

News from Washington: August 13-19

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### **WOTUS Is (Partly) Back**

Which streams and wetlands are protected under the Clean Water Act? The answer depends on where you're standing. On Thursday, a U.S. District Court in South Carolina [overturned](#) the Trump administration's recent attempt to delay the Waters of the U.S. rule, saying that the Trump administration had failed to offer the public a proper opportunity to comment.

So, as of Friday, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where federal court injunctions are still in place.

Environmentalists like Jon Devine of the Natural Resources Defense Council called the decision a “sharp rebuke to the Trump administration.” Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the administration “to take immediate steps to limit the impact of this dangerous court decision.”

The Justice Department is reviewing the decision, a spokesman said, and both sides broadly expect an appeal. But the fate of the delay rule could ultimately become moot if a federal district court judge in Texas grants a nationwide injunction request pending from three states.

The battle royale will be over the Trump administration's final rule to repeal WOTUS, and the EPA and the Army Corps of Engineers are expected to propose a replacement rule.

Geoff Gisler, the Southern Environmental Law Center attorney who brought the South Carolina case on behalf of local environmental groups, argued the court's decision has implications for that fight and “should give the agencies pause” as they move forward. “The agencies just aren't telling the public what they're doing,” he argued. “What this decision said was you can't just have a comment period, it has to be a meaningful comment period.”

You can see a map [here](#), courtesy of DTN/Progressive Farmer, showing which states are now under the jurisdiction of the WOTUS rule.

### **Mexico, U.S. Keep Moving to Wrap Up NAFTA 2.0**

It's been officially one year since trade officials from the U.S, Mexico and Canada first convened in Washington to reopen NAFTA talks. Although the U.S. vowed it would take only a matter of months, it's only recently that signs have emerged that negotiators are nearing a revamped agreement — at least between the U.S. and Mexico.

Representatives from the two countries are continuing talks today for the fourth straight week. And final trade-offs are being lined up to reach a deal, POLITICO has learned.

The nearing conclusion on NAFTA offers a glimmer of hope for American farmers and business owners who are feeling the weight of retaliatory tariffs and depressed prices as a result of a glut in many goods.

The U.S. is preparing to give up a controversial proposal that would allow for American fruit and vegetable growers to use seasonal and regional data to make the case that Mexico is selling produce at unfairly low prices during parts of the year. In exchange, Mexico would have to accept the U.S.' demands on autos, according to two sources with knowledge of the trade-off.

The seasonal produce proposal has been largely backed by Florida lawmakers, such as Sens. Marco Rubio and Bill Nelson, who argue that NAFTA has been a success at expanding other region's agricultural exports at the expense of Florida growers.

Significant portions of the negotiation remain unresolved — chiefly the so-called sunset clause, though there are others. The biggest outstanding issue is how long it takes before Canada will be brought back into the fold.

However, both the U.S. and Mexico are likely to keep talks moving. The political situation in both countries is such that each is more eager than ever to make a deal, setting up a scenario in which a major breakthrough could be on the near horizon.

For Mexico, the pressure has built as negotiators are pushing to wrap up a deal under the current Mexican President Enrique Peña Nieto's administration, which ends on Dec. 1. On the U.S. side, reaching even a bare-bones agreement before November midterms would offer President Donald Trump a political victory to tout in farm states on the campaign trail, placate free-trade Republicans and bring some relief to consumers who rely on two of the U.S.' biggest trading partners.

Wrapping up NAFTA would also allow U.S. trade officials to cross off a major to-do list on their agenda and dedicate more time to tackling what has been regarded as just the beginning of a protracted trade war with China.

"We're settling in for the long haul with China, so we really need to release the pressure in our backyard," said Dan Ujcz, an international trade lawyer who specializes in Canada-U.S. matters. "I think that's a driving force for the U.S.'s desire to get a deal right now."

### **Senate Whip Defends SNAP Work Proposal**

Sen. John Cornyn, the No. 2 Republican leader, said during a Thursday floor speech that he was "disappointed" the Senate-passed farm bill doesn't include "stronger reforms" to the Supplemental Nutrition Assistance Program. Although the Texas Republican said he was proud to have voted in favor of the Senate version of the legislation, he encouraged conferees to reconsider House Agriculture Chairman Mike Conaway's version, which would impose stricter work requirements on millions of able-bodied adults while spending billions on mandatory state education and training programs.

"During this record of low unemployment across the nation, it's not unreasonable to try to use this opportunity, which comes only once every five years, to take a look and ensure our federal dollars are being spent wisely," Cornyn said.

The Senate's play to leave SNAP largely untouched is complicated by the fact that President Donald Trump has endorsed the House proposal, particularly regarding work requirements.

Several Democrats reiterated this week that any farm bill that includes work requirements won't be enacted. "If they try to put those onerous requirements on SNAP it will not pass, and we will not get a farm bill passed," Sen. Doug Jones [said](#) during a town hall this week in Birmingham, according to the Alabama Political Reporter. "That is a poison pill that could derail the whole thing."

Rep. Cheri Bustos, who is on the conference committee, also said she saw little need to add such requirements. “More than 80 percent of the people who are on the nutrition program do have a job,” she said in an [interview](#) with the RFD Radio Network.

### **China Says U.S. Farmers May Never Bounce Back**

The U.S. and China trade relationship may never be the same, even if the trade tensions between the two countries eventually cool off. Its vice agriculture minister said over the weekend that China has other options to purchase and grow its own agriculture goods — indicating that American farmers could permanently lose their place in the Chinese market they have spent several decades building up, reports the South China Morning Post. China, the world’s largest buyer of soybeans, has been purchasing more of the crop from other countries, as well as exploring alternatives to feed livestock and encouraging farmers to plant domestic crops.

Negotiators from the U.S. and Mexico are entering their fourth week of resumed NAFTA talks as they push to wrap up the remaining bilateral issues.

But while Mexican Economy Secretary Ildefonso Guajardo has repeatedly said their teams are “making a lot of advancements,” the progress hasn’t been far enough along to invite Canada’s team back to the negotiating table. Canada’s date to return to the talks “will depend on the speed in which in the next few days or weeks we finish the U.S.-Mexico elements,” Guajardo said Friday.

This strategy to hold off on bringing in Canada could backfire. Without Canada’s team in Washington, the window is closing for NAFTA negotiators to deliver a deal in less than three weeks — the target date that Mexican and U.S. officials have set.

### **Monsanto Verdict Could Give Momentum to Other Cases**

A stunning verdict on Friday could be just the beginning for Monsanto’s legal woes. A California jury in a state court in San Francisco found that the company’s products containing the weedkiller glyphosate were responsible for a former groundskeeper’s diagnosis of non-Hodgkin lymphoma (a cancer of the lymph system). Even if the damages are later lowered or an appellate court overturns the verdict, the decision isn’t a good sign for Monsanto or its soon-to-be parent company, Bayer, which is paying \$66 billion to purchase the company.

The case of the groundskeeper, Dewayne Johnson, was sped up because his diagnosis is terminal. But there are more trials coming. Patients in several state court lawsuits and a federal multidistrict litigation diagnosed with non-Hodgkin lymphoma say the herbicide in Monsanto’s flagship product Roundup carries a cancer risk that the company didn’t warn consumers about. Brent Wisner, Johnson’s lead trial lawyer, [said](#) during a news conference after the decision that more than 4,000 other cases have been filed around the U.S.

Monsanto said in a statement that it would appeal. The company has repeatedly argued that there’s no credible scientific evidence linking glyphosate to cancer in humans.

“We are sympathetic to Mr. Johnson and his family. Today’s decision does not change the fact that more than 800 scientific studies and reviews — and conclusions by the U.S. Environmental Protection Agency, the U.S. National Institutes of Health and regulatory authorities around the world — support the fact that glyphosate does not cause cancer, and did not cause Mr. Johnson’s cancer,” said Scott Partridge, vice president of global strategy.

## **Ag Lenders Worry About Farmers**

Depressed commodity prices, poor weather and trade war ramifications are worrying ag lenders, according to the second quarter Agriculture Credit Condition Survey [published](#) Thursday by the Federal Reserve Bank of Minneapolis.

Farm income, spending on capital equipment and household purchases decreased, according to the report, which covers April through June. Nearly half of the lenders in the Fed district (which stretches from Montana to Wisconsin) reported a decrease in farm income, while 8 percent reported an increase. Wisconsin, a prominent dairy state, had the highest portion of lenders reporting falling incomes, at 71 percent.

Lower incomes slightly hurt the rates of loan repayments. Respondents also said the value of cropland increased somewhat. About half of survey respondents predict conditions will worsen further by the time the third quarter rolls around.

## **Bayer Officially Begins to Absorb Monsanto**

RIP Monsanto — at least, in name. Bayer announced Thursday it has the greenlight to start integrating Monsanto into the company after completing mandated selloffs by the Justice Department in exchange for antitrust approval of the blockbuster deal.

Bayer will retire the Monsanto brand, meaning all its products will be under the new parent company's umbrella. The beefed-up Bayer will now be the largest agrichemical company in the world.

The company will also have to take on Monsanto's legal struggles. Bayer said Thursday it has so far held off from weighing in on Monsanto's legal strategy involving lawsuits — mainly over allegations of cancer risk in its weedkiller Roundup and complaints of damaged crops from its herbicide dicamba drifting onto other fields. A California jury last week ordered Monsanto to pay \$289 million to DeWayne Johnson, a former groundskeeper who said his terminal non-Hodgkin's lymphoma diagnosis was a result of repeated exposure to Roundup.

Investors haven't been thrilled about the legal approach so far. Bayer's stock fell on Monday, the first trading day after the California award, and dropped another 4.6 percent on Thursday.

Last summer, 3.6 million acres of soybeans that aren't resistant to dicamba were damaged from drift. Now, the two biggest independent seed sellers in the U.S — Beck's Hybrids and Stine Seed — are working to stop farmers from spraying it in the coming summers, Reuters [reports](#). Homeowners are also complaining the chemical is damaging their trees and flowers. Monsanto had blamed farmers for improperly applying the weedkiller.

## **Economists Stunned by USDA Decision to Move ERS**

USDA Secretary Sonny Perdue's surprise announcement last week that the department's National Institute of Food and Agriculture and the Economic Research Service would be packing up and moving from D.C. was news to an important group of people — the staff members themselves. Department staff were informed of the plan about an hour before USDA unveiled it to the public.

Perdue said the decision to transfer approximately 260 employees to an undetermined location was made to save money, better retain staff and operate closer to USDA's constituents. But economists inside and outside ERS told POLITICO they are skeptical of the administration's

motives and worry that it will eventually lead to their work being overlooked, underfunded and potentially more susceptible to political influence.

“A lot of people feel strongly that the rationale given doesn’t make sense and doesn’t have much evidence to support it,” said an ERS staff member granted anonymity to discuss the move.

The plan is already in the works. USDA on Tuesday begun the process of finding a new location for ERS and NIFA, per a [notice](#) posted to the federal register. USDA needs a lot of space: About 90,000 square feet for 360 NIFA employees and 70,000 square feet for ERS workers. The department’s criteria for the new spots includes proximity to an airport, commuting options for employees, technology infrastructure, capital and operating costs, community/quality of life and workforce considerations.

### **USDA to Soak Up \$50M in Surplus Milk**

The department is lending a helping hand to the struggling U.S. dairy industry — and to low-income residents — by buying up to \$50 million of fluid milk. That amounts to buying about 11 million to 13 million gallons.

The purchase is intended "to encourage the continued domestic consumption of these products by diverting them from the normal channels of trade and commerce," according to USDA. The milk will be distributed to food assistance programs like food banks.

Food banks are in need of milk but get few donations — only about one gallon of milk per person, per year. “Milk is one of the most requested nutrition staples at food banks, yet it is rarely available,” said Julia Kadison, chief executive officer at MilkPEP, a coalition funded by the nation's milk companies.

Dairy groups said this is the first time USDA has bought milk using its authority under Section 32 of the Agricultural Adjustment Act Amendment (a Depression-era law), which allows the department to support farmers by purchasing surplus commodities.

The move is not related to the trade-aid program that USDA announced recently, but dairy farmers across the country have fallen on tough times as milk prices remain low amid a global oversupply. For example, Wisconsin, one of the leading dairy states, [lost](#) 500 dairy farms last year as producers struggle to remain profitable, according to that state’s agriculture department.

### **Smithfield Owner Hurt by Trade War**

WH Group, the world’s largest pork company and parent company of Smithfield, reported lower than expected earnings Tuesday as the U.S. pork industry gets hammered from the U.S.-China trade war.

On fresh pork sales, WH Group recorded an operating loss in the U.S. of \$15 million in the first six months of 2018 as a result of oversupply in the country as well as the retaliatory tariffs by China, the company said in its most recent [earnings report](#).

WH Group shares have fallen 31 percent this year, and wholesale prices dipped 17 percent in the first half of the year but have since recovered 9.6 percent.

Smithfield and other pork companies are bearing the brunt of the trade shakeup as China has slapped hefty tariffs on U.S. hog exports. “The company’s U.S. and European operations were

affected by the change in trade environment and industry dynamics,” WH Group’s CFO Guo Lijun said during a press conference on Tuesday.

WH Group has rerouted shipments of pork grown in the U.S. from China to Korea and Japan, and will continue that business strategy if trade tensions persist. “It’s really a question of finding the market for this need,” said Kenneth Sullivan, Smithfield CEO, according to [Bloomberg](#). “Because if you produce it, you don’t throw it away, you ultimately sell that meat. It’s a sell-it-or-smell-it business. Meat will get distributed.”