



**National Cattlemen's  
Beef Association**



# Beltway Beef

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*Beltway Beef is a weekly report from Washington, D.C., giving an up-to-date summary of top policy initiatives concerning the cattle industry; direct from the National Cattlemen's Beef Association (NCBA). Please feel free to reprint in full or in part. If you would like to include NCBA's logo, contact us at 303-694-0305.*

## Cattlemen's Capitol Concerns

### EAJA Reform Advances in US House —Reforms Will Provide Transparency and Accountability to EAJA Program

The U.S. House Committee on the Judiciary today, Nov. 17, 2011, passed H.R. 1996, the Government Savings Litigation Act of 2011, by a vote of 19-14. According to Dustin Van Liew, National Cattlemen's Beef Association director of federal lands and Public Lands Council executive director, this legislation will provide transparency and accountability to the Equal Access to Justice Act (EAJA) that he said was intended to level the playing field

between individual citizens and the federal government but has been misused as a revenue source for groups intent on halting sustainable livestock production practices across the nation.

"We respect the original intent of EAJA. Unfortunately, over the past couple of decades, radical groups have abused the program to target livestock producers by challenging federal government land and resource use decisions in court. Livestock producers end up paying multiple times over to defend themselves while

radical environmentalists pocket millions of dollars," Van Liew said. "You have to look no further than a recent taxpayer-funded lawsuit between the U.S. Fish and Wildlife Service (FWS) and two environmental groups over the Endangered Species Act (ESA). The suit had little to do with substantive issues related to ESA but

*"This legislation will protect livestock producers from funding their own demise, will prevent taxpayer dollars from lining the pockets of wealthy environmental extremists and will ensure Congress and the American people know how much is spent on EAJA and where those funds are going."*

~Dustin Van Liew

rather was based on process related issues. Rather than expending financial and staff resources on this suit, FWS was forced to reach a settlement and pay attorney fees through EAJA to these well-funded environmentalists. That is just one example of the abuse EAJA has received at the expense of farmers and ranchers and of all hard-working Americans."

Specifically, the Government Litigation Savings Act will prohibit organizations with a net worth exceeding \$7 million from filing for EAJA funds; require that

EAJA filers show a "direct and personal monetary interest" in the action to be eligible for payments; cap the attorney fees environmental activists claim to be owed; and require oversight and reporting of EAJA payments and a Government Accountability Office audit over EAJA payments over the past 15 years. Van

Liew noted that 45 organizations representing livestock producers sent a letter to members of the Judiciary Committee

supporting H.R. 1996.

"We commend Judiciary Chairman Lamar Smith (R-Texas) and the members of the committee who voted in support of H.R. 1996," Van Liew said. "This legislation will protect livestock producers from funding their own demise, will prevent taxpayer dollars from lining the pockets of wealthy environmental extremists and will ensure Congress and the American people know how much is spent on EAJA and where those funds are going. We urge all House members to support this legislation."

### Non-O157 STEC Comment Period Extended

In response to a letter from the National Cattlemen's Beef Association (NCBA) and other organizations representing the meat industry, the U.S. Department of Agriculture (USDA) announced Nov. 16, 2011, an extension of the comment period on a Federal Register notice that USDA intends to declare six additional strains of non shiga toxin-producing E. coli (non-O157 STECs) as adulterants. The deadline has been extended 30 days to Dec. 21, 2011. NCBA will continue analyzing the policy document and will submit comments to USDA on behalf of cattlemen.

## Ranchers Warn US Forest Policies Threaten Livestock Grazing

On behalf of the Public Lands Council (PLC) and the American Sheep Industry Association (ASI), Margaret Soulen Hinson told lawmakers on the House Subcommittee on National Parks, Forests and Public Lands if the U.S. Department of Agriculture's U.S. Forest Service's proposed forest planning rule goes into effect, thousands of ranching families could be forced off the land.

"By 2013, my family and I will be forced to remove 60 percent of our sheep from our allotments on the Payette National Forest, which may well mark the end of our family's 80-year-old sheep operation altogether," Soulen Hinson said. "This has come to pass because of a wildlife provision of the current planning rule calling for management for 'species viability.' The term 'viability' is a vague, ill-defined term which appears nowhere in statute and has been the source of litigation and economic destruction over the years."

According to Soulen Hinson, while the Forest Service claims the viability provision in the proposed rule is an improvement because it only applies to populations of "species of conservation concern," there is no science-based definition for "species of conservation

concern," which could result in a limitless list of species to manage. She said under the National Forest Management Act and the Multiple-Use Sustained Yield Act, the Forest Service does not have statutory authority to manage for species viability.

Subcommittee Chairman Rob Bishop (R-Utah) also expressed concerns with the proposed planning rule.

"I remain concerned that the U.S. Forest Service's proposed planning rule will have a devastating impact on access within our nation's 155 national forests and 20 grasslands, especially for ranchers who utilize these areas for grazing. Secondly, I am very interested in addressing rising concerns that the Forest Service is attempting to leverage access to public lands in exchange for privately held water rights," Bishop added, addressing another topic raised in the hearing regarding the Forest Service's policy on water rights and permitted activities. "It is my hope that these concerns can be brought to light and put to rest with final resolution. Privately-held water rights should not be a factor associated with the permitting process."

### Legislative Watch

#### H.R. 10 - Regulations in Need of Scrutiny (REINS) Act of 2011

To require an up-or-down, standalone vote in Congress and the President's signature on all new economically significant rules before they can be enforced

NCBA urges a **YES** vote on the REINS Act.

Key Sponsor: Rep. Geoff Davis (R-Ky.)

#### S. 1061 / H.R. 1996 - Government Litigation Savings Act

Will amend the Equal Access to Justice Act (EAJA) to prohibit organizations with a net worth exceeding \$7 million from filing for EAJA funds; require EAJA filers to show a "direct and personal monetary interest" in the action to be eligible for payments; and cap the attorney fees. NCBA urges a **YES** vote on S. 1061 / H.R. 1996. Key Sponsors: Rep. Cynthia Lummis (R-Wyo.), Sen. John Barrasso (R-Wyo.)

#### S. 1528/H.R. 1633 - Farm Dust Regulation Prevention Act

To establish a temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter (dust), to limit Federal regulation of nuisance dust in areas in which such dust is regulated under State, tribal, or local law. NCBA urges a **YES** vote S. 1528 / H.R. 1633. Key Sponsors: Sen. Mike Johanns (R-Neb.), Rep. Kristi Noem (R-S.D.)

#### Amendment 939 to H.R. 2354, the Energy and Water Appropriations Bill

Senators John Barrasso (R-Wyo.) and Dean Heller (R-Nev.) are expected to offer an amendment to the Energy and Water spending bill to defund the U.S. Army Corps of Engineers' (Corps) attempt to expand its jurisdiction under the Clean Water Act through guidance documents and/or regulation. NCBA urges all Senators to vote **YES** on the Barrasso-Heller amendment.

#### H.R. 2414-Farmers' Freedom Act of 2011

Exempts certain farm vehicles from certain federal requirements (for a commercial driver's license, drug testing, medical certificates and hours of service). Prohibits federal transportation funding to a state from being terminated, limited, or otherwise interfered with as a result of the state's exempting a covered farm vehicle from any state requirements governing the operation of that vehicle.

Key Sponsor: Rep. James Lankford (R-Okla). NCBA urges a **YES** vote on H.R. 2414.

*For a full list of legislation NCBA is monitoring [click here](#).*

## New on the Web

Check out the [Beltway Beef blog](#) for inside perspectives on issues affecting U.S. cattlemen and women. This week's features include updates on the Clean Water Act and more. You can sign up on the blog to receive an email when new information is posted. You can also follow us on [Twitter](#), be a fan of us on [Facebook](#), check out our

latest photos on [Flickr](#) or watch video updates on our [YouTube](#) page. For audio, visit and subscribe to the Beltway Beef [Podcast](#). You can also subscribe to our [podcast](#) on iTunes.

## Big Government Hijacks Clean Water Act

By Ashley Lyon, NCBA deputy environmental counsel



What you can't legislate, regulate. Such has been the case time and again with the overzealous regulators in the current administration. Fortunately for farmers, ranchers and private property holders nationwide, the U.S. Congress is on the verge of blocking the administration from moving forward with an overreaching, potentially devastating expansion of the Clean Water Act (CWA). The U.S. Senate could vote, possibly this week, on an amendment offered by Senators John Barrasso (R-Wyo.) and Dean

Heller (R-Nev.) to the Energy and Water Development Appropriations bill for fiscal year (FY) 2012 that would defund the U.S. Army Corps of Engineers' (Corps) and the Environmental Protection Agency's (EPA) attempt to expand its jurisdiction under the Clean Water Act (CWA) through guidance documents and/or regulation.

The guidance attempts to expand the Corps and EPA's jurisdiction by redefining what a "water of the United States" (WOTUS) is. It uses broad terminology to determine whether a water is a "tributary," essentially allowing every ditch or conveyance to qualify and fall under federal regulatory authority. It expands the agencies' jurisdiction to cover ephemeral streams (which are streams with water in them only during rainfall events). It is unlikely most farmers and ranchers even know where all of the ephemeral features are located on their property. Next, it defines "traditional navigable waters" as any water that supports one-time recreational use. One trip in a canoe down a stream would qualify a water as a "traditional navigable water." In the history of the CWA, the term "traditional navigable water" has only been used to describe major rivers that can float commercial vehicles like barges. Finally, for all "other waters" field staff will have broad authority to find any type of water (puddle, prairie pothole, mudflat, etc.) is a WOTUS by finding it is "similarly situated" to other jurisdictional waters, or, finding it has a "significant nexus" to a "traditional navigable water" (which also has been expanded).

Unfortunately, this is not a new issue. The federal government's authority under the CWA has been the subject of two recent Supreme Court cases, which have clearly articulated that the Corps and EPA's jurisdiction is not limitless, unfortunately, that is exactly what the guidance does. It makes the federal government's authority over water limitless. Additionally, legislation was introduced in previous Congresses to redefine WOTUS in this manner, by deleting the word "navigable" from the CWA. Those bills never went anywhere. There was never enough support to move them through

Congress and there is not enough support today. In fact, 170 members of Congress sent a letter to EPA and the Corps opposing the guidance earlier this year. The administration ignored Congress and plowed ahead with this overreaching guidance. The National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC) supports protecting and preserving our nation's waterways but subjecting every drop of water in this country to EPA and the Corps jurisdiction isn't responsible, science-based regulation. NCBA worked to stop those misguided pieces of legislation and has worked relentlessly to stop this guidance.

While the guidance has not been finalized yet, the agencies are quickly moving forward to a rulemaking redefining the term "waters of the United States" to codify the guidance. It has been reported that EPA and the Corps may walk away from the guidance only to send a proposed rule, which would likely contain much of the exact language in the guidance to expand the types and number of waters subject to the CWA, to the Office of Management and Budget in the coming weeks. This is the final step before a regulation is officially proposed or finalized. In order to stop EPA and the Corps from trying to regulate virtually every drop of water – be it through regulation or guidance – Congress must act. The Barrasso-Heller amendment would do two things. First, it would prohibit the Corps from finalizing the guidance. Second, it would prohibit the Corps from promulgating a rulemaking redefining WOTUS. Senator Barrasso said the amendment "blocks Washington's power grab over all farms, ranches, small businesses and rural communities." He also said the "guidance creates even more uncertainty that delays economic investment and job creation. America's ranchers should be focused on running their operations — not dealing with this Administration's bureaucratic red tape."

The guidance claims to provide clarity and certainty to landowners. Unfortunately, expanding the scope of the CWA in such a manner will do nothing but give farmers and ranchers the certainty that every stream, ditch and pond on their property will be subject to federal regulation, not the kind of certainty cattle producers are looking for from this administration.

NCBA urges all senators to support the Barrasso-Heller amendment and we urge cattlemen across the country to weigh in with their senators as well. Supporting this amendment is a vote on the side of responsible, commonsense regulation and it is a vote on the side of America's farmers and ranchers.

## CattleFax Update

On Wed., Nov. 9, commodity markets closed mixed, while financial markets were mostly lower. Live cattle futures closed mostly higher with the December contract advancing \$0.325/cwt. Feeder cattle futures prices were mostly higher. However, the November contract lost \$0.10/cwt. The CME reported the feeder index at \$142.86/cwt., down \$0.26. Boxed beef prices moved around \$1/cwt. higher with moderate volume for the third consecutive day. Wholesale beef prices have moved more than \$10 higher in 19 business days. Choice beef is well above spring highs at \$195.45. The Choice-Select spread is at \$18.76, around \$1.50 less than the annual highs established last week. Hide and offal values are near 12-month lows. Packer margins remain negative, but a strong wholesale beef market is reducing losses. The grain market was red today. Chicago wheat lost the most, down \$0.16/bu. West Texas Intermediate crude oil futures added more than \$2/bbl., trading near \$101.50/ bbl. However, Brent crude oil was down \$1.50/bbl.

For recent market news and analysis, visit [www.CattleFax.com](http://www.CattleFax.com).

## Don't Miss Out on NCBA's Cattlemen to Cattlemen!

Don't miss NCBA's *Cattlemen to Cattlemen*, Nov. 22-26. We'll talk with members of Congress about the economic challenges impacting the beef industry. Plus, viewers will learn how a sustained nutrition program is helping many operations cope with historic drought conditions.

NCBA's *Cattlemen to Cattlemen* debuts each Tuesday at 8:30 p.m. The show also airs Wednesday at 10:30 a.m. and on Saturday at 9 a.m. (all times are Eastern). Don't forget that you can also [watch NCBA's Cattlemen to Cattlemen online](#) anytime by visiting our website. Follow us on [Twitter](#) and become a fan on [Facebook](#).



## Your NCBA

**Bring the Whole Family:** The 2012 Convention has something for everyone—even the kids. Don't forget to sign them up for Youth Cattle Judging, Team Marketing, the youth quiz bowl or the speaking contest. This is a great way to get the whole family involved in this important event. Registration is now open. Sign up today!

**NCBA PAC in Action:** U.S. Representative Sam Graves (R-Mo.) visited with National Cattlemen's Beef Association (NCBA) staff in Washington, D.C., this week during a NCBA political action committee (PAC) event. Graves serves as chairman of the House Committee on Small Business and also on the House Committee on Transportation and Infrastructure.



Left: Rep. Sam Graves (R-Mo.) and NCBA Vice President of Government Affairs Colin Woodall.



## National Cattlemen's Beef Association

*The National Cattlemen's Beef Association (NCBA) has represented America's cattle producers since 1898, preserving the heritage and strength of the industry through education and public policy. As the largest association of cattle producers, NCBA works to create new markets and increase demand for beef. Efforts are made possible through membership contributions. To join, contact NCBA at 1-866-BEEF-USA or [membership@beef.org](mailto:membership@beef.org).*