

# Legal Review

Ag law experts review top legal issues affecting farmers.

Court decisions and changes in the law can have significant impacts on farm and

ranch businesses, according to two ag law experts who presented at a workshop at the

American Farm Bureau Federation's 2018 Annual Convention in Nashville, Tenn.

Tiffany Dowell Lashmet, assistant professor and Extension specialist in agricultural law with Texas A&M AgriLife Extension, and Paul Goeringer, Extension legal specialist at the University of Maryland, gave an overview of legal issues affecting farmers and ranchers, including the Waters of the U.S. (WOTUS) rule, dicamba drift,

**BLACKJACK FARMS, LLC**

## 2018 BULL SALE

**Saturday, March 3rd**

12 noon...at the ranch near Seminole, Oklahoma

**85 Fall 2016–Spring 2017 Bulls Sell**

**Angus & a select group of Simmental & SimAngus**

...Semen Tested & Fully Guaranteed

Over half the offering includes calving ease bulls with a BW EPD of less than +2. Bulls bred for gain & marbling!

All Angus bulls 50K tested & BVD tested

**SALE GUESTS: PFEIFFER ANGUS FARMS • McFERRAN FARMS**



**6215**

9/24/2016 • AAA +18820512  
Sire: EXAR Stetson 3704B  
MGS: GAR Predestined

CED 9 / BW 1.2 / WW 58 / YW 107 / MILK 41  
MARB 1.14 / RE .50 / \$W 74.48 / \$B 159.64



**6211**

9/13/2016 • AAA 18811116  
Sire: EXAR Denver 2002B  
MGS: EXAR 263C

CED 18 / BW 1.24 / WW 158 / YW 1106 / MILK 125  
MARB 1.57 / RE 1.45 / \$W 55.82 / \$B 123.73



**7101**

1/11/2017 • AAA 18936333  
Sire: Connealy Confidence Plus  
MGS: EXAR Denver 2002B

CED 3 / BW 2.4 / WW 79 / YW 145 / MILK 32  
MARB 1.07 / RE .35 / \$W 81.52 / \$B 185.71



**Stryker  
607D**

1/27/2016 • ASA 3120890 (PB Simm)  
Sire: W/C Loaded Up 1119Y

CED 9 / BW 1.1 / WW 57 / YW 81 / MILK 11  
MARB .04 / RE .87 / API 109 / TI 63  
Reserve Grand Champion  
Simmental Bull, 2017 Tulsa State Fair



**6196**

8/28/2016 • AAA 18820497  
Sire: EXAR Stetson 3704B  
MGS: Hoover Dam

CED 8 / BW 2.1 / WW 60 / YW 105 / MILK 25  
MARB .58 / RE .52 / \$W 58.35 / \$B 122.09



**6228**

9/23/2016 • AAA 18811120  
Sire: EXAR Denver 2002B  
MGS: Connealy Consensus 7229

CED 7 / BW 2.0 / WW 57 / YW 102 / MILK 25  
MARB 1.77 / RE 1.37 / \$W 52.50 / \$B 120.10



**7150**

2/5/2017 • AAA 18936351  
Sire: Basin Advance 3134  
MGS: Sitz Top Game 561X

CED 7 / BW 1.1 / WW 72 / YW 119 / MILK 46  
MARB 1.39 / RE .47 / \$W 95.96 / \$B 150.61



**6004D**

9/1/2016 • ASA 3253332 (1/4 Simm)  
Sire: BPF Special Focus 504  
MGS: FF 74-51 Big Slap X401

CED 13 / BW 1.2 / WW 69 / YW 117 / MILK 23  
MARB .57 / RE .44 / API 140 / TI 77

### Attorney shares how due process helps fight government red tape

To combat the ever-increasing number of burdensome government regulations affecting American farmers and ranchers, public interest law firms are working with the courts to reverse the trend of ignoring due process related to administrative rules.

“The courts often defer to agencies’ views of the facts, so [farmers and ranchers] lose their ability to challenge the facts,” said Tony Francois, senior attorney for the Pacific Legal Foundation, a public-interest law firm based in Sacramento, Calif. Francois addressed farmers and ranchers at a workshop at the American Farm Bureau Federation’s 2018 Annual Convention in Nashville, Tenn.

Francois’ focus has been the defense of property rights threatened by federal environmental statutes, namely the *Endangered Species Act* and the *Clean Water Act*. Francois said his firm was working to rebuild protections through recent and upcoming judicial decisions that would help those in agriculture going forward regain protections of due process.

The attorney reminded attendees that the intended purpose of America’s legal process was to ensure that no one branch or agency held all the power or made decisions in secret. The protections of due process are also designed to protect the accused against government power being used for improper motives.

Francois said that while the powers of enforcing the law and interpreting the law were separated intentionally, they often get put

*Blackjack*  
FARMS LLC



family owned for four generations

Keith & Janet Grissom

(405) 382-7678 • cell (405) 997-9678

Amber McFerran

(405) 382-2945 • cell (405) 919-5194

a.mcferran@yahoo.com

35824 EW 1140, Seminole, OK 74868

**P Pfeiffer Angus Farms**

“Quality Angus Cattle Since 1907”

John & Gaye Pfeiffer, John C. & Andy

Mulhall, OK • (405) 649-2425 • pfeiffer@agristar.net

John cell (405) 880-0862 • Gaye cell (405) 880-1993

John C. (405) 880-3699 • Colton Blehm (580) 822-5826



SALE MANAGER

Matt Sims (405) 641-6081

matt@mcsauction.com

www.mcsauction.com

Contact the owners or the sale manager to request your sale book.

Mark your calendar! BLACKJACK & GUESTS ANNUAL FEMALE PRODUCTION SALE • OCTOBER 13, 2018

a tentative settlement in the Syngenta corn class action lawsuits and “ag gag” laws.

### WOTUS

“Congress gave the EPA jurisdiction over Waters of the U.S., but didn’t define *Waters of the U.S.*,” said Lashmet. This left the definition up to the Environmental Protection Agency (EPA), but rather than interpreting the scope of the regulation, EPA expanded it with the 2015 WOTUS rule. Numerous lawsuits were filed,

back together in the administrative agencies.

“This was not what was originally intended,” Francois said.

Francois explained that administrative agencies have historically skirted this separation through delegation and deference. He elaborated that Congress often delegates to agencies the writing of their own rules, including deciding whether or not to hold hearings.

The judiciary will give deference to agencies as experts in their field, especially in terms of environmental laws. This becomes a problem when the agency presents the facts of their enforcement without a neutral decision-maker to ensure fairness for the other party.

“While the USDA has hearing officers outside of normal program staff, the EPA and Fish & Wildlife do not. They have decision makers who are on the staff. This is a problem,” Francois said. “Decision makers need to explain the decision process [of an enforcement action] and explain whose evidence was more persuasive.”

Despite the challenges of recent decades, Francois said there is evidence to suggest the courts are becoming more balanced.

“It could be an easy fix, just inserting text that requires a hearing instead of whenever a decision-maker receives evidence of a violation,” Francois said.

While other countries may have judicial systems that may be more efficient, Francois added, without the protections of due process, those systems are susceptible to abuse and corruption.

Farmers and ranchers looking for answers to specific questions related to their farm should contact a local legal representative.

and the 6th Circuit Court of Appeals stayed the rule in 2015. Farmers could be required to get a permit for a farm pond, with permit costs ranging from \$30,000 for a “simple” permit up to \$280,000 for a complex one, and with daily fines of \$37,500 for noncompliance. In 2016 the

Supreme Court heard a challenge, and a ruling was expected sometime in summer 2018.

That ruling came earlier than expected as the U.S. Supreme Court ruled Jan. 22 that federal district courts — not federal courts of appeals — have jurisdiction to

review the 2015 WOTUS rule.

“This Supreme Court decision brings greater clarity to an important issue that has bogged down the litigation over this and other *Clean Water Act* regulations for years,”

*(Continued on page 152)*

# L BAR L ANGUS

*We are in the people business;*

## AND WE SELL BULLS.

**20<sup>th</sup> Annual Bull Sale**  
**Thursday, March 29, 2018**  
**Imperial Auction Barn**  
**Imperial, NE 12:30 (MDT)**

*Selling Bulls*

*and*

*Heifers from:*

**Basin Payweight 1682**

**Bushs Easy Decision**

**Basin Payweight 107S**

**BSF Lotto**

**Connealy Consensus**

**B&B Identity**

**B&B Fort Knox**

**Cedar Ridge**

**Commando**

**Selling a pick  
of our 2017  
replacement  
heifers!**

# L BAR L ANGUS

**Todd & Donalyn Hasenauer**

**37703 S. Hwy. 25**

**Wallace, NE 69169**

**308-530-3568**

**308-387-4454**



**VIEW OUR SALE BOOK AND THE BENEFITS WE OFFER AT: [WWW.LBARLANGUS.COM](http://WWW.LBARLANGUS.COM)**

**Legal Review** (continued from page 151)

said Ellen Steen, AFBF general counsel. “That is a positive result, but it also creates uncertainty and confusion in the short term, because the Sixth Circuit must soon lift its nationwide stay of the 2015 rule.”

As of late January, EPA had not yet finalized its proposed rule to delay the

application of the unlawful and dangerous 2015 WOTUS rule while the agency considers whether to permanently repeal that rule.

Said Steen: “AFBF is considering its options to avoid application of the 2015 rule while EPA moves forward

with an appropriate long-term solution that provides clear rules and clean water without requiring a federal permit to plow a field.”

**Dicamba drift**

Goeringer said new EPA regulations

will force new labeling requirements for dicamba use. Only permitted, certified applicators who received dicamba-specific training can apply the product, and operators cannot spray if wind is higher than 10 miles per hour.

There are new recordkeeping requirements and more specific tank cleanout requirements. Dicamba can only be sprayed during daylight hours, and farmers must do additional checks for sensitive crops before spraying. Other labeling requirements from 2017 will still apply, and new state laws and regulations have been adopted in several states.

**Farm protection laws, unfairly described as “ag gag” laws by opposition groups, have been passed in Idaho, Montana, Utah, North Dakota, Kansas, Missouri, Iowa and North Carolina.**

**Tentative Syngenta settlement**

In 2013, corn shipments were rejected at a Chinese port due to the presence of Viptera, and lawsuits were filed across the country by shippers and grain handlers, as well as farmers who did not plant the seed.

Many suits were consolidated in Kansas, where a jury awarded \$217 million to farmers. The court also certified nine initial class-action lawsuits in several states. Unconfirmed reports say a settlement could be \$1.5 billion, but any payout will take considerable time to be decided.

The message to farmers, said Lashmet, is to “pay attention to your mailbox for a mailing about opting in or out, or a notice of settlement.”

**‘Ag gag’ laws**

Farm protection laws, unfairly described as “ag gag” laws by opposition groups, have been passed in Idaho, Montana, Utah, North Dakota, Kansas, Missouri, Iowa and North Carolina. These laws make it a crime to trespass on or video ag operations or to seek employment with intent to video ag operations. The court affirmed some of these provisions and struck down others.

**Other legal issues**

Goeringer and Lashmet also gave brief updates on federal reserved water rights on insurance protection exclusions for manure, and urged farmers and ranchers to be informed about legal issues that could affect their businesses.

**Editor’s Note:** This article was provided by the American Farm Bureau Federation.

# 12th ANNUAL BRAND ANGUS PRODUCTION SALE

Sat., March 17, 2018 @ 4 PM | Lake City, MN

**Selling:**

40 YEARLING BULLS, 10 OPEN HEIFERS, 15 BRED HEIFERS

FED SENSIBLY, GOOD DISPOSITION, HIGH CARCASS MERIT, ULTRASOUNDED, SEMEN TESTED, GUARANTEED, MARKETING PROGRAM, FREE DELIVERY, MIDLAND WINNERS, DENVER WINNERS 42 YEARS

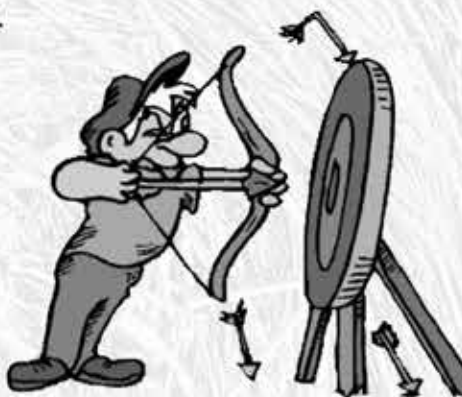
**Calves Sired by:** Jindra Multitude, WR Journey, Generation 2100, Connealy Shreck, VAR Discovery, GAR Prophet

**Dang, Missed Again! Tired** of missing those premiums?

**\$300+ per head premium**

**Put a Brand bull on your cows.**

Our cattle consistently grade 95-100% CAB® and 60-100% prime.



**#1 - Most affordable bulls west of the Mississippi**

**#2 - Offspring worth much more!**



**For more information contact:**

**BRAND ANGUS**

Frank or Jeff  
32199 Cty Rd 33 • Lake City, MN  
651-764-1281 | 651-764-1065  
brandangus@hotmail.com  
jjbrand28@hotmail.com

Watch and bid online at [dvauction.com](http://dvauction.com)

