

Capitol Reflections



2018 LEGISLATIVE SESSION

“The ultimate result of shielding men from the effects of folly is to fill the world with fools.”

— Herbert Spencer, English Philosopher (1820-1903)

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DAIRY PHOSPHORUS INDEXING RULE IS APPROVED

This week both the House and Senate Agricultural Affairs Committees listened to presentations about a new option for dairies to manage phosphorus on their fields. The new method was proposed last summer by the Idaho Dairymen’s Association after reviewing the method which is used in a number of other dairy states.

The new method is called phosphorus indexing. It requires a dairy to modify their nutrient management

plan to include additional information about each field where dairy manure will be applied. The parameters measured include soil type, slope, irrigation method, proximity to surface water, etc. All of these parameters are entered into a grid designed specifically for Idaho conditions and developed by soil scientists at the Kimberly Agricultural Research Service facility.

The grid provides a score as to the probability that phosphorus will be transported away from the field and into a water body. The scores can be mitigated by up to two Best Management Practices per field which can reduce the score and provide additional flexibility to the producer in how he manages his fields. Annual soil testing for each field will continue to be required with this indexing method.

Under the new rule, dairy producers can continue to use the current phosphorus threshold method which is more simple, or they can choose to use the new phosphorus indexing method during a five-year phase-in period. However, after June 30, 2023 all dairies must use the new phosphorus indexing method.



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There was no opposition expressed in either committee hearing. In fact, even the Idaho Conservation League spoke in support of the rule, which they said was scientifically defensible. Both Committees did approve the rule and the indexing method will now be available for dairymen this summer.

Both the Idaho Farm Bureau and the Milk Producers of Idaho asked ISDA, during the rulemaking last summer, to allow both methods to be used into the future. This way if a dairy was happy with the threshold method and did not want to change, they would not have to. If a

dairy needed some additional flexibility, they would have the option to use the new indexing method. Both methods would be equally protective of the environment.

Unfortunately, ISDA did not allow that request to move forward saying it was beyond the scope of the rulemaking petition. Therefore, Farm Bureau and Milk Producers of Idaho will be petitioning ISDA to enter into negotiated rulemaking again this summer to allow both methods to be available into the future without a sunset date.

FUEL TAX REFUND RULES APPROVED

This summer the State Tax Commission entered negotiated rulemaking to overhaul the rules relating to fuel tax refunds. These rules had been put together over many years and had become very convoluted and difficult to understand. Recognizing this, the Tax Commission proposed pretty much an entire re-write of the rules, which IFBF was happy to see. Their first attempt was pretty good but was still not as clear as it could have been, and it left readers with some confusion as to who qualified for refunds, and who did not.

IFBF was the only organization who engaged in this process last summer. We met with the Tax Commission a couple of times and made further clarifying suggestions at each meeting. We appreciate the Tax Commission's willingness to work with us and to cooperate on getting the language as understandable as possible, while conforming to the underlying laws the rules enforce.

Essentially, the rules describe what records are necessary

to claim a fuel tax refund for two different situations: 1. When tax-paid fuel is used in a non-taxable manner, such as when used in equipment in farm fields. 2. When clear diesel fuel is used in registered vehicles that travel off public roads.

There is no real substantive change to the rules, but they certainly are more clear and concise, and they help the public better understand what is needed for a fuel tax refund.

Both the Senate and the House Transportation Committees have approved these rules. The rules will now go into effect on July 1 of this year. IFBF supports the fuel tax rule re-writes.



IFBF SUPPORTS SHORTLINE RAILROAD TAX CREDIT

Idaho Farm Bureau supports H375- the Short Line Railroad (RR) Tax Credit for Infrastructure and Maintenance. The bill authorizes a nonrefundable income tax credit which enables Idaho's eight Class III and one Class II shortline railroads to invest in and maintain infrastructure. The income tax credit is 50% on value of investment and capped at \$3,500 per mile of track. This credit is transferable. If the shortline

railroad chooses not to exercise the credit, it is transferable only to RR customers or vendors.

Maintenance costs for Class II and III railroads can be \$14,000 per mile and the shortlines do not receive state assistance or direct funding for this purpose. The credit is capped at \$3,500 per mile. Idaho has a total of 885 miles of shortline railroad which includes mainline, sidings, rail yards and industrial sites which are eligible

for the credit. The credit can be carried forward for 5 years and if adopted, the program sunsets in 2024. If H375 becomes law, the Idaho State Tax Commission will promulgate rules.

Maximum fiscal impact is \$3.1 million (885 miles of track x \$3,500). Since the credit is limited to 50% of investment, all 9 of Idaho's shortline RRs would have to first invest \$6.2 million in improvements or construction in order to claim the credit.

The bill creates an incentive for shortlines to invest in their companies and creates a good quality shipping infrastructure for Idaho's shippers. Shortline RRs serve over one hundred Idaho rail customers who ship over 190,000 railcars per year. Quality track and infrastructure are important because a track's load capability determines load size and speed. Many railcars on shortlines are under loaded and speeds are limited because of track capability.

H375 is supported by the Idaho Farm Bureau, IACI, Food Producers of Idaho, the Idaho Chambers of Commerce and many agriculture and business organizations and companies.



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REP. STEVE HARTGEN ANNOUNCES RETIREMENT



This week Representative Steve Hartgen (R-Twin Falls) said he will retire at the end of his current term. Rep. Hartgen has served 5 terms in the House of Representatives in the District 24 House B seat. Seven of those years have been as Chairman of the Commerce and Human Resources Committee. He was originally appointed Chairman to replace Rep. Sharon Block (R-

Twin Falls) who retired because of health issues.

Chairman Hartgen was Publisher and Editor of the Twin Falls *Times News* from 1982 to 2005; serving as editor during most of the decade of the '80s and publisher/editor most of the '90s. After leaving the newspaper, he acted as an economic development consultant regionally and in the Magic Valley. The Chairman acknowledges agriculture's importance to Idaho generally, and the Magic Valley, in particular.

He cites the U of I Aberdeen Research Station's work in warm-weather barley varieties as fundamental to increased barley plantings in the Magic Valley. Rep. Hartgen also understands the increase in alfalfa acres and that crop's importance not only to Idaho's dairy and cattle industries, but as an export commodity as well. He notes Governor Otter's comment from the 2018 State of the State address that for the first time in years "more water is going into Idaho's aquifers than going out."

In retirement, Rep. Hartgen says he's open to other opportunities and is writing a book. He's been a good friend of the Idaho Farm Bureau. We wish him well and thank him for his long service to the State of Idaho.

INMATE LABOR BILL GETS OVEWHELMING SENATE VOTE

S1208, a bill which expands the ability of Idaho agriculture to utilize inmate labor, received a 34-1 vote from the Senate and now proceeds to the House. Sponsored by Senator Patti Anne Lodge (R-Huston), Chairman-Senate Judiciary and Rules Committee, the legislation allows minimum security inmates to work in any segment of the ag industry defined as agriculture in 22-2602 Idaho Code.

Language in Senator Lodge's original 2014 legislation limited the use of inmate labor to "... *the production, harvesting and processing of perishable agricultural food products.*" S1208 eliminates "perishable" and "food," allowing horticulture, forestry and other agriculture segments to use workers from the Dept. of Corrections.

Idaho is faced with record low unemployment and it is particularly hard to find ag workers. Sen. Lodge said up to 260 minimum security inmates participate in the program.

During the bill's committee hearing, a witness from Symms Fruit Ranch in Sunny Slope said the operation had an immediate need for 50 pruners. He also said the workers are taught job skills that can be utilized after their incarceration ends and said one inmate had a job

with the fruit ranch as soon as the individual's incarceration is over.

Bill Clayton, Owner of Clayton Tree Farm, reiterated the need for reliable workers and said that unlike other ag operations, winter is his harvest time. Trees need to be dug, prepared for shipment and shipped before budding out in the spring. Timing is critical.

Inmates benefit as well; learning job skills, responsibility and gaining self- respect. One participant told the Senator said that after working in the program, it gave her great satisfaction to send money to her family.

Because of the unique needs of the horticulture and tree fruit industries S1208 contains an emergency clause; allowing these industries to contract with IDC as soon as the Governor signs the legislation.

Idaho Farm Bureau supports S1208.



IDAHO WATER RESOURCE BOARD MEETINGS

The Idaho Water Resource Board met in Boise this Thursday and Friday to receive presentations and updates on a number of projects and legislative issues. A few projects of interest to our members may be the Boise River Storage Feasibility Study, the current update on the recharge taking place on the Eastern Snake Plain Aquifer (ESPA), discussions happening in the Bear River basin, and funding for Priest Lake water management projects.

Representatives from the Bureau of Reclamation presented on the progress being made to further study a possible raise of Arrowrock, Anderson Ranch, and Lucky Peak reservoirs. This study will be funded by the IWRB and the federal government. Currently operating

under the authority of Public Law 111-11, and potentially in the future acting under the Water Infrastructure for Improvements to the Nation (WIIN)



Act, Reclamation will analyze the different aspects of this project, including providing a number of

alternatives that will be presented to the board in the future.

Reclamation reported to the board that this project is a top priority for the agency, with full support coming from the regional manager. They also reminded the board of the Secretarial Order the agency received from Secretary of the Interior, Ryan Zinke, to accelerate and streamline the NEPA process, taking no more than one year to complete Environmental Impact Studies. This should prove beneficial as this project progresses in the future. The IWRB has repeatedly expressed great interest in this project, recognizing the need for further water storage options for the Treasure Valley. IWRB staff insured the board that the public will remain informed about the progress of this study and allow for public input when appropriate.

With large amounts of carryover water storage from last year, the IWRB has been able to recharge a significant amount of water over the past several months. As of



January 23, there has been 217,212 acre-feet of water recharged into the ESPA. This year, recharge has been better spread out throughout the aquifer, with more recharge sites coming available and more irrigation companies offering to recharge water through their systems. Experts predict they will be able to recharge around 370,000 acre-feet before the IDWR's recharge water rights are turned off.

The board also briefly discussed some of the issues being faced in the Bear River basin. These issues range from water right adjudication in the basin, changes in PacifiCorp's operations dealing with hydropower in high water years, and the role of the IWRB in all of this. Board members discussed the need to work with local stakeholders and express their desire to move forward with adjudication in the near future. Board members also reminded PacifiCorp representatives of their obligations under the Bear River Compact, and included that the state of Idaho expects them to be meet these obligations and respect the state's water rights. The board expressed interest to have PacifiCorp come to a future meeting and present any plans to change current operations along the Bear River system.

The Board voted on a resolution that supports state funding that have been set aside for water infrastructure improvements to be used at Priest Lake for the water management projects. The Governor has proposed money to go to this project in his budget. The board is supportive of this measure.

IDAHO DEPARTMENT OF WATER RESOURCES BILLS

The Idaho Department of Water Resources (IDWR) introduced three bills in the House Resources Committee last week. The committee voted to print the bills for their consideration. The following is a brief description of each bill:

H370 – District Meetings

This bill would amend Idaho Code 42-605 and deals with details of the water district meetings, purposing legislation as follows:

- 1) To lengthen the period of time in which state water districts can hold annual meetings. Current law specifies that water districts may adopt a resolution at any annual meeting to hold the annual meeting in subsequent years to any weekday between the second Monday of January and the third Monday of March. Several water districts hold meetings after the third Monday of March, and some hold them as late as the fourth Tuesday of May. The legislative amendment will align the law with current practice and remove any conflict that water districts

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may have with the current statutory requirement for annual meeting dates;

- 2) Add language to Section 42-605(4) clarifying that absentee voting and proxy voting are prohibited. IDWR frequently receives questions regarding absentee and proxy voting. The amendment will help clarify that such voting is prohibited; and 3)
- Remove unnecessary or duplicate language throughout the section.

H371 – Critical Ground Water Management Areas

This bill would amend Idaho Code 42-233a, to clarify the IDWR director shall not curtail a participant in an approved water management plan within a critical ground water area so long as the participant complies with the approved water management plan. In addition, this proposed legislation deletes the last sentence of the statute, currently requiring the director to determine if there is sufficient ground water and issue a curtailment order by September 1 of the year prior to the year in which administration on a time priority basis shall occur. IDWR asserts the September 1 deadline is too far in advance of the irrigation season to allow for an accurate determination by the director as to whether there is sufficient ground water to meet demands of water rights within all or portions of a water management area in which injury to water rights is determined on an annual basis. This proposed legislation would make curtailment in a Critical Ground Water Area the same as curtailment in a Ground Water Management Area.

H372 – Transfer Application Fees

This bill deals with the cost of updating water right records to accurately depict where water is being diverted. Sometimes water right owners need to update their water right places of use or points of

diversion to achieve consistency with the Public Land Survey System rather than for actual physical changes to their water diversion and use locations. Currently, the only administrative process available for such updates is the transfer process set forth in section 42-222, Idaho Code, for changing the elements –place of use, point of diversion, season of use, or purpose of use—of an established water right. The quantity-based, sliding-scale transfer filing fee, which can be hundreds or thousands of dollars, deters some water right owners from seeking to update their water rights. When no update is sought, inaccurate water right records complicate property transactions and cause water right administration difficulties for the Idaho Department of Water Resources (IDWR) and water districts. To encourage water right holders to update their water right records, this bill proposes to amend Idaho Code 42-2210 to charge a flat fee of only \$50.00 per water right for a transfer application updating the legal description of the point of diversion or place of use for a water right when no physical change is proposed, and no unauthorized water use change has occurred.

On Monday, IDWR presented these three bills to the Idaho Water Users' Legislative Committee for their consideration. The Water Users voted to support all three bills



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