

Agricultural Law Hot Topics

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Category Archives: Estate Planning

January 29, 2021 Weekly Round Up
Posted on January 29, 2021 by tiffany.dewell
Happy Friday! It's been a busy week here as I have been working with several of my colleagues in the Texas A&M Agricultural Economics Department on a series of educational videos on the legal and economic issues related to hemp production. If this is a topic of interest to you, be sure you subscribe to this blog as we will be releasing our videos and written materials within the next month! Here are some of the ag law stories in the news over the past couple of weeks....
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January 15, 2021 Weekly Round Up
Posted on January 15, 2021 by tiffany.dewell
Happy 2021, friends! We hope you all had a happy, healthy holiday and we are excited to be back for our first Weekly Round Up of the year. Here are some of the major agricultural law stories in the news over the past couple of weeks. * Lawsuit filed seeking to overturn recent dicamba registration. On December 22, several environmental groups filed suit against the US Environmental Protection Agency challenging the recent approval of the use of over-the-top dicamba products through 2025. Specifically, the lawsuit claims that the...

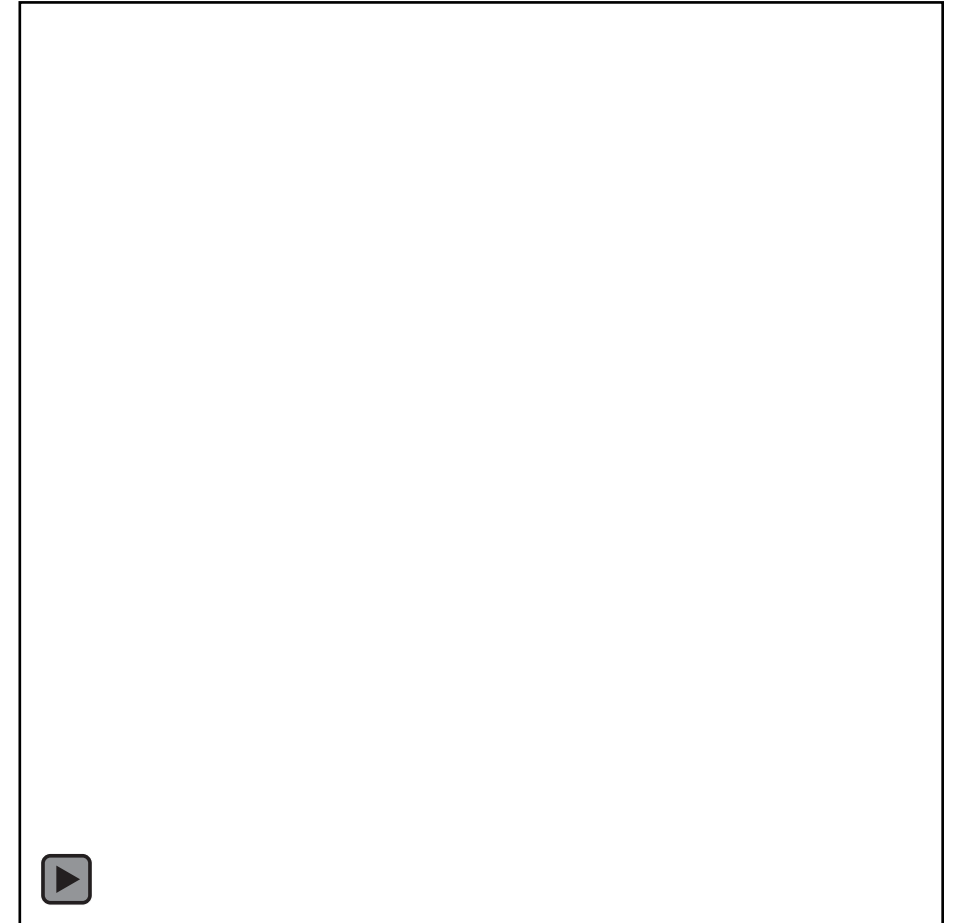
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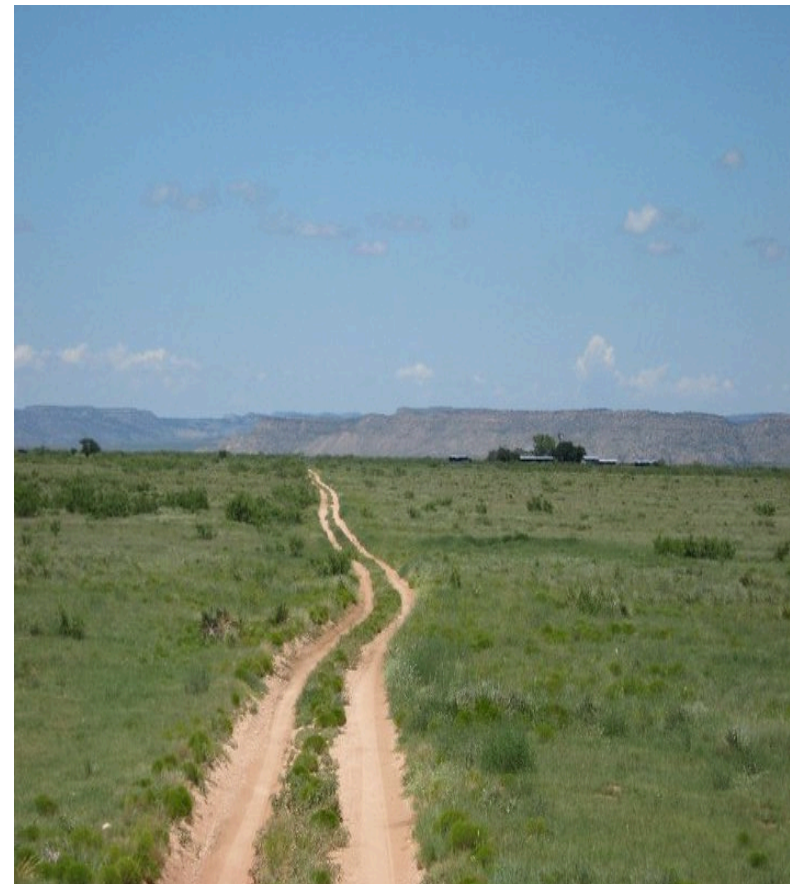
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Roadmap

- Texas Farm Animal Liability Act Update
- Dicamba Debacle
- Solar Issues
- Honorable Mentions



Farm Animal Liability Act Update



FALA Summary

- Essentially designed to protect farm animal owners from inherent risks associated with farm animal activities.
- “Any person, including a farm animal activity sponsor, farm animal professional, livestock producer, livestock show participant, or livestock show sponsor, is not liable for...damage...if the damage results from the dangers or conditions that are an inherent risk of a farm animal activity or the showing of an animal on a competitive basis in a livestock show...”
- Subject to several exceptions

James v. Young

- Young family invites James family over to the ranch, child injured.
- Negligence suit filed, FALA raised as defense, exception claimed.
 - Defendant provided animal to the person and did not make a reasonable and prudent effort to determine ability of participant to safely engage in activity & to safely manage the animal
- Trial court sides with landowner—grants summary judgment. Appellate court affirms.

Waak v. Zuniga

- Ranch employee is killed while moving bull for employer on ranch.
- Employer was non-subscriber to worker's compensation.
- Employee's family sues for negligent hiring and training.
- Employer raises FALA as defense.
- Trial court dismissed the case.
- Appellate court find FALA applies as a defense only in case with injured independent contractors, not injured employees.
- Employer appeals.

Waak v. Zuniga

- Texas Supreme Court rules in favor of the employee.
- Holds that the FALA does not apply to “ranchers or ranch hands.”
- Court says language “confines the statute’s protections to the contact of shows, rides, exhibitions, competitions, and the like.”
- Two Justices dissented—say the plain language of the statute says “any person...is not liable.”

HB 1078

- Introduced by Brooks Landgraf (R – Odessa)
- Would modify FALA to essentially change result in future *Waak* case
 - Adds in “breeding, feeding, or working animals as a vocation” to definition of “farm animal activity”
 - Expressly lists “farm or ranch owner or operator” as protected person
 - “Participant” definition expanded to include persons within the scope of employment as a farm or ranch employee or engagement as an independent contractor by a farm or ranch owner/operator
- Currently no action taken

Dicamba Debacle



Dicamba Drift

- 2015: Monsanto begins selling dicamba-resistant cotton & soybean seeds.
- Nov. 2016: EPA approves dicamba for over-the-top use.
- Lawsuits!
 - Drift complaints and lawsuits abound for post-2015 growing seasons complaining of drift & challenging registration.
- Drift cases around the country.
 - *Bader Farms v. Monsanto*: \$265MM award for peach farmer during 2015-16 growing season claiming negligent design, civil conspiracy. On appeal.
 - *In re dicamba MDL*: Class action claiming drift issues pre- and post-release of Xtendimax.

Registration Cancellation

- June 2020: 9th Circuit vacates registration for XtendiMax, FeXapan, Engenia.
- Panic ensues.
- EPA issues cancellation order with existing stocks provision to allow use of existing stocks through July 2020.
- Products conditional registration expired at the end of 2020 growing season anyway, so had to re-apply.

Re-Registration

- November 2020: EPA issues re-registration for Xtendimax, Engenia, Tavium through 2025 with additional restrictions.
 - Nationwide July 30 cutoff date
 - Increased buffer
 - Required use of buffering agent
 - Simplified label
- Lawsuits!
 - American Soybean Association & PCG – too restrictive.
 - National Family Farm Coalition – not restrictive enough.
- February 2021: Corteva announces it will no longer sell FeXapan in the US.

Settlement

- December 2020: Bayer announces \$400 million settlement
 - Only applies to soybean farmers who can document yield loss from 2015 – 2020.
 - Only applies to Bayer as defendant.
 - May 28, 2021 claims deadline.
- Non-soybean crop or plant injury in settlement negotiations with Bayer.

Solar Issue



Lyle v. Midway Solar

- 315 acres in Pecos County.
- Lyle owns portion of mineral rights.
- Drgac owns surface and signs solar lease.
- Leasee attempted to get waivers from mineral owners (failed).
- Lease amended to identify designated drilling site tracts.



Lyle v. Midway Solar (continued)

- Lyle sues claiming breach of 1948 mineral lease & trespass to mineral interest because they denied reasonable access to 70% of surface.
- Court rules in favor of Drgac and Solar company.
 - Accommodation doctrine does apply.
 - Attempt to develop required for legal remedy under AD.
 - No trespass because both parties have rights to use the surface.
 - Breach of contract claim fails because Lyle was never precluded from mineral development.
- Lyle is appealing to Texas Supreme Court.

Honorable Mentions

- WOTUS definition battle continues.
- Does high speed rail have eminent domain authority?
- Legal issues related to hemp production in Texas
- Beef checkoff litigation
- North Carolina nuisance settlement
- Application of “functional equivalent” standard from *Maui County* case.

Thank you!

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