

2016 Agricultural Law Year in Review

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2016 was quite a year for agricultural law. From the FAA passing UAS regulations to a major water law decision by the Texas Supreme Court to Congress passing a GMO labeling bill, a lot has happened in the past 12 months. This article will recap some of the highlights of the past year.

WOTUS joint resolution vetoed, stay in place during litigation. The controversy surrounding the Clean Water Act definition of "Waters of the United States" continued from years past, and there does not appear to be an end in sight. Currently, the nationwide stay issued by the United States Court of Appeals for the Sixth Circuit in late 2015 remains in place, and the new EPA definition of "Waters of the United States" is currently not in effect anywhere in the US. In January 2016, Congress passed a joint resolution that would have declared the new EPA definition null and void. On January 20, 2016, however, this bill was vetoed by President Obama. Thus, litigation remains pending before numerous trial courts as well as before the Sixth Circuit. Currently being considered are disputes over whether jurisdiction is proper before appellate or trial level federal courts.

Unanimous victory for landowners at United States Supreme Court. Sticking with the Clean Water Act, landowners scored an important victory before the United States Supreme Court this year in *US Army Corps of Engineers v. Hawkes*. That case addressed the issue of when a landowner can appeal an approved jurisdictional determination from the EPA or Corps that their property includes a "water of the United States," thereby imposing Clean Water Act jurisdiction. The landowner, who did not agree with the Corps' determination filed an appeal. The Corps argued that the landowner did not have the legal right to appeal. Instead, they argued, his remedies were limited to obtaining the required Clean Water Act permits (at a significant cost) or proceeding with his project and waiting to be fined tens of thousands of dollars per day for not having the permits. Siding with the landowner, the Court held that a landowner may immediately appeal an approved jurisdiction determination.

FAA passes UAS regulations, opens commercial use in the United States. After years of waiting, folks are now able to fly unmanned aircraft systems ("UAS" or "drones") for commercial use in the US, thanks to the Federal Aviation Administration issuing final rules. Importantly, all UAS users--regardless of the purpose of the flight--are required to register their aircraft with the FAA. For those making commercial use of the UAS, a host of rules regarding pre-flight, during flight and post-flight actions have been passed by the FAA and must be followed. These include requirements like obtaining a pilots' certificate, conducting pre-flight safety checks, maintaining a visual line of sight, not flying faster than 100 mph or lower than 400', and more.

Lawsuits filed regarding drones and privacy. There continue to be numerous news stories surrounding drones and privacy rights. Several lawsuits are

pending across the country involving issues related to UAS operation and privacy of landowners. For example, in Kentucky, a landowner shot down a drone flying over his property. The drone operator has filed a federal lawsuit seeking to determine the rights of the parties in this situation. This is another area of the law that will likely be in the news more in 2017.

Congress passes mandatory GMO labeling bill, state bills pre-empted. President Obama signed the federal GMO labeling bill into law in July. The bill gives authority to the USDA to develop a labeling scheme within the next two years. Further, the bill expressly pre-empts state laws including the Vermont law, which went into effect for a short time this year.

Lesser Prairie Chicken no longer on the Endangered Species list...for now. The United States District Court for the Western District of Texas issued an order finding that the US Fish and Wildlife Service acted improperly when making its decision to list the Lesser Prairie Chicken as threatened under the Endangered Species Act. Initially, the USFWS said they would appeal the decision, but later decided not to pursue that avenue. Instead, the USFWS has indicated that it will start over and undertake the proper considerations and re-consider the listing.

Special Master recommends denying Motion to Dismiss in Texas v. NM water law dispute. The ongoing dispute between Texas and New Mexico regarding the waters of the Rio Grande River and the 1938 Rio Grande Compact is still pending before the United States Supreme Court. Essentially, Texas alleges that New Mexico is violating the compact by intercepting water between the Elephant Butte Reservoir and the Texas state line that belongs to Texas. In July, the Special Master appointed by the Court to handle motions and discovery issued a report recommending that the Supreme Court deny New Mexico's Motion to Dismiss the case and let Texas proceed with its claims.

Judge Certifies 9 producer classes in Syngenta corn litigation. Recently, the federal judge sitting on the multi-district litigation involving claims by producers and agribusinesses against Syngenta certified 9 classes of producers to proceed as class action cases. The producers' claims center around Syngenta's sale and marketing of a specific corn seed containing the trait MIR-162. The genetically modified corn was approved for sale in the United States, but had not been approved by China. When the US shipments reached China, they were rejected due to the presence of the Syngenta corn. Shortly thereafter, the corn price dropped significantly in the United States, something that the plaintiffs claim was due to the rejection of the corn by China.