

# Capitol Reflections

2018 LEGISLATIVE SESSION

“The moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.”

-John Adams, A Defense of the American Constitution, 1787

## FEDERAL STOCKWATER RIGHTS BILL ADVANCES

This week H603 was approved unanimously in the House Resources Committee, chaired by Rep Marc Gibbs (R-Grace). It is likely to be heard by the entire House on Monday before moving to the Senate for consideration.

The intent of H603 is to ensure that nobody is above Idaho law as it pertains to water, including the federal government. 25 years ago, during the Snake River Basin Adjudication, the federal government applied for 10s of thousands of stockwater rights on the federally administered lands, despite the fact that they knew full well they did not own any livestock and were not putting the water to beneficial use as required by Idaho law.

Strangely, at that time the Attorney General's office and the Dept. of Water Resources recommended to the adjudication court that the federal claims were legitimate, thus aiding and abetting this massive violation of Idaho water law. Meanwhile, the ranchers who were actually putting the water to beneficial use were being advised by the state to not bother applying

### IN THIS ISSUE

FEDERAL STOCKWATER RIGHTS BILL ADVANCES.....	Pp1-2
S1305-STOCKWATER APPURTENANCE .....	P2
S1306-NOTIFICATION TO WATER DELIVERY ENTITIES .....	P2
AGRICULTURAL LAND AND ANNEXATION.....	P3
PLANNING AND ZONING BY REFERENDUM.....	P3
TAX RELIEF BILL ADVANCES.....	P3
SALES TAX EXEMPTION FOR CERTAIN FREE MEDICAL CLINICS GETS “DO PASS”.....	P4
WOLF DEPREDATION CONTROL BOARD SUNSET CORRECTED.....	P4
FISH AND GAME REPORTS ON FEE INCREASE RESULTS.....	P4-5

for their Stockwater rights, stating that the state would “protect” their interests.

Fortunately, some ranchers were less trusting of the state, and after more than ten years of expensive litigation, the Idaho Supreme Court ruled unanimously in favor of the ranchers that the federal government could not own stockwater rights since they did not own livestock and did not put the water to beneficial use as required under Idaho law. Unfortunately, by the time of this ruling, all of the other federal stockwater claims had already been decreed to the federal government.



Idaho Farm Bureau Federation

500 W. Washington Street  
Boise, ID 83702

[www.idahofb.org](http://www.idahofb.org)  
208-342-2688

H603 now takes the next step of correcting this egregious error. It directs the Director of the Dept. of Water Resources to send a “show cause” letter to the federal government, in light of the Idaho Supreme Court ruling, as to why these illegitimate water rights should not be forfeited since they do not now, and never have complied with the requirements of Idaho law to legally secure them.

IDWR has already sent show cause letters to the Forest Service in the North Idaho Adjudication when

stockwater claims were filed after the Joyce decision. The Forest Service then withdrew their claims as they could not provide any evidence of beneficial use.

H603 will help clear the way for the legitimate users of the water to apply for and receive stockwater rights in their name on these federally administered lands. Speaker Bedke, Rep Judy Boyle and Senator Mark Harris are the sponsors of this bill. **IFBF supports H603.**

## S-1305 STOCKWATER APPURTENANCE

This week, both the Senate Resources Committee and the full Senate passed S1305 unanimously. The bill amends Idaho Code 42-113 to codify the portion of the Idaho Supreme Court's Joyce Livestock decision, which affirms that stockwater rights associated with grazing permits on federal lands are an appurtenance to the base property. The legislation also clarifies that when federal grazing permits are transferred to a new owner by a means other than purchasing the base property, the water rights may be conveyed under certain conditions and become appurtenant to the new owners base property.

Idaho Farm Bureau policy #48 supports legislation that would codify the holding in the Joyce decision that stockwater rights are an appurtenance of the base property. The Department of Water Resources has administered stockwater rights consistent with the Idaho Supreme Court's ruling since that time. Senator Mark Harris (R-Soda Springs) and Rep. Judy Boyle (R-Midvale) are the sponsors of this bill. Having passed the Senate, S1305 will now be sent to the House for consideration. **IFBF supports S1305.**

## S1306—NOTICATION TO WATER DELIVERY ENTITIES

The Senate Resources Committee unanimously passed S1306 to go on and be considered by the full Senate. This legislation amends Idaho Code 67-6519 to require planning and zoning authorities to notify those water delivery entities that have requested notice in writing of any proposed rezoning, subdivision, or any other site-specific land development proposals. The bill also allows for notice to be provided by email, if agreed upon by both parties. This notice is to be provided at least 15 days prior to the public hearing date concerning the proposed development, so that water users can review the project proposal and raise any potential concerns.

IFBF Policy #138 states that, “Water-right holders or recipients of water delivered through property that is proposed to be rezoned should receive the same notification of public hearings as surrounding landowners.” S1306 will aid in assuring that water delivery infrastructure, easements, and rights-of-way are not encroached upon as development occurs, and that the rights of water users are not injured. Senator Kelly Anthon (R-Burley) is the sponsor of the legislation. This bill will be considered by the full Senate at the beginning of next week. **IFBF supports S1306.**

## AGRICULTURAL LAND AND ANNEXATION

H604 was heard this week in the House Local Government Committee, Chaired by Rep Christy Perry (R-Nampa). Idaho is one of a very few states who allows for forced annexation of property into a city, even when the property owners do not want to be annexed. This has led to a variety of issues over the years, including the annexation of active farmland into a city from time-to-time.

H604 would require a city to receive written authorization from the landowner before agricultural land could be annexed. Only land actively devoted to agriculture as defined for property tax purposes would qualify for this treatment. The attorney who represents the Idaho Association of Cities spoke against the bill, as did a staff member of the Caldwell planning and zoning department. They said it would cause problems with "enclaves" of land within the city that would not be part of the city, but they both admitted that there are situations like this already.



IFBF spoke in favor of the bill along with sponsor Rep Mike Moyle (R-Star). We explained the financial burdens of paying additional city taxes with no additional services which are provided to the land. The committee agreed, yet they were uncomfortable with a clause which would make the bill retroactive back to January 1, 2016. This was included so it would undo the annexation of some agricultural properties that occurred in North Boise. The committee sent H604 to the amending order to remove that clause. IFBF policy #132 opposes forced annexation and **supports H604**.

## PLANNING AND ZONING BY REFERENDUM

There has been a movement in Ada County to overturn the approval of a planned development by a referendum of the citizens. While we are not fans of the planning and zoning process, turning this process over to the whims of initiatives or referendums would be even worse. This would allow the citizens in a town of a rural county who did not want to see any development to essentially hold hostage the development rights of the rural residents. That would completely undermine private property rights.

The bill would simply add an exclusion for any local zoning decisions. There is already an existing exclusion from using either an initiative or referendum for bond elections. The Idaho Supreme Court has also ruled that it is not appropriate to use an initiative process to overturn local zoning decisions.

This week the House Local Government committee approved the bill after an attempt to amend it. However, the committee determined that the bill as written was appropriate. H568 now goes to the floor for a vote by the full House. **IFBF supports H568**.

## TAX RELIEF BILL ADVANCES

True to his word, Senator Dan Johnson (R-Lewiston), allowed a hearing on H463 once his tax relief proposal had a hearing in the House Revenue and Taxation Committee. H463 is the bill that the Governor proposed earlier this year which will cut corporate and individual income taxes by .475% across all tax brackets. It also institutes a \$130 non-refundable child tax credit to help compensate for the loss of the dependent exclusions at the federal level. H463 also conforms with the federal tax reform package. Overall, this would provide net tax relief of roughly \$100 million for Idaho businesses and citizens. The Senate Local Government and Taxation Committee narrowly approved the bill on a vote of 5-4. Concerns that were

raised revolved around the child tax credit not providing enough tax relief to compensate for the changes made at the federal level which will affect how Idaho adjusted gross income is calculated, as well as conformity with one of the federal business tax provisions. The bill effectively provides an additional 20% deduction on qualified income to all non-C corp. businesses. Although there are still a couple of other tax relief proposals floating around the capitol, this is the bill that is moving forward. The full Senate will now consider H463 prior to going to the Governor for his signature. IFBF supports reductions in personal and corporate income tax rates.



## SALES TAX EXEMPTION FOR CERTAIN FREE MEDICAL CLINICS GETS "DO PASS"

Thursday, the Senate Local Government and Taxation Committee gave a "do pass" recommendation to H513, a bill which provides a sales and use tax exemption to certain free and charitable clinics which provide primary medical care.

**Idaho Farm Bureau supports H513. IFBF policy 165-5 says in part *"We support legislation that permits, promotes and/or assists: . . . free clinics funded by local community/faith-based organizations..."***

IFBF also supported the 2017 version of the legislation which passed the House, but did not receive a hearing in the Senate.

The exemption is extended to member clinics of the Idaho Association of Free and Charitable Clinics (IAFCC). In order to qualify, a clinic must provide primary medical care. Some free clinics in Idaho will not receive the exemption because of a limited scope of care.

IAFCC member clinics are located in Sandpoint, St. Maries, Lewiston, Caldwell, Garden City (2), Boise, Twin Falls, Shoshone and Pocatello. H513 will allow these free clinics to use 100% of the money donated to them to purchase medical equipment and supplies. It is a 6% revenue increase. Clinic supporters estimate a \$5 return on every dollar donated.

## WOLF DEPREDATION CONTROL BOARD SUNSET CORRECTED

This week H538 got a "do pass" recommendation from the House Agricultural Affairs Committee. Original enabling legislation for the Wolf Depredation Control Board provided for a 5-year sunset clause but showed an incorrect end date of 2019. That bill also indicated an end date of 2019 for the \$25 wolf control assessment that is taken from every brand renewal application fee and the directive to the Idaho Fish and Game Department to provide funds for the wolf control fund.

Agriculture Committee Chairman, Rep. Judy Boyle

(R-Midvale) is the sponsor. The bill changes the incorrect 2019 end date to the correct, 2020. **Idaho Farm Bureau supports 538. IFBF policy no. 93-Wolves is extensive and supports wolf management. IFBF supported the original enabling legislation for the Wolf Depredation Control Board and will continue to support legislation that ensures wolf management.**

S1276 is a bill which eliminates the sunset clause and is making its way through the Senate. IFBF also supports this legislation based on IFBF policy no. 93.

## FISH AND GAME REPORTS ON FEE INCREASE RESULTS

This week, Idaho Fish and Game Director, Virgil Moore, told the Senate Resources and Environment Committee about results of H230, the 2017 bill which increased fees, placed a surcharge on licenses and implemented "price lock" license/tag pricing. Idaho Farm Bureau supported H230.

Director Moore said about 400,000 individuals held 2017 licenses. This enabled them to lock in 2017 prices on licenses, tags and permits for 3 years. If an individual did not hold a 2017 license, that person can still lock in the 2017 prices by purchasing a 3-year license in 2018. A one-year, 2018 license will be higher cost. The Director said about 52,000 Idahoans bought licenses

through Jan. 31, 2018 and about 94% of these folks were "locked in" at the 2017 prices.

A \$5 resident/\$10 non-resident license surcharge was included in the sale of every license after H230 went into effect in 2017. The first \$500k of this money goes into the set-aside account for depredation compensation. Formerly, \$250k per year went into this account, but \$750k is now transferred into this account every year. The compensation fund cap is \$2.5 million; formerly \$750k. Any moneys in excess of \$2.5 million in the compensation account are transferred to the depredation prevention account. After the first \$1million from license sales goes into the compensation

# IDAHO FARM BUREAU'S GOVERNMENTAL AFFAIRS REPORT

and prevention accounts, remaining revenue is deposited into the Fishing and Hunting Access dedicated account.

Depredation prevention is also addressed by the license surcharge revenues. The 2<sup>nd</sup> \$500k collected is placed in the depredation prevention set-aside account. About \$900k per year is now dedicated to depredation prevention. The annual deposit to Winter Feeding increased from \$186k to \$435k annually. Also, the \$3.50 increase in every elk, deer and pronghorn tag is split between depredation prevention and winter feeding.

Through the end of FY17 (6/30/17) IDFG paid 79 depredation claims totaling about \$1 million. All eligible claims were paid in full. Since July 1, 2017, the start of the current fiscal year, claims paid are about \$700k and the balance in the depredation compensation account is \$611k.

Current balance in the depredation prevention account is \$638k. In FY17 \$180k was paid in depredation prevention. YTD FY18, about \$383K has been paid out. Several dozen stack yards are planned for this spring. 295 have been built in the last 3 years. Cameras, radio collars, hazing techniques and drones are all considered for depredation prevention.

The Director went on to say that the Commission and Department have structured hunts to put pressure on depredating animals before and during depredation problems, are considering lure crops in some areas to draw animals away from ag land, developed continued use agreements and increased the number of controlled, LAP and depredation tags.

To address depredation concerns, the Commission increased the number of controlled bull elk tags by 230, added 3,420 controlled cow elk tags and added an additional 1,500 extra controlled cow elk tags (includes

Landowner Permission Hunts) during the 2017-18 season setting process.

Many of these extra controlled cow elk tags are in the Salmon River area. IDFG has hired a temporary Depredation Hunt Coordinator to assist landowners in scheduling depredation hunts in that area. One additional technician per region has been hired to assist in the expanded depredation and depredation prevention efforts to achieve a quicker and more efficient landowner response.

Elk and deer antlerless hunts have been expanded in the Panhandle. Over 800 landowners and designated hunters took hundreds of elk and white-tailed deer. Elk collaring has taken place in the Weiser River area to determine patterns of depredating elk so IDFG can increase hunting pressure on these animals during the regular hunting season.

Landowners can now keep an animal taken in a depredation action. (Director Moore said about 19 landowners or their designees kept 28 elk, 3 deer, 2 pronghorn and 1 bear.) The annual damage deductible has been lowered to \$750 from \$1,000 and claims can be submitted during the first 60 days of the fiscal year if the claim occurred within the last 60 days of the prior fiscal year.

The Director told the Committee that the claims process is being streamlined. A new landowner guide has been developed and was reviewed by Idaho Farm Bureau prior to printing. A depredation webpage is being developed which includes downloadable claims forms, statutes and rules and other information. The claim form no longer requires notarization. A new fencing materials agreement has been compiled which allows for quick reimbursement to the landowner for materials expense. Guidance on "reasonable access" is provided and considers all access being provided by the landowner.

## Contact Your Legislators:

Website..... [www.legislature.idaho.gov](http://www.legislature.idaho.gov)  
Legislative Information..... 208-332-1000  
Toll Free &TDD.....800-626-0471  
Fax..... 208-334-5397  
Email..... [idleinfo@lso.idaho.gov](mailto:idleinfo@lso.idaho.gov)  
Mail..... P.O. Box 83720, Boise ID/ (83720-0038 House) (83720-0081 Senate)  
Street Address..... State Capitol, 700 W. Jefferson, Boise, ID 8372