

Capitol Reflections



2015 Legislative Session

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"Laws that forbid the carrying of arms . . . disarm only those who are neither inclined nor determined to commit crimes . . . Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man."

Thomas Jefferson

IDWR Water Rule to Repeal IDWR Rule 50 - Rejected

Yes this is very confusing! The Senate Resources and Environment Committee added their rejection to the House Resources and Conservation Committee's earlier vote to reject the proposed rule to repeal "Rule 50."

The proposed rule change resulted from a 2010 petition made by Clear Springs Foods. The department determined that the boundary used to define the common groundwater supply that contributes to the aquifer needed to be expanded.

Had the new IDWR rule been accepted, the area impacted by a ground or spring water call would have been expanded by approximately 500,000 additional acres.

When trying to understand the conjunctive management of surface and ground water in the Eastern Snake River Plain Aquifer, legislators struggled to comprehend the impact of those criteria to be used.

Director Gary Spackman, and IDWR senior advisor Richard Rigby, debated the technical validity of the model that is being used under the existing rule and the updated groundwater model that is the basis to expand the common ground water supply that contributes to the aquifer.

Several irrigators from the Rexburg area testified that the groundwater in their area is pumped from a "perched" aquifer, and to involve them in a call made to address a lower gradient Snake River Plain Aquifer call would not help to restore ground water levels or spring flows. Many suggested that a curtailment call precluding their ability to utilize groundwater would perhaps never restore groundwater to down gradient water rights holders.

Testimony was also heard that the hydrology used to model the impact from the Big Lost River and the Wood River and tributaries, have not been appropriately modeled to adequately demonstrate how they contribute to the Eastern Snake River Plain Aquifer.

Lynn Tominaga, Executive Director of the Idaho Ground Water Appropriators, testified that his members are split on this issue and reside both inside and outside of the current boundary. His concerns reflected that the uncertainties of the models have not been quantified. Because of the uncertainty it would cause, and due to the many irrigators outside of the boundary that could be impacted, the Idaho Ground Water Appropriators opposes the rule change.

Chairman Steve Bair said, "The problem with the repeal of Rule 50, of the conjunctive management rules, is that all boundaries of the current common groundwater area would have been removed. A water judge recently ruled that the director improperly applied a limit on curtailment, limiting the curtailment to 157,000 acres. If rule 50 had been repealed, in the future the director would arguably have needed to curtail all water users from the east mountaintops to the west mountaintops. This would be impossible for the director to accomplish because there is little or no historical data available to regulate water in outlying areas. The model does not extend from mountaintop to mountaintop. It was better to leave the common groundwater area as currently defined by Rule 50."

The rejection of this rule and the continued use of Rule 50, now remain in conflict with the desire by the water judge to have more area covered in the common groundwater area. However, to determine what that common groundwater area is, the legislature voted to rely on the modeling data available. The water debate is healthy and continues in our state.



Two Infrastructure Revenue Bills Surface

In the last week, two bills intended to assist in infrastructure maintenance funding have been introduced.

H95 was introduced in the House Revenue and Taxation Committee by sponsor, Sen. Jim Rice (R-Caldwell). The bill exempts road materials used to construct, improve and maintain public roads from sales/use tax. These materials are currently taxed because the common thought is that the contractor is the end user. In fact, the materials are often provided by an entity whose responsibility it is to build and maintain roads; the State of Idaho, a highway district, county or city. Taxing the materials results in higher costs to build the roads. The bill's intent is to allow the moneys paid in sales tax to remain with the various transportation agencies.

Sales of materials would be exempted from sales/use tax regardless of whether or not the materials become part of the real property or an improvement or fixture to the real property. To qualify for the exemption, these conditions must be met: 1) materials become part of a public road, 2) materials are used under a contract with a federal, state, county or city government entity, and 3) upon completion of the contract the materials become the property of a federal, state, county or city government entity or any political subdivision or agency of the government entity.

The proposed exemption in H95 would not apply to: 1) property that is owned by the contractor after the contract is completed, 2) materials used by a private entity to develop any part of a public road that has not yet been dedicated to the public, 3) any materials that remain the property of public utilities or any other nongovernmental entities, 4) materials that become part of a water or sewer system or 5) any materials that a contractor consumes to perform a contract that is not intended to become part of a public road.

The second bill, H111, was sponsored by House Transportation Chairman, Joe Palmer (R-Meridian) and allows county commissioners to authorize a temporary vehicle registration increase for a specific transportation project in their county if passed by a 2/3 majority in a general election.

H111 also says that 1) all revenues from the registration fees can only be used for transportation projects on roads and bridges in the state, county and/or highway district systems, 2) the money cannot be diverted for another purpose, 3) the specific projects will be identified, 4) the increased registration fee will only be valid until sufficient revenue has been collected to pay the estimated cost of the specifically identified project and is null and void after that point, 5) the county commissioners then certify when sufficient revenue has been collected 6) if there are unspent moneys collected for a project those funds shall be used for the maintenance and repairs for that project, 7) the exact rates, duration, etc., will be stated in the ordinance and 8) no rate or term shall increase without voter approval. Item 8 requires a simple majority.

Constitutional Carry Bill H89

Last week a bill was introduced in the House State Affairs Committee by Greg Pruett representing the Idaho Second Amendment Alliance. H89 would allow law-abiding citizens to carry concealed weapons without any license or permit, just as law-abiding citizens are now allowed to openly carry firearms without any sort of license or permit.

The bill does not do away with the concealed carry licenses that are now available. It is still necessary to have a permit when travelling in other states that have reciprocity agreements with Idaho to recognize our concealed carry license as equivalent to their licenses.

According to Mr. Pruett, five other states already have laws recognizing "Constitutional carry", meaning that each citizen has the inherent right to defend themselves and carry a firearm without any permit or license as recognized by the second amendment to the U.S. Constitution. Idaho would join those other states in no longer requiring a permit to exercise this right.

H89 does not impact those barred from possessing firearms under State law. Those prohibited from possessing firearms, such as convicted felons, would still be prohibited. Nor does the bill impact criminal activity, as it will still be illegal to commit crimes with weapons under H89.

Correction of Hand Tool Exemption Moves Forward

This week the House Revenue and Taxation Committee, Chaired by Rep Gary Collins (R-Nampa), sent H39 to the floor with a "do pass" recommendation. Ever since the sales tax was implemented in 1965, items used in the production of products for later resale have not been taxed. This is to prevent taxing the same items multiple times through the production process with the understanding that the sales tax will be paid on each item by the final consumer. There has always been an exception to the production exemption however, which required businesses to pay sales tax on all hand tools valued under \$100, regardless of their use.

This has become an administrative headache for the state tax commission as well as for those who sell these items to other businesses. There have been significant internal discussions within the State Tax Commission as to what exactly qualifies as a hand tool. Therefore, the State Tax Commission has proposed H39 which simply removes the exception for hand tools from the production exemption.

H39 is friendly to business since hand tools valued at less than \$100 will no longer be taxed as long as they are necessary for producing products that will be taxed later at the retail level. Idaho Farm Bureau supports H39.

Off-Road Fuel Must Remain Road Tax Free

As legislators continue to wrestle with how to raise additional funding for transportation needs, one idea has surfaced that needs a quick and permanent death. It has been suggested that off-road diesel should be taxed just like on-road diesel. This is a preposterous idea. It would be like requiring non-smokers to pay a cigarette tax, or forcing unemployed workers to pay an income tax. It makes absolutely no sense to require fuel that is not used on the roads to pay a tax for roads.

Prior to the mid-1990s federal law taxed all diesel fuel with the federal road tax, no matter how it was used. Those who used the fuel off-road such as for logging, mining, construction, agriculture or even in generators or reefer units of semi-trailers could request a refund of the tax they had paid which was not used on the roads. Since they were not using the roads, they should not have to pay the road tax.

This system proved to be an administrative nightmare and was rife with fraud and abuse. According to the IRS, their investigations revealed the mafia was intimately connected with claiming huge refunds of fuel tax associated with their business ventures. The IRS further reported that the federal highway trust fund was losing billions in taxes annually due to fraudulent refund requests.

<http://www.fhwa.dot.gov/policy/taxpaper.htm>

To prevent this problem, the federal government decided to add red dye to diesel fuel that was intended for off-road purposes. This would allow the fuel to be sold tax-free, and would be easy to enforce since it would be plainly evident if dyed fuel was being used by vehicles on the road. The system has worked well ever since it was implemented. It has saved money in administration, and has provided clear evidence when dyed fuel is used improperly.

Another misguided effort that has been discussed here in Idaho is to increase the transfer fee on dyed fuel to use for transportation funding. This is also improper, since once again, dyed fuel is only for off-road use. If dyed fuel is being used on the road, that is illegal and subject to severe fines and penalties. Legislators must not succumb to the lure of "it's only a couple of pennies per gallon". This is an unfair and improper way to raise revenue for transportation. We would never consider asking non-drinkers to pay a beer and wine tax. Idaho Farm Bureau opposes any imposition of road tax or transfer fees on off-road fuel.

Re-Confirmation of Directory Gary Spackman

UPDATE - On Wednesday, February 11, 2015 the Senate Resources and Environment Committee voted to re-confirm Gary Spackman to continue as Director of the Idaho Department of Water Resources. Remember this vote was held over from last Friday by a motion by Senator Jeff Siddoway (R-Territon) who asked for additional time to meet with some of his constituents over the weekend.

The initial motion made in Wednesday's hearing was made by Senator Sheryl Nuxoll (R-Cottonwood) who asked that the vote be delayed to allow her to meet with her constituents. That motion was voted on by a roll-call vote that failed 3-6. A subsequent motion to recommend confirmation was made by Senator Lee Heider (R-Twin Falls) and passed by a voice vote.

Senator Heider will be the floor sponsor to bring committee's "Do Confirm" recommendation to the floor of the Senate to be voted upon in the near future.

Idaho Farm Bureau holds Legislative Leadership and Commodity Conference

Last Tuesday and Wednesday, the Idaho Farm Bureau Federation (IFBF) held its annual Legislative Leadership Conference at the Riverside Hotel, Boise. The conference provides an opportunity for Farm Bureau leaders and members to hear from state and national elected leaders about issues that affect agriculture.

During Tuesday's opening lunch, ITD Director, Brian Ness, updated Farm Bureau on Idaho's transportation issues and needs. Later, Senate President Pro Tem Brent Hill, and House Speaker Scott Bedke, discussed ways Idaho could push back against federal over-reach with the meeting attendees. Resources Committee Chairmen Senator Steve Bair and Representative Dell Raybould spoke next to the group covering a variety of issues including aquifer recharge, Fish and Game issues and sage grouse concerns.

A panel consisting of Senate and House Ag Chairmen, Sen. Jim Rice and Rep. Ken Andrus; Senate and House Taxation Chairman, Sen. Jeff Siddoway and Rep. Gary Collins; and Senate and House Transportation Chairmen, Sen. Bert Brackett and Rep. Joe Palmer discussed and answered questions about issues that may come before their respective committees.

It was interesting to note that several legislators expressed support throughout the day for Idaho taking over management of public lands within the state.

Every seat was filled at Tuesday evening's Strolling Buffet. The crowd of approximately 280 included 70 legislators, 160 Farm Bureau members and 50 other guests and staff members, enjoyed the evening visiting. Tables are arranged by legislative district, enabling Farm Bureau members and their legislators to find one another and discuss anything they want to talk about.

The conference concluded with the Wednesday morning National Affairs Breakfast. Idaho's Congressional continued page 4

delegation spoke to the group by conference call. Congressman Mike Simpson was participating in two hearings in Washington, DC and was unable to join the conference call because of this conflict. Congressman Labrador also had a conflict. Doug Taylor, Congressman Labrador's regional director, was able to address the attendees in person and discuss immigration reform, enactment of measures to assist ranchers to renew their grazing permits and Obamacare repeal.

Senator Crapo and Senator Risch updated the group about the National Sheep Research Station in Dubois, possible modification of the Antiquities Act, EPA's proposal on waters of the United States, tax extenders, the Washington State dairy RCRA decision and issues surrounding the Longshoremen's Union and west coast ports.

Other Congressional staffers attending the breakfast included Layne Bangerter, Agriculture and Natural Resources Director-Sen. Crapo; Mike Mathews, State Director- Sen. Risch and Melinda Smyser, Regional Director- Sen. Risch.

The Commodity Conference began Wednesday morning with Clark Johnston, JC Management and Joel Packham, University of Idaho Extension speaking to attendees about the 2015 Commodity Outlook and the Farm Bill.

After the opening session, the attendees had the opportunity to attend two of six different presentations. Jeff Daniels, Wheatland Milling presented Wheat Marketing & Grading Opportunities; Rachel Land, Dow Chemical presented Rates, Timing & Personal Protective Equipment (applicators license credit); Hay & Forage Testing by Nick Huntsman, Mountain Sunrise Feed; Arial Monitoring, A 500 Foot View of Your Operation by Shad Nalder, Landview; Labels & Labeling, Warnings & Symbols (applicators license credit) by John Ihli, BASF and Farm Bill Revenue Protection Program by Joel Packham, U of I Extension. We appreciate all who participated in this conference.