



The National Agricultural Law Center



Case Law Index Updates – August 1, 2009

L. Paul Goeringer
Research Associate

Administrative Law

Fourth Circuit

Dow AgroSciences LLC v. Nat'l Marine Fisheries Serv., --- F.Supp.2d ---, 2009 WL 2257703 (D. Md. 2009) (biological opinion taken in regards to pesticide application process)
N.C. Growers' Ass'n, Inc. v. Solis, --- F.Supp.2d ---, 2009 WL 1905067 (M.D.N.C. 2009) (injunction to prevent agency rule from taking effect)

Fifth Circuit

Magee v. United States, No. 09-60009, 2009 WL 2169057 (5th Cir. July 20, 2009) (review of NAD decision)

Eighth Circuit

Carter v. High Country Mercantile, Inc., No. 08-0835-CV-W-ODS, 2009 WL 2244753 (W.D. Mo. July 28, 2009) (agency could prevent employees from testify or producing documents to protect agency's privilege)

Ninth Circuit

Cal. Trout v. FERC, --- F.3d ---, 2009 WL 2138983 (9th Cir. 2009) (upholding agency decision to deny attempts to intervene in renewal of license to operate dam)
Lion Raisins, Inc. v. U.S. Dep't of Agric., --- F. Supp. 2d ---, 2009 WL 2043112 (E.D. Cal. 2009) (administrative search; FIOA requests)
Idaho Wool Growers Ass'n v. Schafer, --- F.Supp.2d ---, 2009 WL 1922070 (D. Idaho 2009) (final agency action; advisory committees)
Ctr. For Biological Diversity v. Wagner, No. 08-302-CL, 2009 WL 21706049 (D. Or. June 20, 2009) (claim agency violated statutory duties when allowing grazing)

Tenth Circuit

Greater Yellowstone Coal. v. Tidwell, --- F.3d ---, 2009 WL 1986826 (10th Cir. 2009) (no violation for rules authorizing federal lands to be used as elk feeding grounds)

DC Circuit

Ark. Dairy Coop. Ass'n, Inc. v. U.S. Dep't of Agric., --- F.3d ---, 2009 WL 2195129 (D.C. Cir. 2009) (producers could challenge interim rule under the APA)
Catawba County v. EPA, 571 F.3d 20 (D.C. Cir. 2009) (no APA violations in promulgation of NAAQS for fine particulate matter)

Federal Circuit

Tex. Bio- & Agro- Defense Consortium v. United States, --- Fed. Cl. ---, 2009 WL 2371342 (Fed. Cl. 2009) (challenging site selection for biosecurity facility)

Idaho

Rammell v. Idaho Dep't of Agric., 210 P.3d 523 (Idaho 2009) (review of hearing officer's decision)

Indiana

Jennings Water, Inc. v. Office of Env'tl. Adjudication, 909 N.E.2d 1020 (Ind. Ct. App. 2009) (judicial review of agency denial of administrative review of permit)

Nebraska

In re 2007 Admin. Of Appropriations of Water of Niobrara River, 768 N.W.2d 420 (Neb. 2009) (administrative proceedings not moot)

Ohio

Ohio Fresh Eggs, L.L.C. v. Boggs, No. 08AP-929, 2009 -Ohio- 3551, 2009 WL 2159652 (Ohio Ct. App. July 21, 2009) (denial of attorneys' fees for unreasonable permit revocation)

Agritourism

Second Circuit

Arnold's Wines, Inc. v. Boyle, 571 F.3d 185 (2d Cir. 2009) (N.Y.'s alcohol scheme was permissible under the 21st Amendment)

Idaho

Rammell v. Idaho Dep't of Agric., 210 P.3d 523 (Idaho 2009) (validity of regulations imposing fees on domestic cervidae)

Animal Feeding Operation

Indiana

Jennings Water, Inc. v. Office of Env'tl. Adjudication, -909 N.E.2d 1020 (Ind. Ct. App. 2009) (denying petition review permit for construction of CFO)

South Dakota

Andersen v. Town of Badger, --- N.W.2d ---, 2009 WL 2093793 (S.D. 2009) (challenging city waiving required distance from town CAFO could be built)

Animal ID

DC Circuit

Farm-To-Consumer Legal Defense Fund v. Vilsack, --- F.Supp.2d ---, 2009 WL 2185553 (D.D.C. 2009) (challenge to state animal identification system)

Animal Welfare

Ninth Circuit

Gardner v. Kootenai County, No. CIV 08-472-BLW, 2009 WL 2392044 (D. Idaho July 31, 2009) (claims of constitutional violations in seizure of animals)

Bankruptcy

Eighth Circuit

In re Farmland Indus., Inc., --- B.R. ---, 2009 WL 2212804 (B.A.P. 8th Cir. 2009) (challenging sale of assets; bidder not qualified bidder)

Georgia

Blocker v. Wyatt, No. 609CV052, 2009 WL 2340700 (S.D. Ga. July 27, 2009) (denying appellate stay of foreclosure)

Idaho

In re Thomason, No. 03-42400-JDP, 2009 WL 2136870 (Bankr. D. Idaho July 14, 2009)
(allocation of proceeds from foreclosed property sale)

Kansas

In re Waite, Bankr. No. 07-41701, Adv. No. 08-7010, 2009 WL 1941301 (Bankr. D. Kan. July 2, 2009) (discharge of debt)

Montana

In re Hughes, Bankr. No. 08-60003-12, Adv. No. 08-00089, 2009 WL 2224642 (Bankr. D. Mont. July 22, 2009) (tractor was property of the bankruptcy estate)

North Dakota

In re Baca, Bankr. No. 08-30796, Adv. No. 08-7033, 2009 WL 1940525 (Bankr. D.N.D. July 2, 2009) (debts determined to be nondischargeable)

Tennessee

In re Williams, --- B.R. ---, 2009 WL 2256696 (Bankr. W.D. Tenn. 2009) (creditor had sufficient interest in check to assert rights)

West Virginia

In re Poe, No. 08-906, 2009 WL 2357160 (Bankr. N.D. W. Va. July 29, 2009) (debtors were not "family farmers" entitled to file under Ch. 12)

Biosecurity**Federal Circuit**

Tex. Bio- & Agro- Defense Consortium v. United States, --- Fed. Cl. ---, 2009 WL 2371342 (Fed. Cl. 2009) (challenging site selection for biosecurity facility)

Clean Water Act**Sixth Circuit**

Fitzgibbons v. Cook & Thorburn & Hancock County Drainage Dists., No. 1:08-CV-165, 2009 WL 2170364 (W.D. Mich. July 21, 2009) (denial of attorneys' fees under CWA)

Eighth Circuit

United States v. Bailey, 571 F.3d 791 (8th Cir. 2009) (enforcement of Corps' order to restore wetlands)

Ninth Circuit

St. John's Organic Farm v. Gem County Mosquito Abatement Dist., --- F.3d ---, 2009 WL 2357866 (9th Cir. 2009) (citizen suit by organic farm for pesticide discharges without a permit; plaintiff entitled to attorney's fees)

Ctr. For Biological Diversity v. Wagner, No. 08-302-CL, 2009 WL 21706049 (D. Or. June 20, 2009) (best management practices did not violate CWA)

Commercial Transactions**Eighth Circuit**

Archer Daniels Midland Co. v. Soucie, No. 4:08CV3215, 2009 WL 2365400 (D. Neb. July 28, 2009) (formation of a soybean contract; statute of frauds)

Helena Chem. Co. v. Triple C. Ranch, No. 2:08-CV-00118 BSM, 2009 WL 1993796 (E.D. Ark. July 9, 2009) (failure to bill proper party for products)

Mich. Millers Mut. Ins. Co. v. DG & G Co., 569 F.3d 807 (8th Cir. 2009) (insurer had no duty to insure losses against mold, mildew, and hard spot on cotton bales)

Tenth Circuit

W. Ridge Group, L.L.C. v. First Trust Co. of Onaga, No. 07-cv-01587-WYD-BNB, 2008 WL 2135773 (D. Colo. July 14, 2009) (interpretation of a contract)

Eleventh Circuit

Validsa, Inc. v. PDVSA Servs. Inc., --- F. Supp. 2d ---, 2009 WL 2029958 (S.D. Fla. 2009) (breach of commodity purchase contract)

California

Stark Packing Corp. v. Sunkist Growers, Inc., No. F052658, 2009 WL 2185407 (Cal. Ct. App. July 23, 2009) (did contract include implied covenant of equitable marketing opportunities)

Idaho

Panike & Sons Farms, Inc. v. Smith, --- P.3d ---, 2009 WL 1959483 (Idaho 2009) (right to reject onions not from designated fields; common usage of trade)

Indiana

Nichols v. Estate of Tyler, 910 N.E.2d 221 (Ind. Ct. App. 2009) (owner was mentally incompetent at time entered into contract to sale farm)

Cooperatives

Eighth Circuit

Farmers Coop. Co. v. Senske & Son Transfer Co., 572 F.3d 492 (8th Cir. 2009) (cooperative's action against truck dealer for violations of Federal Odometer Act)

Environmental Law

Seventh Circuit

Nat'l Pork Producers Council v. Jackson, --- F.Supp.2d ---, 2009 WL 2213481 (W.D. Wis. 2009) (EPCRA reporting requirements in agriculture; dismissal of claim as not justiciable)

Ninth Circuit

Citizens for Better Forestry v. U.S. Dep't of Agric., --- F.Supp.2d ---, 2009 WL 1883728 (violation of NEPA and ESA in promulgating forest management plans)

Ctr. For Biological Diversity v. Wagner, No. 08-302-CL, 2009 WL 21706049 (D. Or. June 20, 2009) (claim that decision to allow grazing violated NEPA)

Tenth Circuit

Oklahoma v. Tyson Foods, Inc., No. 05-CV-329-GKF-PJC, 2009 WL 2252129 (N.D. Okla. July 24, 2009) (motion to strike certain expert witnesses in poultry litter litigation)

Oklahoma v. Tyson Foods, Inc., --- F.R.D ---, 2009 WL 2176337 (N.D. Okla. 2009) (dismissal of damages in claims of watershed contamination) – WALT I STOLE THIS SUMMARY FROM YOU AND ALREADY DID IT

Greater Yellowstone Coal. v. Tidwell, --- F.3d ---, 2009 WL 1986826 (10th Cir. 2009) (environmental analysis not required for elk program)

DC Circuit

Natural Res. Def. Council v. EPA, 571 F.3d 1245 (D.C. Cir. 2009) (challenging change rules for NAAQS for ozone to eight hour standard)

Catawba County v. EPA, 571 F.3d 20 (D.C. Cir. 2009) (no violations in promulgation of NAAQS for fine particulate matter)

Estate Planning and Taxation

Federal Circuit

J. Cardenas & Sons Farming, Inc. v. United States, --- Fed. Cl. ---, 2009 WL 2053594 (Fed. Cl. 2009) (refund claims time-barred; attempt to seek refund on agricultural workers)

Tax Court

Foriest v. Comm'r, T.C. Summary Op. 200-110, 2009 WL 2030874 (T.C. 2009) (disallowing of deductions; owning two cows not enough to be considered in farming business)

Minnesota

In Myrtle Haack Irrevocable Trust Agreement, No. A08-1998, 2009 WL 2016938 (Minn. Ct. App. July 14, 2009) (reversing trial court decision undo transaction involving trust assets)

Finance & Credit

First Circuit

United States v. Williams, No. 08-CV-427-B-W, 2009 WL 2134139 (D. Me. July 26, 2009) (government was not required to comply with state law notice requirements; acceleration of payments)

Eighth Circuit

United States v. Anderson, 570 F.3d 1025 (8th Cir. 2009) (wire fraud in loan from Farm Credit)

Eleventh Circuit

Blocker v. Wyatt, No. 609CV052, 2009 WL 2340700 (S.D. Ga. July 27, 2009) (denying appellate stay of foreclosure)

Food Labeling

Second Circuit

Verzani v. Costco Wholesale Corp., --- F.Supp.2d ---, 2009 WL 2337927 (S.D.N.Y. 2009) (claim that shrimp tray's label was misleading)

Federal Circuit

In re Northland Organic Foods Corp., No. 2009-1139, 2009 WL 1951353 (Fed. Cir. July 8, 2009) (denial of trademark for organic dairy because of likelihood of confusion)

Labor

Fourth Circuit

N.C. Growers' Ass'n, Inc. v. Solis, --- F.Supp.2d ---, 2009 WL 1905067 (M.D.N.C. 2009) (preliminary injunction to prevent new H-2A regulations from taking effect)

Sixth Circuit

Roslies-Perez v. Superior Forestry Serv., Inc., No. 1:06-00006, 2009 WL 2254961 (M.D. Tenn. July 28, 2009) (violations of FSLA and AWPAA)

Eighth Circuit

United States v. Agriprocessors, Inc., No. 08-CR-1324-LRR, 2009 WL 2255729 (N.D. Iowa July 28, 2009) (challenge of warrants issued to search meat packer for illegal aliens)

Iowa

IBP, Inc. v. Burress, --- N.W.2d ---, 2009 WL 1975399 (Iowa 2009) (meat packer contracting brucellosis; entitled to workers' compensation benefits)

Landowner Liability

Ninth Circuit

Adams v. United States, No. CV-03-49-E-BLW, 2009 WL 2139699 (D. Idaho July 14, 2009) (dismissal of fraud claim that drift pesticide would not persist in soil)

Indiana

Long v. IVC Indus. Coatings, Inc., 908 N.E.2d 697 (Ind. Ct. App. 2009) (claim of negligence by neighbor causing sediment to run into a farm pond)

Iowa

Gannon v. Rumbaugh, No. 07-0889, 2009 WL 1913668 (Iowa Ct. App. July 2, 2009) (flooding neighbors' property; lowering a levee)

Local Food Systems

Indiana

Daily v. Columbus Bd. of Zoning Appeals, 909 N.E.2d 1038 (Ind. Ct. App. 2009) (denial of temporary use permit for a farmers' market)

Daily v. Columbus Bd. of Zoning Appeals, 904 N.E.2d 343 (Ind. Ct. App. 2009) (denial of temporary use permit for a farmers' market)

Marketing Order

DC Circuit

Ark. Dairy Coop. Ass'n, Inc. v. U.S. Dep't of Agric., --- F.3d ---, 2009 WL 2195129 (D.C. Cir. 2009) (challenging milk marketing order)

Nutrition Programs

California

Bracewell v. Nakawatase, No. C053775, 2009 WL 1893055 (Cal. Ct. App. July 1, 2009) (disqualification of vendor for overcharges; WIC)

New Mexico

Waters-Haskins v. N.M. Human Servs. Dep't, 210 P.3d 817 (N.M. 2009) (equitable estoppel as defense in overpayment of food stamp benefits)

Perishable Agricultural Commodities Act

First Circuit

Peter Condakes Co. v. Sandler Bros., No. 09-cv-168-P-S, 2009 WL 2148867 (D. Me. July 16, 2009) (failure to promptly pay and maintain sufficient trust assets)

Second Circuit

E. Armata, Inc. 27 Farmers Mkt., Inc., No. 08-5212 (KSH), 2009 WL 2386074 (D.N.J. July 31, 2009) (entering a default judgment against violators of PACA)

Third Circuit

Frank Gargiulo & Son v. Riverdell Mkt. Corp., No. 08-5102 (JAG), 2009 WL 2151908 (D.N.J. July 14, 2009) (failure to complete payment for produce)

In re Zach, Bankr. No. 1-08-bk-04160 RNO, Adv. No. 1-08-ap-00160 (Bankr. M.D. Pa. June 29, 2009) (exemption from discharge of PACA debts)

Sixth Circuit

Consumers Produce, Inc. v. R. Family Mkt., No. 4:08CV70, 2009 WL 2351642 (N.D. Ohio July 28, 2009) (attorney's fees under PACA)

Seventh Circuit

Anthony Marano Co. v. MS-Grand Bridgeview, Inc., No. 08 C 4244, 2009 WL 1904403 (N.D. Ill. July 1, 2009) (civil contempt for violation of injunction to not violate trust)

Ninth Circuit

Gen. Produce Co., Ltd. v. Alex R. Thomas & Co., No. CIV S-08-1084 JAM EFB, 2009 WL 1871678 (E.D. Cal. June 29, 2009) (enforcement of statutory trust)

Eleventh Circuit

Fresh Logistics, LLC Atlantis Foods, Inc., No. 08-81239, 2009 WL 2242608 (S.D. Fla. July 27, 2009) (motion to dismiss; claims of violations of statutory trust)

Pesticide Regulations

Fourth Circuit

Dow AgroSciences LLC v. Nat'l Marine Fisheries Serv., --- F.Supp.2d ---, 2009 WL 2257703 (D. Md. 2009) (jurisdiction of federal courts to hear FIFRA actions)

Ninth Circuit

Gowan Co. v. Aceto Agric. Chems., No. CV-09-1124-PHX-JAT, 2009 WL 2028387 (D. Ariz. July 10, 2009) (copyright infringement of pesticide label)

Renewable Energy

Wisconsin

Ecker Bros. v. Calumet County, No. 2007AP2109, 2009 WL 2032336 (Wis. Ct. App. July 15, 2009) (county ordinance regulating wind farms)

Secured Transactions

Sixth Circuit

In re Williams, --- B.R. ---, 2009 WL 2256696 (Bankr. W.D. Tenn. 2009) (security interest in crops)

Ninth Circuit

United States v. Thies, No. CV-08-275-EFS, 2009 WL 2241335 (E.D. Wash. July 20, 2009) (FSA entitled to first priority lien on crops and proceeds from crop year that FSA provided unpaid operating loan on)

Eleventh Circuit

Blocker v. Wyatt, No. 609CV052, 2009 WL 2340700 (S.D. Ga. July 27, 2009) (denying appellate stay of foreclosure)

Urbanization and Ag

Fifth Circuit

Bluefield Water Ass'n, Inc. v. City of Starkville, --- F.3d ---, 2009 WL 2153287 (5th Cir. 2009) (city required to turn over customers to rural water district)

Delaware

CCS Investors, LLC v. Brown, --- A.2d ---, 2009 WL 2054551 (Del. 2009) (awareness of conservation easement; variance)

Indiana

Daily v. Columbus Bd. of Zoning Appeals, 909 N.E.2d 1038 (Ind. Ct. App. 2009) (denial of temporary use permit for a farmers' market)

Daily v. Columbus Bd. of Zoning Appeals, 904 N.E.2d 343 (Ind. Ct. App. 2009) (denial of temporary use permit for a farmers' market)

New York

Lewis Family Farm, Inc. v. Adirondack Park Agency, --- N.Y.S.2d ----, 2009 WL 2045321 (N.Y. App. Div. 2009) (agency could not require permit to build agriculture structure)

South Dakota

Andersen v. Town of Badger, --- N.W.2d ---, 2009 WL 2093793 (S.D. 2009) (challenging city waiving required distance from town CAFO could be built)

Texas

Save Our Springs Alliance, Inc. v. City of Dripping Springs, --- S.W.3d ---, 2009 WL 1896070 (Tex. App. 2009) (standing to challenge development)

Wisconsin

Ecker Bros. v. Calumet County, No. 2007AP2109, 2009 WL 2032336 (Wis. Ct. App. July 15, 2009) (county ordinance regulating wind farms)

Water Law

Federal Circuit

N. Colo. Water Conservancy Dist. v. United States, --- Fed. Cl. ---, 2009 WL 2386097 (Fed. Cl. 2009) (article in water contract was enforceable against the federal government)

Indiana

Long v. IVC Indus. Coatings, Inc., 908 N.E.2d 697 (Ind. Ct. App. 2009) (was water “surface waters”)

Nebraska

In re 2007 Admin. Of Appropriations of Water of Niobrara River, 768 N.W.2d 420 (Neb. 2009) (condemnation of water rights; administrative proceedings not moot)

Texas

Save Our Springs Alliance, Inc. v. City of Dripping Springs, --- S.W.3d ---, 2009 WL 1896070 (Tex. App. 2009) (standing to challenge development that may add pollution to aquifer)