



California Association of Wheat Growers

Newsletter

September 30, 2016

**Thank you for your commitment to
the future of agriculture and our membership.**

California Wheat Collaborator Meeting

Save the Date

The annual California Wheat Collaborator Meeting will be held on **Wednesday, October 12th, 2016** at the U.C. Davis Buehler Alumni Center located across the arboretum from Mark Hall and next to the Mondavi Center, Davis California. Please mark your calendars and Save the Date.

State Legislative Update



Today is the final day for the Governor to act upon the 789 bills sent to his desk during the last few days of the legislative session. This week was busy for labor and energy legislation. Below is an update on some of the key labor legislation passed this year.

2016 has been an exceptionally active year for labor and employment issues. Issues taken up by the state Legislature this year run the gamut from new protected leave mandates; overtime for agricultural workers; workers' compensation reform and a new state run retirement savings programs for private sector workers. All of the bills below have been signed or are on Governor Jerry Brown's desk for action. These bills include:

- AB 1050 carried by Assembly Member Evan Low (D-Campbell) was vetoed by the Governor on September 27, 2016. The proposed law adds new notification requirements for California Division of Occupational Safety and Health Administration, (Cal/OSHA) conveyance variance (elevators, lifts, etc.) applicants, creating broad new precedent for who must be notified and

who can be party to Cal/OSHA proceedings.

- AB 1066 will phase-out the overtime exemption for agricultural workers. This legislation was one of the most controversial of the session. Originally failing on the Assembly floor, the author Lorena Gonzalez did a procedural action called a "gut and amend" and reinvigorated AB 1066. The bill will require overtime for agricultural field employees after 8 hours in a day and 5 days worked in a week. The requirements will be phased in over 4 years. Late amendments provide employers under 25 employees with an additional 3 years to comply. Signed by the Governor. (Chapter 313, Statutes of 2016)
- AB 1676, authored by Assembly Member Nora Campos (D-San Jose), is currently on the Governor's desk. AB 1676 provides that a job applicant's prior salary cannot, by itself, justify any disparity in compensation.
- The Governor has signed into law AB 2337 by Assembly Member Autumn Burke (D-Inglewood) that mandates employers of 25 or more employees must provide written notice to employees of their rights to take protected time off for domestic violence, sexual assault or stalking. This new law requires employers to inform each employee of his or her rights upon hire and at any time thereafter upon request by the employee. The Labor Commissioner will develop a form for the notices by July 2017. (Chapter 355, Statutes of 2016)
- Governor Brown has signed AB 2535 authored by Mark Ridley-Thomas (D-Los Angeles) that sets in statute an important clarification that an employer must only track hours worked and record those hours on an itemized wage statement for hourly, non-exempt employees. This ensures that employers do not have to track and record salaried exempt employee hours. (Chapter 77, Statutes of 2016)
- A new stackable protected leave measure is also on the Governor's desk. SB 654 by Senator Hannah Beth Jackson (D-Santa Barbara), if signed, would affect California employers with 20 or more employees by imposing yet another protected leave mandate. This proposed law would require the affected employer to offer six weeks of protected leave for baby bonding. This proposed mandate can be stacked on top of the current state requirement that employers with 5 or more employees allow 16 weeks of protected pregnancy-related leave.
- SB 1001 by Senator Holly Mitchell (D-Los Angeles) is also on the Governor's desk. This measure seeks to add new legal liabilities for employers by making it unlawful for an employer, in the course of satisfying specified work authorization requirements of federal law, to request more or different work authorization documents than are required under specified federal law or to refuse to honor documents tendered that reasonably appear to be g

enuine from a job applicant. Employers would also be prohibited from attempting to reinvestigate or re-verify a current employee's authorization to work. If anyone is found to have done any of the above, they will be subject to up to a \$10,000 penalty imposed by the Labor Commissioner and liability for equitable relief.

- SB 1063 by Senator Isadore Hall (D-Compton) also awaits action by Governor Brown. This bill proposes to amend the Equal Pay Act to prohibit employers from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work.
- Still awaiting action by the Governor is SB 1167 by Senator Tony Mendoza (D-Artesia) that orders the California Division of Occupational Safety and Health Administration, (Cal/OSHA), by January 1, 2019, to propose to the state Occupational Safety and Health Standards Board, a heat illness and injury prevention standard applicable to workers working in indoor places of employment. The bill does not prohibit the division from proposing, or the standards board from adopting, a standard that limits the application of high heat provisions to certain industry sectors.
- One of the most significant pieces of employment related legislation is SB 1234, by Senate President Pro Tem Kevin DeLeon. SB 1234 is still on Governor Brown's desk. This bill establishes the Secure Choice Retirement (SCRSP) program for all covered employees. The provisions of SB 1234 mandate the creation of savings accounts for workers whose employers don't offer a pension, 401(k) or other retirement savings option and would be automatically enrolled. The program will be phased in over a 36 month period and overseen by the new Secure Choice Retirement Savings Investment Board.
- Within 12 months of the program opening for enrollment, employers with more than 100 employees and no retirement savings plan must help their employees to automatically enroll their employees that do not opt out of the program.
- Employers with 50-99 employees would have 24 months to enroll workers; and
- Employers with 5-49 employees would have 36 months.

Other key provisions are:

- Employees have the right to opt out of the program.
- Allows the Board, unless otherwise specified by the employee, to set the initial employee contribution into the SCRSP between 2% and 5% of their gross wages.
- Employers always retain the right to provide their own employer-sponsored retirement plans in lieu of SCRSP.
- The SCRSP Board may implement annual automatic escalation of employee contributions of up to 8%, but cannot rise more than 1% in a year.
- An employee may opt out of automatic escalation and set his or her contribution rate at a level determined by the employee.

In conclusion, employers will need to keep abreast of the Governor's action on the legislation above. Most of the bills become effective January 1, 2016, unless otherwise noted. Also, many of these bills, if signed, will require employers to change their employment handbooks or provide new notices to employees about the changes in law.

More information on the specific language in these bills can be found here. http://www.legislature.ca.gov/the_state_legislature/bill_information/bill_information.html

Employers are also advised to talk to their HR specialists or attorneys in order to ensure their employment policies, procedures, training and notices meet the standards set by the new laws.

DPR Announces Pesticide Restrictions Near Schools and Day Care Centers

DPR is proposing a new regulation that would give further protections to children when agricultural pesticides are applied close to schools and child day-care facilities. The full proposed regulation release September 30 can be found here. www.cdpr.ca.gov/docs/legbills/rulepkgs.htm.

Many K-12 schools and child day-care facilities are located near farming operations and increasingly teachers, parents and the public want to know whether the chemicals being applied could adversely affect them.

While many counties in California currently have varying requirements for notification of certain pesticide applications near schools, the proposed regulation would be the first statewide standard. The regulation would affect about 3,500 schools and child day-care facilities and involve approximately 2,500 growers in California.

The proposal was informed by a series of public workshops held over the last year in five locations around the state to gather input from school administrators, growers and applicators, parents, teachers and the community. DPR is seeking further public comment on the proposed regulation by November 17, 2016, and a final regulation is expected to become effective in September 2017.

The proposed regulation would do the following:

- Prohibit many pesticide applications within a quarter mile of public K-12 schools and child day-care facilities from Monday through Friday between 6am and 6pm. These include all applications by aircraft, sprinklers, air-blast and all fumigant applications. In addition most dust and/or powder pesticide applications such as sulfur would also be prohibited during this time.
- Require California growers and pest control contractors to notify public K-12 schools and child day-care facilities and county agricultural commissioners

(CACs) when certain pesticide applications are made within a quarter mile of these schools and facilities.

Under the proposed regulation, California growers would be required to provide two types of notifications to a school or child day-care facility:

(i) An annual notification that lists all the pesticides expected to be used during the upcoming year. This must be provided to the school or child day care facility administrator by April 30 each year. The notice must include among other things:

- The name of pesticide products (and the main active ingredient) to be used
- A map showing the location of the field to be treated
- Contact information for the grower/operator and the County Agricultural Commissioner
- The web address for the National Pesticide Information Center where additional sources of information or facts on pesticides may be obtained.

(ii) An application-specific notification which must be provided to the school or child day-care facility 48 hours before each application is made. This begins Jan 1 2018 and must include among other things:

- Name of pesticide products (and the main active ingredient) to be used;
- Specific location of the application and the number of acres to be treated;
- Earliest date and time of the application.

California has varying microclimates and schools have various extracurricular school activities. Therefore, the regulation will allow the individual school or child day-care facility, the grower and the CAC to develop an alternative written agreement, to which all three parties must consent, that provides equal or more protection than the regulation. This agreement will be enforced by the CAC.

State Water Board Releases Draft Flow Objectives for San Joaquin River; Salinity Objectives for the Southern Delta

The State Water Resources Control Board released a draft proposal to update water quality requirements for salinity in the southern Delta and water flows in major tributaries to the San Joaquin River (the Stanislaus, Tuolumne, and Merced Rivers), which drain into the southern Delta.

The refined salinity requirements reflect updated scientific information about salt levels. The new flow requirements for the San Joaquin River's major tributaries recognize the role upstream water flows provide for habitat and migratory signals for native fish species. In summary, the draft proposes increasing flows for fish and wildlife and adjusts the salinity requirements to a slightly higher level to

reflect updated scientific knowledge.

The San Joaquin River is a key part of the Bay-Delta system. Flow objectives on the San Joaquin River have not been updated since 1995. Since that time salmon and steelhead, including those that spawn and rear in the San Joaquin's tributaries and migrate through the Delta to the Pacific Ocean, have steeply declined. The proposed flow objective for the Lower San Joaquin River and its tributaries is designed to protect at-risk native fish species by leaving more water in the rivers during the critical February through June time period.

Unimpaired flow is a measure of the total amount of water that would flow down a river if it was not diverted or stored in a reservoir. The staff proposal recommends a range of between 30 and 50 percent of unimpaired flow, with a starting point of 40 percent.

Stakeholders are encouraged to work together to present the State Water Board with voluntary agreements that would implement Bay-Delta Plan objectives for fish and wildlife beneficial uses. Voluntary agreements to implement non-flow actions that improve conditions for fish and wildlife may reduce flows needed within the 30 to 50 percent range.

The staff proposal also includes a recommendation to revise salinity objectives in the southern Delta. High concentrations of salt in irrigation water can reduce crop yields. However, studies of the most salt-sensitive crops grown in the southern Delta show that the existing April through August salinity objective is lower than what is needed to reasonably protect agriculture.

The new objective, coupled with the continuation or improvement of management actions to respond to salinity, such as the maintenance of adequate water levels and requirements on federal and state water project operations, in conjunction with increased San Joaquin River flows, would provide the same or better conditions for agricultural uses in the southern Delta as currently exist.

Comments on the draft SED are due on Nov. 15 of this year. A public hearing will be held over three days beginning on Nov. 2 in Sacramento, continuing Nov. 4 in the Modesto area, and concluding Nov. 10 in Sacramento.

Federal Policy Update



CR Approved, No New USDA Loan Money; Congress Recesses until After Election

The Senate and House quickly approved a stop-gap funding bill this week to keep the federal government operating until December 9, and both chambers immediately headed back to the campaign trail,

recessing until after the election. President Obama signed the bill almost immediately upon receiving it at the White House.

The House returns from recess November 14; the Senate returns November 15, and they'll immediately continue hammering together an FY2017 omnibus spending package for approval during the lame duck session.

The short-term funding package does not include additional money to help USDA direct and guarantees operating loan programs for economically distressed producers, and doesn't provide permission for the department to shift funds or authorities to meet loan demand. Critics, including the American Farm Bureau Federation (AFBF), the National Farmers Union (NFU) and others, say this means the Farm Service Agency (FSA) will run out of money to pay all approved loan applications before the CR runs out in December. USDA reported this week it has 916 loan applications pending with a value of about \$119 million, but more applications are received daily, and Secretary of Agriculture Tom Vilsack said this week he's confident USDA can cover the loan demand. Ag groups are now focusing on getting more money and authority flexibility included in the FY2017 omnibus spending package.

Also not included in the CR is extra money for USDA to conduct congressionally mandated studies in connection with recently enacted legislation requiring on-label disclosure of access to information relative to genetically engineered ingredients.

The continuing resolution (CR) keeps the federal government operating at spending levels included in the FY2016 omnibus package approved last December. While some call it a "clean CR" for its lack of new policy riders, the bill includes \$1.1 billion in new money to fight the Zika virus, and \$500 million to aid the victims of the recent Louisiana flooding and other natural disasters.

The Senate hang-up was new money to fund modernization of urban water systems, including the system in Flint, Michigan. Bickering over not including the water funding in the CR, particularly after the disaster assistance money was added, derailed the Senate CR more than once. However, the Senate has also included \$220 million in water system repair money in its version of the Water Resources Development Act (WRDA) approved last week, and House Speaker Paul Ryan (R, WI) and Minority Leader Nancy Pelosi (D, CA) cut a deal to include a \$170-million amendment to the House WRDA bill approved this week. The final WRDA package - and reconciliation of the ultimate water system monies--- will be dealt with during the lame duck session.

Stabenow Goes "Urban Ag," While Industry Worries about Keeping the Next Farm Bill Intact

Senate Agriculture Committee ranking member Sen. Debbie Stabenow (D, MI) this week laid down her marker by announcing plans to introduce legislation to include what she calls "urban farming" in the 2018 Farm Bill, though she admits her new bill is more a conversation-starter than a sure thing.

Meanwhile, national agriculture groups joined arms with national anti-hunger groups this week in Washington, DC, to figure out how best to keep the coming Farm Bill intact, even as increasing conservative noise calls for a stripped down bill devoid of food stamp and other feeding program monies.

The American Soybean Assn. (ASA) and Feeding America co-chaired the meeting of producer organizations held at the Washington headquarters of the American Farm Bureau Federation (AFBF), and a number of organizations with specific program concerns with the omnibus agricultural legislation attended, including produce growers, dairy, rice and sugar groups.

Several participating groups, including the National Council of Farmer Cooperatives (NCFC) which convened a smaller group last June on the same topic, strategized on how best to target House members particularly who have publicly argued to split the Farm Bill, while coming up with a coalition strategy to get as many ag, agribusiness, nutrition and anti-hunger groups as possible to sign on to a letter of "shared principles."

It's expected the ag groups will also begin development of communications strategies, as well as education pieces for distribution on Capitol Hill.

Stabenow's legislation would set up a new office of urban agriculture at USDA, expanding loan programs to help "city farmers." Changes would focus on incentives for urban farm cooperatives, research funding and access to loan and risk management programs. Most of the new urban agriculture benefits, however, will be achieved by tweaking existing conventional farm programs to recognize the needs of the growing urban farm sector.

State Ag Chiefs Come out of Annual Meeting Focused on Farm Bill

Demonstrating heretofore grit, state agriculture secretaries and commissioners emerged from their annual meeting last week with a whole list of things they want, starting with greater federal-state cooperation on rulemakings and including new approaches to how the next Farm Bill will be written.

With producer groups and activists beginning to ramp up Farm Bill rhetoric, the National Association of State Departments of Agriculture (NASDA) waded into the fray early, listing their priorities for the next Farm Bill, which could be drafted as early as next year.

First on the farm policy agenda is NASDA's belief the nutrition title - with its food stamp program - should remain part of the omnibus agriculture policy package.

Then comes a reworking of the Margin Protection Program (MPP) for dairy producers, which NASDA said during debate on the 2014 Farm Bill should have allowed USDA to lower payments to producers to counter overproduction. The current program, the group said, may help protect against market failure, it doesn't help when farmers hit long patches of low prices. The group stopped short of recommending changes at this point, but said it should be one of the leaders in the debate.

Water quality issues were also top of mind for the state ag executives, with special attention on runoff issues. Changing the conservation title might be one way to address the problems, but funding remains a sticking point when asking farmers to implement costly remediation efforts without reimbursement.

The executives also want to see a "land transition title" added to the bill, one that tackles issues surrounding the ceding of land by aging producers to younger farmers just entering the lifestyle. NASDA point to an estimate that about 10% of farmland will change hands in the next five years, but access to land remains one of the biggest impediments to new farmers. The section could also be used to address what NASDA called "workforce development" challenges and labor issues.

On disaster funding, NASDA wants to see a shift away from petitioning the federal government for financial assistance in the wake of a natural disaster or extreme weather. Each time a state needs major disaster assistance, it has to go to Washington for "ad hoc funds," which creates significant uncertainty. They also want to see income caps on disaster assistance removed.

States, Business Groups Bring Suit Against DOL, as House Votes to Delay Federal Overtime Rule

A group of business organizations, the U.S. Chamber of Commerce and 21 state attorneys general - led by Texas and Nevada - this week filed federal lawsuits to block or kill the Department of Labor's (DOL) controversial overtime threshold rulemaking that kicks in on December 1.

In a related development, and in a largely symbolic move this week, the full House voted 246-177 to delay the controversial Department of Labor rewrite of federal overtime pay rules. The new effective date is June, 2017, for a rulemaking set to take effect in December.

The impending rule requires employers to pay overtime to any salaried employee earning less than \$47,500 per year, double the current threshold for overtime payments of \$23,660, set 12 years ago. DOL Secretary Thomas Perez said the lawsuits are "obstructionist tactics" designed to block the administration from ensuring workers and managers are paid fairly when they work extra hours.

In their filing in a U.S. District Court in Texas, the 21 states claim the new overtime regulations are illegal because they would automatically raise wage rates every three years without congressional permission as the law now requires. Plaintiffs in the various suits also contend the new rule will force most employers to demote salaried management employees to hourly jobs, and create more part-time positions at the expense of full-time slots.

In the Senate, Sen. Jim Lankford (R, OK) introduced identical legislation to the House bill, designed to delay the effective date, with support from Sens. Lamar Alexander (R, TN) and Susan Collins (R, ME). However, the Senate is not expected to take up the bill, and even if it did, President Obama said he'll veto any legislation seeking to change the overtime rule.

Democrat supporters of the new rule say it will create more than 100,000 jobs and said the change was long overdue given the rule had not been modified since 2004. They said the bill if enacted would "take \$600 million out of the pockets of the more than 4 million workers" who'll get overtime protection on December 1.