

Top Ag Law and Tax Developments of 2022 – Numbers 4 and 3

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Today's article is another installment on what I believe to be the Top 10 developments in agricultural law and agricultural taxation of 2022. Today, I look at developments number four and three.

No. 4– Economic Issues

In general. Economic issues impact daily decision-making for farmers and ranchers. These issues also impact tax and financial planning. During 2022, economic issues impacted farms and ranches to a great degree. Price inflation triggered by economic policies increased the price of fossil fuels which, along with other policies produced wage inflation. In addition, massive deficit spending resulted in a quintupled the money supply which created excess demand that further increased inflation. In addition, poor policy past policy choices by the Federal Reserve kept interest rates at artificially low levels further increasing demand and increasing inflation. Beginning in the first half of 2022, the Federal Reserve started to increase interest rates to decrease demand and reduce inflation. However, further deficit spending by the Congress enacted into law in August of 2022 will largely offset the impact of the Federal Reserve's interest rate increases with the result that, as of the end of 2022, inflation was anticipated to continue with the possibility of decreased demand, a scenario not unlike the economic situation of the late 1970s.

All of these political/economic choices have implications for farmers and ranchers. Crop production, energy issues, monetary policy, issues in the meat sector, water issues west of the sixth Principal Meridian, and unanticipated outside shocks have farm-level impacts that professional advisors and counselors need to account for when representing farm and ranch clients.

Specific points. Several specific economic points from 2022 are listed below.

- The war in Ukraine has had a major impact on global grain trade and created additional issues for U.S. farmers and ranchers. Russia and Ukraine are leading exporters of food grains. One estimate is that worldwide food and feed prices could rise by 22 percent which could, in turn, cause a surge in malnutrition in developing nations. Since the war started, total world food output has decreased, resulting in a sharp drop in food exports from exporting countries. Other food exporting countries have announced new limitations on food exports (or are exploring bans) to preserve domestic supplies. This will have an impact on international grain markets and will likely have serious implications for the world's wheat supply. The extent of such disruptions remained unknown at the end of 2022.



- The demand for beef remained strong in 2022. But, a major issue was the disconnect between beef demand and the beef producer. This fact, along with significant drought in much of the major cattle producing areas signaled producers to decrease herd size. During 2022, the Congress was considering legislation focused on providing more robust and transparent marketing of live cattle.
- Pork demand was not as impressive of beef, but improved during 2022. Export demand dropped primarily due to China which caused U.S. pork production to decline along with pork values.
- Poultry, demand remained strong and flock sizes decreased largely because of the presence of Avian Flu. Toward the latter part of 2022, retail egg prices increased substantially.
- **Water issues.** West of the Sixth Principal Meridian, access to water is critical for the success of many farming and ranching operations. During 2022, a dispute continued to brew between Colorado and Nebraska over water in northeast Colorado that Nebraska lays claim to under a Compact entered into almost 100 years ago. Water access and availability will continue to be key to profitability of farms and ranches in the Plains and the West.
- **Land values; machinery and input costs.** Farm and ranchland values remained strong during 2022, and input, machinery costs and land values continued to outpace inflation. For those farmers that were able to pre-pay input expenses in 2021 for 2022 crops, much of the price increase of inputs could be blunted until another round of inputs were needed in late 2022 for the 2023 crop. Also, many short-term loans were locked in before interest rates began rising. That story will also likely be different in early 2023 when those loans are redone.

During 2023, the biggest risks to agriculture will continue to be from outside the sector. Unexpected catastrophic events such as the war in Ukraine, whether (or when) China will invade Taiwan, domestic monetary and fiscal policy, political developments at home and abroad, and government regulation of key segments of the economy that impact agricultural activities remain the biggest unknown variables to the profitability of farming and ranching operations and agribusinesses.

No. 3 – Endangered Species Act regulations

In early 2022, the Environmental Protection Agency (EPA) announced a new policy regarding its Endangered Species Act (ESA) responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The ESA requires federal agencies to determine whether an agency action “may affect” any species or habitat protected or designated under the ESA. If an agency determines that the an action is “likely to adversely affect” protected species or habitat, the agency must consult with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service to determine mitigation measures. The EPA administers the FIFRA, and the EPA now considers practically every decision it makes under FIFRA to require consultation in accordance with the ESA. In late 2022, the EPA published its policy plan focusing on ESA mitigation for FIFRA pesticide registration reviews.

During 2022, additional ESA regulations were changed or modified, many of which will potentially negatively impact agricultural activities on private land. For instance, “habitat” is no longer specifically defined, and the Critical Habitat Exclusion Rule was rescinded. This will make it easier for the USFWS to



designate critical habitat for protected species under the ESA. Much critical habitat is on private property. The USFWS also continued the process of revising its Listing Rule.

Upon enactment in 1973, the ESA barred the “taking” of endangered species. The “taking” prohibition only extended to “threatened” species if the Interior Department deemed it necessary and advisable for the conservation of the species. In 1975, the Interior Department, contrary to the statute, issued a “blanket rule” extending the prohibition to all threatened species, unless it adopted a special rule relaxing the prohibition for a particular species. In essence, the blanket rule provided [no meaningful distinction](#) between regulations for species that are listed as threatened or endangered.

The Trump Administration restored the ESA’s distinction between the regulation of endangered and threatened species by repealing the blanket rule. The move aligned the practice of the Interior Department with that of the Commerce Department (which manages marines species and never had a blanket rule). The change applied prospectively only, and no species lost any protection due to the change. The restoration of regulatory distinctions between endangered and threatened species is designed to better align the incentives of landowners with the interests of rare species. By repealing the blanket rule, burdens imposed on landowners will increase if species decline and relax as they recover.

While the blanket rule remained in effect during 2022, the USFWS is in the process of rescinding the rule. Expect legal challenges to this action which is contrary to the statute and congressional intent to happen once the rule is formally rescinded.

Conclusion

Next time I will look at developments two and one.

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