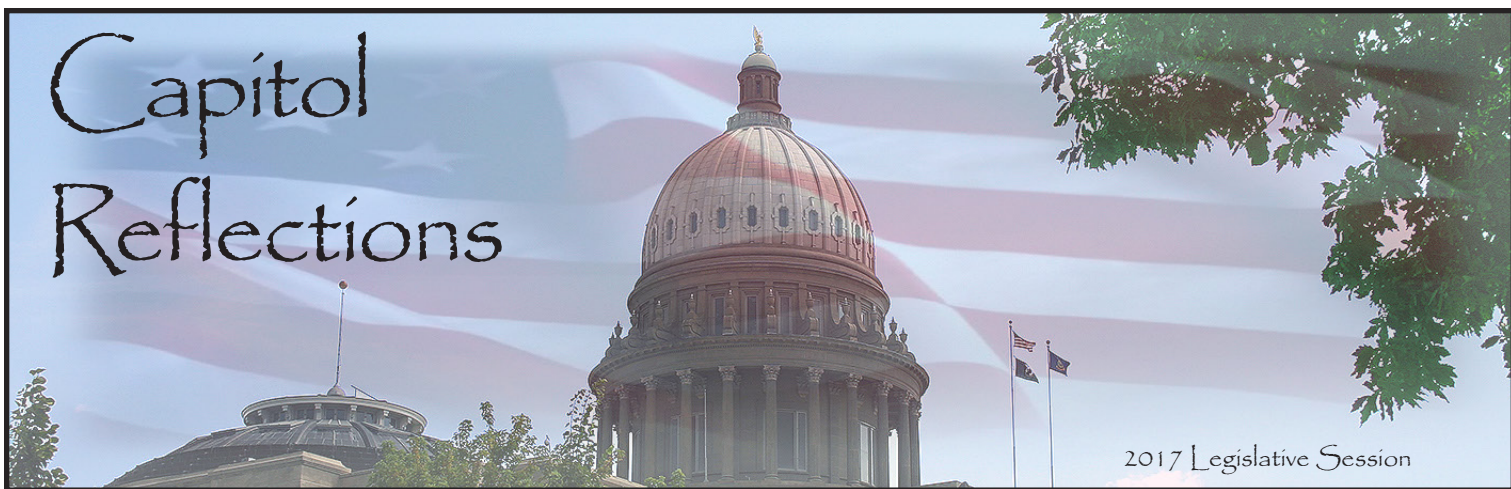


Capitol Reflections



2017 Legislative Session

In this issue

- Hemp Production, pg. 1
- Stockwater Rights, pg. 1
- Water Sustainability pg. 2
- Internet Sales, pg. 2
- Dyed Fuel Bills, pg. 2
- Invasive Species, pg. 3
- State Water Plan/Legislators, pg. 3
- Oil and Gas Meeting, pg. 4

“So great is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community.”

- Sir William Blackstone, author of Blackstone’s Commentaries on the Laws of England

Hemp Production and Benefits

On Monday, members of the House Agriculture Affairs Committee received a presentation by Erik Nelson regarding hemp production. Mr. Nelson, a young war veteran, enthusiastically presented all of the potential benefits of this crop, ranging from an alternative crop and feed source for Idaho’s farmers and ranchers, to the potential cannabidiol oil production for medical purposes. The presenter outlined the specific and important differences between hemp and its cousin plant – marijuana – and pointed out the unlikely co-cultivation between the two plants.

Efforts to legalize hemp production have already taken place in many states throughout the nation. No legislation has been presented on the topic thus far here in Idaho during this session. Idaho Farm Bureau’s policy 13 states that we support legalizing the production of industrial grade hemp with 0.3% THC (Tetrahydrocannabinol), or less in Idaho.

Protecting Stockwater Rights

For the past three years, IFBF has been working diligently to codify important legal points from a landmark Idaho Supreme Court decision regarding stockwater rights. The case, *Joyce Livestock Company v United States of America*, arose out of the Snake River Basin Adjudication when the BLM decided to file competing claims on stockwater against the ranchers who had been putting the water to beneficial use for generations as they grazed on the federally administered lands.

Under Idaho law you must put water to beneficial use to receive a water right. Despite the fact that the BLM owns no cattle, the BLM filed stockwater claims anyway and told the ranchers to drop their legitimate claims or they would go broke fighting it out in court. Most ranchers grudgingly capitulated under the threat of the government using their own tax dollars against themselves. However, two courageous Farm Bureau members Paul Nettleton and Tim Lowry knew the BLM’s claims had no legal basis.

Tim and Paul bravely continued the fight as the BLM appealed each time they lost in court all the way to the Idaho Supreme

Court. Finally after nearly 10 years of litigation and an enormous legal bill, the Idaho Supreme Court ruled against the BLM on every point. As the ranchers knew all along, the BLM cannot have stockwater rights unless they own cattle and put the water to beneficial use.

Next week, the Senate Resources Committee, chaired by Senator Steve Bair (R-Blackfoot) will introduce two bills which will ensure that this does not happen again in Idaho, and will help the ranchers to file for their legitimate stockwater rights. This week the draft language was reviewed by several legislators, Idaho Department of Water Resources personnel, water attorneys, ICA and IFBF. It appears that all have agreed that the language which will be introduced next week will indeed accomplish what is intended and needed. Senators Mark Harris and Bert Brackett will be carrying the bills in the Senate, and Rep Judy Boyle will be carrying the bills in the House. More details will be included in Capitol Reflections next week once the bills have been introduced. IFBF policy #50 supports this effort and IFBF will be supporting these two bills.



Idaho Farm Bureau’s Governmental Affairs Report

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Water Sustainability Sales Tax on Out of State Purchases (Internet Sales)

Members of the House Resources & Conservation Committee heard a presentation about a new section being added to the state water plan on Tuesday afternoon. Vice-Chairman of the Idaho Board of Water Resources, Jeff Raybould, presented the new section regarding water resource sustainability in Idaho and explained the development process.

By request of the Governor, the Idaho Water Resource Board took on the task of developing the new section over the past several years. Using the direction provided by the Governor, holding many public hearings throughout the state, and incorporating suggestions given by many stakeholders, the board was able to prepare the Sustainability Section that will be added to the end of the state water plan. This new section will provide further guidance in the management and development of this precious resource.

A copy of the new section can be found at: <https://www.idwr.idaho.gov/files/board/20161102-SWP-adopted-Sustainability-Section.pdf>

“Sustainability is the active stewardship of Idaho’s water resources to satisfy current uses and assure future uses of this renewable resource in accordance with State law and policy.” ~ Sustainability Section, Idaho State Water Plan.

For at least the fifth time, Rep Lance Clow (R-Twin Falls) has introduced a bill to ensure that all purchases made by Idaho citizens are subject to sales tax, regardless of whether they are over the internet or through a catalog or some other means. This year his bill, H155, seeks to expand the definition of a retailer engaged in business within the state. He is primarily basing his bill upon efforts in New York and North Dakota. When a retailer achieves sales of more than \$10,000 in Idaho, they are required to collect and submit sales tax on all the sales within the state if they have an agreement with someone in this state that refers people to their business either through a website or some other means.

This would cause a huge problem for any farmers or other businesses that are exempt from sales tax on production items. Many farmers purchase herbicides, parts, supplies

and other items which are specifically exempt from sales tax online. Many web portals do not provide a way to differentiate if a sale is tax exempt or not. The sponsor has stated in the past that a farmer would need to submit an ST 101 form to the business which authorizes tax free sales on production items. However, many web-based retailers are not equipped to track or monitor those exemptions, so the sales would likely be taxed.

Another concern is the need for the Idaho State Tax Commission to reach out beyond our state borders to audit the sales tax submissions of businesses located out of our state. Does this mean the Tax Commission will need more auditors? Will they scrutinize those out-of-state businesses as carefully as in-state businesses? **IFBF policy #124 opposes the collection of tax on out-of-state goods purchased by Idaho citizens.**

Dyed Fuel Enforcement and Dyed Fuel Exemption Elimination Bills Introduced

Last week, Chairman Bert Brackett (R-Rogerson), introduced a dyed fuel enforcement (DFE) bill in the Senate Transportation Committee. The original bill, S1044, was replaced Thursday by S1072, which is an identical bill but contains language addressing “incidental crossing” of a road or highway by an off-highway vehicle using dyed fuel. The new language was included in S1072 at the request of the mining industry.

Also introduced this week by Jerry Deckard of CapitolWest Public Policy and Sen. Chuck Winder (R-Boise) was S1052, a bill which eliminates Idaho’s dyed fuel exemption. Diesel sales in Idaho would be restricted to clear fuel. Off-road

users and political subdivisions currently allowed to use dyed fuel on highways would be required to submit refund requests to the tax commission for clear fuel use if S1052 passes. IFBF policy 116- Fuel Tax says “. . . *We oppose taxing dyed fuel.*” **IFBF opposes S1052.**

At the start of the 2017 Legislature, suggestions for amendment were made by IFBF and a number of groups, but none were included in S1044. The mining industry’s “incidental crossing” was included in S1072. No other language in S1072 was changed.

IFBF has four remaining concerns: 1) federal funding of the DFE program, 2) information sharing with the federal

government, 3) bulk storage tank inspection at the farm or worksite and 4) potential significant penalties for the first violation.

Last year IFBF’s suggestions included utilizing only existing state resources and personnel; sole jurisdiction of an DFE program by the state of Idaho; no information sharing with the federal government or Internal Revenue Service; no joint jurisdiction with the IRS, limitation of enforcement actions to a single incident; enforcement actions not creating probable cause to inspect other diesel-powered vehicles or bulk storage tanks owned by the company or farm.

S1072 allows for the use of *“other funding as may be available.”* This

Dyed Fuel Enforcement

continued from page 2

concerns IFBF a great deal; because most other state's DFE programs are funded by federal enforcement grants. IFBF does not want to build a large enforcement bureaucracy with state or federal funds. Enforcement grants could allow this to happen as the federal money would obviously have conditions attached to it. Utilization of these grants may lead to an expansion of the program or information sharing with the federal government. Language in the bill addressing this information sharing concern says "*The provisions of this section shall not be construed to require an agency of the state to report any violations to the federal government unless otherwise required to do so.*" This language concerned stakeholders to varying degrees, language was offered, but it remains unchanged. IFBF thinks it should be a simple, clear "shall not" statement.

S1072 is silent on bulk storage tanks at the farm or worksite. This is troubling because extremely high DFE program fines have occurred in states which allow going back to the bulk storage tank

at the worksite or farm and including the amount of fuel gone from the bulk storage tank in the penalty. Although language in S1072 specifically addresses inspection of a vehicle's fuel tanks, IFBF thinks a specific bulk tank exclusion in the bill should be included in the bill to provide future protection to the farm and worksite.

Penalties utilize original language in 63-2460 IC says "*Any person who violates any provision of this chapter or violates any provision of Idaho law relating to the assessment and collection of any unpaid tax or fee associated with this chapter is guilty of a misdemeanor, unless the violation is declared a felony by any other law of this state. Any person so convicted of a misdemeanor shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000.)*" Additionally a civil penalty of \$250 and costs is levied for the first offense. Included in S1072 are new penalties of a civil penalty not to exceed \$10,000 for fourth and subsequent violations and a \$1,000 penalty for refusal to allow the

vehicle to be tested.

The bill establishes that a DFE action can only take place during a traffic stop as a secondary action or at a fixed or portable ITD inspection station. State, city, or county law enforcement officers or an authorized ITD employee can conduct the dyed fuel test. If the bill passes, negotiated rulemaking will be conducted by ITD, ISP, and ITC; with no lead agency designated by the legislation.

S1072 contains a number of provisions with which IFBF has no issue: information and education prior to effective date, program evaluation after five years, dyed fuel use on roads for disaster relief during a federally declared emergency and a grace period for the purchase of diesel vehicles previously owned by governmental entities.

Idaho Farm Bureau opposes S1072 as written, but will continue to discuss amendments on the four issues of concern. This opposition is not intended to make a perfect bill, but to provide additional security and protection to the agriculture and construction industries.

Comprehensive Invasive Species Bill Introduced

This week, Sen. Mark Harris (R-Soda Springs) introduced S1068, a bill that deals not only Quagga and Zebra mussels, but all invasive species in Idaho. S1068 establishes the "Office of invasive species policy" within the Office of Species Conservation. The administrator will act as policy advisor to the Departments of Agriculture, Fish and Game, Parks and Recreation and other state, local, federal and private sector agencies to combat

invasive species infestation throughout Idaho.

The administrator is appointed by the Governor and is the individual in the state tasked to oversee and coordinate all invasive species programs in Idaho. The office will coordinate interstate activities, create cost estimates, pursue funding, create awareness campaigns and provide input on community, tribal and federal plans.

S1068 directs the Department of

Agriculture to do a number of things, including the development of long-term strategic plans for all invasives, writing grants, harmonization of regulations, identification and entry into cooperative agreements with appropriate entities, the establishment of funding partnerships and reporting annually to the Senate and House Agriculture Committees. The bill also strengthens the watercraft inspection provision of the law.

Notifying Legislator of Changes to the State Water Plan

A Farm Bureau bill sponsored by Representative Clark Kauffman (R-Filer) was introduced this week in the House Resources & Conservation Committee. H140 would amend Idaho Code 42-1734B to direct the Idaho Water Resource Board to notify each

member of the legislature when there is a change to the Comprehensive State Water Plan. Article XV, section 7 of the Idaho Constitution allows the Legislature 60 days from the first day of a regular session to accept or reject any change made to the plan. The

Idaho Farm Bureau believes the change outlined in H140 will ensure that the state water plan development process remains transparent. Idaho Farm Bureau Policy #37 supports this concept. **IFBF supports H140.**

Joint Meeting for Oil and Gas Rule Comparison

Next week, the House and Senate Resource Committees will be holding a joint meeting to hear a presentation regarding Idaho's oil and gas rules and how they compare to other producing states. The meeting will be held on Wednesday, February 15, 2017 at 1:30 PM in the Lincoln Auditorium. The meeting is open to the public, and we would invite any of our members who are interested in oil and gas development to attend.

How to Contact Legislators

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Fax.....	208-334-5397
E-mail.....	idleginfo@lso.idaho.gov
Regular Mail.....	P.O. Box 83720, Boise, ID
.....	83720-0038 (House)
.....	93720-0081 (Senate)
Street Address	State Capitol, 700 W. Jefferson, Boise, ID 83720