

# The Agriculture Letter

Insight and Analysis for Agribusiness Leaders

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Dear Client:

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Outlook for a big infrastructure package... President Joe Biden initially told the truth about getting it through the Democrat-controlled Congress, but then had to walk back his comments after Republicans threatened to pull their support from a bipartisan agreement they thought they had with the president.

What's up and what's ahead...

**INFRA-STRUCTURE** Big snag avoided? Infrastructure and a multitrillion-dollar package backed by liberal Democrats must be passed in tandem, Biden initially said. If the Senate did not sign off on the “human” infrastructure package of social spending via a coming reconciliation measure, he would not sign the infrastructure bill... even if it clears the Senate, he said. Linkage surprised Republicans.

GOP labeled this a veto threat, and Biden backed off.

House Speaker Nancy Pelosi (D-Calif.) is key.

Reason: She said she would not bring up the infrastructure measure unless the Senate passes the Democrat-pushed reconciliation measure, which includes spending for climate change provisions and additional tax credits and subsidies for families, home health workers and college students, among other items offset by increases in corporate taxes and other taxes that Republicans say they will not support. That means this measure must clear the Senate with just Democratic votes via reconciliation, which does not face a filibuster threat and requires 60 votes.

Biden should urge Democratic leaders to delink the infrastructure and reconciliation bills, says Senate Majority Leader Mitch McConnell (R-Ky.). But that's unlikely to happen.

So are the odds dim for an infrastructure bill?

Not necessarily. Reason: White House and Democratic congressional leaders will make sure centrist Senate Democrats like Joe Manchin (D-W.Va.) and Krysten Sinema (D-Ariz.) and others get significant funding and programs for their states... enough to ensure they vote for reconciliation.

Final task: Convince Sen. Bernie Sanders (I-Vt.) to vote for reconciliation if the final price tag is “only” \$1.5 trillion or \$2.0 trillion — a level Manchin signaled is needed to get his support. Sanders will also be promised something big in return.

Bottom line: Biden is attempting to simultaneously satisfy liberal Democrats and secure a bipartisan breakthrough, which requires major legislative acrobatics. Biden predicts his legislative highwire act will succeed because Democrats will understand the procedural hurdles of legislating and, ultimately, accept the outcome. This is very similar to the strategy used by Democrats to pass the Affordable Care Act.

## More on Infrastructure and Reconciliation Bills

- Neither bill has been written... just framework language.
- Also murky: How the reconciliation bill will be financed and whether ideas negotiators have offered are enough.
- Central debate: How big the second package should be. Sanders hopes for a \$5 trillion to \$6 trillion package, but Manchin supports a roughly \$2 trillion plan.
- Physical infrastructure bill calls for \$579 bil. in new spending over existing funding levels... much smaller than \$2 trillion American Jobs Plan Biden proposed.
- No details on how \$579 bil. would be spent other than broad categories, including \$109 bil. for roads and bridges, \$66 bil. for railroads, \$65 bil. for broadband, \$16 bil. for ports and waterways and \$5 bil. for the Western water shortage.
- White House says \$65 bil. for broadband is enough to “connect every American to reliable high-speed internet.”
- Fate of both bills will not likely be known until late summer/early fall, with a late-year timeline possible.

*Source: Congressional and White House contacts*

PROP. 12

Supreme Court denies meat industry petition for review of Calif.'s Proposition 12. "We are disappointed our petition for cert [certiorari] was denied. We will be considering other options to protect consumers and producers from Proposition 12, which will cost both millions of dollars, according to economists and the state of California's own analysis," North American Meat Institute Spokesperson Sarah Little said in a statement.

Prop. 12, implementation of which will begin Jan. 1, 2022, imposes what opponents claim is arbitrary animal housing standards that reach far beyond California's borders to farms across the country; it bans the sale of pork that does not meet those standards.

Prop 12 is also the subject of separate litigation from the National Pork Producers Council and the American Farm Bureau Federation. The Ninth Circuit heard oral arguments on that case in April and has not yet rendered a decision.

DISASTER  
AID

Permanent ag disaster fund? House Ag Committee Ranking Member GT Thompson (R-Pa.) says he will support such a fund and will work with others on it if it:

- (1) Does not compete with crop insurance.
- (2) Is easy to implement.
- (3) Responds to disasters quickly.

How many of you think Congress can accomplish points two and three?

Will Congress approve aid for 2020 and 2021 disasters? The short answer is yes. But it may take some time. After all, USDA just started sending out the second-half payments for WHIP+... the complexity of that program is the pressure behind lawmakers seeking a more simplistic ad hoc program.

Funding issues were part of the WHIP+ glitches. Watch for any congressional language that says "such sums as necessary" in any new legislation. If that makes it in, then USDA will not have problems calculating payments to see if there is enough funding. But getting a blank funding check from Congress will likely face major hurdles.

Farm Service Agency (FSA) staffing issues were also to blame in the WHIP+ and Quality Loss Adjustment payments snafu. USDA Sec. Tom Vilsack recently told lawmakers they are getting more staff through FSA offices, but post-pandemic issues are still evident.

PROPERTY  
RIGHTS

Protection of private property rights was bolstered by the Supreme Court's 6-3 Cedar Point Nursery decision. Two growers in Calif. challenged a 1975 regulation by the state's Agricultural Labor Relations Board that requires farmers to allow union organizers onto their property three hours a day for 120 days each year. They argued that the regulation was equivalent to a time-limited government easement and thus constituted what's known as a "per se" physical taking of property. Bottom line: the California regulation giving union organizers the right to recruit members on farm property is unconstitutional. Proponents of the decision say the Court's conservative majority delivered a major victory for property rights.

ANTITRUST

Biden is prepping an antitrust executive order. The White House is readying an executive order that would promote competition and go beyond antitrust enforcement in multiple sectors, including agriculture. While not final, the order would use federal power to spark competition across businesses, including suggestions for agency actions. The order calls on the United States' two antitrust agencies... the Justice Department and Federal Trade Commission... to update guidance on how they examine proposed corporate mergers.

There has been increasing pressure to address a slew of antitrust concerns, including within the meat producing industry. The pandemic and recent JBS hacking by Russia-based hackers has highlighted the potential pitfalls of meat producer consolidation.

The meat processing and seed industries are just two sectors the Biden administration... and Congress... want to review.

Expect several hearings on this topic as action is being mulled.

OPEC

OPEC chief says coronavirus variants 'wild card' for oil demand: Reuters. The rise of new coronavirus variants and their impact on the trajectory of the global pandemic are a source of uncertainty for oil demand, OPEC Secretary General Mohammad Barkindo told a June 29 meeting of the OPEC+ Joint Technical Committee.

"The current 'wild card' factor is the 'Delta Variant' of the pandemic that is resulting in rising cases and renewed restrictions in many regions," Barkindo said, according to a copy of his speech seen by *Reuters*.

Oil demand for 2021 had been forecast to grow by 6 mil. barrels per day (bpd), with a lion's share of the increase... 5 million bpd... expected during the second half of the year, he told the committee. Even factoring in the uncertainty, Barkindo predicted oil demand will still see "a significant increase" during the second half of this year, according to the outlet.

Expectations are that OPEC+ will increase production gradually as demand continues to recover from pandemic lows and inventories retreat.

MARKETS

Corn: While farmers boosted corn plantings from levels signaled in March, USDA's 92.69 mil. planted acreage estimate was around 1.1 mil. acres below expectations. Coupled with a June 1 stocks figure that was slightly smaller than expected after a big usage boost in the March-May quarter, corn futures are again rallying. The data puts even more attention on summer weather. Much of the Corn Belt received rain in late-June, but the driest northwest third of the Belt received the lightest tallies. Forecasts point to building crop stress in July and August. Meanwhile, frost dinged Brazil's safrinha corn crop.

Soybeans: U.S. farmers planted fewer soybean acres than they said they intended in March, surprising analysts expecting soybean planted area to climb nearly 1.4 mil. versus intentions, on average. June 1 stocks were a little smaller than expected, despite a 9% slide in March-May usage. Now demand and August weather will be the market focal point ahead. Tight stocks and a smaller year-over-year rise in planted acreage than previously expected gives the crop little room for error.

Wheat: Total U.S. wheat plantings topped expectations at 46.7 mil. acres, but that was still the fourth smallest planted acreage estimate on records dating back to 1919. And wheat stocks on June 1... which set 2020-21 carryover... were just 844 mil. bu., down 18% from year ago and the smallest stocks level in four years. USDA said spring wheat plantings were down 5% from year ago, and it projected abandonment of just 3.2%... too low given poor crop ratings. In 1988 when late-June crop ratings were at similar levels, abandonment topped 20%.

Rice: Plantings totaled 2.66 mil. acres for all types of rice, down a sizable 12% from last year as medium rice was down a sharp 15%, according to USDA. But the water situation in Calif. was a key for medium and short grain rice as acres were down 19% from last year. Still, production is likely to be more than enough to meet demand.

Cotton: USDA pegged cotton plantings at 11.72 mil. acres, down 3% from last year, reflecting the West's water woes. Upland cotton plantings were down in 9 of 17 major cotton producing states, with 100,000 fewer acres in Texas. But Missouri farmers stepped up plantings by nearly that amount.

Dairy: Global milk production has exceeded expectations and that has translated into lower-than-expected global milk prices. But China's demand has been strong, picking up about 76% of increased milk production in major exporting countries.

Hogs/pork: USDA's quarterly Hogs & Pigs Report showed total hog numbers down 2.2% from year ago, in line with expectations. The data suggests the third quarter hog slaughter will likely to be down nearly 3% from year ago, with harvest for all of 2021 still expected to slide 1% from 2020. Some believe USDA is missing some disease impacts.

Cattle/beef: After months of sideways trade, cash cattle prices finally rose the latter half of June, with drought-stressed pastures and high temperatures helping northern locations to lead gains. Boxed beef prices dropped sharply as July Fourth buying concluded.

## BIOFUELS

Biofuels coalition does not expect surge in refinery exemptions following the U.S. Supreme Court decision last week that struck down part of a 10th Circuit Court decision curtailing EPA's ability to grant small refinery exemptions (SREs) under the Renewable Fuel Standard (RFS). Biofuel and corn groups hosted a call and said they do not expect the move will result in a surge in new waivers issued by the agency. Participating in the call were four groups that had urged the nation's highest court to uphold the 10th Circuit decision: the Renewable Fuels Association (RFA), National Corn Growers Association (NCGA), American Coalition for Ethanol (ACE) and the National Farmers Union (NFU).

The coalition does not believe it will reopen the floodgates on SREs, which were liberally distributed during the Trump administration. While the Supreme Court struck down a requirement that refineries must have maintained a continuous string of SREs since 2011 to be eligible for future waivers, it left intact other key aspects of the ruling.

Two other "pillars" of the 10th Circuit decision still stand, explained RFA President and CEO Geoff Cooper. The first held that EPA can only grant SREs... which require a finding of "disproportionate economic harm" from RFS compliance... only if associated harm is caused by the RFS itself and not outside factors like market shocks, weak demand or other outside economic factors. The second pillar, said Cooper, "is that EPA really must reconcile any decisions to grant exemptions with the agency's long-standing position that refineries of all shapes and sizes... pass through their RFS compliance costs, they pass through their [Renewable Identification Number (RIN)] costs, in the prices of their refined products." He added that those two aspects of the 10th Circuit decision left standing mean "it's going to be difficult or impossible for refiners to really establish that the RFS itself is somehow harming them."

Looking ahead, Cooper voiced hope that EPA will issue "a clear statement of direction ... that they do intend to honor and adopt those other two holdings from the 10th Circuit decision, and to do so on a nationwide basis."

The Supreme Court did not address several other points raised in ongoing litigation around the RFS. One is the issue of whether EPA must recover or redistribute volumes exempted using SREs. Another key: How EPA addresses the issue in upcoming Renewable Volume Obligations (RVOs) for 2021 and 2022, which should be coming out soon.

There is no appetite to legislate on the RFS as a consequence of the Supreme Court decision... whether that's on the issue of small refinery exemptions, or whether that's on the issue of 2023 and beyond and the so-called "reset rule."

POTATO  
TRADE

U.S. potato growers push Biden administration on Mexico's import practices. The National Potato Council (NPC) wants the Biden administration to keep pushing Mexico in the dispute over its potato import actions. While a recent Mexican Supreme Court ruling was "significant progress" in the dispute, the NPC said, "there are serious concerns about the long-term prospects for successful market access for U.S. potatoes in Mexico."

Mexico's potato cartel CONPAPA is "exerting great political pressure" to impede competition from the U.S., NPC said, adding Mexico's health safety agency in April changed the U.S. fresh potato import protocol without notification to the U.S. and involves additional sampling of U.S. potatoes to be sent to a lab selected and paid for by CONPAPA. "The clear goal of this unilateral change is to manufacture a reason to close the market to U.S. fresh potatoes at some point in the future," NPC said in the letter to Vilsack and U.S. Trade Representative Katherine Tai.

Vilsack is scheduled to meet with Mexico's Agriculture Secretary Víctor Villalobos Arámbula in early August where issues on GMO corn, glyphosate and the potato trade situation are expected to be key topics.

Best regards,

*The Ag Letter Editors*  
THE AGRICULTURE LETTER EDITORS

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