

State Association Weekly Washington Report 1.12.17

USDA Secretary Last Slot Unfilled

Some say President-elect Donald Trump is saving the best for last, but right now the secretary of agriculture job is the only cabinet level slot in the incoming administration yet to be revealed. Trump spokespeople contend the position is “too important to rush,” but others say the lack of a nominee is due to political pressure on the transition team to find an acceptable minority candidate to give diversity to the Trump cabinet.

In any event, the lack of a nominee means President-elect Donald Trump will take office January 20, with no one at the helm of USDA, and confirmation hearings before the Senate Agriculture Committee are likely impossible until after Trump takes his oath of office, confirmed committee Chair Pat Roberts (R, KS) this week. House Agriculture Committee Chair Mike Conaway (R, TX) said picking the right USDA candidate is tough because of the broad range of programs housed at USDA, including income support programs, conservation, research, federal nutrition programs, including food stamps, and the forestry service.

Industry talk – citing rural America’s support for Trump – continues to focus on former Georgia Gov. Sonny Perdue as the frontrunner for the USDA slot. Many expected Trump to name Perdue to the job at the end of the recently concluded American Farm Bureau Federation (AFBF) annual convention in San Diego this week, but that didn’t happen. Behind Perdue on the likely secretary list is Chuck Conner, current president of the National Council of Farmer Cooperatives and former deputy secretary of agriculture under President George W. Bush, for whom he also served as special assistant for food, agriculture and trade. Both men have interviewed with Trump.

Another wrinkle in the ag secretary selection process is regional conflict. Sen. Charles Grassley (R, IA) says he wants to see an ag secretary from “above the Mason-Dixon line” because that’s where Iowa, Michigan, Wisconsin, Ohio and Pennsylvania are. Also this week, Indiana Agriculture Director Ted McKinney was seen entering Trump Tower in New York. McKinney was Vice President-elect Mike Pence’s choice for state ag commissioner, and is a member of Trump’s agricultural advisory committee.

However, if cynics are correct, and USDA secretary is to be the possible marquee job for women and minorities, then Cuban-born former USDA under secretary for food safety and president of Texas A & M University Dr. Elsa Murano and former California state assemblyman and Lieutenant Governor Abel Maldonado sit at the top of that list. Maldonado has the backing of the National Association of Latino Elected & Appointed Officials. His nomination, the group said, would help diversify a cabinet heavy with older rich white men. Also this week, the president and CEO of the U.S. Hispanic Chamber of Commerce wrote an opinion column backing Maldonado before meeting with the transition team “on a variety of issues.”

Reports also indicate Trump’s agriculture advisory committee wants the president-elect to pick a USDA secretary candidate who can understand production agriculture, can work the immigration reform issue, can promote ag trade and who can work with other Trump agency and department heads to ensure farmers and ranchers are not burdened with heavy environmental and safety regulations.

Several of the candidates for secretary may wind up accepting subcabinet USDA positions as under secretaries, deputy secretaries and assistant secretaries of agriculture.

WOTUS Rescission Battle Begins; Could be Tougher than Thought

Senate Environment & Public Works Committee members Sens. Joni Ernst (R, IA) and Deb Fischer (R, NE) this week reintroduced a resolution under the Congressional Review Act (CRA) to force EPA to withdraw or formally kill the controversial “waters of the U.S. (WOTUS)” rule. The move will likely force a test vote, but sets up the incoming administration to kill the rule “on my first day in office” as promised during President-elect Donald Trump’s campaign.

However, WOTUS is currently sitting in the 6th Circuit Court of Appeals in Cincinnati, and the first move the new White House could be to petition the federal court to hold the case in abeyance until new leadership at EPA and the Army Corps of Engineers can review the rule. Justice Department and EPA lawyers told reporters this week at a DC Bar Association meeting that the federal judges may be reluctant to hold the rule since it’s already finalized and is already on hold by court order.

Ernst and Fischer, in introducing their resolution to overturn WOTUS, acknowledge the Clean Water Act (CWA) is important, but also said the process from proposal to final rule was flawed.

The federal attorneys explained that for the federal government to make WOTUS disappear, the agencies would have to either suspend or withdraw the rule, and then follow the lengthy notice of public comment/comment review requirements of the Administrative Procedures Act (APA) before finalizing action. The Trump administration would then have to decide if it intended to repropose the rule, and if it did, would have to start from square one.

House Approves CFTC Reauthorization with No Funding Increase

The full House this week approved 239-182 reauthorization of the Commodity Futures Trading Commission (CFTC), but the GOP majority continued to keep a hold on the commission’s budget as it moved to thwart Dodd-Frank rulemakings at the commission.

The House approved similar bills in 2014 and 2015, but the Senate has given no word on whether it will try and move a bill identical to that approved in the House, or because of staunch Democrat opposition particularly from Senate Agriculture Committee ranking member Sen. Debbie Stabenow – craft its own CFTC reauthorization legislation.

House Agriculture Committee Chair Mike Conaway restated his concerns over what he considers to be “burdensome rules” imposed by Dodd-Frank on futures market users, particularly legitimate hedgers trying to control risk. He also reminded colleagues during his floor statement that they all ran for re-election promising to reduce federal regulation and reauthorizing the CFTC with restrictions on Dodd-Frank rulemaking was a good first step.

The bill approved by his committee and voted on this week by the full House freezes the commission’s budget at \$250 million a year through FY2021, and requires the CFTC to conduct “robust and thorough cost-benefit analyses” before rolling out new rules. Conaway successfully amended the bill on the floor to require the agency not impose position limits until it acts to end excessive speculation. The commission is working on a new position limits rule after it rejected a version written in 2013.

House Agriculture Committee ranking member Rep. Collin Peterson (D, MN) said the bill voted on this week was too complex and interfered too much in a CFTC process already under revision, and he called for a simple reauthorization vote. His counterpart on the Senate Agriculture Committee, Sen. Debbie

Stabenow (D, MI), said the House-approved bill will face “tough resistance” in the Senate if only because the bill includes for the first time a spending cap. She also said the bill “irresponsibly handcuffs the CFTC.”

Trump Target of Full Court Press on Ag Trade

From hammering home, the message that U.S. agriculture doesn't grow without increased trade to the need to bolster relations with Cuba, agriculture groups this week leaned heavily on President-elect Donald Trump to back off what is perceived to be an anti-trade policy agenda.

Trump has said he wants Department of Commerce Secretary-designate Wilbur Ross to “lead and steer” his administration's trade efforts, aided and abetted by Robert Lighthizer, Trump's choice to be U.S. Special Trade Representative (USTR) and Peter Navarro, designated chair of Trump's White House Nation Trade Council. Ross is set for his confirmation hearing before Senate Commerce Committee next week.

Senate Agriculture Committee Chair Pat Roberts (R, KS) met with Lighthizer this week, stressing to the former Reagan trade advisor the need for agricultural exports to be protected and “an aggressive trade policy that involves agriculture is absolutely essential.”

Roberts said the Trump camp might be overcomplicating its trade agenda by reorganizing the players. “There seem to be too many cooks in the kitchen,” Roberts said after the meeting. “You've got to stop and figure out who's in charge here.” Lighthizer didn't answer reporters' questions after the meeting.

But ag interests were taking no chances their message might get lost in the rush to Trump's inauguration, circulating a broad agriculture letter reiterating the importance of trade to the growth of domestic agriculture to be sent to the president-elect next week.

A separate letter signed by 15 agricultural groups was delivered to the Trump transition team this week, stressing the need for an aggressive federal agricultural trade policy. “The importance of trade to America's farmers and ranchers cannot be overstated. The share of U.S. agricultural production exported overseas is 20% by volume, with some sectors being much higher.” The groups explained that targeted Trump economies, including China, Mexico and Canada, are major U.S. markets.

“U.S. agricultural exports in FY2016 were nearly \$27 billion to China, over \$24 billion to Canada and nearly \$19 billion to Mexico. Disrupting U.S. agricultural exports to these nations would have devastating consequences for our farmers and the many American processing and transportation industries and workers supported by these exports,” the groups wrote.

The dairy industry joined the National Association of State Departments of Agriculture (NASDA) in pushing the Trump transition team to prioritize trade, particularly remedying problems with U.S.-Canada trade under the North American Free Trade Agreement (NAFTA).

The National Milk Producers Federation (NMPF), International Dairy Foods Assn. (IDFA), the U.S. Dairy Export Council (USDEC) and NASDA urged the incoming administration to act immediately to forestall existing and “soon-to-be-expanded” protectionist policies that block U.S. dairy exports. U.S. producers are already losing money and markets due to Canadian trade barriers. The groups said that in New York and Wisconsin alone, ultra-filtered milk – a product heavily reliant on its Canadian market – has conservatively taken a \$150-million hit.

“The entire dairy industry is being hurt as milk prices are being driven down nationally by Canada’s actions,” the groups wrote, warning lawmakers U.S. producers are forced to move large volumes of skim milk powder into a “thinly traded global market,” further depressing prices.

While the letter went to Trump, USTR-designate Lighthizer, and members of the House and Senate ag committees were copied. NASDA has previously complained directly to Ontario and Quebec ag ministers.

At the same time over 100 agriculture groups urged Trump to support President Obama’s efforts to normalize trade relations with Cuba, urging him to end a ban on private financing of ag trade. “Your support in removing outdated financing and trade barriers for exporting agricultural products to our island neighbor could significantly strengthen U.S. industry, supporting 17 million jobs across the country and proving the Cuban people with high-quality American-grown food,” the groups wrote.

House Ag Committee Subcommittee Chairs Named

House Agriculture Committee Chair Mike Conaway (R, TX) this week named subcommittee chairs for his committee for the 115th Congress. The chairs are Rep. Austin Scott (R, GA), subcommittee on commodity exchanges, energy and credit; Rep. Frank Lucas (R, OK), subcommittee on conservation and forestry; Rep. Glenn Thompson (R, PA), subcommittee on nutrition; Rep. Rick Crawford (R, AR), subcommittee on general farm commodities and risk management; Rep. Rodney Davis (R, IL), subcommittee on biotechnology, horticulture and research, and Rep. David Rouzer (R, NC), subcommittee on livestock and foreign agriculture.

Ethanol, GHG Benefits Outlined in USDA Report

Greenhouse gas (GHG) emissions from corn ethanol are 43% lower than those of gasoline, USDA reported this week, and that “positive disparity” is expected to increase. The department’s “lifecycle analysis of ethanol and GHG emissions said when ethanol plant efficiency and farmer conservation practices are both at “optimum conditions,” the ethanol-gasoline disparity jumps to 76%.

The administration report, the first of its kind from USDA, comes a week before the new administration takes office and responds to ethanol critics who have said the environmental friendliness of corn ethanol is not all it’s cracked up to be if full lifecycle of the corn – from harvest to ethanol refinement – is considered. It includes in its analysis land use for corn growth, and conservation practices, including reduced tillage and cover crops, are estimated to decrease GHG output by 14%.

“This should answer critics who have repeated Big Oil’s polemic that renewable biofuels somehow increase carbon emissions,” said Bob Dinneen, head of the Renewable Fuels Assn. (RFS). “Clearly, the opposite is true...this is not your grandfather’s ethanol industry.” Reports indicate the American Petroleum Institute (API) had no comment on the USDA analysis.

The Senate’s biggest ethanol cheerleader, Sen. Charles Grassley (R, IA) said the report “completely and definitively settles the debate regarding the positive environmental benefits of conventional corn ethanol. There’s really no contest. Ethanol beats gasoline on lower GHG emissions by a mile.”

REINS Act Sails through House, Senate Outcome Unsure; Ryan Touts Regulatory Accountability Act

While the House approved 237-187 the REINS Act, an ambitious rewrite of the way the executive branch promulgates regulations, including requiring congressional approval for any rule with a price tag of \$100 million or more, the bill's fate in the Senate is not so sure.

And in a second round of regulatory reform, House Speaker Paul Ryan (R, WI) this week tied the Regulatory Accountability Act (RAA) to the REINS Act, part of the House GOP's so-called "better way" agenda. The RAA requires federal agencies to choose "the least costly option" unless they can demonstrate a pricier rulemaking is needed to protect the public.

Ryan tried to raise eyebrows this week when he said the Obama administration promulgated nearly \$1 trillion in rulemakings – 4,432 rules – during its eight years, and those rules required 754,208,800 hours of paperwork to comply. He said the cost of "midnight rules," those published by the administration in the last days of Obama's term, carried a \$6-billion price tag.

As to the REINS Act and its Senate fate, Sen. Rand Paul and 23 other senators have introduced the companion bill, but Democrats have already threatened to filibuster the legislation. Paul said his group had "worked very, very closely" with the Trump transition team.

USDA Says Wheat Stocks Up, Corn, Oilseed Production, Use Down

The January 2016-17 corn forecast is lower production, reduced feed and residual use, increase ethanol use and smaller ending stocks, USDA said this week in month supply and demand estimates. Corn production is forecast at 15.148 billion bushels, down 78 million from last month on lower harvested area and reduced yields.

Corn imports are seen increasing, based on the trend through November, 2016, said USDA. Feed and residual use are reduced 50 million bushels to 5.6 billion, based on a smaller crop, increased corn used to produce ethanol, greater sorghum feeding and bigger disappearance in September-November. Ethanol use jumped 25 million bushels to 5.325 billion, a record level the department said based on recent data from the Grain Crushings & Co-Products Production Report.

Oilseed production is seen at 127.3 million tons, down 1.5 million from December, based on lower soybean and peanut production, partly offset by increases in canola, sunflowerseed and cottonseed crops. Soybean production is estimated at a record 4.037 billion bushels, down 54 million bushels from December on lower yields. Exports and crush are seen unchanged, so ending stocks are projected at 420 million bushels, down 60 million from December.

Wheat ending stocks were increased this month to the highest levels since the late 1980s, USDA said. Feed and residual use was lowered 35 million bushels. Proposed ending stocks for 2016-17 are increased 43 million bushels.