

State Association Weekly Washington Report

November 8 Election Tightening; Get Out and Vote!

No one can deny this year's general election has been a departure from the conventional. So close are the presidential contenders at this writing, it's tough to identify a front runner let alone predict a winner. While it appears today the House will remain Republican controlled, albeit with a narrower majority, the Senate is in play, and could wind up a 50-50 split as it did 16 years ago. If that happens, the race for the White House is even more important as the party of the new vice president – as president of the Senate – controls the chamber.

Take this item as a reminder that you and your legally eligible loved ones, friends and neighbors must vote. There is no legitimate excuse for walking away from your constitutional right and obligation. For many, this is a very tough election. Perhaps the following quote, found while researching a speech about the election, will help:

“Vote as if your ballot determines nothing whatsoever – except the shape of your own character. Vote as if the public consequences of your action weigh nothing next to the private consequences. The country will go whither it will go, when all the votes are counted. What should matter the most to you is whither you will go, on and after this November’s election day.” – Matthew J. Franck, PhD, Professor Emeritus, Political Science, Radford University, Radford, Virginia.

Ag Groups File Federal Briefs in WOTUS Challenge

The American Farm Bureau Federation (AFBF), along with groups representing livestock producers, companies and public lands interests this week signed on to a brief filed in the Sixth Circuit Court of Appeals as part of a federal action brought by several states challenging EPA's “waters of the U.S. (WOTUS)” rulemaking.

The brief, AFBF said, lays out the substance of the groups' opposition, and includes sign-on by “dozens of agriculture, business and municipal entities” seeking to vacate the WOTUS rule, deemed a power grab by opponents, including several members of Congress, exceeding both constitutional authority and authority granted under the Clean Water Act (CWA). An appeals court decision won't be available until at least next summer, sources said.

EPA “flouted important procedural safeguards designed to ensure a fair and thoughtful rulemaking process,” said AFBF. Said the National Cattlemen's Beef Assn. (NCBA) and the Public Lands Council (PLC), “By violating fundamental tenets of administrative law and expand jurisdiction well beyond the text and structure of the Clean Water Act, it is very clear the WOTUS rulemaking was flawed from the start.”

“EPA set out to achieve a predetermined outcome and then manipulated the public notice-and-comment process to achieve that outcome,” said AFBF General Counsel Ellen Steen. “It treated the rulemaking process like a game to be won instead of a deliberative process for developing lawful and reasonable regulations.”

The WOTUS rule was finalized in August, 2015, after being proposed in 2014 by EPA and the U.S. Army Corps of Engineers, with both agencies contending the rule was necessary to satisfy several U.S. Supreme Court CWA decisions. The Court of Appeals blocked the rule shortly after it went final until

several lawsuits were consolidated and decided by the federal court. Congress has tried and failed to enact legislation requiring EPA to rescind the rule, start over and take into greater account stakeholder input.

It effectively expands EPA CWA authority beyond simply “navigable waters of the U.S.” by removing “navigable” from the definition. Opponents contend the new rule includes upstream water, intermittent and “ephemeral streams,” including those used by farmers and ranchers for drainage, and includes lands adjacent to these waters as well. EPA says the rule has minimum impact on farming and ranching as all existing CWA exemptions remain in place.

However, NCBA sees it differently. “Regulatory overreach is becoming the norm for farmers, ranchers and small businesses across the country, hampering economic growth and threatening the stability of many rural communities,” the group said in a statement.

Grassley Keeps Pressure on Feds to Review Mega-Mergers

U.S. regulators charged with reviewing a series of mergers among companies with interests in agrochemicals, biotech seed and other farming technologies are hearing regularly from Sen. Charles Grassley (R, IA), chairman of the Senate Judiciary Committee, that he’s watching to ensure they do their job in protecting competition, product availability and pricing for farmers and ranchers.

Grassley said this week he’s focused on the \$66-billion pending deal between Bayer AG and Monsanto Corp, saying he fears the deal will “substantially lessen competition in an already concentrated sector.”

Grassley says the deal means the merged company would control about 36% of the corn market and 34% of the world herbicide market. He wants to see the Justice Department work with USDA and the Federal Trade Commission (FTC) in reviewing the proposed deal.

“I am concerned that the merger (of Bayer and Monsanto) will curtail chemical and seed choices, and raise prices for farmers and the American consumer,” Grassley said in a letter to Renata Hesse, principal deputy assistant U.S. attorney general for antitrust. “In addition I am concerned that the proposed deal will harm research, development and innovation.”

In addition to the Bayer-Monsanto deal, Grassley has publicly questioned the wisdom of Chinese government-controlled ChemChina’s move to buy biotech seed giant Syngenta, as well as the pending merger of Dow Chemical and DuPont.

USTR Says Votes Are There for TPP Approval

Despite the nasty talk being tossed around during the U.S. presidential campaigns about the Trans-Pacific Partnership (TPP), this week U.S. Special Trade Representative Michael Froman told reporters he’s confident the congressional support is there to get the 12-nation Pacific Rim trade treaty ratified.

Froman is leading a full-court administration press in support of TPP. He has spent weeks on Capitol Hill pushing for the trade pact to get a vote during the post-election lame duck session. He said he’s confident that House and Senate support for trade promotion authority (TPA) will transfer to TPP based on over 100 member visits, 95 of which were to talk trade with House Republican members.

The chief trade negotiator made it clear he's well aware of the politics surrounding TPP and various members' reluctance to talk publicly about a possible vote on the treaty, but he added, "If they bring it forward, I think we can get the votes."

U.S. dairy, said USTR chief agriculture negotiator Darci Vetter, is out in force on the Hill pushing for TPP, critical in getting the attention of House Speaker Paul Ryan (R, WI), who so far has said he's not planning to schedule a TPP vote during lame duck. Senate Majority Leader Mitch McConnell (R, KY) has said much the same thing, referring to the politics surrounding trade as "toxic."

EU, Canada Sign Massive Free-Trade Pact as U.S., Euro Talks Lag

Canada and the European Union (EU) this week heaved a sigh of relief as they signed a massive bilateral free trade agreement after tiny Belgium finally withdrew its opposition to the deal. Meanwhile, there's no word on progress between the EU and the U.S. on reaching a similar trade accord.

The "Comprehensive Economic & Trade Agreement (CETA)" must now be formally ratified by both Canada and all 28 EU member states, another hurdle to overcome. Canadian Prime Minister Justin Trudeau called the deal "historic," while Jean-Claude Juncker, president of the European Commission (EC) said the trade pact signals a new chapter in the Canadian-EU "relationship."

The deal was blocked at the 11th hour when Wallonia, a French-speaking region of Belgium, used its veto power to force the Belgian government to withhold its approval of the CETA language. Fearing greater competition for its farmers from Canadian imports, Wallonia withdrew its opposition after it received several major concessions from the federal government, including a pledge to directly assist farmers.

The deal gives Canada added access to the EU and its \$20 trillion in economic activity generated by 500 million consumers.

The agreement calls for elimination of 99% of tariffs on both sides of the deal as soon as it's formally ratified, translating to an elimination by Canada of about \$500 million in duties. The deal opens the market for Canadian beef to move to the EU duty free, but that beef must meet the no-growth hormone rules the EU has in place. Once the deal is ratified, say Canadian meat producers, beef and pork will enjoy nearly unlimited duty-free access.

USFRA Ramps Up Food Company Confrontations over Deceptive Marketing Claims

The times, they are a changin'. U.S. agriculture producers, led by the U.S. Farmers & Ranchers Alliance (USFRA), have expanded their strong and unapologetic criticism of one yogurt company's consumer "pledge" to source dairy for some of its products from cows never fed "GMO feeds," to include up to a dozen more national and international food companies.

These farm/ranch organizations targeted The Dannon Co. for its non-GMO move as "flimflam" and "fear-based marketing," tossing aside daside the conventional industry practice of never challenging the customer for fear of losing the customer.

USFRA, formed by six major agricultural organizations to promote U.S. agriculture while trying to educate the consumer, shifted from polite conversation to confrontation when it saw the former going nowhere.

The industry initiative focuses on “deceptive food company marketing claims,” and USFRA confirms there are about a dozen other companies in its sights. Dannon is the first target because conversations between USFRA and the yogurt maker over the last few months “didn’t go in a direction that was reasonable and accurate,” said Randy Krotz, USFRA CEO (<http://www.fooddialogues.com>).

Dannon referred to the multi-group letter it received last week as “divisive and misinformed” about the company’s “efforts to continue to grow America’s enjoyment of dairy products, including yogurt.” The Dannon goal for some of its yogurt products is to label them as “non-GMO,” an ability limited by the new biotech food labeling disclosure law to USDA certified organic products or those certified by third party reviewers, such as the Non-GMO Project, which requires dairy cows be fed non-GMO feeds to meet its program criteria.

Dannon estimates about 80,000 acres of grain and oilseed production will go non-GMO as demand for its yogurt products increases. This is why producers like Randy Mooney, who owns a 200-cow operation in Missouri, sees the Dannon move as the “tipping point,” according to media reports. “There is nothing different in the milk from non-GMO feed and GMO feed,” the dairy producer told an agribusiness journal. “Before you know it, there’s a domino effect, and the whole feed supply affects all the feed that goes to dairy.”

Producers also see a dangerous shift in who calls the shots on feed ingredient production, away from producers, their experience and science. Food companies chasing niche markets like “non-GMO” foods are demanding “sustainable” production designed to fit the company’s marketing plan, producers fear.

USFRA’s Krotz told a media call last week, “We’ve heard so much about the (consumers’) ‘right to know’ over the last couple of years. We believe in the ‘right to know,’ but also that it’s a wholly accurate conversation.” He said the dynamic between producers and food companies is changing. “At times, agriculture will have to step up and challenge when food companies misinform consumers about practices,” he said.

The biotechnology debate is not the only focus of industry’s frustration. Apart from the USFRA effort, company claims about “vegetarian” animal diets, “hormone-free” products from species for which FDA hasn’t approved man-made hormones, the use of antimicrobials in feeds, and various alleged animal welfare “improvements” generate frustration as well.

***New York Times* Says Biotech Benefits Aren’t Delivered; Industry Shoots Back**

In an October 30 *New York Times* story entitled “Doubts About the Promised Bounty of Genetically Modified Crops,” the author says reduced herbicide use and increased yields didn’t materialize after 20 years of use. The industry wasted no time in countering the article.

The *Times* piece was based upon “an analysis by the *Times* using United Nations data,” the article said, and went on to report that the U.S. and Canada “have gained no discernible advantage in yields...when measured against Western Europe.” The report went so far as to allege herbicide use in the U.S. has actually increased because weeds have developed resistance to the genetically engineered (GE) varieties.

Monsanto’s Chief Technology Officer Robert T. Fraley said the newspaper used selective data to slam the industry, explaining in the story farmers don’t use technology that doesn’t deliver as promised.

Other scientists, according to reports after the story broke, pointed out crops are not engineered to increase yields to begin with; that increased crop chemical use is related to an increased number of acres in production – “and in some cases, more herbicide use per acre” – and that GE crops have led to increased use of conservation tillage.

NGFA Says Changes Needed on STB Proposed Rail Switching Rule; 10 Shipper Groups Ally on Filing

The National Grain & Feed Assn. (NGFA), while commending the Surface Transportation Board (STB) for tackling modernization of reciprocal switching rules, made several recommended changes in the proposed rule and urged the board to finalize the rulemaking “with all deliberate speed.”

At the same time, 10 shipping groups, including the National Industrial Transportation League (NITL), joined together to file comments with the STB on its proposed rule to make it easier for shippers to gain access to competitive rail service via reciprocal switching.

NGFA, on behalf of grain elevators and shippers, said it was pleased to see the STB propose to eliminate a “30-year agency precedent that requires the rail users, as a precondition to seeking a reciprocal switching order...to demonstrate that the origin railroad unwilling to offer switching, was intentionally engaging in anticompetitive conduct.” NGFA said it was this condition that resulted in shippers filing no requests for reciprocal switching since the late 1980s.

The case-by-case approach proposed by the STB was supported by NGFA, but the group urged the board to recognize that all grain elevators and other agricultural facilities are located in rural areas where the nearest rail interchange may be 100 miles or more away. NGFA recommended the STB provide guidance that it generally will set a maximum interchange distance of 100 miles from a facility’s location, but allow for individual shippers to argue for longer distances on a case-by-case basis.

NGFA also urged the STB to let shippers challenge “unjustifiably high switching charges,” even if two rails agree to such fees; eliminate or greatly simplify the requirement that shippers prove that a carrier is market dominant if arguing for competitive service; to not exempt Class II and Class III shortlines from the new rules; adopt expedited procedures and timelines for requests for reciprocal switching relief, and determine that a working interchange for switching traffic from one rail to another “exists if such an interchange existed as of the date of the proposed rule (July 27, 2016) so that carriers seeking to avoid competition would be incentivized to remove such an interchange to avoid switching traffic to a competing carrier.”

NITL summarized the comments from the Shipper Coalition for Railroad Competition (SCRC) as follows: The STB has the legal authority to make the changes it envisions to the existing reciprocal switching rules; STB’s case-by-case approach is a good one, but should be changed to make switching proceedings, cheaper, faster and easier; short lines should be allowed to serve as a “competing carrier;” the term “reasonable distance” in the proposal needs to be better defined and the STB needs to explain how it fits within the “market dominance test;” lost contribution should not be considered by the STB when setting an access price, and the STB should clarify the standard it will use when deciding whether to reopen an order for reciprocal switching.

Animal Diseases Entering U.S. via Feed Imports?

The Swine Health Information Center (SHIC) says foreign animal diseases can enter the U.S. via imported feed, an assertion made based on research by Scott Dee, Pipestone Applied Research, Pipestone Veterinary Services, South Dakota State University and SHIC.

Dee said in a SHIC press release the question of whether a foreign animal disease could be transported by imported feeds hadn't been answered because the research hadn't been done. "The answer appears to be true. Via simulation, we've shown for the first time that viral pathogens can move from country to country through feed imports from countries of high risk to countries without the disease," Dee said.

The research was done because Porcine Epidemic Diarrhea virus (PEDv), which used to be an exotic disease unknown in the U.S., broke out in 2013, spreading rapidly across the country. "When it started we didn't even have a good way to test for PED," said Dr. Paul Sundberg, SHIC executive director. Sundberg said the National Pork Board (NPB) and the Pork Checkoff funded the research necessary and "besides sponsoring novel transboundary feed biosecurity research, making sure we are ready is also part of SHIC's mission."

"PED likely came to us in feed from China, I am quite convinced of that," said Dee, explaining the first PED strain in the U.S. was 99.8% similar to a strain found in China.

Because several virulent animal diseases are found in China, the industry needed to know if these diseases could make it across the ocean in feed, he added. Dee simulated transport of feed ingredients from China, kept logs of humidity and temperature, lists of typical ingredients, inoculated those ingredients with surrogate viruses, and found that indeed, viruses can survive a 37-day trip from Beijing to Des Moines.

EPA Notes

Enlist Duo Gets Second Chance – EPA this week reaffirmed the registration of Enlist Duo, a Dow AgroSciences product that combines 2,4-D and glyphosate, because the company submitted additional data showing the effects of mixing the two chemicals shows no additional toxicity. For EPA the data was new and after review, said "therefore this is not of concern." The product has remained on the market for use on genetically engineered (GE) corn and soybeans in 15 states, even after EPA originally withdrew its registration for additional review. In addition to those 15 states, EPA is proposing to clear it for use on GE cotton in the same states and on GE corn, soybeans and cotton in another 19 states.

New General Permit for Pesticide Discharge Coming – EPA says its looking to issue a new general permit that would allow pesticide discharge under the Clean Water Act (CWA), but only under certain use scenarios. The new permit would cover biological pesticides and chemical pesticides that leave a residue, and would apply to chemicals used to control flying insects, weed and algae pest control, forest canopy pest control and animal pest control. The permit would apply in Idaho, Massachusetts, New Hampshire, New Mexico and Washington, DC, along with some federal territories, including Puerto Rico. Applicators would be required to minimize the amount of chemical used and the frequency of application to reduce chances the "receiving waters" are polluted and wildlife endangered, the agency said. Details can be found at www.epa.gov.

More on atrazine battles – EPA Administrator Gina McCarthy this week heard from more than 100 House Republicans that she needs to dump her agency's atrazine draft ecological risk assessment. The draft reportedly shows concerns relative to the chemical's effect on some wildlife, but the lawmakers

say the data is flawed. The House members sent McCarthy a letter that reiterated atrazine's safety record along with the importance of the herbicide to corn producers. McCarthy was asked to consider "the needs of farmers" and urged to "use sound science" as the agency moves to finalize the risk assessment.

2017 Safety Net Enrollment Announced by USDA

Farmers with base acres under the Agriculture Risk Coverage (ARC) or Price Loss Coverage (PLC) income safety net programs created by the 2014 Farm Bill can swing by their Farm Service Agency (FSA) offices to sign contracts and enroll for 2017, USDA announced this week. The new sign-up period began November 1.

The department said it has paid out more than \$7 billion in October under ARC and PLC for 2015 crops to producers who suffered a loss of price, revenue or both. "Since shares and ownership of a farm can change year to year, producers on the farm must enroll by signing a contract each program year," USDA said. If not enrolled during the 2017 enrollment period, producers may not be eligible for financial assistance under ARC or PLC for the 2017 crop. Producers who made their elections in 2015 must still enroll during the 2017 enrollment period. Details are available at www.fsa.usda.gov/arc-plc.gov.