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Dear Client: Washington, Sept. 1, 2023

We now have a final definition of the WOTUS rule... Waters of the United States.

But, the definition is generating a lot of criticism.

WOTUS

The new WOTUS rule: EPA and the Department of the Army changed parts of the previous definition of "waters of the United States" to align with the Supreme Court's decision, which weakened the federal agencies' power to regulate the nation's waterways.

EPA speaks. "While I am disappointed by the Supreme Court's decision in the Sackett case, EPA and Army have an obligation to apply this decision alongside our state co-regulators, Tribes, and partners," EPA Administrator Michael Regan said.

Key change: Under the new rule, several types of waters will no longer be under federal protection, an EPA official said, including an estimated 1.2 million to 4.9 million miles of ephemeral streams. Up to 63% of wetlands by acreage in the United States could also be affected, the official added, citing mapping done by the Fish and Wildlife Service.

EPA said the amendments announced are limited and only change the parts of the previous rule that are invalid under the court's decision. For example, the final rule removes the significant nexus test from consideration when identifying tributaries and other waters as federally protected.

This updated rule, known as the post-Sackett rule, states that wetlands covered by the Clean Water Act must have a continuous surface connection to navigable waterways. This means that wetlands not directly connected to large rivers, streams and coastlines might either remain unregulated or be subject to state-level regulation.

The new rule takes effect immediately and is intended to help provide clarity around implementing the Clean Water Act following the court's decision.

Despite this attempt to clarify regulations, there is still confusion stemming from the Supreme Court's limitations on the administration's authority. Legal experts in natural resources suggest that uncertainties persist.

Opposition growing. Groups representing industries such as oil, agriculture and development have accused the Biden administration of not fully adhering to the Supreme Court's Sackett v. EPA ruling. This suggests that legal battles over the jurisdiction of federal waters will likely continue.

The agencies will host a public webinar on Sept. 12, 2023, to provide updates on the definition of WOTUS. For registration information, visit EPA's webpage for the amendments rule.

The agencies also plan to host listening sessions this fall with co-regulators and stakeholders, focusing on identifying issues that may arise outside this limited rule to conform the definition of WOTUS with the Sackett v. EPA decision.

House Transportation and Infrastructure Committee leaders expressed differing opinions along party lines. Sen. Shelley Moore Capito (R-W.Va.), ranking member of the Environment and Public Works Committee, expressed disappointment with the revised rule, considering it rushed and likely to face rejection in the courts once again.

WOTUS rule reaction

• Zippy Duvall, President of the American Farm Bureau Federation, believes EPA missed an opportunity to create a fair and lasting WOTUS rule that respects farmers' rights. While the removal of the "significant nexus" test is appreciated, other concerns raised by the Supreme Court, states, and farmers about private property rights and the Clean Water Act were ignored.

• Mary-Thomas Hart, Chief Counsel of the National Cattlemen's Beef Association (NCBA), sees the revised WOTUS definition as a step toward aligning EPA with the Supreme Court's ruling.

• Ted McKinney, CEO of the National Association of State Departments of Agriculture, finds it perplexing that the revised rule fails to accurately address all the issues raised by the Supreme Court and stakeholder groups. He expected better water quality outcomes and more comprehensive improvements.

• Jim Murphy, Director of Legal Advocacy at the National Wildlife Federation, asserts that the revised rule highlights how the Sackett decision has weakened wetland protection. He calls for Congress to step in.

Source: Ag Letter editors

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BIOFUEL

Green Plains: Ethanol's use in SAF will be tied to tax policy. The fate of turning ethanol into sustainable jet fuel in the U.S. is closely tied to the formulation of tax policy, according to Green Plains CEO Todd Becker. The Biden administration's stance on tax credits outlined in the Inflation Reduction Act (IRA/Climate Bill) will significantly impact U.S. corn farmers and biofuel producers.

A point of contention is how emissions from sustainable aviation fuel (SAF) will be tracked, given its potential to be derived from various sources. The U.S. ethanol industry sees SAF as a means to stimulate demand in the coming years, especially as gasoline consumption declines due to the rise of electric cars.

Two contrasting models are being debated: one (GREET) is supported by biofuel producers and farm state lawmakers, and is backed by the U.S. Energy Department,. It would credit carbon sequestered in soil even after crops are harvested; the other (CORSIA), favored by environmentalists, takes a stricter approach by considering changes in land use driven by biofuel production. The latter approach could disqualify certain ethanol-based sustainable aviation fuel productions from receiving the tax credit.

Timeline: The Treasury Dept.'s guidance on key aspects of the climate law is anticipated to be released in September, offering insights into how these potential provisions will take shape.

TRADE POLICY

GOP presidential candidates align with former President Donald Trump's trade policy views. In the lead-up to the 2024 GOP presidential race, a consensus is emerging within the Republican Party that aligns with Donald Trump's anti-free trade stance. Republican candidates, including front-runner Trump, are advocating for more protectionist approaches, particularly towards China. They call for ending permanent normal trade relations with China and promoting domestic manufacturing, possibly through government subsidies.

Trump has gone further by proposing a universal baseline tariff on U.S. imports, escalating on countries involved in unfair trading practices or currency manipulation.

Ag sector concerned. While GOP contenders are primarily focusing on China, their views align with the party's increasing hawkishness on this matter. However, they are not advocating for new trade pacts with other international partners, a stance that concerns advocates of free trade, including many in the U.S. ag sector.

Hardening Republican stance on trade is tied to China's economic and military influence. The Covid-19 pandemic also exposed vulnerabilities in the U.S. supply chain that heavily relies on China. While Trump's rivals are mostly keeping their focus on China, they are cautious about forging new trade deals and instead aim for better reciprocity.

Bottom line: This shift signifies a departure from decades of open-border policies that gained momentum through free-trade agreements in the 1980s and 1990s. China's rise in economic and military power has challenged this approach. Although these protectionist views resonate with a considerable portion of the U.S. population, some fret they could result in economic costs and hinder global economic growth.

WTO

The number of trade disputes initiated at the WTO has fallen precipitously since the appellate body has been challenged by both the Trump and Biden administrations.

Facts and figures. Between 1996 and 2019, the World Trade Organization (WTO) received an average of 23.7 requests annually for dispute settlement proceedings. But over the past three years, this average has declined significantly to 7.3 per year, marking a 69% decrease from the period when the WTO's appellate body was fully operational, according to *Bloomberg* calculations.

Rather than relying on the time-consuming WTO dispute process to resolve disagreements, countries such as the U.S. and China have turned to unilateral trade penalties as a more efficient means of safeguarding their markets. Since 2020, governments have more than doubled the average number of restrictive trade policies compared to the previous decade's average. This trend has been observed through data compiled by the University of St. Gallen's Global Trade Alert.

Impacts: If the global trading system drifts into two competing blocks, WTO economists predict it will shave $4.4 tril. off global output, which is equivalent to 5% of world gross domestic product. This is why trade policy will get a lot of attention in coming U.S. elections.

FOOD REGS

The Food Marketing Institute (FMI) is expressing caution regarding USDA's proposed rule regarding Salmonella in breaded, stuffed raw chicken products. While not fully endorsing the rule, FMI has submitted comments to USDA's Food Safety and Inspection Service (FSIS), expressing concerns that the proposed rule might be too broad in its scope.

The proposal, issued in April, aims to reduce Salmonella contamination in not-ready-to-eat (NRTE) breaded stuffed chicken products.

FMI is calling for clearer definitions of the product type and a narrower scope for determining inclusion. The organization argues that the description of NRTE breaded chicken products that are both breaded and stuffed is overly broad and could encompass products that don't share the characteristics of the proposed included products. They believe that products that are not frozen and appear raw should not fall under the determination. FMI suggests that FSIS should explore alternative policies to achieve the goal of safeguarding public health and preventing foodborne illnesses.

MARKETS

Note: The national estimates below reflect *Pro Farmer's* view on production and yields. They take into account data gathered during Crop Tour and other factors like weather during Crop Tour, crop maturity, historical differences in Tour data versus USDA's final yields, areas outside those sampled on Tour, etc. Based on August FSA certified acreage data, *Pro Farmer i*ncreased harvested corn acres 675,000 from August, and made no adjustment to soybean harvested acres.

Corn: 14.960 billion bu.; Average yield of 172.0 bu. per acre

Corn +/- 1% = 15.110 billion bu. to 14.810 billion bu.; 173.7 bu. to 170.3 per acre

Soybeans: 4.110 billion bu.; Average yield of 49.7 bu. per acre

Soybeans +/- 2% = 4.192 billion bu. to 4.028 billion bu.; 50.7 bu. to 48.7 bu. per acre

Rice: India will allow exporters to ship their non-basmati white rice cargoes that have been trapped at ports after a sudden ban on exports of the category in late July, a government order said. Shipment of those cargoes will be allowed provided traders paid the 20% export duty that was in place up to July 20, when the ban was imposed. It is expected around 150,000 MT of non-basmati white rice cargoes would be shipped out of various ports, said the president of the Indian Rice Exporters Federation.

Pandemic Assistance Revenue Program (PARP) update. USDA needs to finalize the 2020-2021 ERP Phase 2 first (provides additional 2020 revenue to be considered for PARP) before it can calculate a payment factor for PARP. Sources say initial projections for the program were high because they didn't include other revenue factors that would decrease the overall demand). It is unclear what USDA received regarding claims under PARP. Some sources estimate that final payment factors for PARP will be determined this fall, likely in October.

Cattle/Beef: USDA's Farm Service Agency (FSA) updated the Livestock Indemnity Program (LIP) payment rate to support livestock producers in the Midwest who have lost cattle to the extreme heat and humidity experienced this summer. To help indemnify ranchers to reflect a trend towards higher cattle weights in feedlots, the 2023 LIP payment rate for beef calves over 800 pounds will increase from $1244 per head to $1618, an increase of $374. LIP provides benefits to livestock owners and some contract growers for livestock deaths exceeding normal mortality from eligible adverse weather events, certain predation losses and reduced sales prices due to injury from an eligible loss. Indemnity payments are made at a rate of 75% of the prior year's average fair market value of the livestock. The updated LIP payment rate is effective immediately and will be applied retroactively starting Jan. 1, 2023, for all eligible causes of loss including excessive heat, tornado, winter storms, and other qualifying adverse weather. Producers who have already received LIP payments for 2023 losses will receive an additional payment, if applicable, commensurate with this updated rate.

Hogs/Pork: Slaughter rates are starting to accelerate seasonally. Continued buying and storage of hams for the year-end holiday season will likely continue through September, but the combination of weak demand and rising output is set to depress cash hog and pork prices. If slaughter rates do not rise substantially above indicated USDA numbers, the downside for futures is limited.

SEN. BOOZMAN

Our interview with Sen. John Boozman (R-Ark.) covered various aspects of the ongoing farm bill debate. Boozman, ranking member of the Senate Ag Committee, discussed key points related to the farm bill process, its timeline, funding and other important issues.

Here are the main takeaways from the interview:

• Diverse Agriculture and Steps to Avoid One-Size-Fits-All: Boozman emphasized the diversity of agriculture and how a one-size-fits-all approach to the farm bill wouldn't work due to the unique needs of various regions and industries.

• Timing of Farm Bill Extension: It's acknowledged that an extension of the current farm bill will likely be needed, and they have some time until the end of the year or early January before significant actions are necessary.

• Drafting and Timing: Boozman said he's working with Sen. Ag Chair Debbie Stabenow (D-Mich.), and they're committed to getting a draft out before the end of the year, although an exact timeline for its release is uncertain.

• Reference Prices and Risk Management Tools: Boozman stressed the need for increased reference prices for program crops and updates to risk management tools, such as crop insurance and the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs. He argues that the current tools are based on outdated data and must reflect the current economic conditions for farmers. But he does not support any mandatory update of base acres.

• Support for Changes: The senator indicates that he supports changes in the farm bill that enhance risk management tools, increase reference prices and generally help farmers manage their financial challenges more effectively.

• Support for Beginning Farmers: Boozman acknowledged the need to support beginning farmers and mentioned that various programs, including potential base updates, might be explored to provide opportunities for new entrants into agriculture.

• Disaster Relief and Implementation: Boozman discussed the challenges of providing disaster relief and how the process can be lengthy and inefficient. He acknowledged the need to improve how disaster assistance is handled.

• Trade and Market Development: The senator highlighted the importance of trade and market development programs, expressing disappointment with recent trade efforts and emphasizing the need to enhance trade opportunities for agricultural products.

• Congressional Priorities: Boozman suggested that both Democrats and Republicans have an interest in passing a farm bill to address the needs of rural America and ensure food security.

• Feather in the Cap: The senator said passing a farm bill could be a feather in the cap for congressional leaders from both parties and could provide momentum for the bill's completion.

DEFICITS & DEBT

Investors are growing uneasy about the U.S. budget outlook, according to a *Bloomberg* assessment.. Highlights:

• They see deficits stretching as far as the eye can see and politicians ready to juice the economy with yet more government cash.

• Treasury yields are already at the highest levels since 2007, and projected sustained budget shortfalls may push them higher.

• The consequences stretch beyond the $25 trillion Treasury market. Rising yields means higher housing costs for households and financing costs for businesses.

Other concerns are being noted about servicing the $32 tril. debt. The Congressional Budget Office... CBO... says the annual net interest costs for servicing the debt in 2023 will be $663 billion. CBO sees it soaring from $745 bil. in 2024 to $1.4 tril. in 2033. For perspective, CBO projects the farm bill baseline cost over ten years at $1.51 trillion. Also, 50% of our nation's debt rolls over in three years... with higher interest rates being charged.

Best regards,

The Ag Letter Editors

Sept. 1, 2023

THE AGRICULTURE LETTER EDITORS