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California's Prop. 2 sparks conflicting CAFO forecasts

By Agri-Pulse Staff

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In the wake of California's Nov. 4th ballot initiative which phases out battery cages for egg production by 2015, the U.S. livestock industry faces a potentially serious contagion. That's according to an Iowa attorney who specializes in agribusiness issues.

Jacob Bylund of the Des Moines office of Midwestern law firm Faegre & Benson warns that "Prop 2," which California voters approved with a 63% yes vote, is **aimed squarely at Concentrated Animal Feeding Operations (CAFOs)**. He says Prop 2 impacts far more than just egg production: "I don't believe for a second that this is about regulating CAFOs or about necessarily improving animal welfare. **This is about prohibiting CAFO development and driving an industry from a state. . . This was bad for California, and it's going to be worse if spreads to other states.**"

Paul Shapiro of the Humane Society of the United States dismisses such warnings as **typical agribusiness "scare-mongering attacks" which he says have been shown to be self-serving distortions**. Prop 2 opponents charged that banning battery cages would drive California egg producers out of business and cause egg prices to soar. Shapiro responds that the egg industry's own research studies predict that banning battery cages for hens would add less than one cent per egg to costs. He also notes that the egg industry nationally faces egg-retailer lawsuits and a U.S. Justice Department investigation, both charging that the industry itself has raised egg prices by 40% through illegal price-fixing. Shapiro adds that rather than spend \$9 million to fight Prop 2, the egg industry could have done what the livestock industry did in Colorado: worked out compromise legislation that avoided an expensive ballot initiative battle.

Bylund sees minimal immediate impacts from Prop 2 since the battery-cage ban won't take effect until 2015. But he expects that existing facilities won't be maintained and that "you're eventually going to see the migration of facilities away from the state." Longer-term, he warns of snowballing economic impacts if other states follow California's example "because when you preclude CAFO development within a region, it has an impact on other industries, on feed companies, on the meat processing industry, and on other service providers in the area."

Bylund's advice to agribusiness following Prop 2's passage is that "it might not be advisable to stake out investments in California for livestock development" and to look instead to "other states that have a more reasonable regulatory environment" – such as Iowa. But he's also concerned that even in less densely populated, heavily agricultural states such as Iowa, CAFO development could be threatened. He says Prop 2's success could encourage people who oppose livestock facilities to take action at the county or local level "to attempt to pass similar regulation." He said such attempts are already being made in Missouri "under the guise of protecting public health" through county health ordinances. Even in Iowa, he says, "our local governments can try to seize on this as a way to basically prohibit CAFOs."

While Bylund is concerned about potential future threats to livestock operations, the Humane Society's Paul Shapiro has a different view of the future after having played a lead role in both California's Prop 2 battle and in this year's compromise Colorado legislation which phases out the use of sow and veal crates. Shapiro sees significant progress toward compromise solutions which benefit livestock producers, consumers, and animal welfare advocates:

"We are already seeing changes that a mere five years ago few people would have predicted. . . Just a year ago, you saw Smithfield, the largest pig producer not only in the country but in the world, announce that it was going to phase out the use of gestation crates. . . I think that we are going to see something similar happen in the egg industry where we are going to see major egg producers . . . moving away from battery cage confinement of laying hens."

Shapiro says there is no secret about the Humane Society's purpose: "Our goal is to reduce animal suffering and some of the most severe causes of animal suffering within the agribusiness sector are the extreme, long-term confinement of farm animals, battery cages, veal crates, gestation crates, and to the extent that we have helped to implement a law in California that will phase those practices out, certainly we want to phase those practices out across the entire nation." He says longer-term goals include dealing with other "extremely troubling" livestock industry practices such as forced feeding, slaughter methods, and long-distance transportation of farm animals. With such goals in mind, he says, the Humane Society is "encouraging President-elected Obama to appoint a Secretary of Agriculture who is concerned about animal welfare."

Attorney Jill E. Cooper of Faegre & Benson's Denver office looks ahead

Prop 2 "will likely result in the significant redesign and modification of most of the egg production industry's operations. This will increase costs of eggs at the market. It may also result in operations in California relocating to other states where the regulations are less stringent. In designing and constructing these new operations, the producers will have the opportunity to build operations that can easily be retrofitted if modifications are required in the future."

"Typically, the use of legislation instead of a ballot initiative allows stakeholders to have a more complete and thorough discussion with the drafters. It often results in statutory requirements that allow the regulated community to phase in requirements in an

economically and technologically efficient manner. When industry proactively works to address perceived or actual issues, it results in a more practical outcome.”

“Concentrated animal feeding operations will continue to exist in these states [California and Colorado]. Companies that own and operate these facilities, particularly when constructing new operations, will need to be much more strategic in the planning, design and implementation. We recommend that they start discussions with the local and state agencies as early as possible. When appropriate, they could discuss new projects early with other community members and key organizations.”



Concentrated animal feeding operation
Photo: U.S. Environmental Protection Agency