

Hay Ground, Horses and Home Rule:
An Ag Law Year in Review
May 2016 – May 2017
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I. Federal Developments

A. Clean Water Rule Faces Challenges.

1. The EPA and Army Corps issued the final Clean Water Rule on May 27, 2015. “Clean Water Rule: Definition of ‘Waters of the United States.’” 80 FR 37054 (“2015 Rule”) (found at 40 CFR 110, 112, 116, 117, 122, 230, 232, 300, 302 and 401, and 33 CFR 328).
2. The final rule identifies eight categories of “jurisdictional waters.” These are waters over which EPA and the Army Corps could exercise Clean Water Act jurisdiction. These categories include:
 - a. Traditional navigable waters
 - b. Interstate waters
 - c. Territorial seas
 - d. Impoundments of jurisdictional waters
 - e. Tributaries
 - f. Adjacent Waters
 - g. Specific Waters Subject to Case-Specific Significant Nexus Analysis
 - h. Other Waters Subject to Case-Specific Significant Nexus Determinations
3. Immediately upon publication of the Rule on June 29, 2015, the majority of states filed actions challenging the validity of the Rule. Industry groups also challenged the Rule. The major allegations include:
 - a. The Rule exceeds the agencies’ authority under the Clean Water Act.
 - b. The Rule violates Const. Amend. X.
 - c. The agencies violated the Administrative Procedures Act in promulgating the Rule.
4. The Rule went into effect on August 28, 2015; however, the United States Court of Appeals for the Sixth Circuit stayed the Rule nationwide in October of 2015. *Murray Energy Corp. v. EPA*, no. 15-3751. The Sixth Circuit determined on 2/22/2016, that it has jurisdiction to rule on the *merits* of the legal challenges to the Rule. Specifically, the Sixth Circuit held that 33 U.S.C. § 1369(b)(1) gives courts of appeals (and not district courts) exclusive *original* jurisdiction over challenges to the Clean Water Rule. *In re EPA & Dep’t of Def. Final Rule*, 817 F.3d 261 (6th Cir. 2016). On April 21, 2016, the Sixth Circuit denied petitions seeking a rehearing *en banc*. On January 13, 2017, the U.S. Supreme Court granted certiorari in *National Association of Manufacturers v.*

Department of Defense, No. 16-299 to decide the jurisdictional issue. On April 3, the Supreme Court denied the federal government's request to hold the briefing schedule in abeyance.

5. On February 28, 2017, President Trump directed the EPA to prepare for public notice and comment a proposed rule to rescind or revise the Clean Water rule. The Order said that officials should consider incorporating into any new rulemaking the definition of “navigable waters” suggested by Justice Scalia in *Rapanos*: “only those wetlands with a continuous surface connection to adjacent waters covered by the Clean Water Act are ‘waters of the United States.’”
6. On March 6, 2017, the agencies published in the Federal Register their intent to “review and rescind the Clean Water Rule.” 82 FR 12532.

B. First Syngenta Bellwether Trial Begins June 7, 2017.

1. Syngenta developed MIR162 insecticidal trait, a GM trait stack-labeled for control of “true armyworm.” Agrisure Viptera approved for sale in U.S. in 2010. After U.S. regulators approved Agrisure Viptera in 2010, Syngenta began selling the GM seed for planting in the 2011 crop year. Most U.S. trading partners—including Canada, Japan, Argentina, and the European Union—also approved the GM trait.
2. China did not grant import approval, despite receiving the initial application from Syngenta in March of 2010. During this same period, Chinese market for U.S. corn exploded. During the 2010-2011 trade year, China imported 979,000 metric tons of corn from the United States. 950,000 metric tons Canada imported during the same year. One year later, however, China imported 5.2 million metric tons of corn from the U.S.
3. China began rejecting U.S. corn in November 2013, arguing it contained trace amounts of GM trait. Average price of corn per bushel dropped by more than half between the summer of 2012 and the fall of 2014. Soybean prices also declined, although not as dramatically. Several consecutive record harvests contributed to a climate where supply outpaced demand. Plaintiffs, including a class of grain farmers and grain exporters Cargill and Trans Coastal Supply, began filing lawsuits. These actions generally allege that China's rejection of U.S. corn caused harm ranging from \$5 billion to \$7 billion and that Syngenta is directly responsible. Allege that Syngenta “irresponsibly” chose to commercialize Viptera before China approved it for import and that Syngenta was negligent by failing to practice “stewardship” required by industry standards. Syngenta counters that China's wrongful refusal to approve Viptera caused any such harm. Major legal claims alleged in the lawsuits include negligence and violations of the Lanham Act.
4. The federal multidistrict litigation is housed in the United States District Court for the District of Kansas. Syngenta AG MIR162 Corn Litigation (<http://www.ksd.uscourts.gov/syngenta-ag-mir162-corn-litigation/>). Consolidated

litigation is also proceeding in Minnesota. *In re: Syngenta Litigation*, No. 27-CV-15-3785 (Hennepin County District Court, Minnesota). On September 26, 2016, Judge Lungstrum certified a nationwide class and eight statewide classes of producer plaintiffs in the federal MDL. The class generally includes “***producers who priced corn for sale after November 18, 2013, and who did not purchase Viptera or Duracade corn seed.***” Classes for the states of Arkansas, Illinois, Iowa, Kansas, Missouri, Nebraska, Ohio, and South Dakota were also certified. Producers had until April 1, 2017, to opt out of the class action.

5. The first bellwether trial in the Minnesota litigation is scheduled to begin April 24, 2017. The first bellwether trial in the federal MDL is set for June 5. Before that trial, Judge Lungstrum entered summary judgment in Syngenta’s favor as to the Lanham Act claims. See [Summary Judgment Narrows Issues for First Syngenta Trial](#).

C. FAA Issues Final sUAS Rule

1. On June 21, 2016, the FAA issued its long-awaited final rule, 14 CFR part 107 (Part 107), for integrating small unmanned aircraft systems (UAS) into the U.S. airspace. Part 107, which changed little from the proposed rule issued in February of 2015, paves the way for the widespread use of small commercial unmanned aircraft. The new rule, which became effective August 29, 2016, is good news for agriculture.
2. The rule applies to all UAS weighing less than 55 pounds (sUAS) that are flown for commercial (not hobby) purposes. Any farming use falls into the commercial-use category. Operators can continue to fly a sUAS for fun without permission from the FAA. All sUAS operators, however, must register their aircraft with FAA through a straightforward, online registration process. Registrants must be 13 years of age or older. The operator must label the aircraft with the official registration number generated during the registration process.
3. Operators must have a remote pilot certificate with a small UAS rating. But the requirements to obtain the certificate are straightforward:
 - Be at least 16 years old,
 - Speak and write English,
 - Be in physical and mental condition sufficient to safely fly a small UAS,
 - Complete a Transportation Security Administration (TSA) vetting process AND
 - Pass the initial aeronautical knowledge exam at an FAA-approved knowledge testing center.
 - Under the new rule, any owner of a small UAS who has exclusively operated the UAS as a model aircraft before December 21, 2015, had to register no later than February 19, 2016. Anyone else must register before their first flight. Registration is online at <http://www.faa.gov/uas/registration/>.
4. The FAA provides links to study guides, sample questions, and standards for the exam. It also provides a list of FAA-approved knowledge testing centers where the exam will

be given. The cost to take the exam should be around \$150. Persons who currently hold a pilot certificate issued under 14 CFR part 61 and have successfully completed a flight review within the previous 24 months can complete a part 107 online training course at www.faa.gov to satisfy this requirement. To retain the certificate, all remote pilots will be required to pass a test every two years.

5. The FAA has provided a helpful summary of the new rule, including flight and record-keeping requirements imposed upon all small UAS operators.

http://www.faa.gov/uas/media/Part_107_Summary.pdf.

6. The new rule also provides a waiver request procedure for operators who wish to fly their sUAS outside of the bounds of the new rule. The waiver request site is here:

https://www.faa.gov/uas/request_waiver/.

7. For an interesting case regarding FAA authority, see [Federal Judge Suggests Limits to FAA Authority to Regulate Airspace](#) (August 10, 2016).

D. FDA Implements New Food Safety Rules

1. On October 1, 2015, FDA revised the Veterinary Feed Directive (VFD) to regulate the use of antibiotics in the treatment of food animals. This VFD requires veterinary supervision with the use of all medically important feed grade antibiotics used in food-producing animals. The newly expanded regulation went into full effect January 1, 2017. The VFD final rule attempts to provide veterinary supervision to ensure that the use of antibiotics in food-producing animals is judicious and compliant with consumers' needs.

2. The Food Safety Modernization Act (FSMA), was the most sweeping reform of our food safety laws in more than 70 years. It was signed into law by President Obama on January 4, 2011. Key rules finalized by FDA to implement FSMA are beginning to go into effect. These include [Preventive Controls for Human Food](#), [Preventive Controls for Animal Food](#), and the [Produce Rule](#).

E. GMO Disclosure Law Goes into Effect

1. On July 29, 2016, President Obama signed the national bioengineered food disclosure standard, S.764, into law. This legislation sets a new nationwide standard for the disclosure of the presence of "bioengineered" ingredients in food and closed the door to state regulation of GMO food labeling. The law was in direct response to Vermont Act 120, which was effective July 1, 2016, and sought to require all food produced from "an organism in which genetic material has been changed" to be labeled. If that food was sold by a retailer, an "easily found" label had to state, "Produced entirely or in part by genetic engineering."

2. For more information on the Vermont legislation, read [Vermont Driving Push for Federal GMO Labeling Law](#) (June 30, 2017). For more information on the GMO Disclosure Law, read [GMO Disclosure Bill Awaiting President Obama's Signature](#) (July 14, 2016).

F. Eighth Circuit Ruling Big Win for CAFO Owners' Privacy

1. In Am. Farm Bureau Fed'n v. EPA, 836 F.3d 963 (8th Cir. Minn. Sept. 9, 2016), the Eighth Circuit Court of Appeals granted a big win to CAFO owners. On September 9, 2016, the court ruled that the EPA abused its discretion by concluding that the release of personal information about CAFO owners would not invade substantial privacy interests.
2. The case arose when three organizations—Earthjustice, the Pew Charitable Trusts, and the Natural Resources Defense Council—filed a Freedom of Information Act (FOIA) request seeking detailed records about confined animal feeding operations (CAFOs) regulated by the EPA under the Clean Water Act. The EPA disclosed a detailed spreadsheet of personal information about the CAFOs and their owners, including the names and addresses of the CAFOs (which were often the owners' home address), GPS coordinates of the CAFOs, as well as the e-mail addresses and primary telephone numbers of the CAFO owners. The EPA released the requested information after determining that substantial privacy interests were not implicated since the information was publically available through other sources. The agency also determined that, even if there were a privacy interest, that interest was outweighed by the public's interest in disclosure.
3. The American Farm Bureau Federation and the National Pork Producers Council, on behalf of their members, filed a reverse FOIA action under the Administrative Procedures Act against the EPA. The organizations sought to enjoin the EPA from making additional disclosures of personal information of its members and to require the EPA to retract the information already disclosed. The groups argued that Exemption 6 of FOIA (5 U.S.C. § 552(b)(6)) protected the information from mandatory disclosure and that the agency abused its discretion by releasing it.
4. The District Court for the District of Minnesota dismissed the action, finding that the organizations lacked standing because the personal information of their members was already publically available. The Eighth Circuit Court of Appeals reversed, essentially ruling that the district court had missed the point. The court ruled that the groups had established a concrete and particularized injury in fact: the nonconsensual dissemination of personal information of their members. This allegation and the risk of impending disclosures was sufficient to establish an injury in fact caused by the agency and redressable by the court.

5. The court ruled that, under the circumstances, mandatory disclosure “would constitute a clearly unwarranted invasion of personal privacy” and that it “was an abuse of discretion for the agency to conclude otherwise.”
6. This ruling, however, means only that the records were exempt from *mandatory disclosure* under FOIA. Under the law, the EPA would still have the discretion to disclose the information within the FOIA exemption, unless something independent of FOIA prohibits disclosure. The farm groups asked the court to find that the Privacy Act is that “something independent.” They asked the court to enjoin the EPA from disclosing further records in its discretion. Noting that the record regarding this question had not been developed before the district court, the Eighth Circuit remanded the case to the district court. On remand, the district court was to determine whether the Privacy Act or other EPA policy would prevent the EPA from disclosing these records in the agency’s discretion. *On March 24, 2017, the parties dismissed the case pursuant to a stipulation.* Read more at [Eighth Circuit Ruling Big Win for CAFO Owners’ Privacy](#).

G. Federal Appeals Court Vacates OSHA Fertilizer Safety Guidance

1. On September 23, 2016, the United States Court of Appeals for the District of Columbia vacated guidance from the Occupational Safety and Health Administration (OSHA). The guidance, which was issued in the form of a 2015 Memorandum, required farm supply companies selling anhydrous ammonia to--for the first time--comply with a complex safety program designed to protect workers from highly hazardous chemicals.
2. Specifically, the court ruled that the new definition of retail establishment constituted a new “occupational safety and health standard.” Challenges to such standards may be brought directly to a court of appeals, pursuant to 29 U.S.C. § 655(f). Also, when OSHA issues a new standard, it must adhere to notice and comment procedures set forth in the Occupational Safety and Health Act. OSHA conceded that this was the law, but argued that the new definition was not a new “standard,” merely an interpretation of an existing one.
3. The court disagreed, finding that the basic function of the new definition was to address a “particular significant risk.” This was the hallmark of a new standard, that it imposed upon employers new and more demanding safety standards. OSHA conceded that the new definition would subject up to 4,800 facilities to new and more demanding substantive safety standards.
4. Because the new definition was a new standard, the court found that it had jurisdiction to hear the matter. The court then vacated the memorandum, ruling that it was invalid because OSHA had failed to comply with necessary notice and comment procedures. The court’s decision did not call into question the substance of the new standard. Rather, it held that OSHA must start over. If the agency again attempts to narrow the retail exemption for the PSM Standard, it must follow the notice and comment

procedures required by the OSH Act. For more information read [Federal Appeals Court Vacates OSHA Fertilizer Safety Guidance](#).

H. Ninth Circuit Affirms Dismissal of California Egg Lawsuit

1. The California Legislature passed AB 1437 in 2010 to make it a crime to sell a shelled egg in California if that egg came from a hen confined in a cage that did not allow it to “lie down, stand up, fully extend its limbs, and turn around freely.” The law, which was effective January 1, 2015, stemmed from Proposition 2, a 2008 California ballot initiative requiring all California egg producers to raise their hen-laying eggs in cages allowing them the full range of movement described above. The force behind Proposition 2, which went into effect January 1, 2015, was the Humane Society of the United States, which spent more than \$4 million to ensure its passage.
2. It did not take long for California egg farmers to push their lawmakers to see that Proposition 2 would place them at a competitive disadvantage as compared to egg farmers from other states. The mandated cages were expensive, and California producers would now have to invest in infrastructure not required for other egg producers. Enter AB 1437. With the stroke of Governor Schwarzenegger’s pen, California sought to regulate egg production in every egg-producing state.
3. The Missouri Attorney General initiated a lawsuit in March of 2014 that was joined by the Attorneys General from four other egg-producing states, as well as the Governor of Iowa. The lawsuit alleged that AB 1437 was unconstitutional and preempted by the Federal Egg Products Inspection Act.
4. The federal district court dismissed the action for lack of standing and the Ninth Circuit Court of Appeals affirmed. On November 11, 2016, the court ruled that the States failed to articulate an interest apart from the interests of an identifiable group of private egg producers who could have filed an action on their own behalf. The case was *State of Missouri v. Harris*, No. 14-17111 (9th Cir. Nov. 11, 2016). After two years, the court never reached the merits. For more information, read [Ninth Circuit Affirms Dismissal of California Egg Lawsuit](#).

I. Ninth Circuit Says Hawaii Counties Can’t Regulate GM Crops

1. In a case study of the balance of governmental powers, the United States Court of Appeals for the Ninth Circuit ruled on November 18, 2016, that local ordinances passed by three Hawaii Counties to ban the cultivation of GM (genetically modified) plants were preempted by state and federal law.
2. What does this case mean for the rest of the country? It appears that local regulation will not be a successful approach for those seeking to regulate the growing of GE crops. The cases were *Atay v. County of Maui*, No. 15-16466 (9th Cir. Nov. 18, 2016), *Robert Ito Farm, Inc. v. County of Maui*, No. 15-15246 (9th Cir. Nov. 18, 2016), and *Syngenta Seeds v. County of Kauai*, No. 14-16833 (9th Cir. Nov. 18, 2016). *Hawaii*

Floriculture & Nursery Ass’n v. County of Hawaii, No. 14-17538 (9th Cir. Nov. 18, 2016) was an unpublished opinion. Read more at [Ninth Circuit Says Hawaii Counties Can’t Regulate GM Crops](#).

J. Congress Moves to Exempt Qualified Small Employer Health Reimbursements from Onerous ACA Penalty

1. On December 13, 2016, President Obama signed the 21st Century Cures Act into law. Tucked away in its “other provisions” was Section 18001, a bipartisan provision (sponsored by Iowa Senator Charles Grassley) which effectively nullified the impact of IRS Notice 2013-54 for “qualified small employer health reimbursement arrangements” (QSEHRA) offered by small employers. The new law removes from the definition of “group health plan” reimbursement arrangements that follow certain requirements. Removing such plans from the definition of “group health plan” means exempting them from the requirements of Affordable Care Act’s market reforms, including the “no annual dollar limits” and “no cost sharing for preventive health services.” Violation of these market reforms subjects employers to excise taxes in an amount up to \$100 per day per employee (or \$36,500 per employee per year).
2. For more information read [Congress Moves to Exempt Qualified Small Employer Health Reimbursements from Onerous ACA Penalty](#).

K. Future of Farmer Fair Practices Rules Uncertain

1. On December 14, 2016, USDA’s Grain Inspection, Packers and Stockyards Administration issued an Interim Final Rule (§ 201.3(a), (b)) specifying that conduct or action can sometimes violate the Act without a finding of harm or likely harm to competition. The same day GIPSA issued two proposed rules, one intended to regulate poultry grower ranking systems (§ 201.214) and another clarifying the definition of Unfair Practices and Undue Preferences (§§ 201.210 and 201.211) under the Act. For more detail on the rules when they were released, read [Future of "Farmer Fair Practices Rules" Uncertain, Even as Unveiled](#).
2. On April 11, 2017, GIPSA officially announced that it is again delaying the effective date of the Interim Final Rule, this time until October 19, 2017. GIPSA also announced that it is asking the public to comment on four possible actions USDA should take in regards to the disposition of the Interim Final Rule. The comment due date is June 12, 2017.
3. The notice states, “The extension allows ample time for stakeholders to review the effects of the Scope Interim Final Rule on their operations, and ensures maximum opportunity for dialogue across every segment of the livestock, meat, and poultry industries.” The announcement did not reference the proposed rules.

L. D.C. Circuit Says Commercial Animal Farms Must Report Air Emissions

1. On April 11, 2017, the United States Court of Appeals for the District of Columbia vacated an EPA final rule that had been in place for nine years. The Rule exempted most farms from CERCLA and EPCRA reporting requirements for *air* releases from animal waste. CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms, 73 Fed. Reg. 76, 948, 76,956/1 (December 18, 2008).
2. The court found that the EPA had exceeded its authority under the statutes in granting the exemptions. As such, the Court vacated the long-standing Rule, subjecting commercial animal farms to reporting requirements the EPA has characterized as costly and burdensome. The case is [Waterkeeper Alliance v. EPA](#), 2017 U.S. App. LEXIS 6174 (D.C. Cir. Apr. 11, 2017). For more information read [D.C. Circuit Says Commercial Animal Farms Must Report Air Emissions](#).

II. Federal/State Developments

A. Federal Court Dismisses Des Moines Water Works Lawsuit

1. Two years and one day after the Board of Water Works Trustees for the City of Des Moines (DMWW) [filed its controversial lawsuit](#) against the drainage districts in three northwest Iowa counties, a [federal court dismissed the action in its entirety](#).
2. After two years and the expenditure of hundreds of thousands of dollars, the merits of the Clean Water Act claims were never considered. The court was required to dismiss the lawsuit after finding that—even if DMWW was able to prove an injury—the drainage districts would have no ability to redress (or remedy) that injury. In other words, the drainage districts were not the proper defendants for this Clean Water Act lawsuit.
3. The federal court found no merit to DMWW’s claims that its constitutional rights were violated. The court ruled that the immunity Iowa law affords to drainage districts does not violate the Equal Protection Clause or the Due Process Clause of the United States Constitution. The court noted that DMWW’s policy arguments are best directed to the Iowa Legislature. Finally, the court also fully agreed with the Iowa Supreme Court’s analysis of DMWW’s takings claim. “A public entity such as DMWW cannot assert a Fifth Amendment takings claim against another political subdivision of the state.” Read more at [Why a Federal Court Dismissed the DMWW Lawsuit](#). Access a full list of litigation resources at <http://www.calt.iastate.edu/article/des-moines-water-works-litigation-resources>.

III. Iowa Developments

A. Ag Supply Dealer Lien

1. Iowa Supreme Court Answers Certified Questions

- a. Iowa Code § 570A.2(3) provides that in an action to enforce an ag supply dealer lien, it shall be an affirmative defense to a financial institution and complete proof of the superior position of the financial institution's lien that the financial institution either:
 - Did not receive a certified request and waiver or
 - Received the request and provided full financial history to the dealer indicating that the farmer did not have a sufficient net worth or line of credit to assure payment.
- b. However, in 2011, the Iowa Supreme Court interpreted Iowa Code 570A.5 to trump Iowa Code 570A.2's certified request provision for a lien in livestock feed. *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186 (Iowa 2011).
- c. After the certified question was answered, the bankruptcy court determined that the amount of the increase in the hogs' value from acquisition to final sale. This was a farrow-to-finish operation so the bank argued the acquisition price included cost to produce each hog. The feed supplier said it was \$0. The court sided with the feed supplier. *In re Crooked Creek Corp.*, 2014 Bankr. LEXIS 4456 (Bankr. N.D. Iowa Oct. 2014). On appeal, Magistrate Strand (now District Judge) certified two questions to the Iowa Supreme Court.
- d. In *Oyens Feed & Supply, Inc. v. Primebank*, No. 15–0806 (Iowa Sup. Ct. May 27, 2016), the Iowa Supreme Court answered the questions.
- e. **Certified Question One:** Pursuant to Iowa Code section 570A.4(2), is an agricultural supply dealer required to file a new financing statement every thirty-one (31) days in order to maintain perfection of its agricultural supply dealer's lien as to feed supplied within the preceding thirty-one (31) day period? *In answering this question, "yes," the Iowa Supreme Court held that an ag supply dealer in feed must file a new financing statement every 31 days to maintain perfection of its lien as to feed sold within the preceding 31-day period.*
- f. **Certified Question Two:** Pursuant to Iowa Code section 570A.5(3), is the "acquisition price" zero when the livestock are born in the farmer's facility? *In answering the second certified question, "yes," the Court ruled that the acquisition price for animals raised in a farrow to finish operation is "0."*

2. Bankruptcy Court Further Defines Contours of Ag Supply Dealer Lien

- a. On January 13, 2017, the United States Bankruptcy Court for the Northern District of Iowa had another opportunity to interpret Iowa Code § 570A.3. This time, the court ruled that a superpriority ag supply dealer lien in livestock proceeds was not limited to the cost of the feed that was consumed by the pigs that were sold (proceeds). Rather, such a lien under Iowa Code § 570A.3 is for the full amount of the feed supplied and attaches in full to the animals that consumed the feed. *In re Schley*, No. 10-03252, 2017 Bankr. LEXIS 115 (Bankr. N.D. Iowa 2017).

B. Real Property Issues

1. Iowa Supreme Court Nixes Partition in Kind

- a. **On December 23, 2016**, The Iowa Supreme Court provided an excellent overview of the rules governing the partition of concurrently owned property in Iowa. In reversing a court of appeals decision ordering a partition in kind, the Court reiterated that Iowa law favors partition by sale. In the case before it, the Court ruled that the party seeking an in-kind division had not established that such a split would be *both* equitable and practicable.
- b. The case is [*Newhall v. Roll*, No. 14-1622 \(Iowa Sup. Ct. Dec. 23, 2016\)](#). Read more at [Iowa Supreme Court Nixes Partition in Kind](#).

2. Iowa Court of Appeals Grants Sister a Partition in Kind

- a. While acknowledging that partition in kind was no longer the favored type of partition in Iowa. (Rather, Iowa R. Civ. Proc. 1.1201(2), favors partition by sale), the Iowa Court of Appeals granted a partition in kind to a sister seeking to live on the “home place.” The court disagreed with the district court’s conclusion that “the volatile nature of farmland as affected by crop prices has made a partition in kind merely guesswork when factoring in the nature and qualities of the land.”
- b. Instead, the court of appeals found that “the record reflects that appraisal is absolutely more certain than mere speculation.” The court found no reason to reject the concept of a fair appraisal. The court found that the third sister proved that an in-kind division of the property would be equitable. The court also concluded that the requested partition was practicable. The land the sister sought to divide in kind was readily identifiable and largely contiguous. No topographical features made division impractical. The case is [*Wihlm v. Campbell*, No. 15-0011 \(Iowa Ct. App. Sept. 14, 2016\)](#). Read more at [Iowa Court of Appeals Grants Sister the Home Place](#).

3. Wind Agreement Provision Trips Up Sale of Farmland

- a. A case from the Iowa Court of Appeals on September 28, 2017, highlights a little provision in an Iowa wind energy agreement that may have killed a contract for the sale of farmland.
- b. The defendants owned 149 acres in Dickinson County. In 2009, they entered into a wind energy lease and agreement with a wind company, and the wind company constructed a wind turbine on their property. In 2013, the defendants sold 77 acres of their farmland at an auction. The plaintiffs purchased the farmland for \$616,000.
- c. The sales contract stated: “The Sellers shall assign all of the rights and obligations in the “Memorandum of Wind Energy Lease and Agreement” to the Buyers...If Sellers fail to timely perform their obligations under this Real Estate Contract, the Buyers shall have the right to terminate this Real Estate Contract and have all payments made returned to the Buyers.” But, the wind company said not so fast. The company pointed to a provision in the wind energy lease prohibiting the wind energy rights from being severed from the property. Based upon this provision, the wind company would only agree to transfer to the plaintiffs the rights under the lease tied to the property the plaintiffs had purchased.
- d. The plaintiffs filed a breach of contract action against the defendants and asked the court to terminate the contract. The district court granted summary judgment to the plaintiffs, finding a breach and ruling that termination was the proper remedy under the terms of the agreement. On appeal, the Iowa Court of Appeals reversed and remanded, holding that it was possible that the purchase agreement merged into the warranty deed. If that happened, termination of the contract may not have been the proper remedy. In other words, monetary damages may be more appropriate. The case is [Krummen v. Winger, No. 15-1044 \(Ia. Ct. App. Sept. 28, 2016\)](#). Read more at [Wind Agreement Provision Trips up Sale of Farmland](#).

4. Iowa Court Says That City Must Pay to Expand Easement

- a. A case decided October 12, 2016, by the Iowa Court of Appeals highlights a general, yet important principle governing Iowa easements: Once a valid easement has been created and the servient landowner justly compensated, the continued use of the easement must not place a greater burden on the servient estate than was contemplated at the time of formation.
- b. In the case at hand, the court affirmed a district court ruling finding that the City of Bettendorf violated that principle by initiating a new streambank-stabilization project without acquiring expanded easements from the impacted landowners. The court found that the grantors of the original easement did not contemplate the expansive use of the easement now sought. As such, the landowners were entitled to just compensation for an additional taking of their property. The case is [Hamner v. City of](#)

[Bettendorf, No. 15-2154 \(Iowa Ct. App. Oct. 12, 2016\).](#) Read more at [Iowa Court Says That City Must Pay to Expand Easement.](#)

5. Unrestricted Terms of Easement Sufficient to Allow Parking in Driveway

- a. Where the existence of an easement is in general terms, it implies a grant of unlimited reasonable use such as is reasonably necessary and convenient and as little burdensome as possible to the servient owner. A court's easement overburdening analysis will evaluate whether it is reasonable to conclude that a particular use was within the contemplation of the parties to the conveyance and, in that context, whether the contested use made of the servient estate by the dominant estate exceeds the rights granted to the user.
- b. When the purpose of an express easement is not clear, a court must ascertain the objectively manifested intention of the parties to the original conveyance in light of the circumstances in existence at the time the easement was made, as well as the physical condition of the premises, and the use of the easement and acts acquiesced to during the years shortly after the original grant. Furthermore, a grant or reservation of an easement will ordinarily be construed in favor of the grantee.
- c. Here, a Bank included an easement in the warranty deed it delivered to the neighbors before it finalized the sale of the house lot to the sellers. The Bank could have limited the scope of the easement in the neighbors' deed, but it did not. The easement was a driveway used for parking before the Bank sold the lot. The court ruled that a reasonable person in the neighbors' position would believe the easement's purpose includes not only ingress and egress to the upper unit of the duplex but also parking.
- d. The case was [Halvorson v. Bentley](#), No. 15-0877, 2016 Iowa App. LEXIS 1390 (Iowa Ct. App. 2016)(deed granting a "12-foot wide easement" with no other restrictions gave the grantee parking privileges, not just the right to use the easement for ingress and egress).

6. Boundary by Acquiescence Established

- a. The plaintiff bought her property in 1972; the defendants bought theirs in 1993. In 1999, the defendants had vinyl fencing installed. The relevant portion of the vinyl fence runs south and ends at what "looks like an end post" of a metal woven-wire fence that is at least fifty years old.
- b. In or around 2012, the county highway next to the parties' properties was repaved. Additionally, the plaintiff updated her estate planning and transferred her property into a trust. She requested a survey to determine her property's west boundary line. The survey evidenced that the defendants had built their fence and driveway upon the plaintiff's property. She made an offer for the defendants to purchase the

property, and the defendants argued that they owned the property by acquiescence.

- c. The plaintiff filed an action seeking to have title quieted in her favor, and the defendants filed counterclaims, asserting they had acquired the property by adverse possession or acquiescence. Trial to the district court was held in August 2015, and Albert and the Congers testified, as well as the prior owners of the Congers' property.
- d. Given the longtime use and care of the property by the defendants, including the installation of a fence, the court ruled that the plaintiff should have been alerted she needed to take action and dispute their use of her land if she believed they had encroached upon her property. The property was not hidden from view, like many boundary cases, where neither landowner had done anything with the disputed land over the years. Moreover, the defendants' use was open and available for all to see; they installed a fence over twenty years ago and continued to maintain the land. The court ruled that the plaintiff's inaction, coupled with the defendants' use of the property for at least twenty years, established a clear case of acquiescence of a boundary as contemplated by Iowa Code § 650.14.
- e. The case was [*Albert v. Conger*, 886 N.W.2d 877 \(Iowa Ct. App. 2016\)](#).

7. Plaintiff Acquires Title to Property Via Adverse Possession

- a. The plaintiff and the defendant owned adjacent property in rural Clayton County. The plaintiff lived in a house on his property, but the defendant's property was unimproved.
- b. The plaintiff presented evidence to show a fence had been treated as the boundary between the properties for more than thirty years, although the fence did not represent the actual property line. The actual property line was about one and one-half feet north of the plaintiff's house. The plaintiff maintained an area about twenty-feet wide north of the house, which was between his house and the fence, by mowing, keeping back trees, spraying for weeds, and planting flowers.
- c. The defendant testified when she purchased the property forty years earlier she was informed the fence was not the property line and the fence was present to keep the former owner's sheep penned in. She also stated she was aware the plaintiff was maintaining the disputed area north of his house.
- d. There is clear and positive evidence in the record to show that the plaintiff actually, openly, and exclusively possessed the disputed area continuously for a period greater than ten years in a manner hostile to the title of the defendant. The plaintiff took steps to occupy, maintain, and improve the land by mowing, cutting back trees, spraying for weeds, and planting flowers. For more than thirty years, the defendant did not take any steps to assert an

interest in the property. The Court of Appeals affirmed that the plaintiff had established title to the property under a theory of adverse possession. Because it affirmed title in the plaintiff, the court did not examine the additional claim of acquiescence.

- e. The case was [*Rodamaker v. Biermann*, No. 16-1102 \(Iowa Ct. App. March 22, 2017\)](#).

C. Farm Lease Issues

1. Iowa Supreme Court: Single Grazing Horse Did Not Establish a Farm Tenancy

- a. In 2015, the Iowa Court of Appeals held that a single grazing horse was sufficient to establish a farm tenancy. Under the court's ruling, the owners of the horse (and arguably anyone with backyard chickens or a pet emu) were entitled to the protection of the Iowa farm tenancy termination statute. Under Iowa Code § 562.6, if written notice is not sent via certified mail before September 1, the lease automatically renews for another year, beginning the following March 1. In other words, on September 2, this statute can make the difference between a 30-day wait to terminate an at-will tenant and a near 18-month wait to terminate a farm tenant.
- b. On March 10, 2017, the Iowa Supreme Court issued an opinion walking back this result. In developing a new "primary purpose" test, the Court held that "land which is not devoted primarily to the production of crops or the care and feeding of livestock cannot be the foundation of an Iowa Code chapter 562 farm tenancy." The case is [*Porter v. Harden*, No. 15-0683 \(Iowa Sup. Ct. March 10, 2017\)](#). Read more at [Iowa Supreme Court: Single Grazing Horse Did Not Establish a Farm Tenancy](#).

2. Farm Tenant Entitled to Recoup Unused Lime Costs

- a. On May 11, the Iowa Court of Appeals found that a tenant was entitled to a pro rata recoupment of unused lime costs. A written amendment to the parties' lease provided that lime and trace materials were to be allocated over 7 years and that "if the Lease [was] not renewed," the tenant was to be reimbursed by the landlord "to the extent Tenant has not received the benefits, on a pro rata basis." Because the tenant only received the benefits of the lime for the 2012 and 2013 crop years, the court ruled that, under the terms of the lease, he was entitled to reimbursement for the unused benefit of the lime. The case was [*Hettinger v. City of Strawberry Point*, Iowa, No. 15-0610 \(Iowa Ct. App. May 11, 2016\)](#). Read more at [Farm Tenant Entitled to Recoup Unused Lime Costs](#).

3. Long Time Family Feud Leads to Breached Farm Lease

- a. In a contentious case, the Iowa Court of Appeals found that a farm tenant was in material breach of a farm lease. The owners were required to plant the field themselves and they received a reduced yield because of the later planting. These facts were sufficient, the court ruled, to establish a breach. The case was [Hope K. Farms, LLC. v. Gumm, No. 14-1371 \(Iowa Ct. App. June 29, 2016\)](#). Read more at [Long-Time Family Feud Leads to Breached Farm Lease](#).

4. Iowa Supreme Court Says 99-Year Lease Valid

- a. On October 28, 2016, The Iowa Supreme Court issued an opinion clarifying the reach of Iowa Const. art. I, § 24. The Court ruled that the provision does not apply to lands suitable for agricultural purposes if only an *incidental* portion of the land is used for farming purposes. Iowa Const. art. I, § 24 states: No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years.
- b. The specific question before the Court was whether Iowa Const. art. I, § 24 applies to lands suitable for agricultural purposes that are *primarily*, but not *solely*, used for nonagricultural purposes. The Court had already determined in *Howard v. Schildberg Constr. Co.*, 528 N.W.2d 550, 553 (Iowa 1995), that the constitutional restriction does not apply to a lease of land *suitable* for agricultural use but used *solely* for nonagricultural purposes. The Court ruled that the evil meant to be thwarted by Iowa's Constitutional restriction did not arise when the primary purpose of the use of the leased land was non-agricultural.
- c. The Court ruled that the clear intended purpose of the 99-year lease in this case was to establish an *arboretum*. The Court held that Iowa Const. art. I, § 24 did not invalidate a 99-year lease for land intended to be used *primarily* for an arboretum, but *incidentally* for farming. The case was [Iowa Arboretum, Inc. v. Iowa 4H Foundation, No. 15-0740 \(Iowa Sup. Ct. Oct. 28, 2016\)](#). Read more at [Iowa Supreme Court Says 99-Year Lease Valid](#).

D. Valuation Issues

1. Iowa Court of Appeals Says No Oppression in *Baur Farms* Case.

- a. On July 27, 2016, The Iowa Court of Appeals issued its opinion in the seemingly never-ending *Baur Farms* litigation. The court affirmed the district court's order, which dismissed the minority shareholder's lawsuit seeking to dissolve the corporation on grounds of "shareholder oppression." This case was before the district court on remand after the Iowa Supreme Court issued its key 2013 ruling setting forth the new Iowa standard for minority shareholder oppression in the context of a closely-held corporation: *The determination of whether the conduct of controlling directors and majority shareholders is oppressive under section 490.1430(2)(b) and supports a minority shareholder's action for dissolution of a*

corporation must focus on whether the reasonable expectations of the minority shareholder have been frustrated under the circumstances...We hold that majority shareholders act oppressively when, having the corporate financial resources to do so, they fail to satisfy the reasonable expectations of a minority shareholder by paying no return on shareholder equity while declining the minority shareholder's repeated offers to sell shares for fair value.

- b. More information about *Baur v. Baur Farms, Inc.*, No. 14-1412 (Iowa Ct. App. July 27, 2016) can be found at <http://www.calt.iastate.edu/blogpost/baur-redux-iowa-court-appeals-says-no-oppression>.

2. Minority Owner of Family LLC Gets a Reprieve

- a. The Iowa Court of Appeals—while denying a minority owner's request to have his family LLC dissolved—breathed life back into his quest to receive “fair value” for his 27% ownership interest. The court reversed a trial court order that had directed the brother to transfer his interest in the LLC to the other two owners for no consideration.
- b. Here, the court ruled, the evidence did not show a situation where the sisters had declined the brother's “repeated offers” to sell his interest for fair value. As such, no oppression had been shown. Under this fact pattern, the court was not required to engage in an in-depth *Baur* analysis. Finding that the brother had not issued a notice of withdrawal ended the inquiry. The case was [*Morse v. Rosendahl*, No. 15-0912 \(Iowa Ct. App. June 15, 2016\)](#). Read more at [Minority Owner of Family LLC Gets a Reprieve](#).

E. Civil Liabilities Issues

1. Iowa Supreme Court Broadly Interprets Elder Abuse Statute

- a. In a 4-3 decision, the Iowa Supreme Court on February 24, 2017, ruled that a 69-year-old woman was a “vulnerable elder” under Iowa's Elder Abuse statute *because of her age*. The case arose because a “do-it-yourself” estate planning strategy went awry. The mother put the title of her mobile home (where she lived) in her adult son's name. She told him that when she died it was to be his inheritance. She continued to live in the mobile home and pay taxes on it. At the same time, the mother transferred title of a duplex she owned to her two daughters.
- b. At some point, one of the mother's daughters moved into the mobile home with her. At this point, the son demanded \$35,000 from his mother to transfer title of the mobile home back to her. When she refused, the son attempted to evict the mother. In response, the mother filed a “petition for relief from elder abuse” against the son. The petition was filed under Iowa Code § 235F.2, which was enacted by the Iowa Legislature in 2014 to provide greater protection against

financial and physical abuse to “vulnerable elders.” “Vulnerable elder” is defined in Iowa Code § 235F.1(17) as “a person sixty years of age or older who is unable to protect himself or herself from elder abuse as a result of age or a mental or physical condition.”

- c. Based upon these facts, the Court found that the mother established that she was a vulnerable adult *because of her age*. The case is [Upon the Petition of Judith Ann Chapman, No. 15–0153 \(Iowa Sup. Ct. Feb. 24, 2017\)](#). Read more at [Iowa Supreme Court Broadly Interprets Elder Abuse Statute](#).

2. Brother Prevails on Intentional Interference with Inheritance Claim

- a. On February 9, 2017, the Iowa Court of Appeals upheld a jury verdict awarding a brother more than \$1.5 million in damages against his two sisters. The court found that substantial evidence supported the jury’s finding that the sisters exerted undue influence over their father, causing him to execute a will that disinherited the brother. The court agreed that the evidence supported a finding that the sisters had tortiously interfered with the brother’s inheritance. Finally, the court upheld the jury’s finding that the brother was entitled to punitive damages.
- b. The case is [Boman v. Cramer, No. 16-0110 \(Iowa Ct. App. Feb. 8, 2017\)](#). Read more at [Brother Prevails on Intentional Interference with Inheritance Claim](#).

3. Iowa Court of Appeals Affirms Half-Million Dollar Nuisance Verdict

- a. On November 23, 2016, the Iowa Court of Appeals affirmed a half a million dollar judgment against Prestage Farms in a neighboring landowner’s nuisance lawsuit alleging that the company’s hog confinement substantially deprived her of the comfortable use and enjoyment of her property.
- b. The jury awarded the landowner damages of \$100,000 for loss of past enjoyment, \$300,000 for loss of future enjoyment, and \$125,000 for diminution of property value. In rendering its nuisance verdict, the jury found that Prestage Farms failed to use existing prudent generally accepted management practices that were reasonable for the facility. Because the landowner was a joint tenant with her husband, the trial court did reduce the award for diminution of value to \$62,500.
- c. On appeal, the company argued that the trial court improperly found that applying Iowa Code § 657.11(2) to insulate Prestage from the nuisance lawsuit would violate the landowner’s rights under the Iowa Constitution. Iowa Code § 657.11(2) is a right to farm law protecting animal confinement operators who comply with state and federal regulations from nuisance liability. In 2004, the Iowa Supreme Court found the law was unduly oppressive to a landowner in a nuisance lawsuit and, therefore, not a reasonable exercise of the state’s police power under the facts of the case before it. The Court in *Gacke v. Pork Xtra*,

L.L.C., 684 N.W.2d 168 (Iowa 2004) specifically found that the statutory immunity provided by Iowa Code § 657.11(2) violated article I, section 1 of the Iowa Constitution under the facts of that case. In its appeal, Prestage Farms sought to distinguish its facts from those of *Gacke*, arguing that the law was not unconstitutional under its facts because the landowner had raised Belgian horses and other neighbors had horses and cows. The court gave little credence to the argument, pointing out that none of those endeavors appeared to have been “animal feeding operations” which would also have had the protection of the right to farm law.

- d. The court also found that the large damage award was reasonable because it was not outside the reasonable range of damages from similar cases. The damages represented “personal inconvenience, annoyance, discomfort, and loss of full enjoyment of the property caused by the offensive odor.” The case is [*McIlrath v. Prestage Farms of Iowa, LLC*](#), No. 15-1599 (Iowa Ct. App. Nov. 23, 2016). Read more at [Iowa Court of Appeals Affirms Half-Million Dollar Nuisance Verdict](#).

4. Family Conflict Signals Need for Estate Plan

- a. The facts in this case were complex. *A farmer died intestate, survived by his third wife and sons from a previous marriage.* The farmer was also survived by his mother, who had been widowed 13 years earlier when the farmer’s father passed away. The farmer and his father had farmed together for years. When the farmer’s father died, his mother disclaimed her interest in all of the farm machinery that the farmer and his father had used on the farm. She also disclaimed a one-half interest in the family farmland. Larry’s mother continued to live on the home property. The farm machinery was stored in the buildings on the home place. The farmer was the sole beneficiary of the property disclaimed by his mother.
- b. *Bad blood* may not properly characterize what appears to have existed between the farmer’s mother and son and the farmer’s third wife. After the wife was appointed to be the administrator of the intestate estate, she began collecting property and arranging for an auction. The farmer’s mother and son, however, disputed the estate’s ownership of the property listed for sale. His mother placed a chain across the driveway, along with a “no trespassing” sign. She also sent notices stating that she was denying entrance to the farmstead. Consequently, the sale was canceled, and the items had to be eventually transported to a different site for another sale. The wife filed a replevin action against Larry’s mother and son.
- c. The Court of Appeals agreed with the district court and ruled that the mother’s disclaimer had been all-inclusive. After his father’s death, the farmer, not his mother, included the disputed equipment on his depreciation schedules. He also sold and traded items at will. In fact, the court found that for 14 years, neither defendant had disputed the farmer’s right to possess, use, control, or even sell any of the farm equipment his father had owned. The mother and son were ordered to

return all but three of the disputed items to the wife. The trial court also awarded the wife damages in the amount of \$748 in lost advertising expenses, \$2,000 in expenses to transport the items off the farmstead, and \$22,824 in reduced proceeds caused by a fall in market price between the time of the scheduled sale and the actual sale. The case is [*Hinderks v. Hinderks*, No.15-2165 \(Iowa Ct. App. Nov. 9, 2016\)](#). Read more at [Family Conflict Signals Need for Estate Plan](#).

5. New Law Limits Ag Nuisance Damages

- a. On March 29, 2017, Governor Branstad signed [SF 447](#) into law. The new law, designed to curb damage awards in nuisance cases brought against “responsible animal feeding operations,” went into effect immediately.
- b. The stated purpose of the law is to encourage animal feeding operations to “adopt existing prudent and generally utilized management practices for their animal feeding operations” and to “provide a reasonable level of protection to persons engaged in animal agricultural production from certain types of nuisance actions.”
- c. Earlier bills had sought to shift the attorney fees of animal feeding operations to a losing plaintiff. The new law, however, does not include this provision. What the law does do is cap “special compensatory damages,” or those damages awarded to a plaintiff for “annoyance and the loss of comfortable use and enjoyment of real property.” It also clearly defines allowable “compensatory damages” or those damages awarded for reductions in property value or medical expenses. For more information, read [New Law Limits Ag Nuisance Damages](#).

F. Contractual Issues

1. Iowa Supreme Court finds that At-Will Contract Was Unilaterally Modified

- a. On October 14, 2016, the Iowa Supreme Court issued an opinion clarifying that an at-will contract with an independent contractor can be unilaterally modified prospectively, upon reasonable notice. A proposal for modification effectively terminates the original contract and offers new terms for acceptance. The modification can be accepted by performance or the contract terminates. This is the same rule that has applied in Iowa for at-will employment contracts. In reaching its decision, the Court reversed an earlier opinion from the Iowa Supreme Court. The case was [*Johnson v. Associated Milk Producers, Inc.*, No. 15-0105 \(Iowa Sup. Ct. October 14, 2016\)](#). Read more at [Iowa Supreme Court Finds That At-Will Contract Was Unilaterally Modified](#).

2. Review Those Custom Feeding Endorsements

- a. On January 11, 2017, the Iowa Court of Appeals found that a custom feeding endorsement in a contract growers’ insurance policy did not provide coverage for the loss of 837 hogs caused by an electrical breaker malfunction in the hog

building. This ruling extended the application of [*Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494 \(Iowa 2013\)](#). Specifically, the 2017 case found that the custom feeding endorsement protected the grower only from damages caused *by* the hogs, not damage *to* the hogs.

- b. The case was [*Schulz Farm Enterprises v. IMT Insurance*, No. 15-1960 \(Iowa Ct. App. Jan. 11, 2017\)](#). Read more at [Review Those Custom Feeding Endorsements](#).

3. Iowa Court of Appeals Enforces Partition Fence Agreement

- a. On January 25, 2017, the Iowa Court of Appeals upheld a trial court's order specifically enforcing a partition fence agreement between neighbors. The opinion illustrates that such an agreement does not necessarily preclude costly litigation. It also demonstrates the importance of engaging legal counsel at the beginning of a dispute.
- b. The case was [*Garrett v. Colton*, No. 16-0031 \(Iowa Ct. App. Jan. 25, 2017\)](#). Read more at [Iowa Court of Appeals Enforces Partition Fence Agreement](#).

4. An Accidental Settlement?

- a. Bad blood, bad relationships among siblings. So far just a typical court of appeals case, right? But, this case was different. Rather than resolving an actual dispute among the siblings, the court here was tasked with determining whether "Doyle's" attorney had acted within his authority in reaching a family settlement agreement on Doyle's behalf. Doyle argued, "Absolutely not." His attorney's testimony was somewhat cloudy. But, the district court and the court of appeals found that Doyle was bound to the terms of a settlement agreement Doyle never signed...a settlement agreement reached through emails and phone calls between Doyle's attorney and the attorney of the siblings.
- b. This case is a great reminder for attorneys and a good lesson for clients that a binding contract can be formed without a "formal signature" on a "formal document." Today's practice of communicating primarily via email rather than by telephone makes the possibility of an "accidental contract" much more likely. Remember, contract law uses an objective standard. If you objectively accept, subjective intent is irrelevant.
- c. The case is [*In the Matter of the Estate of Kinzenbaw*](#), No. 15-0981 (Iowa Ct. App. July 27, 2016). Read more at [An Accidental Settlement?](#)

G. Drainage District Issues.

1. County Supervisors Prevail in Drainage Action

- a. On June 29, 2017, the Iowa Court of Appeals issued an opinion interpreting Iowa Code § 468.600 et seq., and determining that it imposed no legal duties on a county board of supervisors. In 2014, a landowner complained to his county board of supervisors that a county road was “damming up water” on his property north of the road. During heavy rains, the road was acting as a levee, causing water to flood the property on the north side of the road.
- b. The board hired an engineer experienced with drainage matters to evaluate the situation. The engineer concluded that it was not in the public interest for the road to function as a levee and that damages would be reduced by placing two culverts through the road grade to allow the water to run its “natural course downstream over the floodplain.” The supervisors voted to install one culvert under the road, and the south-side landowners objected, filing a petition for a writ of mandamus and injunctive relief against the board. The petition asked the court to direct the board to follow the requirements of Iowa drainage law, specifically Iowa Code § 468.600 et seq. This law requires that adjacent landowners be given notice and an opportunity to be heard when an “owner of any land” files an application to “construct a levee” or “underground drain” to secure better drainage across a highway.
- c. The district court granted summary judgment to the supervisors, finding that Iowa Code § 468.600 et seq. did not impose any explicit duties on a board of supervisors. Rather, the district court found that those drainage law provisions were triggered when a *private landowner* filed an application with the county auditor. The Iowa Court of Appeals affirmed the summary judgment. The court noted that a writ of mandamus could not be used to interfere with a county board of supervisors’ reasonable exercise of discretion. Although the board could have—in its discretion—advised the north-side landowner to file an application under Iowa Code § 468.600 to secure better drainage across the highway, it had no obligation to do so. The case was [*Knoer v. Palo Alto County Board of Supervisors*, No. 15-0742 \(Iowa Ct. App. June 29, 2016\)](#). Read more at [County Supervisors Prevail in Drainage Action](#).

H. Pipeline Issues

1. Polk County District Court Rejects Landowners’ Eminent Domain Challenge

- a. [Polk County District Court judge ruled](#) on February 15, 2017, that the Iowa Utilities Board properly acted within its discretion in determining that the Dakota Access pipeline would promote the “public convenience and necessity.” The court also found that the Board had statutory authority to grant Dakota Access eminent domain over impacted parcels of agricultural land. The

ruling was in response to four petitions for judicial review filed with the court following the Board's decision to grant a hazardous pipeline permit to Dakota Access. Landowners filed three of those petitions, and the Sierra Club filed the other.

- b. Two main questions were at issue in this case: did the Board properly conclude that the Dakota Access pipeline would promote the "public convenience and necessity," and did Iowa law restrict the use of eminent domain with respect to the agricultural land at issue in this case? The landowners have appealed the decision. Read more at [Polk County District Court Rejects Landowners' Eminent Domain Challenge](#).

I. Other

1. Iowa Court of Appeals Says Common-Law Marriage Established

- a. A recent case from the Iowa Court of Appeals reminds us that sometimes a cohabitation relationship can lead to a common-law marriage. This means that when the relationship ends, a party can seek standard dissolution remedies such as alimony or an equitable property division.
- b. The court reiterated that claims of common-law marriage in Iowa are scrutinized carefully and that the burden of proof rests with the party asserting the claim. Yet, the court found that the three elements the Iowa Supreme Court has ruled must be proved to establish a common-law marriage were present: (1) Present intent and agreement to be married by both parties; (2) Continuous cohabitation; and (3) Public declaration that the parties are husband and wife. After examining the evidence *de novo*, the court found that the woman petitioner established the existence of a common-law marriage.
- c. The case is [In re Marriage of Capalite, No. 15-0909 \(Iowa Ct. App. Aug. 31, 2016\)](#). Read more at [Iowa Court of Appeals Says Common-Law Marriage Established](#).