

Capitol Reflections



2016 Legislative Session

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Catastrophic Public Nuisance

The Senate Resources & Environment Committee continued with the hearing of S1338 on Wednesday afternoon. Senator Sheryl Nuxoll (R-Cottonwood) is sponsoring the legislation which codifies county authority and provides procedures for them to declare a catastrophic public nuisance on federally managed lands and request abatement by federal agencies. The poor conditions of many areas of federally managed lands have created a public concern and potential risk for many communities. The bill is drafted to allow county governments to call awareness to federal agencies to those areas that pose a significant public risk. The hope is that such actions will encourage federal agencies to work with county governments and coordinate efforts to protect both the land and the safety/welfare of the public.

As specified in the bill, the definition of a catastrophic public nuisance is "a condition on federal land where natural resources and biota have been managed or neglected

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"In our federal system, the National government possesses only limited powers; the States and the people retain the remainder. . . . The Federal government "is acknowledged by all to be one of enumerated powers" *McCulloch v. Maryland*, 17 U.S. 316, 4 Wheat. 316, 405, 4 L. Ed. 579 (1819). That is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal government's powers. Congress may, for example, "coin money," "establish Post Offices," and "raise and support Armies," Art. I, Sect. 8, cls. 5,7,12. The enumeration of powers is also a limitation of powers, because "[t]he enumeration presupposes something not enumerated." *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1, 195, 6 L. Ed. 23 (1824). The Constitution's express conferral of some powers makes clear that it does not grant others. And the Federal government "can exercise only the powers granted to it." *McCulloch*, *supra*, at 405, 4 Wheat. 316, 4 L. Ed. 579." U.S. Supreme Court in *National Federation of Independent Businesses v Sebelius*, 132 S. Ct. 2566, 2578 (2012) as quoted in *Legal Analysis prepared for the Utah Commission for the Stewardship of Public Lands, December 9, 2015* <http://le.utah.gov/interim/2015/pdf/00005590.pdf>

Biosecurity Bill sent to House Floor

H531, an Idaho Farm Bureau crafted biosecurity bill, received a unanimous "do pass" recommendation from the House Agricultural Affairs Committee Wednesday. That vote advances the bill to the full House of Representatives for its consideration, and it will probably be debated and voted on early next week. Sponsors are Rep. Gayle Batt (R-Wilder) and Senate Agricultural Affairs Committee Chairman, Sen. Jim Rice (R-Caldwell).

The bill is consistent with Idaho Farm Bureau policy #19 Bioterrorism, which says in part "*We support legislation that would make it a felony for any person to purposefully spread any type of contagious, communicable or infectious disease among livestock or*

other animals. . . ."

Several years ago aquaculture operations were provided protection from certain criminal acts or those attempted acts. H531 is written to provide similar protection to agriculture facilities and operations as defined in the Right to Farm Act and expands the proposed legislation to include poisoning or attempted poisoning of an ag facility or operation. Processors are included under the proposed statute as well since the Right to Farm Act was amended in 2003 when a now-defunct computer manufacturing firm threatened the Amalgamated Sugar Company Nampa plant.

Agroterrorism's goal is economic

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Public Nuisance

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to such an extent as to cause: The threat of a catastrophic wildfire demonstrated by stand density, basal area or ground fuel load greater than one hundred fifty percent (150%) of the land health standards or an insect or disease infestation severe enough to threaten the mortality of at least twenty percent (20%) of the trees in the forestation area; or a condition in the area that threatens the quality or quantity of the public water supply of a county, the health, safety or welfare of the citizens of a county, the air quality of the nonattainment area, or the vegetation resources required to support land health and authorized livestock grazing.”

The the bill was sent to the Senate floor with a do-pass recommendation by a 7 to 2 vote. IFB policy #59 supports county coordination with federal agencies to promote better management of the public lands. **IFBF supports S1338**

Biosecurity

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disruption and instability caused by food shortages or fear of the food supply. International exports will be negatively affected even if an issue is confined to a single incident as importing countries may impose significant phytosanitary barriers. Domestic food security could be threatened.

Animal and plant diseases are easy to transport and often require little technical skill to administer. In plants, effects may not be detected for many years, and animal diseases are often highly contagious. That is why Idaho and other states have stringent animal health requirements and certification for imported and exported animals.

H531 is very straightforward, and much care was taken to make the language convey the correct intent in the plain reading of the bill. The

legislation simply says that it is illegal to release or spread, attempt to release or spread a disease or poison or conspire with others to commit those acts on an agricultural facility or operation. The ability to perform normal ag practices such as chemical application are addressed by “without the knowledge and consent of the owner” language in the bill.

The legislation establishes maximum misdemeanor and felony penalties and fines. H531 does not bar injured parties from civil actions and the bill specifically says the court may award restitution to injured parties. H531 also contains a severability clause. **IFBF supports H531** along with Northwest Food Processors Association, Food Producers of Idaho and IACI (Idaho Association of Commerce and Industry).

State Management of Public Lands

There was an overflow crowd in the Lincoln Auditorium this week for a joint hearing of the House and Senate Resources committees. The purpose was to receive information about Utah’s efforts to take over management of the federally administered lands within their state. The committees heard from Utah Representative Kevin Stratton and Utah Senator David Hinkins, who are the co-chairs of the Utah Commission for the Stewardship of Public Lands. They each gave a brief overview of Utah’s activities that have led up to this point and the reasons Utah is interested in taking over management of these lands.

Under federal administration, the public is being systematically locked out of recreational opportunities, and the land and resources themselves are suffering from the lack of management or mismanagement from the federal agencies. They provided several examples of how the state has and would do a better

job of management, particularly with wildfire management. They know that Utah citizens will receive better results when the land is managed locally rather than remotely from 2,000 miles away by unelected bureaucrats.

The committee also heard from George Wentz, one of the attorneys and authors of the legal analysis that the Utah Commission for the Stewardship of Public Lands has commissioned to provide the legal basis for Utah to take over management. Mr. Wentz took about 30 minutes to review the historical, constitutional and legal foundations supporting Utah’s efforts. There were a number of questions from the committee, which the speakers handled very well, providing additional background and information.

The very unruly crowd was mostly subdued by the end of the presentation. Perhaps they had not been aware or had been misinformed about the solid legal, historical and constitutional underpinnings of

this effort. Perhaps they had not considered that local elected officials would always be far more responsive to the needs and desires of the citizens than unelected bureaucrats sending decrees from afar, regardless of the effects on the land, citizens and opportunities.

This is what Farm Bureau members have been saying for years. The current system of federal administration is broken and is creating a number of problems for Idaho citizens. We want to have more access, not less. We want the land to be more productive, not less. We want Idaho to have greater opportunities, not less. We want more local input and management, not less. All of these goals can and will be achieved when Idaho is managing our lands for the benefit of all. Although no bills have been introduced on this subject, Idaho Farm Bureau policy #59 supports Idaho taking over management of federally administered lands within the state.

Ag Committees hear Idaho Dairymen's Association Report

This week the Idaho Dairymen's Association (IDA) made its annual report to the Senate and House Agricultural Affairs Committees. Executive Director, Bob Naerebout, told the Committees that 500 dairies, milking 563,292 cows were operating in Idaho at the end of December 2015. 131 had fewer than 200 cows, 94 milked 201-500, 95 were 501-1,000 cows, 91 had 1,001-2,000 cows, and 91 milked 2,001 or more cows.

Geographic distribution varied, the Treasure Valley has 95 dairies in 8 counties, milking 119,483 cows with an average herd size is 1,258 cows per dairy. There are 296 dairies located in 6 Magic Valley counties with an average herd size is 1,386 cows per dairy, totaling 410,122 cows. Eastern Idaho has 111 dairies in 113 counties. The average herd is 333

cows, with total cows numbering 37,006.

Mr. Naerebout said Idaho dairy production is third in the United States and often trades ranking from year to year with New York, although Idaho has 80,000 fewer cows than New York. He said Idaho's national production ranking will probably stay where it is because other higher-ranked states have greater cow numbers.

Idaho had 8,500 dairies and 144,000 cows in 1970. In 2003, dairies numbered 774 with 358,213 total cows. In 2016, there are 502 dairies and 566,611 dairy cows in Idaho. Milk production for 1970 was 1.5 billion pounds, 2000- 7.2 billion pounds, 2011- 13.23 billion pounds and 2015- 14.08 billion pounds.

So how is all this milk used? Fourteen processors in the Magic Valley convert

the raw milk into yogurt, cheese, dehydrated products, and ice cream as well as producing liquid milk. The Treasure Valley has five processors and four in Eastern Idaho.

Mr. Naerebout also told the Committees of the industry's commitment to sustainability which includes engagement in the immigration reform and refugee resettlement issues as well as committing staff time and financial resources toward those discussions. IDA has hired Dr. Stephanie Kulesza to supervise the organization's work in nutrient management and water quality. He concluded by saying IDA will continue to encourage economic development through its regional organizations.

Idaho National Laboratory Presents to House and Senate Committees

The House Environment, Energy & Technology and the Senate State Affairs Committees held an informational hearing about the Idaho National Laboratory (INL) on Wednesday afternoon. Dr. Mark Peters, Director of the INL, gave a presentation of the laboratory, its mission, purpose, and future endeavors. Dr. Peters explained that INL is the nation's leading nuclear research and development institution with areas of research in advanced nuclear energy and advanced reactors, as well as maintenance and retirement

of aging nuclear reactors. Currently, nuclear reactors supply approximately twenty percent of the nation's energy. Besides nuclear research, Dr. Peters also mentioned the continued investigation and development of biofuels and energy storage. Another of the large concerns and areas of interest at INL is the security of the nation's energy infrastructure, with a particular focus on cyber-attacks and transportation interruptions.

Aside from the valuable research that INL provides to all of the nation and world, the laboratory is a large part of

Idaho's economy. Currently, over 3,770 employees work for INL, with over 500 recently being added. INL is the fifth largest employer in the state while also paying a very favorable wage. Idaho educational institutions are working to better prepare a future workforce for the INL. Dr. Peters expressed his appreciation for the state of Idaho, the state officials/legislators, and the many educators that have collaborated with the INL to ensure its continued success in the future.

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