

Capitol Reflections



2018 LEGISLATIVE SESSION

"The right to defy an unconstitutional statute is basic in our scheme. Even when an ordinance requires a permit to make a speech, to deliver a sermon, to picket, to parade, or to assemble, it need not be honored when it's invalid on its face." -Justice Potter Stewart (1915-1985), U. S. Supreme Court Justice, Walker v. Birmingham, 1967

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H658A, PROPERTY RIGHTS BILL CROSSES FINISH LINE!

This past week, H658a saw a lot of activity. At our last writing, H658 had been sent for amendment by the Senate Resources Committee. There were a number of amendments that were attached in the Senate to clarify some items of concern which had been raised. These amendments clarified that oral permission is still allowed, that investigation costs must be reasonable and approved by the courts, that a defendant in a civil trespass suit could recover attorney fees if the suit was found to be brought without foundation, added a definition of "remains", reduced the penalty on a first-time criminal conviction when no damage occurs to an

infraction with a \$300 fine, and clarified that law enforcement could cite someone when they refuse to depart after being ordered to do so, or if they return within a specified time period without permission.

After the bill was amended, H658a passed the Senate on a party-line vote of 29-6. It then went back to the House and received a vote of 51-18, picking up an additional 6 votes in favor over the previous vote. *Finally, on Wednesday, March 28, after considerable suspense, H658a became law without Governor Otter signature.*

IFBF would like to provide a huge thank-you to all Property Rights Coalition organizations and members who worked so hard to ensure a successful result. In addition, there were other people who also showed great leadership in helping to get H658a approved, including Senators Steve Bair and Jeff Siddoway. The biggest thanks go to the two intrepid sponsors of H658a, Chairman Judy Boyle and Senator Mark Harris. They both worked tirelessly for very long hours over many weeks to get the bill over the finish line. We cannot express enough thanks for their leadership and tireless efforts on this vitally important issue. **IFBF policy #192 supports H658a.**



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FEDERAL STOCKWATER RIGHTS H718

Ever since the Idaho Supreme Court ruled in favor of ranchers Tim Lowry and Paul Nettleton in the Joyce and LU cases, IFBF has been trying to figure out a way to get the illegitimate stockwater rights out of the hands of the federal government. Finally, H718 does just that. In the Joyce case, the Idaho Supreme court ruled that since the federal agencies don't own livestock, they don't put the water to beneficial use as required under Idaho law. The court also ruled that the ranchers are not the agents of the federal government. Idaho law requires that water rights be put to beneficial use, or they are subject to forfeiture after five years of no beneficial use. Therefore, more than 10 years later, H718 now directs the Department of Water Resources to send a "show cause" letter to the federal agencies within 90 days, asking them to prove beneficial use and explain why their water rights should not be forfeited.

This has apparently got the attention of the federal agencies. Both the USDA and Department of Interior attorneys have been on the phone with the Governor, Speaker of the House and other legislators trying to work out a "deal" so Idaho wouldn't pass this bill. Fortunately for us, the Speaker was adamant that the bill must pass, so the state has some leverage on the federal government. H718 passed handily through both bodies and ***has been signed by the Governor***. Now, the federal government must cooperate since they are required by federal law to follow state law as it pertains to water. Once the federal agencies no longer hold these illegitimate water rights, that will remove the remaining obstacle for the ranchers who actually put the water to beneficial use to file for and receive water rights in their names. **IFBF supports H718.**

TWO NEW ELD ACTIONS BENEFIT LIVESTOCK HAULERS

Important Note: Qualifying haulers using the current ELD waiver need to operate under the recent waiver extension until advised otherwise and need to carry a copy of the Federal Register notice addressing the ELD waiver extension with them through June 18, 2018. This is a condition of the waiver extension.

Enforcement of the ELD requirement may vary state-to-state. Federal enforcement has been waived until June 18, 2018. U.S. DOT enforcement funding has been prohibited through the end of FY18 because of language included in the FY18 Omnibus Spending Bill. It is unclear how this interacts with the waiver extension. [A link to the waiver extension is provided on the Idaho Farm Bureau Federation website, under Trending News, at ELD 90-Day Waiver for the Transportation of Agricultural Commodities.](#)

During the past week two actions occurred which significantly affect the ELD mandate. First, the Federal Motor Carrier Safety Administration (FMCSA) granted livestock haulers a 90-day waiver extension postponing ELD enforcement until June 18, 2018. A number of ag-related associations, including the American Farm Bureau Federation requested an extension of the waiver. The 5th term of the waiver extension says "Drivers operating under this waiver must carry a copy of this **Federal Register** notice and present it to motor carrier safety enforcement officials upon request..."

During the 90-day extension period the FMCSA will also publish a final guidance to the agricultural 150 air-mile hours-of-service exemption and personal conveyance.

As a significant collateral issue, full enforcement of the ELD rule is scheduled to begin April 1, 2018 for those carriers subject to the rule. If involved in an enforcement action, a carrier without a required ELD will be placed out of service for 10 hours. After that, the driver will be allowed to proceed to the next stop and should not be dispatched again without the ELD. This enforcement applies to haulers who do not qualify for the ELD ag waiver.

Concurrent with the waiver extension, the FY18 Omnibus Spending Bill which was passed by Congress and signed by the President this week, included language prohibiting the U.S. DOT from spending money to enforce the ELD mandate through the end of FY18 (Sept. 30, 2018). At this point it is unclear how the appropriations prohibition will interact with the waiver and ELD enforcement. American Farm Bureau and others will meet with DOT to find out the agency's intentions.

Federal enforcement is prohibited through Sept. 30, 2018. However, this does not preclude the states from enforcing the ELD rule. This is why we are advising qualifying ag carriers to carry a copy of the Federal Register waiver extension notice with them through Sept. 18, 2018. Future clarification from DOT may be helpful to avoid inconsistent state enforcement.

Please contact Dennis Tanikuni at (208) 342-2688 with any questions.

IDAHO WATER RESOURCE BOARD MEETING

On Thursday and Friday, the Idaho Water Resource Board (IWRB or Board) held meetings in Boise to discuss and act on several projects and water issues from around the state. Some projects and topics of interest to our members may include studies to enlarge Lost Valley Reservoir, updates on the recharge efforts on the ESPA, the water supply outlook for the state, Bear River Basin updates, and progress on other water storage projects.

Water users who benefit from the Lost Valley Reservoir are joining with the IWRB to finance a study on the Northern Idaho ground squirrel and how it might be affected by the potential enlargement of the reservoir. Because the squirrel is listed as an endangered species, special attention must be given whenever proposed developments could impact the animal's habitat. The Board approved up to \$30,000 to help fund the impact study on the squirrel, with any additional cost being covered by the water user groups in the area. This study will likely take place over the summer, to then present the findings to the Board.

Wesley Hipke with IDWR, reported on the amount of recharge that has taken place on the ESPA thus far during the recharge season. Since the end of August until March 20th, the IWRB has been able to recharge a total of 352,747-acre feet of water. It is projected that before the Board's recharge water is turned off (mid to late April) a total of more than 440,000-acre feet of recharge will have taken place. This effort should prove beneficial as the state and water user groups work to stabilize aquifer levels on the ESPA. More sites continue to be developed for future recharge opportunities.

This year, snowpack levels and stream flows vary largely throughout the state. The snowpack varies from 45% - 124% of normal, with stream flow forecasts showing anywhere from 10% - 135% of normal. Due to the weather/storm patterns this winter, the southwest

corner of the state missed out on a lot of precipitation, while many parts of northern and central Idaho received above average precipitation. Most of the state received the bulk of its snowpack and precipitation during the second half of winter as the la Niña weather pattern finishes up.

A representative of Rocky Mountain Power/Pacificorps reported to the Board regarding its operation of the Bear River water system. The utility has interest in increasing the capacity of the Bear River channels to provide reserve power from the Soda hydroelectric project. An increase of hydroelectric activity would increase flows and water levels below the Soda project. This has the potential of flooding low level agriculture lands along the river. The company was preparing proposals to initially purchase the land; however, the representative stated that they are now looking at potential easements that could be offered to landowners instead of purchase offers.

Relating to the Bear River basin, the Board also passed a resolution giving the state authority to file an application for water storage rights in Bear Lake. This action allows the state to apply jointly with the state of Utah for these storage rights, giving the states more say on the operation of the Bear River system. Rocky Mountain Power expressed surprise and some hesitation to the board's action.

Brief updates were given on other water storage projects that are currently being studied. The Boise River Storage Feasibility Study is continuing to get on its way, and a "go/no go" decision is expected in November or December of this year. The Island Park Raise continues to be studied with work being done with the Bureau of Reclamation to identify all their easements. Also, the Galloway Dam Project continues to be analyzed, with the Board likely having to decide in the near future if they will proceed with further studies and proposals.

PERSONAL PROPERTY TAX ON AG EQUIPMENT

Ever since the legislature passed a law more than 15 years ago to exempt equipment used in the production of agricultural commodities from paying personal property tax, several county assessors have been working to get around that law. This year, the Canyon County assessor saw lots of new equipment being utilized in the expanding production of hops, and the assessor decided it was time to begin taxing that equipment, despite it being tax exempt for over 15 years.

When the hops growers received their assessment notices, they approached their legislators and decided to run a bill to clarify that equipment used to produce hops are not taxable. Hops are a little bit like alfalfa hay in that they are not able to be sold until they have been dried and baled for shipment. Therefore, hops use some equipment that is unusual or not necessary to many other crops. However, they are very necessary for hops production, or you would not have a marketable product.

The House unanimously approved H594, but when the

Senate Local Government and Taxation Committee looked over the bill, they determined that instead of a fix just for hops, there should be a fix for other agricultural crops that are also receiving different treatment in different counties such as milking equipment, mint stills and honey extraction equipment. In each of these cases, the equipment is necessary to produce an agricultural product that can be sold. However, some assessors believe this equipment does not meet the technical requirements of the law.

Therefore, the Senate amended H594 with a two-year sunset. Their intent is that a broader fix must be implemented so that these other agricultural producers are not discriminated against in some counties. After the amendment, both the House and Senate approved the bill unanimously and the bill is now law. Work will begin right away with the Idaho Tax Commission, the Idaho Association of Counties, IFBF and other agricultural organizations to ensure that a fix is brought forward next year. **IFBF supports H594a.**

HP1-STOCKWATER RIGHTS/ATTORNEY FEE PAYMENT

Both the House and the Senate have adopted House Proclamation 1 regarding the reimbursement of both LU Ranching Company and Joyce Livestock Company for their attorney fees to defend Idaho's sovereignty and authority over stockwater rights. This long-fought court case known as the Joyce Decision, should have never fallen on the backs of these two ranching families; rather, the State should have defended its rights over water against the federal government.

In 2007, the Idaho Supreme Court made several important rulings in the cases of Joyce Livestock Company vs. the United States of America and LU Ranching Company vs. the United States of America. The Court, ruling in favor of the ranchers, determined stockwater rights on federal lands are an appurtenance to the base property, the federal government cannot put the stockwater to beneficial-use, and the federal government can not avail itself of the constitutional method of appropriation to obtain a stockwater right from the state. The ranchers won this landmark court case that has set a precedent across the entire West; however, they were forced to foot the attorney bill.

The state of Idaho failed on two separate occasions to defend the state's water. First, when the federal agencies filed for tens-of-thousands of stockwater rights during the Snake River Adjudication, IDWR recommended their

approval to the adjudication court. The agency completely disregarded Idaho water law that requires the water to be put to beneficial-use. Second, the Attorney General failed to protect and defend the State's constitutionally protected water rights. This ultimately left the ranchers on their own to defend the State's water rights against the federal government.

This proclamation proposes a remedy to this situation, by urging the Constitutional Defense Council to reimburse both Joyce Livestock Company and LU Ranching Company for their attorney fees. Some might say that this could set a precedent in the state, resulting in more requests for attorney fee reimbursements in other court cases. However, the importance, magnitude and uniqueness of this case must be considered. First, Idaho should have been the party to stand and defend its authority and sovereignty over its water, which it holds in trust for its citizens. Second, the court ruled in favor of the ranchers, resulting in a clear victory for the entire state and its citizens. Third, this case has set a precedent for stockwater rights filed in other adjudications in Idaho and throughout the West since the 2007 ruling.

This court case was a win for the entire State and West, and it should have been fought by the State in the first place. It is time for the State to step-up and pay for the cost of defending Idaho's water rights. **IFBF supports HP1**

CERCLA FIX INCLUDED IN OMNIBUS SPENDING BILL

The recently passed FY18 Omnibus Spending Bill includes language from the proposed FARM (Fair Agriculture Reporting Methods) Act which amends Sec. 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to say that under the act, farmers do not have to report air emissions from animal waste on the farm.

This language fixes an issue that originated in 2008, when EPA published a rule that exempted most farms from emission reporting requirements under CERCLA and EPCRA (Emergency Planning and Community Right to Know). EPCRA requires emissions reporting to the U.S. Coast Guard so that

first-responders will know which industries in an area are releasing potentially dangerous emissions into the air and enables first-responders to create appropriate emergency plans.

The 2008 rule exempted farms releasing ammonia and hydrogen sulfide from animal waste above threshold levels from CERCLA reporting. The rule was challenged in court by a number of environmental groups and on April 11, 2017, it was struck down by the U.S. Court of Appeals for the D.C. Circuit, eliminating the farm exemption. The Omnibus language restores the original rule's intent and effect.

ACTION! GET FAMILIARIZED WITH 2018'S LEGISLATIVE CANDIDATES

This is the final issue of Capitol Reflections for the current Legislative Session, now we urge you to familiarize yourself with your local candidates for the next legislative session!

The Idaho Secretary of State has released the 2018 Official Primary Candidate List. This list is comprised of those individuals who are running for a legislative seat for the 2019 year. This list is currently located on the Idaho Secretary of State website, under the 3rd red tab on the left-hand side of the screen where it says "Elections, Lobbyists & Campaign Disclosure;" once selected, the top

of the next page says "[2018 Official Primary Candidate List.](#)"

The 2018 Official Primary Candidate List can also be accessed on the Idaho Farm Bureau Website, [Legislative page](#) by selecting "[New! View Idaho's 2018 Official Legislative Candidates List.](#)"

Please take some time to familiarize yourself with your local legislative candidates. It is important to know who the local candidates are; voting for your local legislators is the first step in aligning your values with your local authorities!

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