

Beef labeling petition scoring signatures

By **CAROL RYAN DUMAS**
Capital Press

R-CALF USA is taking its fight to get mandatory country-of-origin labeling on beef and other products to consumers, who are seeing slim supplies in grocery stores.

The online petition states the president and Congress should immediately pass MCOOL for beef, pork and dairy products to strengthen national food security and help stimulate the economy in response to the COVID-19 crisis.

It has gained 250,000 signatures in seven days.

Bill Bullard, R-CALF's CEO, said the organization hasn't yet determined how many of the signatures might be from cattle producers. But he's betting a lot of the

signatures are from consumers.

"That was our goal," he said.

Consumers have been seeing empty shelves in grocery stores, which has caused them to focus on the food supply and wondering where it comes from, he said.

At the same time, meatpackers are bringing in foreign cattle and U.S. ranchers are being denied access to markets due to processing plant slowdowns and shutdowns, he said.

"They cannot get a bid," he said.

USDA reported meatpackers sourced more than 12,000 head of cattle from Canada over the last two weeks, he said.

"This is unconscionable," he said, adding some R-CALF members haven't been able to sell their cattle for the past five weeks.

Bringing in foreign cattle "has

displaced U.S. producers from our own domestic market," he said.

If MCOOL were in place today, consumers could immediately correct the situation by choosing to buy beef that is exclusively born, raised and harvested in the U.S., he said.

It would also help them avoid imported beef produced in foreign countries with ongoing disease problems, such as Brazil and Namibia, Africa — both known to harbor foot-and-mouth disease, he said.

MCOOL would put the choice in consumers' hands of where they want their beef to be born, raised and harvested, he said.

R-CALF helped pass the original COOL law in 2002. It was repealed for beef and pork in 2015, but remains a requirement

for several other food products. R-CALF has tirelessly tried to get it reinstated.

The goal now is to get half a million signatures on the petition to support legislation when it's introduced, he said.

R-CALF has been working with legislators and others campaigning for office who support the labeling, he said.

"We're seeing a resurgence of interest in restoring mandatory country-of-origin labeling for beef," he said.

The petition can be found at www.DemandUSABeef.com.

R-CALF has also launched a crowd funding effort to raise \$50,000 to bolster promotion and lobbying efforts to secure passage of MCOOL. People can donate at <https://fundly.com/demand-usa-beef>.



R-CALF USA CEO Bill Bullard says his organization is promoting an online petition calling for mandatory country of origin labeling on meat.

Supreme Court scales back scope of groundwater pollution ruling

By **MATEUSZ PERKOWSKI**
Capital Press

Groundwater will be regulated less strictly under the U.S. Supreme Court's new interpretation of the Clean Water Act compared to an earlier legal standard affecting several Western states.

The nation's highest court has rejected a more expansive understanding of groundwater as a channel for pollution that had been imposed by the 9th U.S. Circuit Court of Appeals.

For farmers and ranchers in the nine Western states under the 9th Circuit's jurisdiction, the reversal of the appellate court's decision potentially reduces their liability under the Clean Water Act — but experts say they still have plenty to worry about with the new legal understanding of that statute.

"It's better than it would have been had the 9th Circuit's decision stood. However, I'm skeptical as to how much better," said Damien Schiff, an attorney with the Pacific Legal Foundation, which supports property rights.

While the Supreme Court didn't consider groundwa-



The U.S. Supreme Court has ruled on a groundwater pollution case that's expected to have Clean Water Act implications for farmers.

ter to be as direct a route for unlawful pollution as did the 9th Circuit, it's nonetheless regulated as a conduit in a way that may prove problematic for agriculture, according to legal experts.

Farm organizations had hoped the Supreme Court would clearly state that groundwater can't serve as a "pipe" for pollution to other waterways regulated under the Clean Water Act, said Norman Semanko, an attorney representing irrigators with the Family Farm Alliance nonprofit.

"It's certainly a better test but it's not a bright line rule, which is what we advocated for," Semanko said of the Supreme Court ruling.

The specific dispute that

gave rise to the broader legal controversy over groundwater pollution pertains to a facility on the Hawaiian island of Maui, which injects partially-treated wastewater into wells.

In 2018, the 9th Circuit ruled the wastewater facility is liable under the Clean Water Act because pollutants seeping into the Pacific Ocean were "fairly traceable" to the injection wells, or the "point sources" of discharge.

Farm organizations feared that "basic agricultural activities," such as pesticide and fertilizer applications, would be subject to lawsuits, penalties and expensive permits under this legal standard.

The Supreme Court's 6-3 decision, written by Associate Justice Stephen Breyer, has now determined the 9th Circuit's "focus on traceability" vested the Clean Water Act with too much authority over groundwater.

In light of the "power of modern science," the 9th Circuit's interpretation may require permitting even for "the 100-year migration of pollutants through 250 miles of groundwater to a river," Breyer said.

On the other hand, the Supreme Court also rejected a competing legal interpretation from the U.S. Environmental Protection Agency, which argued the point source of discharge isn't regulated if pollutants pass through groundwater before reaching a navigable waterway.

Breyer said this understanding was "too narrow" because it would "risk serious interference with EPA's ability to regulate ordinary point source discharges."

Under the EPA's interpretation, polluters could simply move a discharge pipe back "a few yards" so that it first travels through "at least some groundwater," thus

opening a "large and obvious loophole" that wasn't intended by Congress, he said.

Instead, the Supreme Court has adopted a legal standard under which Clean Water Act permits are required when there's a "functional equivalent of a direct discharge" — requiring an analysis of the time and distance that pollutants must travel, among other factors.

Compared to the 9th Circuit's test, these criteria will require a stronger link to the point source of pollution to establish the need for a Clean Water Act permit, said Schiff of the Pacific Legal Foundation.

"Even if you could trace it back, that doesn't necessarily mean there's liability," he said.

The ruling's nationwide impact will particularly be felt by the agricultural industry outside the 9th Circuit, which wasn't subject to the appellate court's earlier ruling, said Semanko of the Family Farm Alliance.

"The door is now open for arguments that discharges to groundwater require a permit," he said.

However, the opinion isn't necessarily a reason to panic about Clean Water Act liability, as agriculture will still keep existing exemptions, such as for irrigation return flows, Semanko said. "This decision doesn't change that."

In less clear-cut cases, though, determining whether a violation has occurred may prove treacherous, said Tony Francois, an attorney with the Pacific Legal Foundation.

"There's not a formula that tells you: If it's this far away, then it's not regulated. Or if the pollutants move this slowly, it's not regulated," he said. "It depends on things that are the hardest about groundwater to answer."

The danger is that guidance from the EPA will be "over-inclusive" and regulate more people than necessary, Francois said. Meanwhile, testing the scope of Clean Water Act authority under the new ruling will likely be tempting for environmental groups.

"That's going to cost you a significant amount of money to defend if you get a citizen's suit like that," he said.

Malting barley association adds ABI Eagle to recommended list

By **MATTHEW WEAVER**
Capital Press

The American Malting Barley Association recently added ABI Eagle, a variety suited for irrigated production in Idaho and Montana, to its list of recommended varieties.

The variety was developed by Busch Agricultural Resources LLC.

The variety joins the association's list because of its quality and agronomic value, said Scott Heisel, vice president and technical director for the malting barley association.

"We're heading into planting season, so we want to make sure it's on the list," he said. "In case growers have questions about it ...

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it's good to have it on there."

The variety combines high malt extract with "very good" grain yield potential, according to the association. It has agronomic advantages with a short plant stature, resistance to lodging, early maturity, high test weight and good kernel plumpness.

The association typically releases its list in January. But every few years, a new variety might be added in the middle of the year, Heisel said.

Heisel expects the variety will ultimately prove to be "one of the major varieties,"

replacing some of Anheuser-Busch's older varieties.

The list is used to let growers know what the industry expects to be using in the coming crop year. Most malting barley is grown under contract.

Malting barley demand has been affected as brewers were impacted but coronavirus shutdowns, Heisel said. He pointed to the effect of COVID-19 stay-in-place orders on beer consumption, including the loss of key sales events such as St. Patrick's Day and March Madness.

"Right now this is short-term," he said. "The hope is we can bounce back from this fairly quickly, but it's certainly going to have some kind of impact."

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