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'September surprise' defeated but water fees still rising

Farmers and ranchers will again be seeing a moderate bump in their water fees. The difference is to make up for a budget shortfall for a program under the State Water Resources Control Board. While the rates are similar to previous increases, the more painful impact is felt in the cumulative cost of compliance that has added up since the regulatory fees began more than a decade ago.

Ag groups and water agencies are now pushing the state for more accountability with the programs' Water Rights Fund, while urging the administration and lawmakers to overhaul the system for the fund.

Last week, the Water Board approved a series of annual fee increases. The fee for the program regulating water discharge from agricultural lands will increase by up to 13%. The program fee for confined animal facilities (CAFs) will rise by 9.5%.

Bob Gore of the Gualco Group, which represents several irrigation districts as well as winegrape growers, noted that one of his clients will pay an added $20,000 annually based on a seemingly small three-cent increase in the Agricultural Lands fee.

The board raised the fees to cover the costs for staff and operations in implementing the water quality program. Ag Lands is running a projected deficit of $815,000, with the new emergency fee regulation bringing the total current budget to $7.8 million. CAFs would be short by $477,000 without the fee increase. Its budget is now projected to be $5.5 million.

During the Water Board hearing, staff presented a last-minute proposal to supplement lost revenue in its cannabis program by increasing fees in the ag programs. The state had anticipated far more cannabis growers enrolling in the water quality program, but several counties banned cultivation altogether. Now, the program is facing expenditures of $18 million while the fee revenue will be just $5 million.

While the staff did not actually recommend the proposal, they did not present another way to cover the programming costs. Gore and others stood in heavy opposition to the “September surprise.”

“I had repeatedly asked at public hearings and been reassured by staff that there would never be any commingling of the cannabis program with any of the other eight water quality programs, including ag,” he said.

The board agreed and decided not to approve the cannabis plan.

The approval for the Ag Lands fees, however, wraps up two years of occasionally heated negotiations. The result was a new fee structure that better allocates costs based on the size and type of the operation. The aim was to factor in the actual staffing time spent on the individual regulations. Most farmers will fall under the Tier A category, with a 13% increase, while rice growers, along with those in managed wetlands and ranchers on irrigated pastures that don’t apply nitrogen, will see an increase of about 12%. The approach also adds more flexibility for regional water boards, which have additional permitting programs that must fit into the State Water Board’s fee structure.

California Rice Commission President and CEO Tim Johnson

Despite the slightly lower rate for his members, **California Rice Commission President and CEO Tim Johnson called the new fee structure a “fair and transparent approach,” but added that it “represents significant compromise on behalf of the agricultural community.”** The fee raises have increased over multiple years, including an increase of 8.9% for Ag Lands and 16.9% for CAFs last year.

The difference between the two tiers is just a few cents.

“This fee differentiation is really almost a footnote,” Johnson told *Agri-Pulse*.

Learning and tracking regulatory requirements are one of the top costs, he notes. Another is the actual work of monitoring and reporting. Fees are a secondary cost in a farmer’s budget.

The Water Board also approved fee increases for water rights permits by 16% for the per acre-foot charge. The annual fee will also increase 33%, to $300. Two years ago, that fee was $75. Overall, the fees for the water rights program have risen by 75% over the last decade.

The increase in water rights fees also impact agricultural water districts. One district representative said his organization will see an extra $62,000 in fees this year.

As more staff are added and salaries go up, the fees have steadily increased each year. Two years ago, the Legislature also passed a measure that added to the fees the costs for pension benefits through the California Public Employees' Retirement System. Each year, new legislation directs the Water Board to take certain actions with programs like these, leading to more fee increases.

Representing the broad sentiment of the many stakeholder groups, Gore said during a stakeholder meeting that they wanted to "put a stake in the ground and find out where our fees have gone over the last decade." The coalition's request for an audit of the programs, however, was rejected by the Joint Legislative Audit Committee.

The Legislature, after all, enacted the fees to begin with.

Bob Gore, Senior Advisor for The Gualco Group

When the recession hit the state's budget in 2009, the Legislature cut off taxpayer support from the General Fund for agency programs like these. The Water Board and other agencies had to rely on fees to support the regulatory programs. The water quality programs were smaller then, focusing specifically on the impacts of agricultural waste discharge from surface water into ditches, creeks and rivers. The program has since expanded to include groundwater monitoring.

Tim Johnson said the coalition is also pressing the administration and lawmakers to return the Water Board programs to the General Fund, arguing the programs provide a public benefit to all and the burden should be shared broadly. The coalition is also working with staff to reduce the compliance load. This could be by reducing the frequency and types of water quality tests and reporting, especially for those with a clean track record. Gore said Water Board staff have been receptive to the request.

"They claim to be aware of the need to do things with existing resources," he said.

For CAFs, J.P. Cativiela of the Dairy Cares coalition said the program needs a better accounting of time for the staff working on dairy. He said some have been working in the bovine and poultry programs as well.

"We're concerned that the overall costs to the program go up, while the size of the regulated community goes down," he said.

The industry has seen about 500 dairies close over the last decade.

Another challenge is that the Water Board anticipates agriculture to grow by 200,000 acres per year, according to Gore. With the plans for the Sustainable Groundwater Management Act going into effect in a few months, the geographic makeup of agriculture may change dramatically. The Public Policy Institute of California estimates at least 500,000 acres of ag lands must be fallowed in order to reach the sustainability goals by 2040. With business as usual, that number could more than double. The current fee structure would mean the fees will be spread among fewer operations, increasing the cost proportionally as has happened with CAFs.

The expectation at the Water Board has been that revenues will increase for the foreseeable future. More of the regional water boards are beginning to enforce groundwater quality through the statewide permitting process, adding more regulated entities to the mix.

The battle over fees will be a continuing challenge in adapting a broad fee to ranchers and farmers representing more than 400 commodities and 200 soil types.

Johnson does see a silver lining to the heavy regulatory requirements though.

"On the export market," he said, "California products are seen as being very trusted, very clean and very environmentally responsible, because they're grown in a state with all of this regulation."

Ten questions for Assemblymember Aguiar-Curry

Cecilia Aguiar-Curry grew up with a father who taught high school agriculture in Yolo County. He later bought a 40-acre ranch, keeping the family in the farming business for the next 50 years.

"I was raised with agriculture around me from day one," says Aguiar-Curry.

She had the trust of farmers when she ran for office in 2016, winning the Assembly seat for the 4th District. She now represents Napa Valley's top vineyards, as well as Delta farmers, Sacramento Valley rice growers and one of the nation's top ag schools, UC Davis. Her district is also buffered by Bay Area tech culture on one side and the capital on the other.

Assemblymember Aguiar-Curry spoke with *Agri-Pulse* on the challenge of representing so many interests as a Democrat, on her disappointment over Senate Bill 1 to protect federal environmental laws, and on her bills that passed and those that didn't.

1. **You voted for SB 1. What are your thoughts now that the governor has said he will veto it?**

Here's my dilemma: My district is so diverse. My farmers down in the Delta were definitely telling me, "We like SB 1." My farmers in Northern California, and in other counties, were saying, "No, we're totally against it. It's going to unravel so many things."

I always go to my industry leaders that I trust and that I work with. I talked to the Yolo County water agency and to (Reclamation District 108). I went all over the place to be sure of what people wanted and what they didn't. Still, I was in the middle. What in the world am I going to do?

My vote did not come up until after it had gone through. I stayed off the bill completely, because I wanted to see where it went. Once it got passed, I honored leadership at that point and said later on I would go up on the bill.

I will admit I was really upset when I heard he was going to veto the bill. If I had known that or had known what he did and didn't like about it, I would have attacked this differently. I spent weeks trying to figure out where I was going to go with the bill.

Those are hard bills to take and there's going to be people who hold it against me. But I really did my homework on it.

2. Has that created some hard feelings in the Assembly?

My bet is there are. But everybody realizes you don't get married to your bill and you move on.

I have hundreds of bills I've got to go through. I rank mine and this was one of the top ones that I knew was going to be a tough decision. I spent a lot of time and my staff spent a lot of time on it. I had industry in and out of (my office). I had personal friends in the farming business come by or call me.

3. If a similar bill shows up next year, will you treat it differently?

I would hope that we sit at the table way before with both sides. Workshops work really well over at the capitol. With both sides of the aisle sitting there, we talk about different issues, and we bring in industry leaders to talk. The environmentalists and labor would also come.

When you have all that information and we're all sitting there talking about it, the conversation is much different, instead of just hating the bill. When you collaborate, the outcome is much better.

Asm. Aguiar-Curry at a Wine Select Committee hearing in 2018.

I'm sure we'll see many more water bills in the next 8 to 10 years.

I also sit on the Delta Caucus. We need to sit down and begin our deliberations on where we would go if something new came up.

4. What are your thoughts on the legislative year as a whole?

I thought it went well, all things considered. We knew the difficult bills early on.

I really concentrate on my district and I concentrate on rural communities. Their voices are always at the table. Although I'm a Democrat, I really watch out for my conservative farmers and agriculturalists at the same time.

I'm the only female farmer north of Stockton. With my Central Valley people, we all work together as much as we can. But when you start looking at the number of votes, they are really in L.A. and the Bay Area. So, my goal is always to educate my colleagues from areas that are not familiar with agricultural issues. When they come and ask me about a bill, I always ask what the unintended consequences are that could happen to my region.

For me, my bills went through and we worked really hard to dot the I’s and cross the T’s. We had 24 bills on the governor's desk and 10 of them have been signed. Most of them are rural issues, like telehealth and telepharmacy and some stuff on fire.

5. **You also had AB 256 on incentives for winter rice flooding to support bird and fish habitats.**

Yep, that's a good one. I love that bill. I got so excited about that bill. And my very conservative people loved it. We were talking with UC Davis. My environmental groups got involved in it. We got the farmers involved and the rice people. It was a fun bill.

6. **Your bill AB 228 would have changed the classification for CBD oil, but was killed in Appropriations.**

I'm going to try to bring it back. It’s frustrating.

The idea was just to make sure that we get the retailers taken care of. We want some labeling on the hemp. Let's face it, it's everywhere. You can buy it even in CVS and farmers markets.

The frustration was that I asked people to be at the table and they didn't come until the very end, including the governor's office and the Department of Health. The bill went through lickety-split. Everybody agreed that this bill needed to go through. We decided to divide it up into two bills at the end. Then they held my bill. But I'm not done.

7. **What else are you planning for next year?**

Well, I’ll do cleanup on CBD. I'll continue to do something with healthcare, with the aging master plan.

I'll be doing <u>some stuff for the wine industry</u> (on limiting air emissions through closed fermentation). That's the frustrating one, because so many of my wineries have open-air fermentation. What works in one area does not necessarily work in others.

I'm afraid the Air Resource Board will mandate this all the way through the state. And that's not going to work for me. Hopefully I'm going to get a study on this through UC Davis. If the data says it needs to be closed, great. Then we'll work on it. But it's an incredible cost to the farmer.

8. **Would you say you have a closer relationship to UC Davis than other legislators?**

Yeah. You always know that you can use them. As a capitol, we should be using them a lot more. They're only 11 miles away.

My frustration is, before my time, they did a dairy bill on methane (SB 1383 by Senator Ricardo Lara, D-Long Beach). I questioned whether he had ever been to a farm or a dairy and really understood the story.

So when I got here, I went right over and found Frank Mitloehner (a UC Davis research professor and specialist in livestock air quality). He's great. I said, “Tell me about it,” and he gave me this whole PowerPoint.

I'm doing a big project for Clear Lake, in trying to figure out how to make it look clear. We have a contract with UC Davis and they're doing a lot of testing for me and they’re doing an economic development study. Everybody's fingers are in this trying to figure out Lake County. Some of the farmers are upset because people say it's their fault because pesticides and herbicides are going into the lake. I think it's mainly just that it's a shallow lake and it's on volcanoes.

9. Tell me about AB 958, which would have subsidized organic meals for schools.

We make so many regulatory issues for organics. They have minimum wage, ag overtime, all these things – it all stacks up. The cost of the products is so much more. Then you're getting the stuff in from Mexico and Argentina with the same California Certified Organic label. This is not fair to these guys that are trying to sell the product. That's what got me going on the school food program.

I'm going to do another one next year, and I'm going to probably expand it to hospitals and maybe the prison system. California grown should be sold here in California.

There's nothing more frustrating than that bill going down. Hundreds and hundreds of people were behind it. Tom Steyer was behind it. The Appropriations chair said to me, “You have too many good bills.”

I did it through CDFA and didn't go through the Department of Education because I knew (CDFA Secretary Karen Ross) would watch over it better. That one I thought for sure we would get through.

10. Aside from policy, what do you think about the politics for next year, since it's an election year?

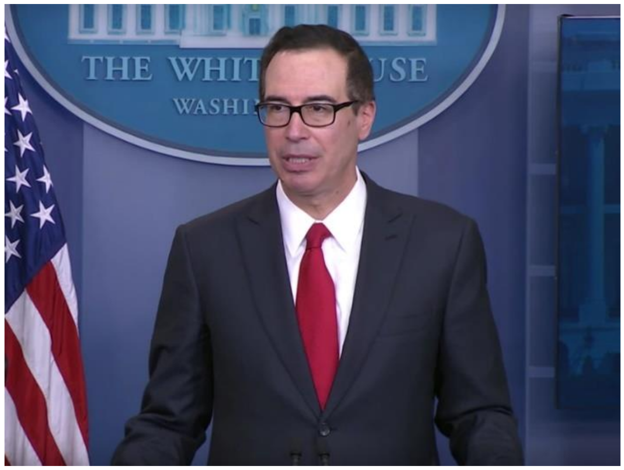
I would hope we can continue to move bills along. During an election year, some people are frightened of their own shadow when it comes to legislation and policy.

I was elected here to do a job. I don't have any other dreams to go anywhere else. Some of the younger legislators are looking for the next job. They're more frightened about taking a hard vote. I get that. But sometimes you have to take a hard vote for the whole state. I did that with SB 1 and I did that with (extending cap-and-trade in 2017). But I did a lot of homework, had working groups and felt comfortable on my votes.

China trade talks on schedule despite complications

The next round of high-level U.S.-China trade talks is on schedule for next month despite the White House axing Chinese plans for a key official to tour U.S. farms and processing facilities this week.

Treasury Secretary Steven Mnuchin confirmed Monday night that Chinese Vice Premier Liu He will be leading his negotiating delegation to Washington the week after next. (At first, he said it would be next week, but then corrected himself later during an interview on Fox's "Lou Dobbs Tonight.")



Meanwhile, China is reaching out to the U.S. ag sector, letting producer groups know that the country is anxious for an end to the trade war and tariffs that are blocking U.S. farm exports.

The Chinese embassy in Washington on Saturday held a reception for U.S. farm and industry groups, and the message to them from Chinese Agriculture Vice Minister Han Jun was primarily that China is looking forward to post-trade-war trade.

One industry source who attended the reception told *Agri-Pulse* that Han also offered a warning that the longer the trade war lasted, the more supply chains would change, along with available markets.

But the atmosphere Saturday was generally positive and optimistic, said Ryan LeGrand, president and CEO of the U.S. Grains Council, who was also one of the guests at the embassy event.

The vice minister "talked about how great a market China is for agricultural products. … He talked about the desire to get back to business. He expressed his desire to end this trade conflict."
Han, who spoke privately with LeGrand, talked specifically about China's need for sorghum, dried distiller's grains and soybeans.

China had intended to conduct even more outreach to farmers and processors outside the Beltway by sending Han and a delegation to Montana and Nebraska, but the White House crushed those plans.

Treasury Secretary Steven Mnuchin confirmed Monday that it was the U.S. that stepped in and cancelled the trip, not the Chinese as some in the two farm states said they had been told. Mnuchin also said the trip could be rescheduled later.

The decision also took President Donald Trump by surprise. He was standing next to the Treasury secretary in New York when Mnuchin told reporters that the trip was cancelled because the U.S. "didn't want confusion around the trade issues."

"Yeah, but I want them to buy farm products," Trump shot back and suggested that "we should get them over there as soon as possible so they can start buying."

Chinese buyers have been purchasing soybeans for the past couple of weeks. Press reports claim that the latest amount purchased a week ago is somewhere between 600,000 and 1.5 million metric tons of U.S. soybeans for delivery between October and December.

John Baize, an analyst for the U.S. Soybean Export Council, said prices at the time were conducive for sales. Freight on board, U.S. soybeans were about $26 per ton cheaper than Brazilian soybeans, Baize said.

Han also addressed the issue of the cancelled trip Saturday at the embassy event, assuring attendees that it would not impact the upcoming trade talks, LeGrand told *Agri-Pulse*.

"These are a couple of key states where [the Chinese] buy product," LeGrand said. "It looked to me like they wanted to get out and do outreach with those particular states. … There are obviously relationships that need to be maintained. I would assume that's just as important to him as it is to us."

Mnuchin on Monday said progress towards a deal is possible during the next round of talks and expressed some optimism.

"The good news is, I think, there's a desire by China to move forward with reforms," he said. "We have a good framework for an agreement. We'll see if we can move forward."

USMCA faces threats from all sides

House Democrats are still far from ready to ratify President Donald Trump's new version of the North American Free Trade Agreement, but their demands represent just one of the threats to implementation of the updated trade pact that would keep most agricultural tariffs at zero.

The most important thing farmers and ranchers hope to get from the U.S.-Mexico-Canada agreement is some certainty in a turbulent world trade scene, but Trump continues to threaten Mexico with new tariffs, and USMCA has become an issue in Canadian elections where incumbent Prime Minister Justin Trudeau's campaign is under siege.

Mexico is so far the only one of the three countries to ratify NAFTA 2.0, but it's also facing a renewed threat from Trump.

Back in April, Trump first threatened Mexico with a 5% tariff by June 10 if Mexican authorities did not obstruct Central American migrants from crossing the country to get to the U.S. The rate would go up to 10% on July 1, 15% on Aug. 1, 20% on Sept. 1 and 25% on Oct. 1.

U.S. farm groups like the National Pork Producers Council immediately warned of concerns that Mexico would retaliate, setting off a new trade war that would scuttle any hopes of implementing USMCA. But Mexico gave in to Trump's demands and sent troops to its southern border to staunch the flow of migrants.

Those troops are still there. But Trump told reporters last week, “If Mexico stopped helping us, that (tariffs) would be immediately on the table."

In Trump's view, new tariffs would punish Mexico for not helping slow the flow of migrants and also help pay for the border wall.

“If I took 5% — 5% tariff for six months — that pays for the entire wall,” Trump said just last week. “At this moment, I don’t want to do that because I’m really happy with what Mexico is doing.”

On the U.S.’ northern border, there’s another troubling sign for USMCA — or CUSMA, as the Canadians call it. Trudeau signed off on the pact that handed key victories to U.S. dairy producers at the expense of Canadian farmers and processors, but he might not be in power much longer.

Canada’s Liberal party and Trudeau, who is now embroiled in more than one scandal, will be competing in an Oct. 21 election against the Conservatives and Andrew Scheer, who portrays the new trade pact as a failure and embarrassment for Canada.

“It’s quite clear that Donald Trump ran the table on Justin Trudeau,” Scheer told reporters last week.

While U.S. politicians and dairy farmers applauded USMCA provisions to end Canada’s Class 7 dairy pricing system and increase Canadian access to U.S. products, they were not popular north of the U.S. border.

Rep. Schakowsky

Dairy Farmers of Canada President Pierre Lampron called Trudeau’s willingness to give the U.S. greater access to Canada’s market “deeply troubling” during negotiations more than a year ago.

Trudeau, Scheer said this month on the campaign trail, “agreed to a cap on exports of dairy products to other countries unrelated to NAFTA. It’s unbelievable that he would agree to that.”

USMCA won’t be outright blocked from ratification if Conservatives win next month and he is elected the next prime minister, Scheer said, but also stressed that he would do his best to make strategic changes.

“We will inherit (Trudeau’s) failure and we will do everything we can in my term to fix the mess he came back with,” Scheer said.

Even if Canada follows through with ratifying USMCA, and the U.S. and Mexico do not plunge into a new tariff war, House Democrats in the U.S. Congress are still not close yet to a deal that would prompt House Speaker Nancy Pelosi to hold a vote on the pact.

“We have a ways to go, that’s for sure,” Rep. Jan Schakowsky, D-Ill., told reporters after a select group of House Democrats met last Friday with U.S. Trade Representative Robert Lighthizer.

House Ways and Means Chairman Richard Neal, who leads the working group tasked by Pelosi to negotiate changes to USMCA with the Trump administration, stressed the two sides were still at odds over several key issues.

One of those issues is the extension of patents for biologic pharmaceuticals by Canada and Mexico in USMCA. It was a U.S. demand that was agreed to by both countries, but some House Democrats are adamant that it be removed. Schakowsky stressed that there was little room for compromise.

“Our position from day one has been that this doesn’t have a place in trade agreement,” she said. “It’s 100% a U.S. proposal. Canada didn’t ask for it. Mexico didn’t ask for it. So we’re still negotiating along those lines.”

Labor, ag groups critical of proposed overhaul of H-2A wage rates

Industry groups say the Trump administration's plan to make the H-2A farmworker visa program easier for growers to use would instead drive up their labor costs and create new wage disparities.

Farm organizations applauded the proposals to streamline the H-2A application process, but they are calling on the Labor Department to scrap a proposed overhaul of the way that wages are calculated.

“The Department’s proposal negates the benefits of the streamlining provisions, by continuing a wage structure that is subject to change drastically year-to-year and increases record-keeping burdens for H-2A users.” the American Farm Bureau Federation said in comments filed with the department.

AFBF said the 489-page plan would raise minimum H-2A wages significantly for many farms, especially for small to medium-size operations.

Tuesday was the deadline for the industry, advocacy groups and the public to comment on the sweeping proposed rule released by the department in July. The department declined to extend the comment period.

A coalition of farmworker advocacy groups also criticized the plan, saying it would make it harder for U.S. residents to compete with H-2A workers.

“The Department’s decisions regarding the H-2A program are increasingly significant as every year more employers apply for H-2A certification and the program continues to spread geographically. Unfortunately, DOL’s decision to revise the H-2A program would exacerbate the harms that are inflicted on both H-2A and U.S. workers,” say the advocacy groups, which include Farmworker Justice, United Farm Workers and Public Citizen.

However, the advocacy groups expressed support for some proposed tweaks to the wage rate calculations, including the proposal to incorporate additional survey data.

The plan makes a number of changes in the way the program is administered, including farms to stagger the hiring of H-2A throughout the growing season without having to file multiple applications, but the department would not expand the program to year-around workers, a priority of the dairy industry.

Some groups, including AFBF and the United Fresh Produce Association, said the department should allow for annual visas.

“While the law states that the program should be for temporary and seasonal industries, it allows for a visa to be offered for up to one year. Despite that provision in the law, the regulations include an arbitrary cap of 10 months per visa stay,” United Fresh said, noting many of its growers have growing seasons that last up to 12 months a year.

Joe Wright, president and chairman of Florida-based Southeast Milk Inc., a producer cooperative, told the department new labor for dairy farms in his state is nonexistent. "Local workers do not want to work on a dairy farm milking cows,” he wrote.

AFBF said “there is no statutory basis to treat industries that fall under special procedures any differently from industries without access to the program.”

Most of the criticism of the rule centered on how the department calculates “adverse effect wage rates,” or AEWR, which set a floor for what farms typically have to pay the workers based on prevailing regional wages for farm labor.

The rates are currently based on the gross hourly rate for field and livestock workers, based on the semiannual farm labor survey compiled by USDA’s National Agricultural Statistics Service. Supervisors, agricultural inspectors, graders and sorters of animal products, agricultural equipment operators, construction laborers, and crop laborers are all the assigned the same state or regional rate. The plan also would incorporate Bureau of Labor Statistics' survey data when NASS data is insufficient.

Another change could require wages to be adjusted mid-contract.

AFBF calculated the impact of the proposed new wage-setting method on farms of various sizes and said H-2A labor costs for small and medium-sized farms would have been 10% higher in both 2016 and 2017 and 9% higher in 2018.

For large-sized sample farms, H-2A rates would have been 4% higher in both 2016 and 2017 and 3% higher in 2018, although there are a few states where rates could have been lower under the new formula, including Arizona, Kansas, New Mexico, South Dakota and Texas.

AFBF and other groups raised concerns about basing wage rates on as many job categories as the department proposed.

“A farm or nursery where one field worker is called upon to drive a tractor once or twice should not be required to pay its entire workforce of field workers as 'equipment operators' — a premium wage on top of the already-premium H-2A wage levels,” said AmericanHort, which represents greenhouse growers.

“Likewise, if a returning field worker shows newer employees how to perform a given task occasionally, he or she is not magically transformed into a 'supervisor' or 'manager.'”
Some groups suggested the wage rates formula should be scrapped in favor of tying the rate to a certain percentage over the minimum wage.

United Fresh said it is conceptually “a good idea to disaggregate the data by occupation so that higher level and salaried employees do not artificially skew wages in favor of relatively entry level workers.” But the group said basing wages on “too many wage categories” could “enhance volatility in the wages required to be paid.”

The California Farm Bureau Federation also supported the idea of tying the AEWR to the minimum wage, saying that one of the challenges with calculating rates by differing job responsibilities "could be that too many wage categories will enhance volatility in the wages required to be paid."

AFBF also raised concern about a proposal to limit the wage survey to U.S. employees only, “out of concern that undocumented agriculture worker wages may depress the wages of workers in the U.S. similarly employed.

“AFBF objects to this proposal because of the potential legal implications for employers and the fact that H-2A responses, which would result in inflated prevailing wage rates, remain in the data collection,” the organization said.

The farmworker advocates said the proposed changes to wage calculations would have a mixed impact.

"For many states and regions this proposed methodology results in a slight increase in the AEWR, which is justified by the fact that the purpose of the AEWR is to establish a wage rate that, in the absence of a prevailing wage survey or other reliable determination, can approximate the wage rate needed to ensure that U.S. workers are not dissuaded from accepting H-2A jobs because they are not competitive with local wage rates," the groups said.

But the groups noted that according to their analysis there could be wage rate cuts in some areas of the country.

Senate subpoenas shine spotlight on conservation easements

The Senate Finance Committee is stepping up an investigation that has put a new focus on what lawmakers from both parties say is an abuse of conservation tax incentives that is costing the U.S. Treasury billions.

Several bills also have been introduced to curb the use of the tax deductions.

The committee has sent out subpoenas to six individuals who had not responded adequately to inquiries in the probe that began in March, according to the committee Initially, inquiries were sent to 14 individuals, eight of whom have responded to the committee’s satisfaction. The committee is seeking documents and information related to the formation of partnerships or pass-through entities set up to invest in land to be donated as a conservation easement.

The committee wants to know whether environmental assessments on the land's conservation value were performed, and whether members of the partnerships received any advice about how to comply with state or federal tax laws. It also is focusing on potentially inflated land appraisals.

“Ultimately, when Congress makes an inquiry, it needs to be answered. It’s not optional,” said Finance Chairman Chuck Grassley, R-Iowa, and the committee's top Democrat, Ron Wyden of Oregon, in a Sept. 16 news release.

The subpoenas shine a spotlight on an issue that has received attention for years: the use of donated conservation easements to claim charitable deductions worth far more than the value of the original investment. About 60 million acres of land and water in the U.S. are protected by land trusts, and much of that is under conservation easements, according to a recent paper by American University Washington School of Law Professor William Snape III in *Tax Notes Federal*.

“To put this acreage into context, the entire national park system encompasses 85 million acres,” Snape writes. “Michigan, the 11th largest state, is about 61 million acres.”

Critics, however, claim that some of the conservation values for the donated are exaggerated, and that partnerships containing unrelated investors are reaping big profits. Defenders of partnerships say they’re performing a valuable service by conserving biologically important lands for future generations and that legislation introduced in Congress to limit partnerships is an overreach.

The IRS estimates that “syndicated transactions” were able to claim close to $5 in deductions for every dollar invested in 2017. In a letter to then-Senate Finance Committee Chairman Orrin Hatch last year, the IRS said the average return ratio for the top 10% of syndicated transactions was 8.23, totaling about $8.9 billion on investments of $1.2 billion.

The Land Trust Alliance and other groups calling for reform of the tax incentive are pushing identical bills in the House and Senate that so far have seen no action. The bills, S. 170 in the Senate and H.R. 1992 in the House, would limit the return ratio for members of partnerships — with the exception of family partnerships — to 2.5 for three years.

The Land Trust Alliance sees the legislation as a way to curb “profiteering,” said Lori Faeth, the group's government relations director. “Congress didn’t put a tax incentive in place for people to make a profit.”

Faeth notes that the Joint Committee on Taxation has estimated the bill would raise $6.6 billion in tax revenue.

Julia Doyle, a spokesperson for Steve Daines, R-Mont., an original cosponsor of the bill with Sen. Debbie Stabenow, D-Mich., said Daines is “working the bill through the committee process” and noted that the committee is still investigating. For its part, the committee has no timetable on when it will finish its investigation.

Daines “believes this bill is the solution to the abuses we’ve seen,” Doyle said. “We’re also working with the Joint Committee and Senate Finance on suggestions to strengthen the bill.”

Not everyone thinks legislation is necessary. The Partnership for Conservation, which represents partnerships that donate land for permanent easements, says there are indeed abuses of the tax incentive, but they are limited in nature.

The legislation, P4C says, does not tackle the main problem, however: inflated land appraisals for the land being conserved.

"If abusive appraisals are at the core [of the problem], then deal with that," says P4C President and Executive Director Robert Ramsay.

Ramsay also criticizes the focus in the legislation on partnerships. "They don't seem to have a problem" with individuals, he says of the legislation's sponsors.

Both P4C and Americans for Tax Reform also are critical of bill language going after deductions claimed after Dec. 23, 2016.

Robert Ramsay, P4C

"Such an effective date would disallow deductions for donations made as far back as January 2016 — more than three and a half years ago," ATR President Grover Norquist said in a letter to the Senate Finance Committee. "ATR believes there is no basis for a retroactive change, especially since the conservation easement deduction has been reaffirmed and strengthened by Congress in recent years."

"You're penalizing people who followed the law in 2016, 2017, 2018," Ramsay said
Ramsay points to the August article by Snape in *Fiscal Notes Federal*, which concludes that contrary to critics' claims, the easements are protecting valuable natural resources. An analysis of about 200 biological baseline reports, which are required for all conservation easements that seek the tax deduction, show that "81 percent of examined conservation easements left an important natural resource unexploited [and] 80 percent had active habitat management regimes."

Snape says the bills "would place limitations on who could claim federal tax deductions but would do nothing to improve and clarify appraisal standards on what qualifies to receive the nice federal deduction."

"If Congress truly wants modern federally funded conservation easements to succeed, it should update and clarify the rules pertaining to easement appraisals to avoid federal tax rip-offs and mandate a centralized and transparent federal easement database that includes up-to-date monitoring information," Snape writes.

LTA's Faeth says, however, that the "legislation is narrowly crafted to target the abuse" of the tax incentive and "Congress has already taken action to deal with appraisals."

On tap: $14 billion market for soil carbon and clean water

Farmers and ranchers could potentially earn up to $14 billion though a new market for improved farming practices that store carbon in the soil or curb water pollution, according to a study of a project backed by some agribusiness giants and food manufacturers.

The study conducted by IHS Markit (formerly Informa Agribusiness Consulting) for the Ecosystem Services Market Consortium identifies the value and likely buyers of credits that farmers and ranchers would generate.

The report estimates the ecosystem credits could be worth $13.9 billion, including $5.2 billion for storing carbon in the soil as a way to limit climate change. Those credits would be worth as much as $150 a ton to as little as $3.

There would be demand for another $4.8 billion in credits for keeping nitrogen out of water sources and $3.9 billion for doing the same with phosphorus, according to the study, which was released at a Farm Foundation forum on Tuesday.

The likely buyers include corporations, industrial or municipal operations that need to meet publicly stated goals on environmental impacts, shareholder and stakeholder expectations or regulatory obligations to improve the environment," the study says.

The report "confirms ESMC's conviction that there is substantial demand for ecosystem services from farmers and ranchers," said Debbie Reed, ESMC's executive director. "ESMC is building a voluntary market to monetize those outcomes for producers, using science-based approaches to increase and measure soil organic carbon, reduce greenhouse gas emissions and improve water quality and water use efficiency," she says.

ESMC includes Bayer, ADM, Nutrien, General Mills, Danone North America, Mars Inc., McDonald's, Tyson Foods,, conservation and academic groups such as Ducks Unlimited, the American Farmland Trust, Noble Research Institute and the Soil Science Society of America, plus an array of farm groups large and small.

Joe Somers, an IHS Markit vice president who led the study, said food and beverage companies are the most likely customers for the credits, accounting for 57 percent of the estimated demand. "A lot of these companies are already working in the value chain and are very interested in what's going on in the farming sector and food sector, and they want to participate with farmers," he said.

A new carbon market would build on current incentives. Although ESMC aspires to create a national private market for sequestering carbon and countering water pollution, landowners have been paid to do those things for decades as co-benefits of state and federal conservation and pollution control programs, conservation easements sponsored by conservation organizations, land trusts, private companies and other public spirited entities.

In fact, efforts to price soil carbon started decades ago: notably the Chicago Carbon Exchange, which dissolved seven years ago.

Kari Cohen, who oversees conservation innovation programs at USDA's Natural Resources Conservation Service (NRCS), points to times his agency has partnered with privately sponsored soil carbon projects, such as one launched five years ago with Ducks Unlimited and General Motors' Chevrolet division to trap 40,000 tons of carbon dioxide in North Dakota Prairie Pothole region soils.

"It's been a long road for these market-based approaches (for carbon), trying to figure out how to scale them and generate prices for carbon that make it worthwhile to a farmer or rancher to engage," Cohen said.

ESMC targets January 2020 as its market launch date. "If this coalition can crack that nut, I say more power to them. It will unlock new income streams for farmers and rancher," Cohen said.

"We're getting better all the time," he said of the scientists and other experts who design carbon pricing protocols. However, he says, the designs "are hard to nail down, and I think the real challenge is in the diversity of agriculture … the types of crops grown, soil types, the geography … and the impact of local conditions on all of these things."

ESMC has already developed a pilot protocol for a soil carbon market for agricultural lands in Texas and Oklahoma, and it recently inked a $480,000 cooperative agreement with NRCS for writing comparable pricing recipes for four more regions, to be selected in the months ahead by ESMC members.

Potential Demand for Environmental Credits

Credit Type	Demand	
	Volume	Value ($bil)
Carbon (vol in MMt Co2e)	189.7	5.2
Water Quality (vol in bil pounds)		
Nitrogen	1.58	4.8
Phosphorous	0.8	3.9
Total		**13.9**

Source: IHS Markit

Reed suggested a protocol for the Northern Plains may be up next where "there's a lot of interest in preserving the grasslands."

In the water quality credits market, the leading likely buyers will be municipal sewage and water treatment plants. Among all industrial and other treated runoff of nitrogen and phosphorus, "publicly owned treatment works (POTW) had the greatest discharges of nutrients, accounting for approximately 63 percent of nitrogen discharges and 94 percent of phosphorous discharges into all waterways," according to the IHS Markit findings.

So, while many farmers may have reduced their own crop chemicals runoff, "POTW's are ideal candidates for a credit marketplace, as many have dated infrastructure and their cost of compliance to remove the next pound of phosphorous can be very high," the study suggests.

The study also looked at landowners' breakeven prices for applying mitigation practices to store carbon and says they would vary sharply based on region and crop. For example, for converting conventional till to no-till, they'd range from an average of $21 per metric ton of carbon dioxide in the Northern Plains, and $29 in the Great Lakes states, to as high as $104 in the Corn Belt. So it's suggested credit buyers would get the most carbon for the dollar in the Northern Plains and Lakes states.

Landowners would sell water quality credits, too, for reducing water pollution, and the study projects the tonnage of nitrogen and phosphorous runoff that could be purged or diverted by farmers to fulfill their credits. It notes the credits which would have to be bought and sold within the same watershed where the runoff occurs.

The credit program could potentially be combined with incentives from federal farm bill programs. ESMC "or the companies, or the carbon registries that are developing the protocols … make the rules for these markets," and "they have said that folks generating carbon credits using federal funding like EQIP or CRP or anything that NRCS provides … can also generate carbon credits off those same practices."

For example, he says, "let's say we're helping a farmer convert to no-till. For (USDA program) purposes, they may be doing that to reduce soil erosion, but sequestered carbon is a co-benefit of that. And so while NRCS may be paying for the reduced soil erosion … (and) the farmer should also be able to get paid for the co-benefit of sequestered carbon."

Paying farmers for reductions in carbon emissions has emerged as an issue in the 2020 presidential candidate.

Former Vice President Joe Biden, seen as the leading Democratic contender, highlights increased federal investment in carbon capture technology, including methane producing digesters.

Sen. Elizabeth Warren, D-Mass., , urges a "New Farm Economy," calling for $400 billion for a "Green Manufacturing Plan" for "innovations for decarbonizing the agriculture sector, including a farmer-led Innovation Fund that farmers can apply to … new methods of sustainable farming, like agroforestry."

News Briefs:

Bayer-Monsanto acquisition leads to 'massive transformation' for BASF. Even though it wasn't at the table for the talks between Bayer and Monsanto that led to a unification of the two companies, BASF still stands to gain significantly from the changes brought about in a new business climate. As part of divestitures for Bayer to finish its 2018 acquisition of Monsanto, BASF gained a good deal of assets that added to its crop protection portfolio and launched a new seed business for the company. "Needless to say, for us it's a massive transformation," Vincent Gros, BASF's agricultural solutions president, said Tuesday in an interview with *Agri-Pulse*. "There is clearly a before and an after the acquisition of the Bayer businesses." Paul Rea, BASF's senior vice president for agricultural solutions for the company's North American operations, told attendees of the company's Global Media Event that BASF expects to have 39 products coming to market by 2025, including expanded products in former Bayer product lines like Liberty and Poncho/Votivo. The venue for the event itself was a sign of changes for the company; it was held in Raleigh, N.C., on the Research Triangle Park campus formerly owned by Bayer. Gros did cite some issues in integrating the 4,500 Bayer employees that joined BASF – which itself had about 8,000 ag employees prior to the acquisitions – after their various product lines and mission areas were acquired by the company. After adjusting to basic challenges like common IT platforms and new company procedures, he said many aspects of the business were doing well, specifically citing record returns in canola and vegetable seeds.

Maui County readies to pull out of SCOTUS CWA case. A decision by Maui County, Hawaii, appears to have ended hopes of farm groups for a favorable Supreme Court decision on the scope of the Clean Water Act. The county on Friday voted narrowly, 5-4, to pull out of a Supreme Court case involving a wastewater treatment plant on the Big Island. The 9th U.S. Circuit Court of Appeals ruled last year that the county needed a discharge permit because the wastewater makes its way to the Pacific Ocean, a "water of the U.S.," after being injected into wells and traveling through groundwater. The majority of county council members said they did not want their county to facilitate a decision that would limit the reach of the CWA. Numerous farm groups, including the American Farm Bureau Federation, Agricultural Retailers Association, CropLife America, and The Fertilizer Institute filed an brief in the Supreme Court arguing that the 9th Circuit ruling "has the potential to turn normal agricultural activity without [a National Pollutant Discharge Elimination System] permit into a crime." The county's resolution is not the final word. It "authorizes" Maui Mayor Michael Victorino to settle the case with the Hawaii Wildlife Fund, but does not order him to do so, which the county's corporation counsel said would lead to further litigation. Victorino has not been in favor settling the case, saying it would cost hundreds of millions of dollars to comply with the CWA.

PepsiCo Inc. aims to build a more sustainable food system. PepsiCo published its 2018 Sustainability Report, which highlights progress and goals in six priority areas where the company believes it can best make a contribution to building a more sustainable food system. In agriculture, more than half of PepsiCo's direct farmer-sourced agricultural raw materials, such as potatoes, whole corn, oats and oranges, were verified as sustainably sourced through its Sustainable Farming Program. The SFP promotes Integrated Pest Management and, at the end of 2018, 66% of farmers engaged through the SFP complied with the company's IPM requirement, with nearly 100 % compliance in the U.S. More than half the palm oil and cane sugar used were sustainably sourced. The company continues working toward its target to reach 100% by the end of 2020. Already, 100% of the chips in the North American Frito-Lay portfolio, including Lay's® and Ruffles®, were made from sustainably sourced North American potatoes. "As a global food and beverage leader whose products are enjoyed by consumers more than one billion times a day and that operates an agricultural supply chain touching 60 nations, we undoubtedly have a role to play in addressing the challenges of the modern food system, from climate change and resource scarcity, to packaging waste and income inequality," said Ramon Laguarta, PepsiCo's CEO and Chairman. "As we strive to use our global scale for good, we are deeply committed to accelerating progress in our sustainability agenda."

CDFA looks to enhance specialty crops, provide farmers with more resources. The California Department of Food and Agriculture (CDFA) is accepting proposals for the 2020 Specialty Crop Block Grant Program (SCBGP). Grant awards range from $50,000 to $450,000 per project and projects may last for up to two years and six months. Non-profit and for-profit organizations; local, state, federal, and tribal government entities; and public and private colleges and universities are eligible to apply. Each year, CDFA conducts a two-phase competitive solicitation process to award funds to projects that enhance the competitiveness of California specialty crops. Specialty crops include fruits and vegetables, tree nuts, dried fruits, horticulture, and nursery crops (including floriculture). Review the 2020 Request for Concept Proposals for detailed application instructions.

Phase I of the competitive process begins with the submission of concept proposals, which undergo both an administrative review and a technical review. Successful applicants will be invited to submit a detailed grant proposal in Phase II of the process. All applicants must register online with the Financial Assistance Application Submittal Tool (FAAST), https://faast.waterboards.ca.gov, to apply. Concept proposals must be submitted electronically using FAAST by Friday, October 18, 2019, at 5 pm PST. You can contact CDFA's Office of Grants Administration at (916) 657-3231 or grants@cdfa.ca.gov for additional information.

In addition, CDFA announced a new Farmer Resource Portal designed to assist farmers and ranchers by increasing access to information to help farming operations. The portal is available here: https://www.cdfa.ca.gov/farmerresources/ This webpage is a "one-stop shop" for farmers and ranchers to find information about available grants and loans including programs that prioritize funding for socially disadvantaged farmers, beginning farmers, female farmers, veteran farmers, and urban farmers. Additionally, there is a list of quick links to information to help farmers and ranchers better understand CDFA regulations and policies.

CDFA Secretary Karen Ross

"It is my hope that this site will be utilized by farmers, ranchers and the groups that work with them," said CDFA secretary Karen Ross. **"Most of the information was already available, but this portal makes it simple and easy to navigate, and it keeps all of the key information in one place."**

The Farmer Resource portal was developed under the tenets of Assembly Bill 1348 (Aguilar-Curry), the Farmer Equity Act of 2017. This law requires CDFA to ensure the inclusion of socially-disadvantaged farmers and ranchers in the development, adoption, implementation, and enforcement of food and agriculture laws, regulations, policies, and programs.

Farm Hands West: California Dairies promotes Girard

California Dairies, Inc. has promoted **Phil Girard** to senior vice president and chief financial officer, effective immediately. Girard will oversee the cooperatives' financial, accounting, treasury, information technology and risk management functions. Based at CDI's corporate headquarters in Visalia, California, he will report to **Andrei Mikhalevsky**, president and CEO. Bringing more than 25 years of financial and accounting experience with him to this role, Girard has an extensive background in dairy cooperatives and food industry companies. Girard has served as the Vice President of Finance for CDI since 2013.

The Wonderful Company and The Maddy Institute announced the winners of the 2019 Wonderful Public Service Graduate Fellowship. The fellows are as follows: **Benny Corona**, **Manpreet Kaur Sandhu**, and **Samantha Santamaria**. Born and raised in Lindsay, Calif., Corona is pursuing a Master in Public Policy at UC Berkeley's Goldman School. In the past few years, Benny has worked as a farm worker, community organizer, community development specialist, and political campaigner. His work is focused on the issues of humane immigration reform, environmental advocacy, and water access. Kaur Sandhu is pursuing a Master of Public Affairs at the University of Wisconsin, Madison. She was born and raised in Bakersfield, Calif., and founded the Jakara Movement's Kern County chapter, becoming the first community organizer in the region and creating a forum for long-neglected Punjabi Sikh youth voices. Santamaria is pursuing a Master of Social Work with a focus in health, mental health and disabilities from Columbia University, in New York City. Santamaria was raised in the town of Lindsay in Tulare County. She went on to pursue her bachelor's degree at the University of California, Berkeley and during her time as an undergraduate student, Samantha served as a health educator for socioeconomically disadvantaged schools that lacked health education.

Colin Woodall has been tapped to serve as the new CEO of the National Cattlemen's Beef Association. Woodall previously served as the vice president of government affairs. Woodall first joined NCBA in 2004 and succeeds **Kendal Frazier**, a 34-year NCBA veteran, who announced his plans to retire earlier this year. **Ethan Lane** has been selected to take Woodall's former position.

Shari Rogge-Fidler has been chosen as the new president and CEO of Farm Foundation. Rogge-Fidler is a fifth-generation farm owner from Nebraska, who began her career in London in financial services and then went to the Boston Consulting Group. She and her family launched and grew a branded gourmet organic food company, where she served as vice president of sales and marketing. Most recently, Rogge-Fidler was CEO of Family Farms LLC.

CoBank has chosen **Andrew Jacob** to succeed **Ann Trakimas** as its new COO. Trakimas is retiring from the bank at the end of year. Jacob currently serves as the bank's chief regulatory, legislative and compliance officer. Before joining CoBank in 2011, Jacob spent almost 25 years with the Farm Credit Administration.

Roquette has selected **Jean-Philippe Azoulay** to serve as vice president of its pea and new proteins business line. Azoulay succeeds **Pascal Leroy,** who has moved to a new leadership role within the company. Azoulay previously worked as global director of DuPont's Nutrition Business and most recently as director general of the European Crop Protection Association.


Shari Rogge-Fidler

The Mahindra Group has opened a new Washington, D.C., office and selected **Dilip Sundaram** to lead its efforts.Sundaram currently serves as president of corporate affairs-Americas.

Clinton Griffiths is the new Editor of Farm Journal magazine. He's been hosting AgDay television.

Susan Skiles Luke is now the deputy director of external communications, North America, for Bayer Crop Sciences. Skiles Luke served as an independent communications consultant for Bayer for the past two years. Before that, she was the editorial director at Farm Journal Media.

Devry Boughner Vorwerk has started her own company called DevryBV Sustainable Strategies, offering strategic communications and engagement strategies to corporate leaders. Boughner Vorwerk previously served as the corporate vice president of global corporate affairs at Cargill.

David Townsend is a new project coordinator in the department of leadership, education, and engagement at American Farm Bureau Federation. Townsend studied plant science at the University of Delaware.

Shiloh Perry left the American Farm Bureau Federation (AFBF), where she served as a media relations specialist since March 2018. She started a new job with the Texas Association of Counties. AFBF has not yet hired a replacement.

Katie Waldman is heading to the White House to become the press secretary in the office of the vice president. Waldman previously served as Sen. **Martha McSally**'s, R-Ariz., communications director.

L-R: Front row at the Organic Trade Association: Britt Lundgren, Doug Crabtree, Executive Director Laura Batcha, Kim Dietz, and Bob Kaake. Back row: Mark Squire, Avi Garbow, Tracy Favre, David Lively, Perry Clutts, Paul Schiefer, Ben Diesl, Melissa Hughes, and Michael Menes.

Veronica Bonilla has left the office of Rep. **Norma Torres**, D-Calif., where she served as press secretary. She now works at the Aerospace Industries Association of America as a media director.

The Organic Trade Association elected new board members at its annual meeting in Baltimore this past week. **Doug Crabtree**, owner-operator of Vilicus Farms, and **Melissa Hughes**, chief mission officer and general counsel for Organic Valley, were re-elected to the board. **Karen Jobb**, vice president of sales at Clif Bar & Company, and **Avi Garbow**, environmental advocate at Patagonia Works, were elected for their first terms on the board.

Best regards,

Sara Wyant

Editor
