



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. Senate Agriculture Committee Republicans and Ranking Member John Boozman (R-AR) have unveiled their farm bill **proposal**. The released framework does not contain bill text, but outlines policy priorities similar to the House farm bill which advanced out of committee last month. Senate Agriculture Committee Chair Debbie Stadenow (D-MI) had previously released her version, entitled the "**Rural Prosperity and Food Security Act**." The Senate GOP-proposal, like the House bill, primarily differs from the Democrat-led proposal around the pay-fors debate. Though the House bill has advanced from committee, it is unlikely a farm bill will pass both chambers before the existing authorization expires on Sept. 30 meaning that an extension will likely have to be passed. To learn more about animal agriculture-specific provisions in the House farm bill, click **here** to read NALC article "Animal Ag in the 'Farm, Food, and National Security Act of 2024.'"

Senate Ag Bills. U.S. Senators Alex Padilla (D-Calif.) and Todd Young (R-Ind.) introduced a bipartisan set of bills aimed at safeguarding America's food security and agricultural supply chains which are vital for national security. The bills focus on leveraging emerging technologies, such as biotechnology, and establishing coordination mechanisms within the U.S. Department of Agriculture (USDA) to address threats and promote innovation. To read a summary of the proposed bills, click **here**.

Animal Feed. The Food and Drug Administration has completed its multi-year review of Bovaer – confirming that the methane-reducing feed ingredient meets safety and efficacy requirements for use in lactating dairy cattle. Bovaer, developed by Dutch company dsm-firmenich, but licensed for use by Elanco Animal Health, is already available for use commercially in 58 countries. Elanco claims a tablespoon of Bovaer has the potential to reduce methane emissions by 30% annually. Elanco is looking to expand Bovaer across North America, and expects a product launch around the third quarter of 2024.

H-2A Wages. A bipartisan group of 120 House of Representative members sent a **letter** to Chairman Robert Aderhold (R-AL) and Ranking Member Rosa DeLauro (D-CT) of the House Appropriations Subcommittee on Labor, Health and Human Services, and Education urging the subcommittee to include a AEWR wage freeze in 2025 appropriations legislation. Adverse Effect Wage Rates (AEWR) are the minimum hourly wage rates that employers must pay migrant temporary agricultural workers under the H-2A visa program. The letter asks to freeze the rates at the levels found in the January 2023 fiscal spending bill. The current AEWR national average is around \$17.55 with most states' AEWR falling between \$17 and \$19 per hour in 2024. The letter expresses concern with rising AEWR rates, and the burdens increasing agricultural costs create for domestic producers. To learn more about the current AEWR and the various legal challenges it faces, click **here** view NALC article "Challenges to the 2023 U.S. Department of Labor H-2A AEWR Methodology Rule."

Carbon Markets. The Biden administration unveiled **new guidelines** for participation in voluntary carbon markets (VCMs), aiming to leverage them as a vital revenue source for rural America. Agriculture Secretary Tom Vilsack highlighted the potential for farmers, ranchers, and forest landowners to earn from carbon credits by sequestering carbon in soil or forests, with verification by trusted third parties. The USDA **plans** to solicit input on integrating farmers into "high-integrity" carbon markets, aligning with the Growing Climate Solutions Act to facilitate farmers' access to carbon markets and establish verification standards.

FDA Reorganization. The U.S. Food and Drug Administration (FDA) has received **final approval** from the U.S. Department of Health and Human Services on its proposed Human Food Program reorganization. The modification of FDA's organizational structure will realign the functions of the Center for Food Safety and Applied Nutrition, Office of Food Policy and Response, and certain functions from the Office of Regulatory Affairs to establish the Human Foods Program. Following its proposal in 2023, the reorganization package underwent a formal external review process, and will be implemented on October 1, 2024.

HPAI. A third human case of highly pathogenic avian influenza (HPAI) was found in a dairy worker in Michigan. While twelve states have confirmed infections in dairy herds, the three human cases have only appeared in two states - Michigan and Texas. All three cases involved farm workers in contact with infected animals. USDA has announced an increase in funding available to the Animal and Plant Health Inspection Service (APHIS) for response activities. Additionally, the FDA published a **letter** addressing the potential HPIA contamination risk of consuming raw, unpasteurized milk. The letter also listed a number of recommendations for states where the sale of raw milk is permitted, including communicating the risk of consumption to the public, monitoring dairy herds for signs of illness, implementing a surveillance testing program, and introducing a raw milk recall procedure.

- 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**.

ESA Litigation. The Ninth Circuit Court of Appeals issued a published opinion in **Natural Resources Defense Council v. Haaland**, rejecting challenges to federal environmental review of long-term water supply contracts for the Central Valley Project (CVP). The court held that agencies complied with the Endangered Species Act (ESA) in assessing the contracts' impacts on listed species. The Sacramento River Settlement Contractors, key stakeholders in the case, negotiated contracts with the Bureau of Reclamation (Reclamation) in 1964 and renewed them in 2005. These contracts play a vital role in CVP operations. The court affirmed the validity of consultations on contract renewals and dismissed claims of Reclamation violating its ESA duty. The Ninth Circuit's ruling emphasized contractual obligations and rejected arguments for further consultation. To learn more about how the ESA impacts agriculture, click **here** to view NALC's ESA Manual.

Right-to-repair. John Deere is now allowing owners of its equipment to use independent repair shops to repair emission control devices and other equipment systems. Prior to this decision, Deere, along with many other equipment manufacturers, required equipment owners to use only Deere-certified repair shops for most equipment repairs. This decision comes after Deere received warnings

from the Environmental Protection Agency about potential violations of the Clean Air Act. In response to EPA violations, Deere recalled equipment owner's manuals, and sent letters to equipment owners notifying them that they are allowed to use a repair shop of their own choice to maintain or repair emission control devices. Deere remains a part of several right-to-repair lawsuits. To learn more about right-to-repair, click [here](#) to read NALC article "Update on Right-to-Repair."

Pollution. Governor Kevin Stitt signed [Senate Bill 1424](#) into law, easing regulatory burdens on poultry farms in eastern Oklahoma despite opposition from cities and tribes. The bill prohibits lawsuits against poultry farmers for ground and water pollution if they follow a state-approved nutrient management plan, and increases fines for pollution to \$10,000 a day. Supporters argue it protects small farmers from legal battles, but opponents fear increased environmental risks and pollution problems, citing concerns about runoff from chicken waste impacting water quality. The bill goes into effect on November 1.

Poultry Contracts. The USDA is proposing a [rule](#) (click hyperlink to comment or read the rule) to prohibit poultry companies from deducting base pay from growers who do not meet production goals. This departure from the tournament system, where high performers are rewarded by deducting from low performers' pay, aligns with a 2022 Justice Department settlement. USDA will take comments on the proposed rule until August 9.

Pesticides. BASF has applied to the EPA for approval of its dicamba herbicide product, Engenia, for use in soybean and cotton. EPA is accepting comments on the proposed label for 30 days. This application follows a federal judge's vacatur of registrations for three dicamba products in February, including Engenia, XtendiMax by Bayer, and Tavium by Syngenta. EPA expects significant stakeholder interest and has included BASF's proposed labeling in the docket for a 17-month review period, potentially affecting its availability for growers in 2025. To view the label and learn how to submit a comment, click [here](#). To learn more about the Arizona court's decision, click [here](#) to view NALC article "The Deal with Dicamba: Court Vacates Over-the-Top Registration."

Colorado River. The Bureau of Reclamation has [announced](#) an additional \$700 million for water conservation projects in Arizona, Nevada, and California, aiming to save over 700,000 acre-feet of water in Lake Mead. These projects, funded through the Lower Colorado Basin System Conservation and Efficiency Program's "Bucket 2," include various water-saving initiatives such as infrastructure improvements, efficiency enhancements, and recycling efforts. This funding, part of the Inflation Reduction Act, aims to support water-saving endeavors in regions affected by long-term drought until the end of 2026, when new water distribution frameworks will be proposed.

- 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](#).

Disaster Relief Litigation. The U.S. District Court for the Northern District of Texas granted part of a preliminary injunction blocking USDA Emergency Relief Program payments to agricultural producers based on its "socially disadvantaged farmer or rancher" designation. This Congressionally created designation allocated greater relief funds to be awarded to women and minority farmers in an effort to remedy the effects of past discrimination. The District Court found that granting increased funds to farmers based on race and sex was unconstitutional, and enjoined the USDA from granting disaster relief on such discriminatory criteria. To read the memorandum opinion and order, click [here](#).

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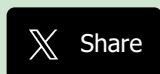


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