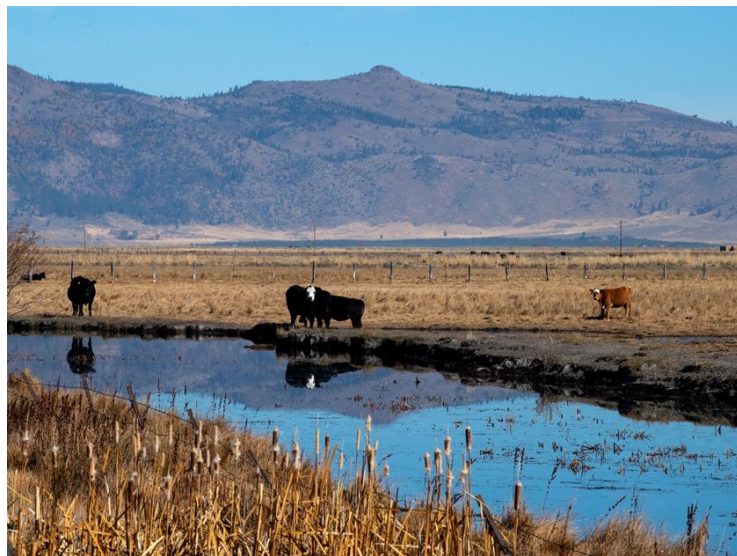


## California's version of the Clean Water Act sets ambitious 2050 goals

Assembly Agriculture Chair Robert Rivas of Hollister is pushing for California to clean up all of its surface waters enough to be drinkable, fishable and swimmable by 2050. His bill, the California Clean Water Act, aims to finish what the federal version began nearly 50 years ago. According to a State Water Resources Control Board assessment of 1,400 water bodies across the state, 95% remain impaired.

**“The original Clean Water Act fell short because it wasn't practical,” said Rivas during a hearing on the measure last week. “Our bill must be practical, it must be achievable and it must be effective.”**

Despite recent amendments to make the bill more practical and ease opposition, more than 100 interest groups stand firmly against the measure. The amendments “amount to exceptions and carve outs, but the goal of the measure remains focused on municipal stormwater and irrigated agriculture,” asserts the California Farm Bureau.



*Livestock near a body of water.*

**“It would fundamentally change the way in which the state and regional water boards regulate discharges from agriculture, and others,”** argued Tess Dunham, a partner at Kahn, Soares & Conway LLP who represents citrus, rice and cotton groups, among others, and led the agriculture coalition response.

**Rivas acknowledged that some opponents have even called the proposal overreaching, draconian and a form of bounty hunting that goes after vulnerable water districts.**

The bill initially set a mandate to clean up all freshwater systems by 2050. Rivas has since revised it to require state and regional water boards to instead develop plans for impaired surface waters to come into compliance by that time.

Katherine Pease, who directs science and policy at the environmental group Heal the Bay, said her organization found that the current rate of implementation for the U.S. Clean Water Act would mean Los Angeles County water agencies would not achieve their goals until 2082.

**“In my own county of San Benito, there are over 100 miles of rivers and streams that are impaired with E. coli, pesticides, heavy metals and other pollutants,” said Rivas.**

Along with developing comprehensive plans, the measure, Assembly Bill 377, would require the boards to focus enforcement efforts on the worst violators in the most impaired waterways, he explained.

“This bill is about trying to create some accountability from polluters,” said Sean Bothwell, who directs the California Coastkeeper Alliance and testified in support of AB 377. “And that is just something the opposition is not willing to support.”

Dunham said the overarching goal of the bill is laudable, but the plans would be impossible and impractical to prepare. She described water in California as a complex patchwork of agricultural drains, flood control channels, bypasses and conveyance facilities. The bill assumes water quality standards are static and water boards know how to ensure compliance and have the resources to do so, she argued.

**“For agriculture, this likely means that growers would need to monitor water leaving seven million irrigated acres of agricultural land at the edge of the field—an expensive and impossible endeavor,” said Dunham.**

Asm. Bill Quirk of Hayward, chair of the Labor and Employment Committee, pushed back.

**“Well, we better figure out how to do this,” he said to Dunham.**



*Asm. Bill Quirk, D-Hayward*

The bill’s proposal to reallocate existing money at the state water board to pay for the increased enforcement raised concerns for Karen Cowan, executive director at the California Stormwater Quality Association.

“The use of those funds would be strictly limited to additional enforcement, notably not to improving water quality,” said Cowan.

Asm. Al Muratsuchi of Torrance heard the same concerns from the cities within his urban district in Los Angeles County.

“Ever since I've arrived in the State Assembly in 2012, all of my cities have emphasized how they're at risk of being bankrupt,” said Muratsuchi, who ultimately voted in favor of the bill.

According to Quirk, cost would be the central issue in this debate.

**“It really is about the money,” said Quirk. “If we're going to treat all of our storm runoff in the way that we treat our sewage—which is at some point what's going to be necessary—it's really, really expensive.”**

He guessed the total cost for the goals in the bill could exceed \$100 billion, and AB 377 is important because it would compel districts to come up with a funding plan for that. Quirk framed the discussion as a battle over climate change.

“We've got to figure out a way that we can preserve the freshwater that we need so much, the bounty of the sea,” he said. “If we don't, the planet's going to go on. It's seen lots of mass extinctions. Do we want to be the cause of another one—and perhaps even of our own?”



*Asm. Al Muratsuchi, D-Torrance*

Other environmental lawmakers had no hesitation in supporting the measure, which passed the first committee along a party-line vote. Asm. Rebecca Bauer-Kahan of Orinda saw it as a “pretty simple” bill that felt like a no-brainer.

**“It's asking us to do what we are already required to do: to provide clean water to California,” said Bauer-Kahan. “You're pushing the government to get to where we are supposed to already be.”**

Asm. Cristina Garcia of Bell Gardens said the bill was already too

pared down and wished Rivas had kept the original 2050 mandate.

Republican Asm. Devon Mathis, on the other hand, was disappointed to see an agriculture chair present a bill that was so heavily opposed by the industry.

**“I strongly recommend you talk to our people we represent,” advised Mathis.**

Rivas pledged to engage the opposition but was frustrated none of those groups presented him with any proposals for amendments. After several Southern California water districts called in to voice opposition, Rivas called their pushback a shame. “This is a perfect example of these local agencies with regulatory enforcement powers who have been unwilling or unable to compel compliance,” said Rivas.

Talking on behalf of the bill's proponents, Quirk acknowledged the Newsom administration has also had concerns over whether the bill would maintain enough regulatory flexibility with the water boards.

“We believe we've achieved that. They're not quite so sure,” he explained. “But I believe we're very close.”



## Legislature to make key budget decisions this week

As budget deadlines loom for the Legislature and governor, many details still need to be ironed out ahead of the next fiscal year, which begins July 1.

Pushing the state and federal tax deadlines to May has added further uncertainty to the process as well as to the outlook for cooperative extension programs within the University of California Division of Agriculture and Natural Resources (UC ANR). The governor will issue his revised budget proposal, known as the May Revise, by May 14. In a normal year this is based on the final tax revenues.

According to Sen. John Laird of Santa Cruz, who spoke last week at a policy event for the California Association of Winegrape Growers, Gov. Gavin Newsom must issue his revised proposal without knowing for sure those final numbers.

**Laird, who chairs a Senate budget subcommittee and led the California Natural Resources Agency during the Brown administration, said legislators are required to adopt a budget by June 15, but they will likely “tweak it and match it to what the actual revenues are” in July and August.** A similar process unfolded in 2020, when tax deadlines were pushed to July and state programs hung in limbo as negotiations played out over a federal rescue package.

Laird said the delay this year could impact the governor’s effort to restore the UC ANR budget. The Newsom administration and Legislature agreed last year to trim the division’s budget by nearly 13%. UC ANR took yet another hit as the state’s economic crisis deepened, losing \$13 million in total. Newsom’s initial proposal for the 2021-22 year offers just \$1.9 million to fill the gap, along with an additional \$2 million specific to UC ANR wildfire abatement work.

**Laird described UC’s overall budget as “hanging by a thread.”** While the university system has suffered revenue losses due to the pandemic, it is also looking to backfill losses as it shifts focus to California residents to fill seats and away from the more profitable out-of-state students, he explained.



*The California state capitol.*

Now the administration and lawmakers have said they are negotiating a way to allocate the full \$72.6 million to UC ANR before July. Laird pointed out that it is unclear if the restored funding will be ongoing or a one-time provision.

**Ahead of the pandemic, farm groups were pushing for an additional \$20 million beyond the baseline budget to fill vacancies and improve service, citing a 57% decline in funding over the last two decades.**

During a budget hearing in March, California Farm Bureau policy advocate Katie Little pleaded with lawmakers, saying that the cooperative extension assistance provided by UC ANR “is

critical, as the state and consumers ask more of our farming communities, and we rise to meet the challenge.”

Considering a surprise state surplus of about \$40 billion this year and another \$26 billion earmarked in federal funds, Laird said the question becomes what the state can do to relieve some of the long-term pressure at UC ANR. He pointed to a decision Newsom made in his first year in office to replace several Vietnam-era helicopters at the fire department. He bought every helicopter that year, rather than schedule the purchase out over nine years, which would add future budget pressures.

The Legislature, meanwhile, is facing its own deadline Friday, when policy committees must decide on fiscal bills. Laird and other policymakers are focusing on one-time expenditures that can quickly bring the best economic returns for the state, according to Jackson Gualco, president of the ag lobbying firm The Gualco Group.

He had asked Senate Majority Leader Bob Hertzberg of Van Nuys what to expect from the coming budget negotiations. Gualco learned that one of the big components will be the Senate’s \$2 billion drought relief plan.



*Sen. John Laird, D-Santa Cruz*

**“This is a very ambitious budget with many big-ticket items. ...Probably the biggest in memory,” said Senate President pro Tempore Toni Atkins when introducing the Senate plan in a press call.**

Agriculture and local water agencies would gain \$300 million for sustainable groundwater assistance under the plan. The rest would mostly go to urban water conservation, safe drinking water projects and environmental protection. Other provisions include debt relief for student loans, universal education, wildfire funding and healthcare access.

“But at this point, the Assembly is not part of those discussions,” said Gualco. “And I think there's been limited conversation with the

administration.”

He expects more to come in the next weeks on that proposal.

With the impending deadline for fiscal bills, Gualco said the Democratic super majority will help some bills sail through, though “it's surprising how many bills are actually not being set for hearing by committee chairs.”

The bills agriculture cares about, however, “tend to get set because that's part of the progressive agenda.”

## Bill on expanding pollinator habitat up for a critical vote

A bill in the Assembly that would encourage farmers to provide forage and habitat for pollinators through incentives grants is facing a key vote in the Appropriations Committee on Wednesday.

The measure would allocate \$5 million to CDFA for the program, which would cover technical assistance and outreach along with the grants. It has gained broad support among agriculture groups as well as conservation organizations like the Pollinator Partnership. The Almond Alliance of California is sponsoring the bill.

**“Without honeybees there would be no almonds,” said Almond Alliance President Elaine Trevino during a recent hearing on the legislation. “Working land offers an opportunity to expand habitat and forage for pollinators, which helps sequester carbon and contribute to climate risk reduction.”**

The bill’s author, Assemblymember Carlos Villapudua of Stockton, said the measure aligns with Gov. Gavin Newsom’s 30x30 order to conserve 30% of the state’s land and coastal waters by 2030 in an effort to promote biodiversity. The bill is also in coordination with a new public-private partnership known as the California Pollinator Coalition, which is bringing the industry, the Newsom administration and conservation groups together to establish more on-farm habitat.

The rationale for the bill is growing concern about the decline in pollinators, according to a state analysis of the measure. “Bees, as the best documented species, can be seen to be suffering from chronic exposure to a range of stressors, which include a loss of abundance and diversity of flowers, a decline in suitable habitat to build nests, exposure to pesticides and infection by parasites and pathogens,” the report reads. The bill passed the Agriculture Committee with a unanimous and bipartisan vote.

## Biden proposing to tax inherited assets, promises to shield farms

President Joe Biden is proposing to impose higher capital gains taxes on inherited assets, with promised protections for farms and other family-owned businesses that continue in operation.

The change is intended to help pay for a \$1.8 trillion package of social benefits announced Wednesday. The proposal, called the American Families Plan, includes expanded child nutrition assistance, free community college, universal pre-K, paid family and medical leave and an extension of Affordable Care Act subsidies.



*President Joe Biden at the White House.*

Under current law, capital gains taxes are only applied to inherited assets such as land, buildings and stocks when they are sold, and then they are taxed according to the “stepped-up basis” — the value at the time of the decedent’s death, not the value at which the decedent originally acquired the property.

A summary of the president’s plan says he wants to eliminate a “loophole that allows the wealthiest Americans to

entirely escape tax on their wealth by passing it down to heirs,” exacerbating income inequality.

**“The President’s plan will close this loophole, ending the practice of ‘stepping-up’ the basis for gains in excess of \$1 million (\$2.5 million per couple when combined with existing real estate exemptions) and making sure the gains are taxed if the property is not donated to charity,” the summary says.**

**“The reform will be designed with protections so that family-owned businesses and farms will not have to pay taxes when given to heirs who continue to run the business. Without these changes, billions in capital income would continue to escape taxation entirely.”**

The White House didn’t provide any more detail of their proposal, including on how farms would be protected from taxation, beyond those sentences at the end of the 15-page summary of the plan. Biden will discuss the effort further in an address to a joint session of Congress Wednesday night.

The plan appears to be in line with a proposal announced by Sen. Chris Van Hollen, D-Md., in March that included a \$1 million exemption.

**The president is not proposing any changes to estate tax laws, but he is proposing to raise the top individual tax rate from 37% to 39.6% and require all households with incomes of more than \$1 million to pay that rate on all their income, including capital gains.**

Farm groups have been lobbying lawmakers to resist any of Biden’s proposals that would increase taxation of inherited assets.

Sen. Tammy Baldwin, D-Wis., told the North American Agricultural Journalists that farm leaders in her state have been bringing up the issue with her.

“I don’t sit on the Finance Committee (which has jurisdiction over tax policy), but I will be in conversation with my colleagues there to make sure that they’re aware of the concerns raised among farmers about this issue,” she said.

To address food insecurity, Biden’s plan would expand USDA’s Summer EBT program to all children nationwide who are eligible for free and reduced-price meals during the school year. The EBT program provides assistance to purchase food during the summer. The program’s expansion would cost \$25 billion.

The plan also seeks to increase — at a cost of \$17 billion — the number of high-poverty schools where all children are automatically eligible for free meals under a “community eligibility provision.” The proposal would provide free meals to an additional 9.3 million children, 70% of whom are in elementary schools, according to the summary.

## **Stabenow pushing for big boost in conservation, says Biden plan falls short**

Senate Agriculture Chairwoman Debbie Stabenow says President Joe Biden’s \$2.7 trillion infrastructure plan is “woefully inadequate” when it comes to funding for climate-friendly farming practices, and she’s pushing for a major increase in funding for conservation programs.



“In the American Jobs Plan, they miss the mark in the category called climate-smart agriculture,” which would get \$1 billion over eight years under the proposal, the Michigan Democrat told members of the North American Agricultural Journalists on Tuesday.

**“I am working to get significant resources in there that fund conservation,” she said. She didn’t specify the amount of money that she is seeking.**



Sen. Debbie Stabenow, D-Mich. (Photo: Joy Philippi)

Agriculture Secretary Tom Vilsack defended the proposals but told reporters last week during the global climate summit that Biden may be recommending more conservation spending when his complete fiscal 2022 budget proposal is released.

**The budget "will send a strong message of support for additional conservation efforts," Vilsack said. Earlier this month, Biden released an FY22 budget outline that was limited to discretionary spending programs, which are funded by annual appropriations bills. The broader budget will include mandatory spending programs, which**

**are funded under the farm bill and other laws.**

A coalition of farm and environmental groups, the Food and Agriculture Climate Alliance, has called for increasing conservation program funding by 10% to 20%, with the increase dedicated to helping farmers reduce emissions, improve soil health and adapt to climate change. FACA also says 1% of program funding should be earmarked for technical assistance.

The coalition wants the increased funding, in part, to make payments to farmers, known as “early adopters,” who may be unable to sell carbon credits for practices such as conservation tillage and cover crops they are already using.

The 2018 farm bill authorized \$29 billion in conservation program spending over five years.

Meanwhile, a partisan struggle continues in Congress over the Biden administration’s idea of using USDA’s Commodity Credit Corp. spending authority to promote climate-friendly practices, either through the purchase of ag carbon credits or other types of payments to farmers.



Sen. John Boozman, R-Ark. (Photo: Joy Philippi)

The top Republican on the Senate Ag Committee, John Boozman of Arkansas, opposes the use of the CCC for that purpose and told the ag journalists he has asked USDA for provide a legal justification if it wants to do so.

**“It’s very clear in the statute” that the CCC can only be used in connection with agricultural commodities, and calling carbon a farm commodity “is really a stretch,” Boozman said.**

The CCC is primarily used by USDA to make commodity and conservation program payments and to make commodity marketing loans, but the Trump administration set a new precedent by tapping the account to make trade assistance payments and to provide coronavirus relief assistance to producers.



Vilsack has indicated the CCC likely would be used on a fairly limited basis initially and that there would be no impact on commodity and conservation program payments.

The FACA coalition has indicated support for using the CCC to fund a carbon bank, but only if the \$30 billion spending limit is raised.

Stabenow defended the idea of using the CCC for carbon-related payments but indicated Boozman would have a say on the issue.



*House Ag Committee Chair David Scott, D-Ga.*

**“It’s all in how we work together with the secretary and with the ranking member of the committee on what those kinds of things look like,” Stabenow said.**

In the meantime, Stabenow said she is hoping to get floor action soon on the Growing Climate Solutions Act, a bill approved by her committee last week to authorize USDA to certify ag credit verification services and technical advisers.

“We’re hoping in the next number of weeks that there’ll be an opportunity for us to include Growing Climate Solutions on the floor. I’m very confident we will be able to bring it up on the floor,” she said.

**The bill’s future in the House is less certain. House Agriculture Committee Chairman David Scott, D-Ga., told the ag journalists that his committee will hold a hearing to examine various ways that farmers are being paid for climate practices. He repeatedly expressed interest in a program run by agrochemical giant Bayer that pays farmers for using cover crops or reduced tillage.**

Bayer announced recently that it is expanding the program so farmers who began using cover crops or reduced tillage methods in 2012 can be eligible for payments up to \$9 per acre. Among the “zillion carbon markets that are just popping up,” Scott said, Bayer’s direct-payment program has “proven successful.”

He suggested ag carbon markets need some kind of regulation and standards for measuring carbon sequestration. “We need to put some guardrails in there,” he said.

The House committee’s ranking Republican, Glenn “GT” Thompson of Pennsylvania, opposes the Growing Climate Solutions Act, telling reporters recently that the bill is “a complex solution in search of a problem.”

But Scott said he intends to work with Thompson on the issue. “You will find us working shoulder to shoulder and hand in hand to make sure we address this and pass bipartisan legislation,” Scott said.

## **US lawmakers look to trade to counter China’s strength**

Lawmakers, lobbyists and farm groups are anxious for the Biden administration to take its first concrete steps to begin negotiating international trade agreements and reform at the World Trade

Organization to improve international access for U.S. goods as well as rein in China's expanding global influence.

Bipartisanship may be increasingly rare now, but confronting China's trade practices and controversial humanitarian issues is uniting some Republicans and Democrats that are seeing trade as a tool to bolster U.S. leadership in the global arena.



Sharon Bomer Lauritsen

**“Many of us are rightly repulsed by practices like China’s technology theft,”** said Sen. Mike Crapo, R-Idaho, at a Thursday hearing held by the Senate Finance Committee that also focused on allegations of human rights abuses. “But the answer is not to construct our own restrictions on data and information, or create some social credit score for U.S. companies. ... We must also negotiate and enforce strong rules through new trade agreements, including at the World Trade Organization.”

From the potential of the U.S. rejoining the Trans-Pacific Partnership to China's rising influence at the WTO, Republican and Democratic lawmakers quizzed

witnesses about ways to counter the country while at the same time creating more opportunities for American farmers to increase their exports.

**“Internationally, we must be sharper in our engagement on human rights by rallying our allies to confront these abuses, including forced labor and the suppression of free speech,”** said Crapo. **“What will bring down those abuses is not U.S. disengagement, but facilitating the opportunity for the Chinese people to engage themselves.”**

The senators are on the right path, said Sharon Bomer Lauritsen, founder of AgTrade Strategies LLC and former assistant U.S. Trade Representative for agricultural affairs and commodity policy.

**Both the forging of new trade pacts and strengthening WTO rules “are important and viable mechanisms to reassert the United States’ leadership on the international level,”** she told *Agri-Pulse*. **“That leadership provides a lot of balance to China’s engagement at the WTO, which has increased over the past four years.”**

Sen. Tom Carper, D-Del., used the Finance hearing to stress the damage done when the U.S. pulled out of the TPP and insist that the U.S. needs to rejoin the pact that includes Japan, Vietnam and nine other Pacific Rim countries.

“One of the best ways we could move forward in terms of trade is the TPP,” he said. GOP Sen. John Thune of South Dakota focused on China's answer to the TPP: The Regional Comprehensive Economic Partnership, a trade pact that represents 30% of global GDP and includes Japan, Australia, South Korea, New Zealand, Vietnam, Singapore, Thailand, Laos, Indonesia, the Philippines, Cambodia, Burma, Brunei and Malaysia.

**“With RCEP now a reality and America not a party to the Trans-Pacific Partnership, what should the top trading priority of the United States ... be?”** Thune asked of witnesses at the hearing entitled **“U.S.-China Relations: Improving U.S. Competitiveness Through Trade.”**

“We need to get in the game,” answered Cleve Willems, an international economics adviser at the White House during the Trump administration.

One of the first things former President Donald Trump did after being sworn in to office was pull the U.S. out of the TPP. Willems, though, said that was a mistake.

“If a comprehensive agreement with our former TPP partners is not viable, we should consider targeted sectoral agreements with TPP countries in areas like digital trade and build on that approach over time,” Willems said.



*Sen. John Thune, R-S.D.*

China and the 14 other RCEP countries signed on to the pact just two weeks after the November election, and then President-elect Joe Biden promised he would not allow China to take the lead in global affairs.

**One of the reasons the Obama administration pursued the Trans-Pacific Partnership "was to pivot the United States to Asia to provide countries an ally," said Bomer Lauritsen, who helped negotiate the pact. "When the United States walked away from TPP in 2017, it gave impetus to China to negotiate RCEP."**

Vietnam — a member of both the TPP and RCEP — has become an increasingly valuable customer for U.S. farmers, especially U.S. pork producers. The country is suffering outbreaks of African swine fever and desperate for imported U.S. pork.

The situation spurred four GOP and Democratic lawmakers to sign on to a letter to U.S. Trade Representative Katherine Tai, asking her to negotiate improved trading conditions with Vietnam.

The European Union as well as TPP countries “are well-positioned to take advantage of this tremendous opportunity given their free trade agreements with Vietnam,” says the letter signed by Reps. Ron Kind, D-Wis., Darin LaHood, R-Ill., Dusty Johnson, R-S.D., and Jim Costa, D-Calif.

“Vietnam was one of those countries that, when we were negotiating TPP, where we were really very excited about the market access opportunities (for) our farmers,” Bomer Lauritsen said. “U.S. farm groups see that part of the world as particularly important as their middle classes improve and American products become more attractive to South East Asian consumers.”

## **Lawyers spar over 'pay to appeal' charge in Roundup case**

The ongoing legal and regulatory battles over the use of Roundup, one of the most widely-used crop protection products in U.S. history, is taking on some new twists.

Bayer will pay a Roundup plaintiff about \$100,000 so long as he pursues — and wins — a federal appeal on an issue where Bayer already won at the district court level, in the hopes of getting a decision that the company could take to the Supreme Court.

The legal issue is whether the Federal Insecticide, Fungicide, and Rodenticide Act pre-empts a state law failure-to-warn claim. Bayer (named as Monsanto in the litigation) maintains it does,

and has been seeking a case to bring to the Supreme Court making that argument. **It's a gamble, but a win on federal preemption could reduce the claims brought by thousands of others and save Bayer significant legal costs over the longer-term.**

In a case in federal court in Georgia, *Carson v. Monsanto*, where the company won on that question in U.S. District Court, Bayer appears to have found one it likes. But lawyers for plaintiffs in California who have won verdicts against the company in three separate cases say Bayer is engaged in a “pay-to-appeal scheme” in order to create a split in the circuit courts of appeals that would make Supreme Court review of the FIFRA/state tort law issue more likely. A win in the high court could undercut the authority of those decisions and put at risk payments to thousands of Roundup plaintiffs.

**The company “is paying [John] Carson to appeal a decision that Monsanto already won in the district court because Monsanto is hoping to secure favorable appellate precedent in 11<sup>th</sup> Circuit so that it can set the stage of a Supreme Court run,” the plaintiff firms said.**

“We proved at the Roundup trials that Monsanto tried to manipulate the science and lied about how Roundup causes cancer for decades,” said the lawyers, R. Brent Wisner of Baum Hedlund, Jennifer A. Moore of Moore Law Group, and David J. Wool of Andrus Wagstaff. “Now Bayer and Monsanto are trying to manipulate the judiciary and buy appellate review.”

They filed a letter with the 11<sup>th</sup> Circuit Court of Appeals, based in Atlanta, noting that the Carson case is the first time Bayer has won on the pre-emption issue, and asking the court to dismiss the appeal with prejudice.

“Litigants ... cannot buy appellate review of decisions they won,” they said. “The court should reject this attempt to manipulate our judicial system and dismiss the appeal with prejudice because Carson and Monsanto are deceiving the court by claiming that an actual case or controversy exists when, in truth, this appeal was bought and paid for by Monsanto.”

**Bayer, however, said in a statement that it’s been “completely transparent about its desire to appeal Roundup failure-to-warn cases on federal preemption grounds, and this settlement, which the plaintiff voluntarily agreed to, is an appropriate path for such an appeal.”**

Under the settlement, Bayer agreed to pay Carson \$100,000 “to drop the surviving design defect claims and to pursue the preemption ruling against him,” the company said. “If he succeeds in the appeal, he gets an additional substantial payment.”

If he drops it, however, “he would simply have to return the \$100,000 settlement payment because he would be in breach of its terms,” the company said. “Thus, plaintiffs’ characterization of the \$100,000 as a ‘penalty’ in a court filing is completely false, and nothing more than an effort to block this appeal on federal preemption grounds which threatens their interests in this litigation.”

Bayer previously decided against seeking review of a California court’s decision involving Dwayne Johnson, the first Roundup plaintiff to go to trial. Instead, it decided to wait for a decision from the Ninth Circuit Court of Appeals in a case involving Edwin Hardeman, which it said “will serve as a better case for review by the Supreme Court.”

The pre-emption question is at issue in that case and in another case involving plaintiffs Alva and Alberta Pilliod, now in California appellate court.



Bayer maintained in a civil appeal statement to the 11<sup>th</sup> Circuit that the settlement is supported by other appeals court decisions, but Wisner, Wool and Moore said the "pay-to-appeal scheme" bears "little resemblance to the settlements described by Monsanto."

**Carson's lawyer conceded in conversations with one of the other Roundup lawyers that she could not find scientific evidence linking her client's condition, malignant fibrous histiocytoma, to Roundup exposure, according to an account of those conversations filed with the 11th Circuit. The Roundup cases litigated, and those involved in a proposed multibillion-dollar settlement, involved non-Hodgkin's lymphoma.**

The lawyer, Ashleigh Madison, did not return an email seeking comment, but Bloomberg reported she said in an email that "all allegations of impropriety are 'categorically denied' and will be addressed in court."

"My client's best interests are my top priority, as they have been throughout my representation of him," she told Bloomberg. "Here, my client's best interests are not served by unfounded public scrutiny."

David Wool, an attorney with Andrus Wagstaff, said in a declaration to the court that he told Madison in a conversation that Monsanto was simply trying to "create favorable appellate law for itself" and that "Carson was risking the rights of people who are actually injured by pesticides to have their day in court in exchange for Monsanto paying Madison and her client. Madison stated that she agreed with this assessment."

## **Multiple challenges hamper commercial Dungeness crab season**

As restaurants reopen and other pandemic restrictions continue to ease, food producers are watching to see how consumers' buying and dining habits will change. For fishermen, too, questions loom about demand, especially for higher-end products such as Dungeness crab. And for this major west coast fishery, the current season has had a series of additional hurdles compounding pandemic impacts.

The commercial Dungeness season in California opened late because the state's Risk Assessment Mitigation Plan (RAMP), which is in full-force for the first time this season, determined elevated risk to certain marine animals. The California Department of Fish and Wildlife (CDFW) developed the RAMP with input from fishermen, environmental groups and other stakeholders to find ways to reduce entanglements of whales and sea turtles in Dungeness crab fishing gear. This week, CDFW will conduct another risk assessment to determine whether migrating blue or humpback whales have entered fishing waters, which could prompt an early end to the season.

Once regulators allowed the season to open, commercial Dungeness fishing in California and Oregon was further delayed when a dispute broke out over pricing. After missing the potentially lucrative holiday season, fishermen finally got out and catches were not huge.

**"It's a little bit tough right now," said Dick Ogg, who has fished commercially out of Bodega Bay for more than 20 years. "That's kind of an understatement."** Ogg is a member of the Dungeness Crab Gear Working Group, which contributed to the RAMP. Ogg says he and other vessel operators have come up with a variety of strategies to reduce the chances of migrating whales or endangered Pacific leatherback sea turtles getting tangled up in gear.

For example, they reduced their use of weights to pull ropes from the water's surface, where they attach to buoys, and instead use shorter ropes that form a straight line down to the crab pot. He

says preventing a W-shape from forming in the line keeps animals from swimming into a rope loop that can wrap around them. Entanglements hit an anomalous high of 18, among whales and sea turtles, in 2015-2016, prompting the RAMP. Numbers since have fallen to just one in the 2019-2020 season.

Ryan Bartling, senior environmental scientist at CDFW, says “anecdotally, season delays, season closures” and modified fishing behavior, altogether, “looks to be playing a part” in reducing entanglements.

**“I don’t want to jinx it,” he said, but things are heading in the right direction.**

Washington and Oregon have their own strategies for preventing entanglements, and while those states allow Dungeness fishing later into the year—until mid-August in Oregon and mid-September in Washington, whereas the latest end date in California is July 15—the states monitor how many vessels are out and may reduce the number of pots they can set.



*Dungeness crab (courtesy WCSPA).*

Bartling said this year’s challenges also include a predictable decline in the mature crab population. The numbers vary greatly over a 10-year period, he explained, and five years ago, a marine weather event called a “blob” brought some unusually warm water. That likely led to fewer new crabs surviving. They typically take about five years to mature so this year, which already would have been in the valley of an up and down cycle, is even smaller.

It’s still a robust fishery, though. “From a sustainability standpoint, there’s not a resource issue,” Barling said. But from what he’s heard, “the catch rates have been fairly low this year in comparison to other years.”

From 2000-2019, the average annual California Dungeness crab yield was 19.5 million pounds. Peak dollar value over that period was in 2013, with \$89 million for 31 million pounds. In 2019, nearly 16 million pounds fetched \$52 million. Data on this season’s California catches aren’t in yet, but so far Oregon’s preliminary total is about 11.6 million pounds, down from 20 million pounds last year. Washington’s landings are at about 10 million pounds so far, on pace with the 12 million pound total last year.

Susan Chambers, deputy director of the West Coast Seafood Processors Association, said the overall lower catch this year has actually helped the industry use up some surplus from the pandemic reductions in sales last year.

“Typically, crab is considered a luxury item,” she said, eaten more often in restaurants than at home. Unlike some other foods, it wasn’t one that could easily be repackaged and redistributed to retail or direct-to-consumer sales, though Chambers said she knew of some seafood sellers who did parking lot pick-ups of boxed orders, similar to what some produce farmers did early in the pandemic.

Now that things are starting to open up, the frozen stock is moving. “With a less abundant crab season, we probably won’t have as much in the freezers next winter as we did this winter,” she said. For those who are still bringing in crab, Chambers said prices have shot up. The opening average price in Oregon was \$3.86/lb. But now?

## Marine animal entanglements

California commercial Dungeness crab fishery

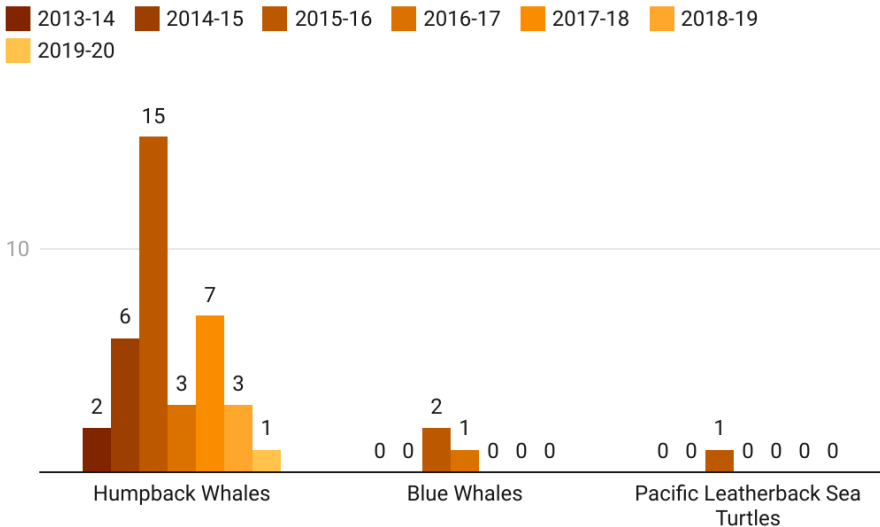


Chart: Amy Mayer • Source: CDFW • Created with Datawrapper

“Some of them are getting like 8 or 9 bucks a pound.”

Ogg pulled his crab gear out early this year, deciding to put his energy into prepping for the salmon season. But he said for the vessels still at it, the higher market prices made up for low catches.

“That was the only thing that made a difference,” he said. “The volume was low but the price was high.”

## News Briefs:

**New tool helps farmers monitor crop risk during wildfire season.** Ahead of what could be another severe wildfire season, a new tool uses air quality and atmospheric data to give farmers up-to-the-minute information to monitor risks to their crops. The chemical and crop solutions company UPL and the ag tech firm 6<sup>th</sup> Grain have announced the launch of Crop S.A.F.E. (Smoke And Fire Events), a platform that shows smoke intensity, particulate matter and ozone levels. The information updates in real time and the app retains the data for a week so a user can playback how conditions have changed in a particular location. In addition to showing wine growers if their vineyards could be at risk of smoke taint, which can affect the taste of the fruit and reduce the value of the crop, information on temperature, wind speed and air quality will help growers monitor for other risks such as poor air quality for workers. In a statement, UPL business excellence lead Stefano Matozzo said the technology would provide “immediate and direct support to growers and their crop advisors via an interactive platform to help manage risk and enable more informed crop management decisions.” In 2020, RMA estimated smoke taint may have hit as many as 30,000 acres of California wine grapes.

**EPA to reconsider Trump admin California emissions action.** The Environmental Protection Agency will take comment on whether it should uphold the Trump administration's action to limit California’s ability to impose its own vehicle emissions standards. In a statement, EPA Administrator Michael Regan said he is a “firm believer in California’s long-standing statutory authority to lead.” He said the Trump administration’s decision in 2019 “to revoke the state’s waiver to enforce its greenhouse gas pollution standards for cars and trucks was legally dubious and an attack on the public’s health and wellbeing.” Reconsidering the waiver’s revocation, he said, would be “a major step forward to restore state leadership and advance EPA’s greenhouse gas pollution reduction goals.” In 2019, California announced an agreement

with four automakers – Ford, Volkswagen, Honda, and BMW – to begin producing new vehicles for model year 2022 that complied with new state-level emissions requirements. In response, the Trump administration withdrew a Clean Air Act waiver that allowed California to set its own emissions standards. EPA says it will specifically seek comment on: whether it was proper for EPA to reconsider a previously issued waiver; whether EPA’s action to withdraw California’s waiver in consideration of the preemption was appropriate; whether the Trump administration’s interpretation of the CAA that enabled EPA to withdraw California’s waiver was appropriate; and whether the interpretation of CAA section 177 that could disallow other states’ ability to adopt California GHG emission standards was appropriate. EPA plans to hold a virtual public hearing June 2 and will take public comments on its Notice of Reconsideration until July 6.

**USDA extends pandemic nutrition benefits.** The Department of Agriculture says it will extend Pandemic Electronic Benefit Transfer benefits for more than 30 million children to help students who may be missing the nutrition from school meals. In a release, USDA noted the P-EBT program’s role in feeding “all low-income children of all ages.” “By providing low-income families with a simple benefit over the summer months, USDA is using an evidenced-based solution to drive down hunger and ensure no child has to miss a meal,” Ag Secretary Tom Vilsack said in a statement. According to USDA, children are eligible for this temporary nutrition benefit – loaded onto an EBT card that can then be used to purchase food – if they are eligible to receive free or reduced-price meals during the school year or if they are under age six and live in a SNAP household. Families of eligible children typically receive \$6.82 per child, per weekday, or roughly \$375 per child over the summer months. USDA plans to provide additional guidance for the program’s operation plans for the 2021-2022 school year and the summer of 2022 later in the spring. The coronavirus relief measure passed earlier this year authorized the program to keep operating for the duration of the COVID-19 pandemic. The move comes after other USDA efforts to address hunger during the pandemic, including last week’s announcement to provide free school lunches for the upcoming school year.

**NRCS announces regional conservation projects.** A Department of Agriculture program will invest \$330 million in 85 public-private partnerships across the country through a farm bill program designed to funnel money to local conservation projects. The funds are awarded through the Regional Conservation Partnership Program run by USDA’s Natural Resources Conservation Service. The program, first authorized in the 2014 farm bill, has invested more than \$3 billion in public and private funds in private-lands conservation. Acting NRCS Chief Terry Cosby called RCPP “public-private partnerships working at their best. “These new projects will harness the power of partnerships to help bring about solutions to natural resource concerns across the country while supporting our efforts to combat the climate crisis,” he added. An NRCS release said the projects will “address climate change, improve the nation’s water quality, combat drought, enhance soil health, support wildlife habitat and protect agricultural viability.” The program calls for partner contributions of more than \$1 for each \$1 USDA invests; at least \$440 million in additional funds are expected to be generated from communities and other partners. Among the projects to receive funding is a Pennsylvania effort to delist impaired waters in Lancaster County, Pennsylvania, by 2040; a joint Nebraska and South Dakota project to increase rangeland resiliency on 40 area ranches; and a California State University effort to help orchard/vineyard, rangeland, dairy and row crop producers to implement soil health practices and carbon farm planning activities. NRCS also produced a map of projects awarded funding.



## Farm Hands West: Biden announces intent to nominate Moffitt to USDA post

President **Joe Biden** intends to nominate **Jennifer Moffitt** to be USDA's next Undersecretary for Marketing and Regulatory Programs. Moffitt currently serves as the undersecretary at the California Department of Food and Agriculture, where she served as deputy secretary from 2015-18. Before that, she worked on her family's organic walnut farm and processing operation for 10 years. She also served on the Central Valley Regional Water Quality Control Board and worked for American Farmland Trust. To read more on Moffitt, click [here](#).

**Ryan Ferguson** has been elected to serve as the president of the Westlands Water District Board of Directors. He succeeds **Daniel Errotabere**, who has stepped down as president but will continue to serve on the Board. Ferguson was first elected to the board in 2017. He is a second-generation family farmer in the Lemoore and Huron area, where he grows almonds, pistachios, tomatoes, and reproduction seed cotton. He currently serves as chair of the finance and administration committee and represents Westlands on the board of the Association of California Water Agencies.



*Jennifer Moffitt*

Tejon Ranch Co., has appointed **Marc Hardy** as senior vice president and general counsel. Hardy currently serves as counsel with the Buchalter law firm in Irvine, Calif. He also served as the assistant general counsel and the general counsel/assistant secretary for A.G. Spanos Companies from 2001 to 2020.

**Rick Haggart** has been selected to be the new chief technology officer for iTradeNetwork, a global provider of supply chain management solutions for the food and beverage industry. He brings over 20 years of experience to the position and previously worked for Boeing, Accenture, PerfectPlaces.com, RedAwning and Virtana.



*Ken Barham*

Nufarm Americas Inc. has tapped **Ken Barham** to be the vice president of crop protection sales for the U.S. Barham brings 20 years of experience in the crop protection industry to his new position. He most recently served as Nufarm's North America vice president of customer and brand marketing for the last four years. Before joining Nufarm, Barham worked for Syngenta leading the post-patent strategies for herbicide and insecticide marketing. He also has eight years of experience working for Adama Group Companies.

**Danielle Crop** has joined Albertsons Companies as the company's new senior vice president and chief data officer. Crop most recently was the chief data officer at American Express.

The Colorado Department of Agriculture has named Dr. **Maggie Baldwin** to be the new state veterinarian. She is the first female to become the state veterinarian in Colorado. She joined the Colorado Department of Agriculture's Animal Health Division in January 2017, focusing on emergency response, incident management, and public outreach. She has served as epidemiology traceability veterinarian and most recently as the Colorado Assistant State Veterinarian.

**Janet McCabe** was confirmed by the Senate in a 52-42 vote to be the next deputy administrator of the EPA. McCabe is a professor of practice at the Indiana University Robert H. McKinney School of Law at IUPUI and director of the Environmental Resilience Institute at IU. McCabe previously served as acting assistant administrator of the Office of Air and Radiation at the EPA under the Obama administration from July 2013 to January 2017 and as principal deputy in that office from 2009 to 2013.



*Karama Neal*

The U.S. Department of Agriculture has named new individuals to senior leadership positions. **Karama Neal** now serves as the administrator for the Rural Business-Cooperative Service. Before this position, Neal served as president of Southern Bancorp Community Partners, a nonprofit community development loan fund located in rural Arkansas and Mississippi. **Mike Schmidt** is the new senior adviser in the Office of the Secretary. Schmidt had served since Jan.20 as a senior adviser in USDA's Farm Production and Conservation Mission Area. He also served as senior professional staff for the Senate Ag Committee under then-ranking member Sen. **Debbie Stabenow**, D-Mich., and worked at USDA during the Obama Administration. **Lisa Ramirez** was named director of the Office of Partnerships and Public Engagement. She most recently served as the chief innovative officer for the Lubbock Independent School District in Lubbock, Texas. She has previously held a series of positions at the Department of Education, including director of the Office of Migrant Education and director for the Office of School Support and Rural Programs. **Doug McKalip** is now a senior adviser in the Office of the Secretary. Most recently, McKalip was a senior adviser in USDA's Animal and Plant Health Inspection Service. He has also served as a senior policy adviser for rural affairs at the White House Domestic Policy Council and held several positions at USDA, including senior adviser to the secretary and director of legislative and public affairs in the Natural Resources Conservation Service.

House Ag Committee Chair **David Scott, D-Ga.**, has added one new individual and promoted two on his committee staff. **Lyron Blum-Evitts** has been promoted to the role of director of outreach and legislative operations. Blum-Evitts has been with the committee since 2019, previously as member relations coordinator. **Ross Hettervig** will now serve as the committee's communications director. Hettervig joined the committee in 2019 and most recently served as a digital director. **Josh Tonsager** will join the



*Tracy Stone-Manning*

committee and serve as the staff director for the General Farm Commodities and Risk Management Subcommittee. Before joining the Committee, Tonsager served as the vice president of policy and communications for the National Association of Wheat Growers.

**Tracy Stone-Manning** has been tapped by President Joe Biden to lead the Bureau of Land Management as the new director. Stone-Manning most recently served as the senior adviser for conservation policy at the National Wildlife Federation. She has also worked on the staff of former Montana Gov. **Steve Bullock** and Sen. **Jon Tester**, D-Mont.

Former senior vice president for government relations and public policy for Feeding America, **George Braley**, died March 28 from complications of congestive heart failure. He was 72. In his career, Braley served as the deputy administrator for special nutrition at USDA's Food and Nutrition Service. His career spanned 32 years at USDA's FNS. He also served as acting administrator during presidential transitions before retiring in 2007.

Organic farming pioneer **Betty Ann Van Dyke** died on April 20 at the age of 88. She was a pioneer of early organic fruit production and also followed her father's footsteps into traditional orchard ranching after she took over the family's operation in Gilroy. While completing her degree from San Jose State, she was also one of the first women to surf in Santa Cruz in the 1950s and 60s. For more on her life and April 29 memorial services, [click here](#).

**Best regards,**

**Sara Wyant**  
**Editor**

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