These bills come after several years of lawsuits filed by plaintiffs claiming that exposure to a particular pesticide caused them to develop a serious illness, despite EPA concluding that the products were safe for use. To learn more about those lawsuits, click here to view the National Agricultural Law Center’s series “Plaintiffs & Pesticides.”

- Conference opportunity (June 7, in person and livestream available): **Rod Snyder**, Senior Advisor for Agriculture to the EPA Administrator and Brigit Rollins, Staff Attorney, National Agricultural Law Center will present “Tomorrow’s Harvest: An Overview of the Regulatory and Litigation Landscape for Crop Protection Products” at NALC’s **Eleventh Annual Mid-South and Environmental Law Conference**.

**Pesticide-Resistant Seeds.** USDA’s Animal and Plant Health Inspection Service (APHIS), has issued a proposed rule to approve a corn cultivar developed by Bayer that is resistant to five herbicides, including dicamba. In a draft environmental impact statement, APHIS addressed the off-target dicamba damage that has been associated with applications of the volatile herbicide to dicamba-resistant soybeans, stating that the degree to which approving the corn cultivar would contribute to the controversy was “uncertain.” Along with dicamba, the new cultivar is also resistant to glufosinate, glyphosate, quizalofop, and 2,4-D. APHIS will take comments on the proposal through May 6. Click [here](#) to learn more.

- Webinar opportunity (May 15): “The Deal with Dicamba: Overview of Recent Legal Developments.” To register, click [here](#).

**WOTUS.** A North Carolina landowner has filed a lawsuit against EPA and the Army Corps of Engineers, alleging that the two agencies are unlawfully interpreting the Clean Water Act term “waters of the United States” beyond the boundaries established by the Supreme Court in *Sackett v. EPA*. Specifically, the plaintiff claims that while the current WOTUS definition covers wetlands that share a “continuous surface connection” in accordance with the Court’s ruling in *Sackett*, the definition failed to include language from the decision stating that such wetlands must also be “indistinguishable” from covered waters. The plaintiff asks the court to strike down the WOTUS provisions on “adjacent wetlands” for unlawfully exceeding statutory authority. To read the plaintiff’s complaint, click [here](#). For more information on legal issues surrounding WOTUS, click [here](#) to view the National Agricultural Law Center’s “WOTUS Update” series.

- Conference opportunity (June 13-14, livestream available): **Tess Dunham**, Partner, Khan, Soares & Conway, LLP will present "WOTUS & Water Quality in the West in a Post-*Sackett* World" at NALC's **Second Annual Western Agricultural & Environmental Law Conference**.

**Ag Surveillance.** The Kentucky state House of Representatives have passed **SB 16**, a bill that would prohibit drone photography of food production facilities or animal feeding operations. If passed, SB 16 would make it a misdemeanor for anyone to use an unmanned aircraft to make either an audio or video recording of such facilities. The bill now heads to the Kentucky state Senate for further consideration.

**Farm Credit.** A rancher in Tennessee has filed a lawsuit against President Biden for failing to make two new appointments to the Farm Credit Administration board (the board). The Farm Credit Act, which established the board states that the President shall appoint candidates to serve on the board for six-year terms. However, the terms of two current members have expired and no new appointments have been made. According to the plaintiff, the President's failure to make those appointments is a violation of Article II of the U.S. Constitution which requires the President to faithfully carry out the law of the land. To view the complaint, click [here](#).

**California: Water.** A court has upheld a decision from the California water board to reduce water diversions from the San Joaquin River and its tributaries to aid struggling fish populations. The court rejected lawsuits from both water districts who argued for a voluntary approach to water conservation, and environmental groups who argued that the water board should adopt stricter, more permanent water reductions. Instead, the court upheld the water board's 2018 plan which would limit diversions on the San Joaquin to between 50% and 70% of the river's total flow. Both the water districts and environmental groups are expected to appeal. Click [here](#) to read the court's decision.

- Conference opportunity (June 13-14, livestream available): **Merissa Moeller**, Associate, Stoel Rives LLP will present "Going with the Flow: Instream Water Rights & the Future of Irrigated Ag" at NALC's **Second Annual Western Agricultural & Environmental Law Conference**.

**Methane Emissions.** A bipartisan group of senators is introducing the **EMIT LESS Act**, aimed at expanding USDA research on feed additives to reduce methane emissions from cattle. The bill would enhance the Agricultural Research Service's capacity for methane analysis, expand training programs for farmers, incorporate methane reduction practices into USDA grants and programs, and revise standards for emission reduction. Industry and environmental groups, including the American Feed Industry Association and Environmental Defense Fund, support the proposal. The bill is sponsored by Sens. Michael Bennet, Mike Crapo, Tammy Baldwin, and Jerry Moran.

**Foreign Ownership of Ag Land.** So far in 2024, at least four states have signed foreign ownership measures into law, including Idaho (**HB 496**), Indiana (**HB 1183**), South Dakota (**HB 1231**), Utah (**HB 516**). Idaho Governor Brad Little and South Dakota Governor Kristi Noem signed the foreign ownership measures enacted by their states' legislature. In the last day, the Georgia legislature enacted SB 420, which has been sent to Governor Kemp. To view states' laws restricting foreign ownership of private agricultural land, click [here](#).

- Conference opportunity (May 14, online only): Harrison Pittman, Director, National Agricultural Law Center and **Ben Maddox**, VP of Business Development, AcreTrader will present "Practical Update on Foreign Ownership and Other Ag Land Transaction Issues" as part of NALC's Online "Early Bird" Agenda for the **Eleventh Annual Mid-South Agricultural and Environmental Law Conference**.

**FY24 Appropriations and Foreign Ownership.** The recently enacted FY24 Agriculture Appropriations included foreign ownership-related provisions. USDA to CFIUS for transactions involving agricultural land, biotechnology, and industry. The FY24 appropriations language also requires USDA to notify CFIUS of agricultural land transactions reported under the Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978 that may pose a threat to national security. The legislation also provided funding to USDA to design a new data system AFIDA reporting, building on the Consolidated Appropriations Act, 2023 requirement that USDA establish an internet databased

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



**DOWNEY** BRAND

**Registration is Open!**

### Agricultural & Environmental Law Conferences

**Mid-South**

*June 6-7, 2024*

*University of Memphis*

*Cecil C. Humphreys School of Law*



**Western**

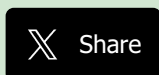
*June 13-14, 2024*

*University of Nevada, Reno*



*Livestream option available for both conferences.*

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:Unsubscribe_nataglaw@uark.edu)

[Constant Contact Data Notice](#)

Sent by nataglaw@uark.edu.ccsend.com powered by



Try email marketing for free today!