Agriculture and the Law: Where is it Headed?

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Outline

- Overview of the National Agricultural Law Center
- “Agriculture and the Law”
- Specific examples
  - Farm Bill
  - Crop Insurance
  - *Gulf Restoration* (numeric vs. narrative standards)
  - States’ Right-to-Farm laws
  - Animal Agriculture
  - Etc.
- Where *are* we headed?
- Q&A
Five “Categories”/Factors

Very general, very oversimplified:

- Globalization/International (Ag) Trade
- Environmental issues
- Energy
- Federal budget**
- “Consumer” influence
General Points

1. Everything in agricultural law is controversial to someone
2. Agriculture as an industry is **not** monolithic
3. Context matters . . . *a lot*
4. Objectivity in research and information activities is extremely important
5. The agriculture industry is quite possibly the most heavily regulated industry in the U.S.
National Agricultural Law Center

- **Diverse user-audience**
  - Producers, academics, Cooperative Extension Service professionals, attorneys, federal and state policymakers

- **Frequently handle sensitive issues**
  - Maintaining trust with stakeholders is critical

- **Objectivity**
  - Same answer to question regardless of who asks it

- **Staffing**
  - Senior Staff Attorneys Elizabeth Rumley and Rusty Rumley
  - Support Staff
  - Student interns
Administrative Law
Animal Identification
Aquaculture
Biosecurity
Business Orgs
Clean Water Act
Commercial Trans.
Conservation Programs
Cooperatives
Disaster Asst/Crop Ins
Estate & Taxation
Food Labeling
International Law
Labor
Landowner Liability
Local Food Systems
Nat’l Organic Program
Native American Ag
Packers & Stockyards
Pesticides
Renewable Energy
Specialty Crops
Urbanization & Ag

Agritourism
ADR
AFOs
Animal Welfare
Bankruptcy
Biotechnology
Checkoff
Climate Change
Commodity Programs
Corp. Farming
Country of Origin Labeling
Environmental Law
Finance & Credit
Food Safety
International Trade
Marketing Orders
Nutrition Programs
PACA
Production Contracts
Secured Trans.
Sustainable Ag
Water Law
Overview

Major Statutes

Regulations

Case Law Index

Center Research Publications

Congressional Research Service Reports

Agricultural Law Bibliography

Reference Resources
  - Governmental Agency Resources
  - Congressional Resources
  - International Resources
  - Publications
  - Additional Resources

Major Statutes

Animal Health Protection Act, 7 U.S.C. § 8301-8321
Columbia River Basin Fishery Development Program, 16 U.S.C. § 833-835m
Commercial Fisheries Research and Development Act, 16 U.S.C. §§ 742(c), 779
Endangered Species Act, 16 U.S.C. §§ 1531-1544
National Agricultural Law Center

- Website: www.nationalaglawcenter.org

- *The Ag & Food Law Blog*: www.agandfoodlaw.com
  - Partnership with the American Agricultural Law Association

- Facebook: www.facebook.com/nataglaw

- Twitter: www.twitter.com/nataglaw

- eXtension Agricultural & Food Law Community of Practice

- Email Communications from the NALC
Agriculture & The Law

Start with the basics

- What is agriculture?
  - VERY important question – answer depends on who you ask, and when/where it’s asked
  - Post WWII evolution is very, very important
  - Competing definitions of what agriculture should be

- What is agricultural/food law?
  - Theoretical vs. practical definitions
  - Answer depends on who you ask, and when/where it’s asked
What is agricultural and food law?

- Technical: The body of local, state, federal, and international laws, regulations, and policies that govern or influence each aspect of the food system, including from production to disposal.

- “Agricultural law is the law of exceptions.”

- Practical: Those laws that affect the daily lives of producers and others engaged in the agricultural sector.
What is agricultural and food law?

- Applicable laws will typically depend on the type of farm business at issue
  - Specialty crops vs. livestock production
  - Farmers’ markets/direct marketing vs. commodity crop production

- Subject to **constant** change through legislative, executive, and judicial branches at the state and/or federal level

- Not just USDA anymore . . .
  - EPA, FDA, DOL, Dept. of Homeland Security
  - RMA vs. FSA and NRCS
Federal Register Pages

source: Law Librarians' Society of Washington DC

Number of Pages vs. Year

(Number of Pages on the Y-axis, Year on the X-axis)
Agriculture & The Law

- Regional and, therefore, political differences
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  - Animal Ag
  - Etc.
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Farm Bill

- An example and reflection of where “agriculture and the law” may very well be headed
- Increasingly difficult to enact, future very uncertain
- Implications for “agriculture” are huge
- Paradigm shift underway
Farm Bill

- Remember our five categories:
  - Globalization/International (Ag) Trade
  - Environmental issues
  - Energy
  - Federal budget**
  - “Consumer” influence
Farm Bill

- **Center Farm Bill Resources**
  - Extensive in-person and webinar outreach, particularly to lenders and producers (and crop insurance agents)
  - Extensive Congressional Research Service Reports
  - Farm Bill resources page (includes digitized farm bills and legislative history from 1933 through present)
  - Variety of applicable Reading Rooms
  - Constant updates via social media
  - Regular media and public inquiries
Federally Reinsured Crop Insurance

- Brings in a new acronym – RMA

- Not a typical, two-party contract
  - Very complicated

- Very significant implications for producers, landowners, and lenders
  - Some lenders requiring producers to irrigate in order to obtain loan
  - Program does not work the same in all regions of the country
  - Very little to no collective understanding of how crop insurance actually works, including impact of case law
Animal Agriculture

- Enormous set of issues nationally
  - Primary focus of one the Center’s Senior Staff Attorneys (Elizabeth Rumley)
  - Formally affiliated with the Center for Food Animal Well-Being

- Animal Well-Being
  - Animal confinement laws
  - States’ animal cruelty laws

- Lacey Act via aquaculture and invasive species

- Changes in livestock marketing rules
  - GIPSA national workshops provided by National Agricultural Law Center
Environmental Law

- EPA and agriculture
  - Pesticide use, Clean Water Act regulation, wetlands, NPDES permits

- Endangered Species Act

- Water quality and the Clean Water Act
  - Point source vs. nonpoint source
  - Very, very important area of activity

- Senior Staff Attorney designated to cover these issues as well (Rusty Rumley)

- *Gulf Restoration, et al. v. EPA*
  - Numeric vs. Narrative criteria under the Clean Water Act
Gulf Restoration

Mississippi River Basin

Arkansas-Red-White

Upper Mississippi

Lower Mississippi

Missouri

Ohio

Tennessee

Hypoxic Zone

Gulf of Mexico
Gulf Restoration

- Whether EPA is essentially *required* under the Clean Water Act to create *federal* numeric nutrient water quality standards for the nation’s waters where such standards do not currently exist, specifically including in the Mississippi River Basin that covers about 40% of the U.S. land mass.

- EPA asserts it has the authority under the CWA to create such criteria at any time it deems necessary, but would rather work with states, authorized tribes, and territories to establish numeric water quality standards.

- Many disagree with EPA, asserting that EPA is basically required under the CWA to create such numeric criteria.
  - *Gulf Restoration et al. vs. EPA* (March 13, 2012)
Gulf Restoration

- Could mean that new regulatory regime or standards will be imposed by EPA on states throughout the intrastate and interstate waters in the 31-state Mississippi River Basin
  - Makes any changes to jurisdictional scope of CWA even more important (i.e., to what waters does CWA apply?)

- Would be a huge shift from the current “partnership” between EPA and the states in establishing water quality criteria
  - Would impose **federal** numeric criteria on states that states must comply with, rather than through a more traditional role of EPA partnering with states to create and approve such numeric criteria
  - Would drive a shift from “narrative” water quality criteria to “numeric” water quality criteria
In general, significant distrust of EPA by agricultural community

Remember: Context matters
- i.e., EPA flyovers
Country of Origin Labeling

- Debate over COOL occurring in each branch of government and at the World Trade Organization
  - Long-debated, but intensified in 2002 Farm Bill

- Again, hinges in part on what definition of “agriculture” is applied
  - Consumers’ right-to-know vs. role of agriculture in global marketplace

- Center recently hosted national COOL webinar
  - Point/counterpoint
State laws that provide affirmative defense to nuisance actions brought against “agricultural operations”

Differs among states
- Center has 50-state digitized compilation of states’ laws
- Extensive research and publication in this area as well

Legal tool sometimes used to attempt to stop agricultural operations
All fifty states have enacted right-to-farm laws that seek to protect qualifying farmers and ranchers from nuisance lawsuits filed by individuals who move into a rural area where normal farming operations exist, and who later use nuisance actions to attempt to stop those ongoing operations. While the overall statutory schemes might be similar, each state has noticeably different content in the specific details of the laws. States’ Right-to-Farm Statutes provides the statutory text of each state’s laws, along with the date of its possible expiration. The primary aim of this compilation is to provide the researcher with easy and free access to a state’s statutory language by simply clicking on the state’s image in the map below. To be directed to the state legislative site where the official language of the statute is maintained, click on the citation above the statutory language.
Where is agriculture and the law headed?

- Impossible to predict, but we are definitely in unchartered waters
  - Political influence of agriculture in Congress still powerful, but has declined
  - Debate over relationship between Nutrition Title and rest of the farm bill is extremely important long-term
  - Outcome of current farm bill debate will be very informative
  - Influence of ag committees without control of nutrition program funding and/or 1938 and 1949 permanent laws in place?

- Lawmaking process/lobbying will have to evolve
  - Easier said than done
Where is agriculture and the law headed?

- “New” political influences firmly in place and will remain for the foreseeable future
  - Internationally and domestically
  - Yesterday’s arguments will be “cookie-cuttered” into new laws and programs

- Production agriculture will continue to be criticized

- Relationship between producer, landowner, and the lender is changing and will continue to change
  - Agricultural lease terms (crop share to cash rent; how to draft leases in an era of continued policy/political uncertainty)
Where is agriculture and the law headed?

- Water quantity and water quality issues will be increasingly prevalent
  - Interstate compacts likely to increase
- Crop insurance dispute resolution will likely be re-examined at some point
- Continued influence of the WTO on agriculture (i.e., how will crop insurance be viewed?)
- In general, producers will continue to manage large amounts of financial
- Ag labor/immigration, ag biotech, organic, etc.
“This time, like all times, is a very good one, if we but know what to do with it.”

– Ralph Waldo Emerson
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