

## **State Association Weekly Washington Report 12.15.16**

### **Ag Secretary Nominee Unknown; Idaho's Otter Joins List, Heitkamp still a Contender**

The list of candidates to be President-elect Donald Trump's nominee for secretary of agriculture keeps growing, with congressional politics playing an increasing role unrelated to policy or programs. Insiders still contend a name will be released soon, and possibly as early as this weekend.

The newest name to be vetted is Idaho Gov. Butch Otter, according to Otter's people talking to the media. The 74-year-old politico mirrors several other nominations put forward by Trump, i.e., male, older, wealthy and business oriented. His experience as a western state governor and six years in the House strengthen his resume. Otter backed Ohio Gov. John Kasich during the primaries, and prior to his political career, he worked his way up to president of Simplot International, the potato/dairy giant, founded by Otter's former father-in-law.

The likelihood Sen. Heidi Heitkamp (D, ND) could be named secretary also continues to bubble within the Trump transition team despite heavy GOP opposition. Known to have been in New York to interview with Trump, a Heitkamp nomination would demonstrate bipartisanship, given the North Dakota Democrat has often voted with the Senate GOP on agriculture issues, and it would let Trump nominate another woman to a cabinet slot. Her nomination, however, wouldn't sit well with some of the major crop and animal producer groups, many of which landed hard on Trump's agriculture advisory committee when her name first surfaced as a possible candidate.

Heitkamp joining the new administration could also provide Senate Majority Leader Mitch McConnell (R, KY) wider majority control in the Senate – and increase the odds of higher GOP committee seats – as her seat would likely go to a Republican, most insiders contending at-large Rep. Kevin Cramer (R, ND) the most likely successor. Currently, in the wake of Republican John Kennedy's victory in the Louisiana Senate run-off earlier this month, Republicans enjoy a 52-48 majority.

### **Perry Gets Energy Nod, Zinke Named to Head Interior**

Former Texas Gov. Rick Perry, who unsuccessfully campaigned for the GOP presidential nomination in part by pledging to shut down the Department of Energy (DOE), is President-elect Donald Trump's nominee to head that department, while relative unknown House freshman Rep. Ryan Zinke (R, MT), a significant public lands protector, is Trump's pick to head the Interior Department.

Perry, Texas' longest serving governor, got the nod on DOE because of management experience and his willingness to curb the activities of the federal department that not only oversees several critical components of President Obama's climate agenda, but also works on nuclear weapon security. Perry is also a climate change skeptic, and is seen in accord with conservative pushes to curtail or shutdown major programs within DOE. He also unsuccessfully sought a waiver from Texas from the Renewable Fuel Standard (RFS), but has since made statements offering limited support to the program.

Zinke, a former Navy Seal commander and member of the House Natural Resources Committee, was an early Trump supporter and his wife is a member of Trump's transition team on veterans' issues. Zinke's name was a surprise as media reports had all but confirmed Rep. Cathy McMorris Rodgers (R, WA) was Trump's pick for Interior. Also in the mix for the job was Rep. Raul Labrador (R, ID).

Said House Speaker Paul Ryan (R, WI) of the Zinke nomination, “Ryan is a no-nonsense leader who has spent his entire life serving this country. As a member of the Natural Resources Committee, he has been an ardent supporter of all-of-the-above energy policies and responsible land management. And as a westerner with close to one third of his state owned by the federal government, he is intimately familiar with how Washington’s decisions affect people’s lives.”

Just as a Sen. Heidi Heitkamp (D, ND) nomination could net Senate Republicans their 53<sup>rd</sup> GOP Senator, Zinke is often talked about and has confirmed he’s thinking about running against Sen. Jon Tester (D, MT), seen as a vulnerable incumbent in 2018.

### **Names Surface on Possible FDA Commissioner Nominees**

Save for once retreating from a primary statement about killing off the “FDA food police,” President-elect Donald Trump has said almost nothing publicly about FDA, food policy and who should head that agency. Rep. Tim Price (R, GA), a member of the House Budget and Ways & Means Committees, will be nominated to head the Department of Health & Human Services (DHS), which oversees FDA, the animal food industry’s chief regulator.

This week, however, two names surfaced as contenders for the top food and drug regulator spot. The leading candidate is Dr. Scott Gottlieb, a physician, former FDA deputy commissioner under President George. W. Bush, and a cancer survivor. Liked and well respected by regulated industry, Gottlieb is a partner at New Enterprise Associates, a venture capital firm, and a resident fellow at the American Enterprise Institute (AEI), a conservative Washington, DC, think tank.

Also talked about because his name is being pushed by his business colleague Peter Thiel, co-founder of Mithril Capital Management, an early Trump supporter and advisor to the transition team, is venture capitalist Jim O’Neill. O’Neill calls himself a libertarian and worked in the office of the deputy secretary at the Department of Health & Human Services (DHS) during the Bush Administration.

### **Freedom Caucus Fingers 232 Rules it Wants Trump to Rescind First Thing**

The conservative House Freedom Caucus this week sent President-elect Donald Trump a list of 232 extant rules and regulations it wants to see repealed or rescinded on Trump’s first day in office. The 21-page report focuses on rules promulgated during the eight-year Obama Administration, and the caucus said rescission is an important step in restoring balance between the executive and legislative branches of government.

Among the rules fingered for repeal are the new Department of Labor overtime rules; EPA’s waters of the U.S. (WOTUS) rule; the Labor Department financial advisor rule and FCC net neutrality rules. At the same time, GOP congressional leadership has asked all federal departments and agencies to cease action on so-called “midnight rules,” last-minute rulemakings that could carry a price tag as high as \$44 billion, says the American Action Forum.

The new Freedom Caucus chair, Rep. Mark Meadows (R, NC), said the list was hammered together so Trump “could hit the ground running on day one.”

“The list continues to grow, but we felt like it was important to put together a real working document where they can look at that and make executive branch decisions,” he said. Meadows said the list provided to Trump are rules which cannot be fixed legislatively nor can they be nullified under the

Congressional Review Act. A separate list of rules over which Congress can exercise authority is also being compiled, Meadows said.

Trump has made various pledges throughout his campaign, including rescission of two existing rules for every new rule published; a halt on all regulatory action as soon as he's sworn in, and a vow to repeal or rescind rules promulgated during Obama's last year in office.

### **Biofuels Seek Assurance on Pruitt, EPA and RFS**

Apparently Oklahoma Attorney General Scott Pruitt, as President-elect Donald Trump's controversial EPA administrator nominee, has the biofuels industry a little nervous over how an oil and gas state politician will view federal biofuels policy and programs. This week Iowa's senior Senator sent a shot across Pruitt's bow, while Trump himself assured Iowa Gov. Terry Branstad that Pruitt is "okay on ethanol."

While Pruitt is praised as a brilliant legal mind, coming from Oklahoma gives from of those biofuels makers "a little concern." Branstad, Trump's pick to be U.S. ambassador to China, told the media Trump has reassured him Pruitt will be "for ethanol." During Trump's "thank you" tour stop in Des Moines, Branstad said the president-elect told the governor, "Don't worry about him. He's going to be for ethanol," adding Trump's direct statement was "reassuring."

Meanwhile, Sen. Charles Grassley (R, IA) said he'll be tough in questioning Pruitt when he comes to the Senate for his confirmation hearings, making sure support for ethanol and the Renewable Fuels Standard (RFS) is solid. He'll also get tough on Gov. Rick Perry, another oil and gas state politician, who will be nominated to be secretary of energy.

### **Dairy Tells Trump Importance of Trade**

The importance of international markets to the U.S. dairy industry was laid out in detail last week in a letter sent to President-elect Donald Trump by the National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC).

Implicit in the letter is growing concern among many in agriculture that Trump does not truly understand the importance of trade to growing domestic production and supporting farm income. The two organizations said "expanded agriculture trade has created thousands of jobs and billions of dollars in economic activity in rural America."

"It is important to preserve current overseas dairy sales while seeking to achieve new gains by removing foreign barriers that hold back additional exports," NMPF President Jim Mulhern said. In 20 years, dairy exports have grown from less than \$1 billion a year to over \$5 billion last year, creating 120,000 jobs in dairy farming, manufacturing and related sectors, said USDEC President Tom Suber.

Both organizations urged Trump to begin a "ramp up in trade enforcement," saying that even with formal treaties "rampant foreign nontariff barriers" arise to block U.S. sales. The groups said it's particularly important to closely monitor other nations' compliance with existing market access concessions.

The long-awaited Water Resources Development Act (WRDA) – converted ultimately to the Water Infrastructure Improvement for the Nation Act (WIIN) – overcame a handful of political barriers and was approved by the full Senate in the early hours of December 17, finalizing legislation on a 78-21 vote, and providing funding for 30 federal government construction/maintenance projects as part of the inland waterways system, including the lock-and-dam system critical to grain shippers. The House approved the bill last week.

A “buy America” provision in the bill, which applies to steel and iron used in waterway and drinking water projects, was accepted as a temporary requirement, even though Senate Democrats wanted it made permanent. The bill also carries major watershed “restoration” language important to environmentalists.

The Army Corps of Engineers projects specifically identified in the bill are based upon the completion of major final reports on the Calcasieu Lock in Louisiana, the Upper Ohio Navigation System and deepening of Brazos Island Harbor in Texas, along with port projects in Georgia and Florida. The bill also carries funding for several flood prevention and ecosystem restoration projects.

Dumped from the Senate bill was language – the Public-Private Partnership (P3) program – authorizing private lock and dam operators to charge private tolls or lockage fees on the Illinois River and other parts of the inland waterway system.

The Senate also rejected a move by Sen. Barbara Boxer (D, CA), who’s retiring from Congress, to strip language from the bill she said “attacks head-on” the Endangered Species Act (ESA), by allowing authorities to move water away from salmon fisheries to irrigation projects. The 11th-hour drought language Boxer opposed was negotiated between House Majority Leader Kevin McCarthy (R, CA) and Sen. Dianne Feinstein (D, CA).

The drought language expands the current water transfer period from July-September to April-November to ensure farmers have enough water for spring plantings. Agencies would have to explain why they might pump water at levels lower than what is allowed by biological criteria to protect fish habitats.

#### **Conaway Calls out China for “Predatory Practices” Harming U.S. Producers**

In the wake of the U.S. Trade Representative (USTR) announcement it will request a World Trade Organization (WTO) dispute settlement panel against China over its \$100 billion in single-year excess producer subsidies on corn, wheat and rice, House Agriculture Committee Chair Mike Conaway (R, TX) called out the Asian giant for predatory trade practices “that harm U.S. farm and ranch families.”

USTR also announced the U.S. will seek enforcement action against China for illegal Tariff Rate Quota (TRQ) administration, which has also harmed U.S. farmers and ranchers.

“Over the course of two years, (the committee) has held extensive hearings concerning the predatory trade practices of foreign countries which employ enormous subsidies, high tariffs and non-tariff trade practices to advantage their agricultural sectors in violation of their own trade commitments,” Conaway said. “Among the most notorious is China, which can always be relied upon to thumb its nose at the rules the U.S. always plays by, with China exceeding its subsidy commitments by \$100 billion in a single

year...this is more than the U.S. will legally provide as a safety net – including insurance – for more than 100 crops for the entire life of the five-year Farm Bill.”

Conaway said other nations are taking a page out of the Chinese playbook, with India’s current subsidy regime being similarly harmful.

#### **As Tax Reform Specter Looms, Biz Groups Weigh in on Import Tax Notion**

With congressional GOP leadership and President-elect Donald Trump in full agreement that comprehensive federal tax reform must be an early priority of the new Congress and the new administration, over 75 business groups this week sent a letter to House Ways & Means Committee Chair Kevin Brady (D, TX) opposing Brady’s notion of implementing a “border-adjustable” business tax.

The new provision referenced by the business groups would authorize the federal government to put new taxes on imports, a move which scares companies relying on overseas ingredients and components in U.S.-made products. Exports would be sold tax free under the Brady plan.

“Companies that rely on global supply chains would face huge business challenges caused by increased taxes and increased cost of goods,” they wrote. “This would, in turn, likely result in reductions in employment, reduced capital investments and higher prices for consumers.”

The groups offered to work with Congress and the White House to find a “pro-growth comprehensive tax reform agenda without the border adjustment provision.” Among those groups signing the letter were the National Automobile Dealers Assn. (NADA), the Consumer Technology Assn. (CTA), and the National Retail Federation (NRF).

#### **EPA Wraps Up Two-Day Science Panel Meeting on Glyphosate**

A two-day Science Advisory Panel (SAP) meeting held by EPA this week laid out the agency’s case for why it has determined glyphosate is not a carcinogen in humans, and after eight hours of public comments on Tuesday, the review process appears to be coming to end so the agency can “put this chemical to bed so we can move on.”

Glyphosate, arguably the world’s most widely used broad-spectrum systemic herbicide, is the foundation chemical in Monsanto’s Roundup products, and was deemed a “probable carcinogen” by the International Agency for Research on Cancer (IARC).

However, EPA, like its counterpart in Europe and several other nations, says a broader library of evidence proves the chemical is not cancer-causing. The agency said the IARC conclusion results from a reliance on only publicly published literature, whereas EPA has “quite a bit of access” to unpublished studies from pesticide companies developed during product invention and registration. EPA said it used only peer-reviewed studies and noted the funding source when using industry data.

#### **EPA Finalizes Review of Pesticide Applicator Certification**

EPA announced it has finalized its review of the agency’s new standards for certifying workers who apply pesticides. The final rule is expected to be published in the *Federal Register* within the week.

The new standards track the agency's August, 2015, proposal, requiring applicators who work with pesticides to update their registrations and certification every three years. For the first time, EPA is setting a minimum age for applicators at 18 years old.

The rule is said to cost the states and applicators \$47.2 million, a cost the agency says is offset by an \$80.5 million increase in health and other benefits. The full review and the new certification standards can be found at: <https://www.epa.gov/pesticide-worker-safety/revised-certification-standards-pesticide-applicators>.