

Agricultural Regulations & How they Could Affect the Future of Farming

*West Texas Agricultural Chemicals Institute Conference
Lubbock, TX*

Tiffany Dowell Lashmet
Texas A&M AgriLife Extension



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Roadmap

- Agricultural Law Resources
- Produced Water Case
- Future of Dicamba?
- Endangered Species Act & Pesticides
- Corporate Transparency Act
- WOTUS
- EID Rule



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Click for a hub of Extension resources related to the current COVID-19 situation. COVID-19 Resources

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TEXAS AGRICULTURE LAW BLOG by Tiffany Lashmet

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January 29, 2021 Weekly Round Up

Posted on January 29, 2021 by [tlfleming](#)

Happy Friday! It's been a busy week here as I have been working with several of my colleagues in the Texas A&M Agricultural Economics Department on a series of educational videos on the legal and economic issues related to hemp production. If this is a topic of interest to you, be sure you subscribe to this blog as we will be releasing our videos and written materials within the next month! Here are some of the ag law stories in the news over the past couple of weeks...

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January 15, 2021 Weekly Round Up

Posted on January 15, 2021 by [tlfleming](#)

Happy 2021, friends! We hope you all had a happy, healthy holiday and we are excited to be back for our first Weekly Round Up of the year. Here are some of the major agricultural law stories in the news over the past couple of weeks. * Lawsuit filed seeking to overturn recent dicamba registration. On December 22, several environmental groups filed suit against the US Environmental Protection Agency challenging the recent approval of the use of over-the-top dicamba products through 2025. Specifically, the lawsuit claims that the...

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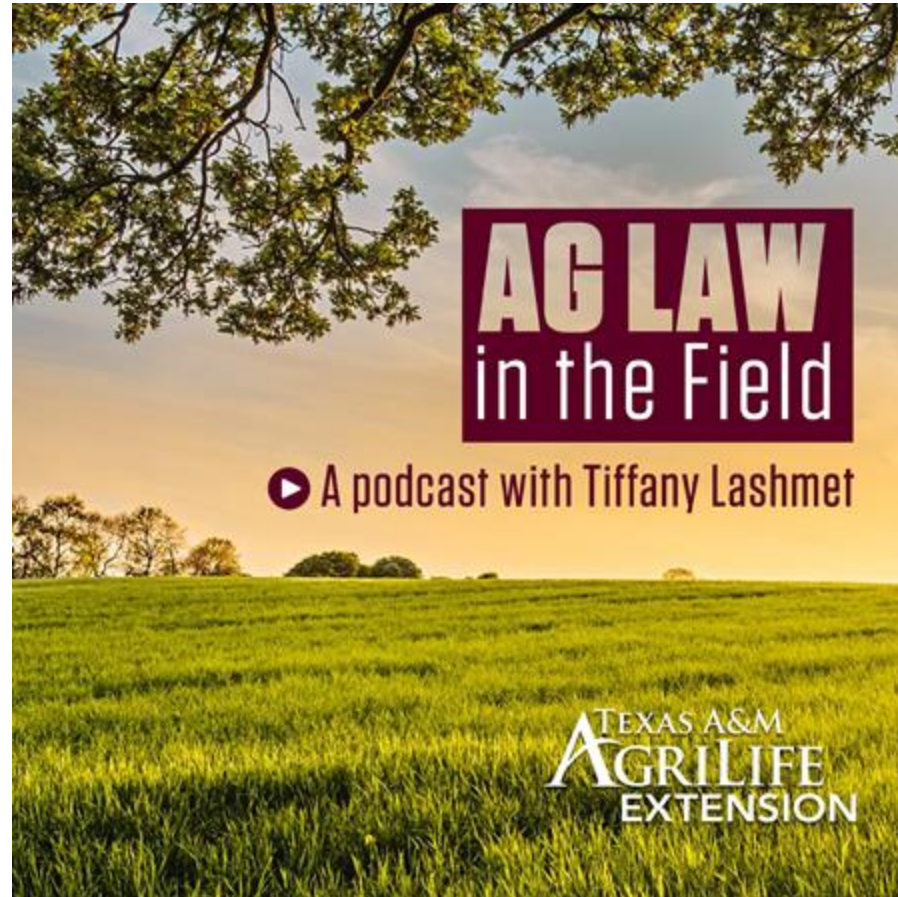
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Produced Water Case



Background

- When companies produce oil and gas, water & other substances come up with the oil and gas.
- They separate the “produced water” from the oil and gas.
- Given the substances included in the produced water, must be carefully gathered and disposed of.
- Historically, operators have spent a lot of money on saltwater disposal wells, trucking produced water off properties, etc.
- Recently, technology developed where the produced water can be treated and then sold back to developers to use in oil and gas operations.



Cactus Water Services LLC v. COG Operating LLC

- COG operating leases mineral rights on 37k acres in Reeves County.
- Surface owner leases groundwater rights to Cactus. Includes the right to sell water produced from oil and gas wells and formations on the leased land.
- Lawsuit arises—both COG and Cactus claim the rights to the produced water.
- Legal issue of first impression: Who owns produced water in Texas?



Cactus Water Services LLC v. COG Operating LLC

- COG arguments
 - We're the ones extracting the water.
 - It's not "groundwater" it's oil and gas waste.
 - No one wanted this before there was a market!
- Cactus arguments
 - Surface owner owns the groundwater. This water came from the ground.



Litigation

- Trial court sides with COG.
- El Paso Court of Appeals: Sides with COG
 - Produced water is oil and gas waste that belongs to mineral lessee.
- Cactus sought review from Texas Supreme Court.
- The Supreme Court asked COG to respond.



The Future of Dicamba?



Center for Biological Diversity v. EPA

- Same plaintiffs, similar claims as the lawsuit that vacated 2018 registration in 2020.
- Arizona federal court vacates 2020 registrations for Xtendimax, FeXapan, Enginia.
- Essentially technicality—EPA did not treat 2020 registrations after cancellation as “new use” registrations and they should have. Needed notice and comment rulemaking.
- Vacating order means is illegal to use, sell, distribute, even move.



Existing Stocks Order

- EPA issues existing stocks order on Valentine's Day.
- May be used if in the US and were packaged, labeled and released for shipment prior to February 6, 2024.
 - “Released for shipment” means when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment.
 - In possession of someone other than registrant.
- In TX, existing stocks can be sold/distributed through 5/31 & used by 6/30 on soybeans.
- In TX, existing stocks can be sold/distributed through 6/30 & used by 7/30.



Going Forward?

- Several companies have proposed new labels.
 - Bayer - KHNP0090 (formerly XtendiMax)
 - Would remove any OTT application in soybeans & limit application to June 12; Cotton cutoff of July 30; 18,500 comments.
 - BASF – Engenia
 - Soybeans through V2 growth or June 12, whichever earlier; July 30 for cotton; reduces total application to 2; 4,500 comments.
 - Syngenta – Tavium
 - Soybeans through V2 growth or June 12, whichever earlier; Cotton allowed until 6-leaf stage but not later than July 30.



What Next?

- The 30-day comment period for each has closed.
- EPA will have to determine if proposal meets standard for a new use registration under FIFRA and, if so, provide separate opportunity for public comment.
- EPA will consult with US Fish and Wildlife Service under Endangered Species Act (more on that later...)
- EPA will publish a proposed registration review decision & allow at least 60 days for comment.
- EPA will issue final decision.
- Timeframe... ?



Endangered Species Act & Pesticides

- Endangered Species Act administered by USFWS and National Marine Fisheries Service.
- Species are listed as protected or endangered, giving them legal protections to conserve the species & its environment.
- Law required all federal agencies (including EPA) to “conserve” listed species. Requires federal agencies to consult with FWS over impact that proposed actions will have on listed species.
- This consultation requirement applies to EPA’s actions under FIFRA including registration of pesticide products.
- EPA historically not done well at conducting the consultations. Lots of lawsuits.
- There are 1,700 listed species and tens of thousands of registered pesticide products. One consultation for a FIFRA action can take years.



Endangered Species Act & Pesticides

- In light of mounting lawsuits and court orders ordering EPA to undertake consultations (est. finish date on court ordered consultations is 2030...), EPA announced new policy to introduce mitigation requirements to pesticide labels to reduce exposure to listed species.
- EPA puts pesticides into categories:
 - Herbicide, Insecticides, Rodenticides, Fungicides
- Final “Herbicide Strategy” released August 20.



Final Herbicide Strategy

- Focus on reducing exposure to listed species via drift and runoff/erosion.
- Identified proactive mitigations EPA can use when registering a herbicide.
- Three-step framework:
 - Determine potential for population-level impacts to species. Classification here critical because it determines amount of mitigation needed.
 - Determine levels of mitigation needed and select from “mitigation menu” (largely focused on buffer zones, may also involve things like equipment, application rate, barriers, humidity)
 - Determine where mitigations are to be required.



WOTUS Debacle



Background

- Clean Water Act gives EPA & US COE federal jurisdiction over “waters of the United States”
- But...didn't define that term
- 50 years of confusion
 - *Rapanos* 4-1-4 decision
 - Scalia Plurality: Relatively permanent body of water; wetland must abut
 - Kennedy Concurring: “Significant nexus”
- 2015 Obama WOTUS definition
 - Significant nexus
- 2020 Trump definition
 - Relatively permanent bodies of water
- 2023 Biden definition
 - Relatively permanent bodies of water OR significant nexus



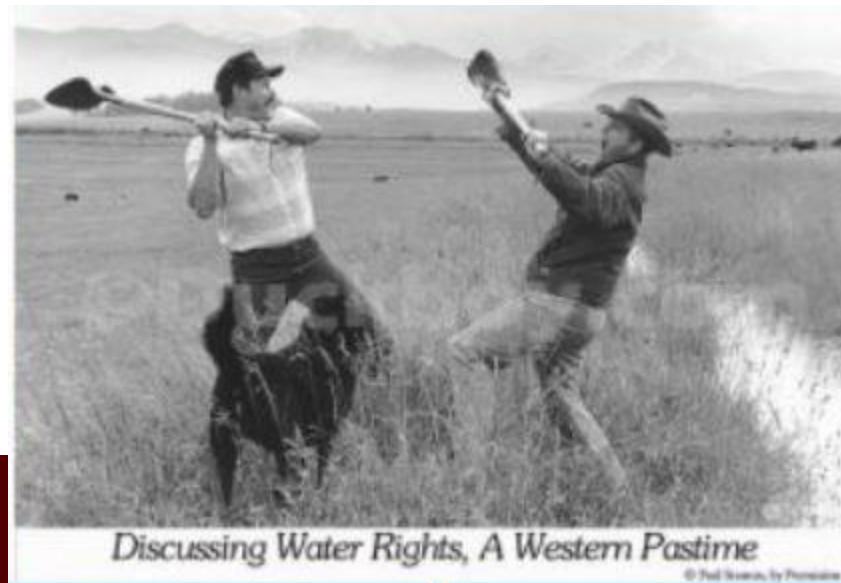
Sackett v. EPA

- Sacketts buy residential lot next to lake in Idaho. EPA says can't place fill on lot because property is a wetland and jurisdictional WOTUS. They say it isn't a WOTUS.
- US Court of Appeals for the Ninth Circuit applies Kennedy's "significant nexus test" and finds the property is a WOTUS because it is across the road from a lake (adjacent), shallow surface water connection to the lake.
- SCOTUS sides with landowner.
 - Significant nexus test is wrong test—that's out.
 - To be a WOTUS, must be a relatively permanent body of water.
 - Wetlands jurisdictional only if indistinguishable from WOTUS, must have continuous surface connection.



But wait...there's more.

- EPA revises Biden definition to comply with *Sackett*.
- Lawsuits all over the country over the revised rule.
 - In S.D. Texas by AFBF by number of ag, trade, building groups
 - In S.D. Texas by State, TCEQ, RRC, TDA, GLO, DOT



Corporate Transparency Act

An official website of the United States Government



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Beneficial Ownership Information

information about the individuals who ultimately own or control them.

U.S. Beneficial Ownership Information Registry Now Accepting Reports
January 01, 2024
Existing Companies Have One Year to File; New Companies Must File Within 90 Days of Creation or Registration

WASHINGTON -- Today, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) began accepting beneficial ownership information reports. The bipartisan Corporate Transparency Act, enacted in 2021 to curb illicit finance, requires many companies doing business in the United States to report

FinCEN Issues Analysis of Identity-Related Suspicious Activity
January 09, 2024

FinCEN Issues Final Rule Regarding Access to Beneficial Ownership Information
December 21, 2023

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Background

- Corporate Transparency Act is a law to prevent money laundering, corrupt financial transactions, and financial terrorism.
- Dept of Treasury Federal Crimes Enforcement Network (FinCEN) required to maintain a national database of beneficial owners of entities not otherwise subject to disclosure requirements.
- Will now require owners to file Beneficial Ownership Information Report online.

Details

- **WHO?** Small entities created by filing document with Secretary of State or other similar agency. Includes LLCs, LPs, LLPs, corporations, etc.
- **WHAT?** Three categories of information:
 - Entity information: Company name, trade names/DBAs, address of principal place of business, state of creation, company ID number.
 - Beneficial owner information: For each person who exercises substantial control or who owns 25% or more of interest in the company must provide name, DOB, residential address, identification number and image of passport or driver's license.
 - Company applicants: Companies created after 1/1/24 have to provide info about who filed the documents (i.e. attorney).



Details

- **HOW?** Online on FinCEN website.
- **WHEN?** Depends on when entity was created:
 - Before 1/1/24, deadline is 1/1/25.
 - In 2024, deadline is 90 days after creation.
 - After 2024, deadline is 30 days after creation.
 - And...once initial report is filed, any updates, changes, corrections must be filed within 30 days of occurrence.
- **PENALTIES?**
 - Civil fines of up to \$500/day for violation
 - Criminal penalties of up to \$10,000 fine and up to 2 years in prison.



Lawsuit

- *National Small Business United v. Yellen*
- Alabama federal court holds CTA unconstitutional.
- CTA beyond Congress' powers to regulate commerce, oversee foreign affairs and national security.
- Issued injunction preventing FINCEN from enforcing CTA against any plaintiff members.
- Will Dept of Treasury Appeal?

EID Rule

- Effective November 5, 2024
- Tags must be visible and electronically readable
- EID required for interstate shipment of:
 - Sexually intact cattle and bison over 18 months of age
 - All dairy cattle
 - All cattle and bison any age used for recreation events, shows, exhibitions
- Certain pre-approved brands and tattoos may be allowed depending on state rules.
- USDA allocated funds to pay for these; contact State Veterinarian/TAHC.
- Bill in Congress to prohibit USDA from making this rule
- Lawsuits threatened.



There Is Hope...

- Ag Law in the Field Podcast Episodes
- 988 - Suicide Crisis Lifeline



<http://extension.okstate.edu/farmstress>

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Thank you!

Tiffany Dowell Lashmet

806.677.5681 | tdowell@tamu.edu

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