



# 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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NALC "WESTERN WATER" WEBINAR SERIES  
**Groundwater Recharge:**  
Legal and Strategic Considerations of Project Development  
June 19, 2024, Noon EDT  
**Presenter:**  
David Cameron  
Hanson Bridgett LLP

**Farm Bill.** House Agriculture Chair Glenn Thompson (R-Pa.) has released his draft of the farm bill, titled the "**Farm, Food, and National Security Act of 2024.**" Senate Agriculture Chair Debbie Stabenow (D-Mich.) had previously unveiled her version, the "**Rural Prosperity and Food Security Act.**" The drafts contain diverging policy considerations, but some main differences surround the debate on pay-fors. The House Agriculture Committee is set to begin markups on May 23, 2024. Chairman Thompson has stated the farm bill will likely not receive a floor vote until September after the appropriations process, a priority for the chamber this summer, is finished.

- Conference opportunity (June 13-14, livestream available): **Fitz Elder**, Republican Staff Director, Committee on Agriculture, Nutrition, and Forestry at the United States Senate and **Rosy Brummette**, Policy Advisor, U.S. Senator Michael F. Bennet will present "Update from the Potomac: 2024 Farm Bill, Public Lands, & Related Federal Issues" at NALC's **Second Annual Western Agricultural & Environmental Law Conference.**

**H-2A Final Rule.** The U.S. Department of Labor has published a **final rule** to enhance protections for workers under the H-2A temporary farmworker program. This rule aims to increase wage transparency, clarify when an employee can be terminated for cause, and prevent employer retaliation among temporary seasonal agricultural workers. The final rule will go into effect on June 28, 2024. However, only applications for H-2A employer certifications submitted to DOL on or after August 29, 2024, will be processed according to the new rules. For more information on the final rule, click **here** to read NALC article "Department of Labor Finalizes New H-2A Regulations."

**HPAI.** A second human case of avian influenza has been detected in a farmworker in Michigan. Confirmed cases of highly pathogenic avian influenza (HPAI) have been detected in nine states; however, both human cases have only been found in farmworkers with regular exposure to infected livestock. USDA has announced an extension of financial assistance to both farms with infected

livestock and farms without infected livestock who are incurring testing and sampling fees.

- Webinar opportunity (July 17): **Brook Duer**, Staff Attorney, Penn State Center for Agricultural and Shale Law will present "HPAI in Poultry and Cattle: How Can We Miss You If You Won't Go Away?" To register, click [here](#).

**Colorado River.** The U.S. Department of the Interior **has approved a plan** by Arizona, Nevada, and California to preserve 3 million acre-feet of Colorado River water until 2026. Interior Secretary Deb Haaland approved the plan, which includes compensating water users for up to 2.3 million acre-feet of reductions using Inflation Reduction Act funding. The remaining water will either go uncompensated or be paid for by state or local funds. This decision reflects the department's response to the ongoing drought in the region.

- Conference opportunity (June 13-14, livestream available): **Merissa Moeller**, Associate, Stoel Rives LLP and **Elizabeth Ewens**, Partner, 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**.

**Cottage Foods.** The Hawaii Legislature passes a **bill** codifying the regulation of cottage food products in Hawaii. Referred to as "homemade food products" in Hawaii, this bill would expand the current definition of homemade food products to include any food product prepared for sale in the home kitchen of a homemade food operator's private home or in a farm kitchen. In addition, the bill would create certification for homemade food operators and labeling requirements for homemade food products' packaging. The bill awaits a signature from Governor Green. For more information on other proposed state cottage food laws, click [here](#) to read NALC article "Update on Cottage Food Laws – 2024 Proposed Legislation." To read more about existing cottage food laws in different states, click [here](#).

**Food Safety.** Senators Amy Klobuchar (D-MN) and Tammy Duckworth (D-IL) have introduced the **Baby Food Safety Act of 2024** to regulate levels of harmful heavy metals in commercial infant and toddler food. This legislation aims to enhance FDA oversight by creating stricter standards for allowable limits of toxic heavy metals in baby foods, setting standards for sampling and testing commercial food products for contaminants, and strengthening the FDA's ability to enforce higher standards for imported food products in commercial baby food. There is a companion bill in the House of Representatives introduced by Representatives Raja Krishnamoorthi (D-IL) and Tony Cárdenas (D-CA).

**Wetlands.** The Fish and Wildlife Service has finalized a **new rule** allowing farmers in the prairie pothole region to install drain tiles on land under wetland easements, as long as they do not directly or indirectly drain protected wetlands. This rule applies to around 28,000 easements in Iowa, Minnesota, Montana, North Dakota, and South Dakota, mostly on private farmland. Notably, the rule specifies that around 20 landowners per year must remove drain tile systems according to current regulations, aiming to incentivize compliance and reduce removal costs.

**Meat Alternatives Labeling.** Iowa Governor Kim Reynolds **signed a bill into law** that mandates the clear labeling of lab-grown and plant-based meat and egg alternatives starting July 1. Products must be labeled with terms like "fake," "lab-grown," or "imitation." The law aims for transparency and consumer awareness. It also prohibits schools from purchasing lab-grown meat and requests a federal waiver to prevent the use of federal food assistance for imitation egg products.

**Vermont Agriculture Bills.** Several agriculture-related bills are on their way to Vermont Governor Phil Scott's desk. **H.626** would establish a Division of Animal Welfare to address animal cruelty cases. **S.301** which would bring miscellaneous changes to agricultural law, including adding certain rodenticides to a restricted use list and prohibiting the sale of specific black bear organs. However, Governor Scott vetoed **H.706**, which would have banned certain uses of neonicotinoids, a type of pesticide harmful to pollinators. Additionally, **H.81**, a bill allowing farmers and loggers to repair their equipment independently, did not pass due to disagreement on its details between the House and

**Roundup Litigation.** The full Eleventh Circuit has **denied** Monsanto's request for a review of a panel's ruling that allows a Georgia doctor to pursue claims against the company over Roundup weedkiller. The panel's decision revived the doctor's state law failure-to-warn claim, rejecting Monsanto's argument that federal pesticide labeling requirements preempted it. Monsanto's petition for rehearing was denied, leaving the panel's ruling intact. This decision could impact thousands of pending lawsuits alleging Roundup's failure to warn about cancer risks. To learn more about the question of failure-to-warn claims in pesticide injury lawsuits, click [here](#).

- Conference opportunity (June 6-7, 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 Mid-South Agricultural and Environmental Law Conference.

**Tennessee Wildlife Laws.** A Tennessee Court of Appeals has issued an opinion in *Terry Rainwater et al. v. Tennessee Wildlife Resources Agency et al.* finding that subsections (1) and (7) of **Tenn. Code Ann. § 70-1-305** are facially constitutional but unconstitutional as applied. Here, the court reviewed the constitutionality of §70-1-305(1) and (7) after plaintiff's sued for Declaratory and Injunctive Relief when Tennessee Wildlife Resources Agency (TWRA) officials installed surveillance cameras on their property without warrants or probable cause to monitor for violations of state wildlife laws. Plaintiffs argued that the TWRA officials' warrantless search violated Article I, Section 7 of the Tennessee Constitution. The Appeals Court agreed declaring the statute unconstitutionally allows TWRA to search a private property protected by both the Tennessee Constitution and the Fourth Amendment of the United States Constitution.

- Conference opportunity (June 6-7, livestream available): **Robert Frommer**, Senior Attorney, Institute for Justice and **Joshua Windham**, Attorney and Elfie Gallun Fellow in Freedom and the Constitution, Institute for Justice will present "Fourth Amendment and Agriculture: Warrantless Access to Ag & Private Rural Lands" at NALC's Eleventh Mid-South Agricultural and Environmental Law Conference.

**Groundwater.** Two landowners and a county farm bureau have **sued** the California State Water Resources Control Board over a decision to place the Tulare Lake Subbasin on probationary status. The decision gives state officials, rather than local officials, the authority to manage the amount of water pumped from the ground in the region. The lawsuit alleges the board overreached their authority and endangered the largely agricultural community of Kings County. State officials claim they were required to act because the local region had failed to create an adequate plan for managing the resource. Under California's 2014 groundwater law, local communities were tasked with creating long-term plans for sustainably managing groundwater. This is the first California area to undergo the probationary process since the law was enacted.

- Webinar opportunity (June 19): **David Cameron**, Partner, Hanson Bridgett LLP, will present "Groundwater Recharge: Legal and Strategic Considerations of Project Development." To register, click [here](#).
- Conference opportunity (June 13-14, livestream available): **Lauren D. Layne**, Shareholder, Baker Manock & Jenson and **Joe M. Marchini**, Shareholder, Baker Manock & Jensen will present "Water Law & Ethics: Sinking and Swimming With Litigation, Water Districts, and Agencies" at NALC's **Second Western Agricultural and Environmental Law Conference**.

**NEPA Litigation.** A group of 20 Republican-led states is **challenging** a recent rule by the Biden administration's Council on Environmental Quality in the U.S. District Court for the District of North Dakota. The rule, called the **National Environmental Policy Act Implementing Regulations Revisions Phase 2**, changes the National Environmental Policy Act's (NEPA) review procedures to require agencies to identify an "environmentally preferable alternative" when drafting an Environmental Impact Statement, and take climate change and environmental justice concerns into

account. While the Biden administration claims the updated rule will streamline the review process for key investments and projects, the challenging group of states argues that the final rule will create advantages for projects that seek to achieve certain “policy goals,” and pose further barriers to projects that do not align with policy goals. To learn more about the final rule, click [here](#) to read NALC article “CEQ Completes NEPA Overhaul with Final Phase 2 Regulations.”

- Conference Opportunity (June 13-14, livestream option available): **Haig Baghdassarian**, Deputy Secretary and Chief Counsel for the California Department of Food and Agriculture, **Cort Jensen**, Chief Attorney, Montana Department of Agriculture, and **Deanie Reh**, Assistant Attorney General, Arizona Attorney General’s Office present “State Ag Departments & the Regulation of Agriculture and the Environment” at **NALC’s Second Western Agricultural and Environmental Law Conference**.

**Pesticides.** The California State Assembly passed **AB-1864**, a bill that would require farms within a quarter-mile of a school to notify county officials before spraying certain pesticides. Specifically, farms within a quarter-mile of a school would be required to submit a notice of intent before applying any pesticide which has been: classified by the California Department of Pesticide Regulation as a carcinogen, a reproductive toxicant, or a cholinesterase inhibitor; is considered a toxic air contaminant pursuant to Section 6860 of Title 3 of the California Code of Regulations; or is one of 20 listed endocrine disrupting pesticides. In the notice of intent, a farm must include both the specific application method they will use, and the exact date and time of the start and the end of the pesticide application. The legislation now goes to the California Senate for further consideration.

- Conference opportunity (June 13-14, livestream option available): NALC Staff Attorney Brigit Rollins will present “The Future of Pesticides in Western States: The Latest Legal Developments & Trends” at NALC’s **Second Western Agricultural and Environmental Law Conference**.

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## Agricultural & Environmental Law Conferences

**Mid-South**

**June 6-7**

**Memphis, Tennessee**

**Western**

**June 13-14**

**Reno, Nevada**



**Livestream option available for both conferences.**





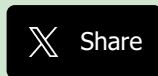


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