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NEWS

A letter from the president and CEO: The Sunshine State awaits

By Mike Seyfert, President and CEO

Hello NGFA members. I hope that you have had a great start to 2024. Time seems to be flying as it is already February. The NGFA team has been very active on your behalf at the outset of the year working on transportation issues, especially opposing efforts to remove dams on the Snake River, monitoring government funding and farm bill activities on the Hill, continuing efforts to pass the Innovative FEED Act that would modernize the approval process for feed additives and pushing for common sense regulations from OSHA and other federal agencies.

We ended 2023 in Louisville, Ky., with our most widely attended CEC meeting since 2017. In early January, we opened registration for the 2024 NGFA Annual Meeting and Convention in Orlando, Fla., on March 17 to 19. This meeting is our largest of the year and allows plenty of time for networking and business meetings, in addition to the strong programming and committee meetings. We continue to add great speakers to our confirmed list, which includes Norfolk Southern President and CEO Alan Shaw, Scoular CEO and Director Paul Maas and Nathan Gonzales, publisher and editor of Inside Elections. All NGFA committees will meet over the three days, along with the NGFA Board and Executive Committee. The annual National Grain and Feed Foundation (NGFF) Golf Tournament will be held on Monday, March 18. For those not inclined to tee off, tour options have been added this year with proceeds also benefiting the NGFF.

New and re-elected NGFA Board members will be seated at the meeting in March. The Nominations Committee appointed

by NGFA Chairman Greg Beck completed its work this week. Ballots will be distributed to the lead representative for all NGFA member companies within the next couple of weeks. I sincerely thank Committee Chairman Benjamin Smith along with committee members Gary Beachner, Jean Bratton, Jarvis Haugeberg, and Kevin Gray for their efforts on one of the most important tasks we undertake each year.

A key priority since I joined NGFA as president and CEO nearly three years ago has been to increase transparency around all NGFA activities for our members. As you know, we were very open regarding economic challenges facing the association resulting in a need to raise our annual dues in 2023 – the first time in at least 22 years for most dues categories. I am pleased that we have firmed up the finances and, even with inflationary pressures, were able to keep dues level for 2024.

You should also know that the NGFA Executive Committee (EC) met in Phoenix, Ariz., in January for one of four in-person meetings it holds each year. The EC discussed existing and future threats to agriculture and NGFA members' freedom to operate, received a financial update, discussed policy priorities for the coming year, and received an update on the implementation of the NGFA Committee Task Force recommendations approved by the Board of Directors in September.

Finally, we are well on our way to implementing the recommendations of the Committee Task Force. **All continuing, restructured and new committees will meet during the annual meeting in Orlando.** In addition, committee assignments will be reviewed and finalized by Chairman Beck and the NGFA officers in February. Other task force recommendations, priorities and tasks approved by the Board will continue to be implemented throughout 2024.

I know you make a decision to invest your resources in NGFA. I thank you for your support and trust in the association and our NGFA team. Please do not hesitate to reach out to me, mseyfert@ngfa.org, at any time with questions, suggestions or concerns.

Best wishes for a safe and prosperous 2024.



NGFA submits comments to House subcommittee on dangers of Lower Snake River dam proposal

In written testimony [submitted](#) Jan. 30 to the House Energy and Commerce Energy, Climate, and Grid Security Subcommittee, the NGFA expressed the concerns of the agricultural industry regarding a settlement deal between the Biden administration, state governments, and environmental groups to study and potentially implement future removal of the Lower Snake River dams.

“We are deeply concerned with the settlement agreement between the White House, several of the tribal governments, and NGOs in the Pacific Northwest, as its implementation will have devastating impacts on U.S. farmers, ranchers and agribusinesses throughout the United States,” noted NGFA President and CEO Mike Seyfert in the testimony. “Removing the Lower Snake River dams will hurt producers and



negatively impact the operations and livelihoods of NGFA members and their employees who have made investment decisions based on the ability to utilize barge transportation.”

The Biden administration on Dec. 14 announced a \$1 billion plan with environmental groups, four tribal governments and the states of Washington and Oregon meant to address salmon declines in the Columbia and Snake River system. The settlement deal proposes that the administration help fund and conduct studies on “how the



transportation, irrigation, and recreation services provided by the four Lower Snake River dams could be replaced, to help inform Congress should it consider authorizing dam breach in the future.”

Breaching the Lower Snake River dams would cause widespread economic and environmental damage and the NGFA has opposed any actions by federal or state governments that could result in breaching them. Barge transportation moves about half of all grain exports to export elevators and is critical to NGFA members in the Pacific Northwest. The Columbia-Snake River System is the third-largest grain export corridor in the world, transporting nearly 30 percent of U.S. grain and oilseed exports. Notably, barges are the most environmentally friendly mode of transportation for grains and oilseeds with one four-barge tow moving as much grain as 140 rail cars or 538 semi-trucks.

“Advocates of breaching the dams suggested barge traffic could be replaced by rail or truck transportation,” Seyfert continued. “The NGFA would like to clarify that the required alternative infrastructure capacity simply does not exist at this time, and it is highly unlikely that it could be created in an economically viable amount of time – if it can be developed at all.”

In a statement issued last week, NGFA endorsed [legislation](#) sponsored by Reps. Dan Newhouse, R-Wash.; Cathy McMorris Rodgers, R-Wash.; Lori Chavez-DeRemer, R-Ore.; Russ Fulcher, R-Idaho; and Cliff Bentz, R-Ore., that would prevent federal funds from being used to study dam breaching.

NGFA supports bipartisan cybersecurity bills

NGFA endorsed a pair of bipartisan, bicameral bills that would strengthen cybersecurity for the food and agriculture industry.

The Farm and Food Cybersecurity Act, introduced by Sens. Kirsten Gillibrand, D- N.Y., and Tom Cotton, R-Ark.; and Reps. Brad Finstad, R- Minn., and Elissa Slotkin, D- Mich., would direct the U.S. Department of Agriculture (USDA) to conduct a study of cybersecurity threats and vulnerabilities in the food and agriculture sectors every two years and submit a report to Congress.

“Protecting our nation’s farms and food security against cyberattacks is a vital component of our national security,” Sen. Gillibrand said. “The Farm and Food Cybersecurity Act is a crucial step toward preparing our nation’s agriculture sector to respond to potential cyberattacks.”

USDA would also be required to conduct annual crisis simulation exercises with the Homeland Security Department, the Department of Health and Human Services and the Director of National Intelligence.

Rep. Finstad said the Farm and Food Cybersecurity Act “will provide us with a greater understanding of the susceptibility of our country’s food supply to cyberattacks, and more importantly, help us prevent these attacks from occurring in the future.”

The legislation has also been endorsed by the American Farm Bureau Federation, North American Millers Association, National Council of Farmer Cooperatives, National Cattlemen’s Beef Association, National Pork Producers Council, USA Rice, Agricultural Retailers Association, American Sugar Alliance, and the U.S. Chamber of Commerce.

Help Wanted: Foreign Ag Labor Solutions

By Kristi Boswell, Counsel, Alston & Bird

This guest column follows Boswell’s presentation at NGFA’s Country Elevator Conference and Trade Show (CEC) in Louisville, Ky., on Dec. 4, 2023. This article is intended to be informational and does not constitute legal advice regarding any specific situation.

Private and cooperative facilities are struggling to find enough local workers. As the workforce shortage grows, many are turning to various visa programs to supplement critical labor needs. Grain and feed businesses have customers that use the H-2A temporary agricultural program and are considering the H-2A program for labor shortages at their facilities. Could it be an option for your business? At the risk of sounding too lawyerly, the answer is maybe.

Is there another foreign workforce solution your business should be considering? While each business is unique and each program has distinct regulatory requirements, we provide some initial questions to ask in deciding whether your business and labor needs may qualify for any of these foreign labor solutions.

The H-2A program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the United States to perform temporary or seasonal agricultural labor or services. The program is administered by the U.S. Department of Labor (DOL), the Department of Homeland Security, and the State Department.

The regulations require that the agricultural labor or services be seasonal or temporary. Employment is seasonal when it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle, and requires labor levels above what is necessary for ongoing operations. Employment is temporary when the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

Employers hiring H-2A workers must follow all the terms and conditions of the program, including paying the applicable wage rate, providing housing, and guaranteeing 75 percent of the total number of hours offered in the contract period.

While many grain and feed businesses consider themselves a part of agriculture, it is important to understand the statutory and regulatory definitions the government uses to decide whether what your



business does is agriculture for purposes of the H-2A program. Congress referred to a few other existing laws in defining agricultural labor or services. Specifically, the definition of agricultural labor in section 3121(g) of the Internal Revenue Code of 1986 and the definition of agriculture in section 3(f) of the Fair Labor Standards Act (29 U.S.C. 203(f)) plus the pressing of apples for cider on a farm or logging employment.

Here are some additional questions to consider (or ask your attorney) before applying for the H-2A program:

- 1) Is your labor need seasonal or temporary?
- 2) Is the activity considered agricultural as described above? If so, will the work be performed by a farmer or on a farm as “incident to or in conjunction with” farming operations?
- 3) Is the work being performed on a farm in the employ of the owner, tenant, or operator of the farm?
- 4) Does the work involve the production or harvesting of an agricultural commodity?
- 5) If it is post-harvest activity, does the owner or operator of the farm own more than one-half of the commodity being handled, dried, packed, packaged, etc.?

The H-2A program can be a resource to fill labor shortages. However, not all jobs within grain and feed facilities would qualify under the H-2A program — especially jobs that are at the facility and not on the farm. Additionally, the H-2A program is costly and due to complex regulations, businesses typically hire full-time staff or outside assistance to navigate the program correctly.

Other foreign workforce solutions may be options for your business.

One such program is the H-2B temporary non-agricultural program. The H-2B visa program permits U.S. employers to hire foreign national workers to come temporarily to the United States to perform temporary nonagricultural services or labor on a one-time, seasonal, peak-load, or intermittent basis because no qualified U.S. workers are available and willing to fill the position.

One key challenge to using the H-2B category is its annual cap of 66,000. This limits the number of visa holders who can enter the country despite American businesses’ much greater need. Once the H-2B cap is reached—which occurs nearly immediately each year—under authority granted through appropriations language, the DOL and U.S. Citizenship and Immigration Services have the authority to designate a supplemental cap and can accept additional petitions for H-2B workers accordingly. Regardless, the restrictive statutory cap limits the use of the H-2B program.

Another option may be the J exchange visitor visas. The J-1 visa program is an exchange-based exposure, training, or educational program that includes both learning about the United States and the exchange of ideas. The J-1 exchange visa category allows for various temporary exchange visitor classifications. The J-1 program classifications include short-term scholar, student, trainee, intern, camp counselor, summer work/travel, and au pair programs. Employers have developed on-the-job training curricula and provide these training opportunities for J-1 visa holders while supplementing their labor needs.

The TN Visa might also be a program to consider. The United States-Mexico-Canada Agreement (USMCA) created special economic and trade relationships for the United States, Canada, and Mexico. The nonimmigrant USMCA Professional (TN) visa allows citizens of Canada and Mexico, as USMCA professionals, to work in the United States in prearranged, professional-level business activities for U.S. or foreign employers. The TN is granted for up to three years. It is renewable indefinitely, and there is no cap on the total number of years one may remain in the United States in TN status. The applicant must

meet the specific program, education, or experience requirements. The program has been used throughout agriculture with success for those jobs meeting the treaty requirements.

Grain and feed businesses may also want to consider partnering with refugee and asylum resettlement organizations. These partnerships have been a success for all parties, providing earning opportunities for transitioning refugees and asylum seekers, and filling critical job needs for employers. Numerous government and non-government organizations aid in hiring these populations.

As grain and feed businesses struggle to find enough local employees to fill key roles, these programs can and should be reviewed to determine whether one may be right for your business. While each program will have challenges and may not work perfectly, through proper counsel and planning, businesses may be able to address their labor needs. Additionally, employers have also discovered many benefits of rich diversity in talent and community outreach.

Our team at Alston & Bird is available to analyze your labor needs to identify whether these or other foreign workforce solutions may work for your business.

EVENTS

Gonzales to provide election analysis at NGFA's annual convention

Two weeks after Super Tuesday presidential primaries across the country, Nathan Gonzales, the editor and publisher of Inside Elections, will provide his nonpartisan campaign analysis during the opening general session at [NGFA's 128th annual convention](#).

In addition to running Inside Elections, which provides analysis of campaigns for Senate, House, governor, and president, Gonzales is also co-host of the Inside Elections Podcast and an Elections Analyst for CQ Roll Call. He has appeared on NBC's Meet the Press and NBC Nightly News, C-SPAN's Washington Journal, NPR's All Things Considered, Fox News Channel, and MSNBC, and has been quoted in the New York Times, the Washington Post, the Wall Street Journal, and USA Today. His work has also appeared on FiveThirtyEight, NBCLatino.com, and in Campaigns & Elections magazine.

Join hundreds of industry members on March 17-19 in Orlando, Fla., at the Omni Orlando Resort at Championsgate.

Other [confirmed speakers](#) include Scoular CEO Paul Maass and Norfolk Southern CEO Alan Shaw.

Register at ngfa.org/annual-convention.



SUPPLEMENTS

Recording available of new NGFA member portal webinar

NGFA provided an overview of its new system for members to pay dues, register for events and access members-only sections of the website. [A recording of this Feb. 1 webinar is available here.](#)

If you questions about the new system, contact NGFA staff at tbaker@ngfa.org or mhitchcock@ngfa.org.

Extra Supplements

NGFA in the news:

Brownfield: [Diverted shipping routes are changing trade flows](#)

RFD-TV: [NGFA: These changes will advance the efficiency of the U.S. rail system](#)

Feedstuffs: [Bipartisan bills address cybersecurity threats to food and ag sectors](#)

Grain Journal: [NGFA to House Subcommittee: Lower Snake River Dam Proposal Dangerous for Agriculture](#)

American Ag Network: [Lower Snake River Dam Proposal Dangerous for Agriculture](#)

Other news:

Reuters: [Why are farmers protesting in France and other parts of Europe?](#)

Reuters: [US officials deliver warning that Chinese hackers are targeting infrastructure](#)

Ag Web: [Bipartisan Bill Introduces New Labeling Rules for Plant-Based and Cell-Cultured Meat Products](#)

Associated Press: [Business and agricultural groups sue California over new climate disclosure laws](#)

The Daily Yonder: [How Much Money Can Broadband Bring a Rural Community?](#)

Bloomberg Law News: [H-2A Visa Program Wage Rule Survives Industry Legal Challenge](#) *(log in)*

Agri-Pulse: [Critics fear a new drought paper could trigger more battles over water rights](#) *(log in)*

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