

Capitol Reflections



2016 Legislative Session

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“Devolution (taking over management of the public lands from the Canadian federal government) was one of the most significant steps in the ongoing political evolution of the Northwest Territories made in my lifetime. Gaining northern control over decisions on land and water that directly affect Northwest Territories (NWT) residents, and their future was a priority for the people and Legislative Assembly of the NWT for decades. I am pleased to have been a member of the government that made it a reality in partnership with the Government of Canada.

We have spent our first year managing the transition and beginning to exercise our new authorities on behalf of NWT residents. Moving decisions about protecting our environment and responsibly managing the pace, scale and intensity of resource development closer to home places more power over land and resources in the hands of Northerners. This will allow us to support a strong Northern economy and create jobs and opportunities for our people.” **Northwest Territories Premier Bob McLeod** celebrating the one year anniversary of “devolution” of the public lands to local management on **April 1, 2015**. <http://www.newswire.ca/news-releases/statement-by-minister-valcourt-and-premier-bob-mcleod-on-first-anniversary-of-northwest-territories-devolution-517420101.html>

Funding for Aquatic Invasive Species Prevention

On Thursday morning, the Joint Finance & Appropriations Committee approved \$300,000 of supplemental funding to the Idaho Department of Agriculture for the Invasive Species Program. The additional request improves operation of watercraft inspection stations around the state to protect the state waterbodies from being infested with quagga and zebra mussels. The supplemental appropriation will come from the general fund and will advance the effectiveness of the program with additional personnel and inspection stations. The supplemental requests include \$200,000 for added personnel, and \$100,000 will go to the expanded operations of the program.

Multiple-Use Sustained-Yield Act

The House State Affairs Committee, chaired by Rep Tom Loertscher (R-Iona), introduced H582 this week which establishes the Idaho Multiple-Use Sustained-Yield Act. This Act, sponsored by Rep Judy Boyle (R-Midvale), sets up the framework of how public lands would be managed if Idaho is able to take over management of the federally administered lands at some point in the future.

The Act is patterned after the federal Multiple-Use Sustained-Yield Act, which was enacted by Congress in 1960. This is the way federal agencies used to manage public lands before the 1980’s when management began to change drastically. The Multiple-Use Sustained-Yield Act specifies that lands will be managed for multiple uses, including timber harvest,

mining, grazing, recreation and other compatible uses. It would not be required to maximize revenues as state endowment lands are.

The Act also protects any currently existing property rights which exist on federally administered lands such as grazing preference rights and mineral rights, which are already recognized in Idaho Code.

This bill does not make any request or demand for the federal government to turn over management of the lands to the state. It simply specifies how Idaho will manage the land if that opportunity presents itself in the future. Idaho Farm Bureau policy #59 reads “we support multiple-use management of federal and state lands with due regard for the traditional rights of use.” **IFBF supports H582**



Felony Penalties for Animal Torture

This week the Senate Agricultural Affairs Committee, Chaired by Senator Jim Rice (R-Caldwell), approved H524 by a unanimous voice vote. H524 seeks to define torture and provide penalties for those who torture companion animals (pets). H524 also amends the definitions of companion animals and production animals to make it clear which animals fall into which categories. It also requires anyone convicted of torture of a companion animal to receive a psychological evaluation prior to sentencing.

IFBF policy #17 states "We oppose any animal care legislation that would impose a stricter penalty than the 2012 law." This policy is in response to several years of contentious debate when animal activists wanted to keep increasing the penalties for those convicted of cruelty to animals. Unfortunately, most of those attempts would have considered many

traditional and veterinarian approved animal husbandry practices as cruelty, such as dehorning or branding.

Finally, after many years of contentious battles over these issues, a bill passed in 2012 that separated production animals from companion animals and also excluded traditional animal husbandry practices. The bill made it a felony after the third conviction for animal cruelty because proponents demanded that there be a felony on the books.

Farm Bureau members decided that they have been pushed as far as they were willing to go on penalties for animal cruelty. They believed that this issue was put to rest, and we would not need to revisit it again. Unfortunately, H524 now seeks, once again, to increase penalties. This time for those convicted of torture of a companion animal, meaning a pet. The penalty would be a felony on the sec-

ond or any subsequent conviction of torture of a companion animal unless, there is a felony conviction in the previous ten years of voluntary infliction of bodily injury to a person, which would cause it to be a felony on the first conviction.

Farm Bureau testified to the committee that the current penalties in the statute are adequate to deter any rational person while no penalty would be harsh enough to prevent mentally imbalanced people from committing some of these abhorrent acts. We support the psychological evaluation but oppose the increased penalties.

Farm Bureau was the only opposition to the bill. Those who testified in support of the bill were the Idaho Cattlemen's Association, Idaho Dairymen's Association and Milk Producers of Idaho. H524 will now go to the floor for consideration by the entire Senate. **IFBF opposes H524.**

Tax Bills Receive Final Approval

This week two Farm Bureau sponsored bills received their final Legislative approval and will now move to the Governor for his signature. H386 helps both farmers and the Tax Commission understand more clearly which equipment qualifies for a sales tax exemption under the production equipment, and which equipment does not qualify. The bill added the term "removal from storage" to the existing code. This removes any doubt that equipment used to remove farm commodities from storage is properly included in the exemption. Since the Tax Commission publicly testified that the bill helps draw a more clear line, the bill passed unanimously in both Houses and now awaits the Governor's signature. **IFBF supports H386.**

H431 has finally implemented a policy that Farm Bureau has had for ten years. Policy #116 supports removing the Idaho Housing Price Index from

the homeowner's exemption from property tax. That is exactly what H431 will do. Currently, there is an index on the homeowner's exemption which allows the maximum amount of the exemption to rise as home prices rise in Idaho. This may sound good for homeowner's at first glance, but in reality, all it does is shift taxes away from homeowner's and shift it to other property owners such as businesses, farmland, non-owner occupied residential, etc. Since the exemption does not reduce the amount of taxes the local taxing districts collect, they simply collect it from other people when the homeowner's exemption increases. H431 removes the index and sets the maximum amount of the homeowner's exemption at \$100,000. This bill passed the Senate on a vote of 23-11 and is now awaiting the Governor's signature. **IFBF supports H431.**

Proposed Boating Fees Increase

Proposed legislation that would increase boating fees in the state was presented as part of a print-hearing to the House Resource & Conservation Committee on Wednesday afternoon. H594, sponsored by Representative Marc Gibbs (R-Grace) and Senator Mark Harris (R-Soda Springs), would double the price of all boating fees throughout the state. This effort would provide more money for the invasive species fund to specifically inhibit quagga mussel infestations in Idaho waterbodies. State revenue from these boating fees is projected to double from \$1.2 million annually to approximately \$2.4 million. A hearing for H594 will likely be held in the upcoming week.

No New Federal Lands

This week the House State Affairs Committee, chaired by Rep Tom Loertscher (R-Iona), introduced a bill to prohibit the federal government from acquiring any additional land in Idaho without consent from the Idaho Legislature. Currently, the federal government administers more than sixty-two percent of the land within our borders. That is more than enough.

The United States Constitution, Article 1, Section 8, paragraph 17, requires the federal government to receive consent from the state legislature before it can acquire lands within a state. This was put in place so that the federal government cannot overpower state governments. This is an important part of federalism, which divides powers between governments.

Early in Idaho's history, the Legislature used to do this through statute. Sadly, however, over time, the legislature began to simply give blanket authority for the federal government to acquire whatever property they wanted. Finally, the state completely ignored even considering any land acquisitions by the federal government.

H586 is an important way for Idaho to reassert its sovereignty. H586 does not propose any new authorities, but simply asserts the legitimate state powers that were provided for in the US Constitution. IFBF policy #58 supports no net loss of private property in Idaho. **IFBF supports H586.**

Questions?

Email staff at
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Idaho Crop Residue Burning Program Advisory Committee

On Wednesday, the Advisory Committee for the Idaho Crop Residue Burning (CRB) Program held a meeting to review the committee's 2015 recommendations, to address current issues and to prepare the committee's recommendation for 2016. One of the major topics of conversation was the recent change made by EPA to the ambient air quality standard from 75 parts per million of ozone to 70 ppm that will go into effect in 2017. According to Idaho Code, the state shall not approve crop residue burning if ambient air quality levels are exceeding 75% of the level of any national ambient air quality standard. Currently, this means that if the ambient air quality in a certain area exceeds, or is expected to exceed, 56 ppm of ozone than no crop residue burning would be allowed. The EPA's change to ambient air quality would subsequently lower the allowable limit from 56 ppm of ozone to 52 ppm. With many areas throughout the state with average ambient air qualities near the 52 ppm threshold, the number of allowable crop residue burn days is likely to decrease. Professionals at DEQ estimate that the number of

no-burn days throughout the burning season will likely double.

In an attempt to ensure that crop residue burning is maintained as a resource and viable option for producers in the future, the CRB Advisory Committee unanimously agreed and recommended that DEQ considers a change to slightly relax the statute and DEQ rules, in order to maintain current crop residue burning opportunities. Another recommendation by the advisory committee would request that DEQ develops a process to work with federal agencies in cases of emergency to deal with wildfire back-burning. Specific cases were discussed in the meeting where coordination with both federal and state agencies were slow to respond in emergency situations where back-burning would have been appropriate to reduce risk to public safety and private property loss. The CRB Advisory Committee recommends that a memorandum of understanding and/or procedures be set in place between all agencies to better ensure timely abatement measures in emergency situations.

Ground Water Management Areas

A bill that would clarify that the director of the Idaho Department of Water Resources shall not curtail a participant of an approved water management plan as long as that person/participant is in compliance with specifications of that plan was presented on Wednesday. The House Resource & Conservation Committee voted to print the bill (H595) and also sent it directly to the House Second Reading Calendar. Essentially this bill provides a safe harbor from curtailment for those parties that participate in approved mitigation and water management plans. In addition, H595 eliminates

the last sentence of the current statute where it requires the director to determine if there is sufficient ground water in a water management area and issue a curtailment order by September 1 prior to the next growing season. The current September 1 deadline is too far in advance of the irrigation season to allow for an accurate determination as to whether there is sufficient ground water to meet demands of water rights within all or portions of a water management area. The bill will be heard on the House Floor in the upcoming week.

Dyed Fuel Enforcement History and Update

In 2015, the Idaho Legislature passed H312a, a bill which increased fuel taxes and vehicle registrations and mandated the Idaho State Tax Commission (ISTC) to make a recommendation to the 2016 legislature regarding a dyed fuel enforcement program (DFE) to catch motorists using red-dyed (off-road only) fuel on Idaho's highways. As part of its information gathering process, the Tax Commission contacted all 50 states and received responses from 29.

Soon after the passage of H312a and through the summer and fall of 2015, the Idaho Farm Bureau Federation (IFBF) contacted the primary DFE proponents and asked to be included in any discussions regarding a dyed fuel enforcement program. In late December 2015, Farm Bureau, Associated General Contractors, Idaho Petroleum Marketers and Convenience Store Association and other stakeholders were invited to attend a meeting to review a draft report compiled by ISTC, Idaho State Police (ISP) and Idaho Transportation Department (ITD). Very minor modifications to the draft were suggested. The report did not resurface until the third or fourth week of January; after the start of the 2016 legislature.

The report provides nine DFE options:

1. Allow inspection of the main vehicle supply tank(s) by ISP or its designee (tank dipping.)
2. Create dedicated fuel tax investigation and prosecution units. (Enhancement of number 1)
3. Clarify that the violation is on the driver, vehicle owner, or both. Increase fines for violations. The violation is on the person who would reasonably know of the violation. (Enhancement of number 1)
4. Enhance dyed diesel referral program to include a web page and reward fund.
5. Implement a weight/mile tax for diesel vehicles over 26,000 pounds GVW in lieu of a diesel fuel tax.

6. Tax all dyed diesel. Allow a refund for a nontaxable use.
7. Do not allow dyed diesel to be used in Idaho. Allow a refund claim based on a flat percentage or authorized percentage will be allowed.
8. Tax fuel as it enters (first receiver tax) and leaves (retail tax) the fuel distribution system, and include information reporting by fuel carriers to the ISTC for full accountability of fuel.
9. Require retailers and purchasers to be licensed to buy or sell dyed diesel. Licensed retailers would file an informational report to track motor fuel sales. Licensed purchasers would be allowed to purchase dyed diesel exempt from tax.

ISTC recommended that one of the first four, or a combination of the first four options, be considered for a DFE program. Obviously, some of the nine alternatives are nonstarters; no dyed fuel use in Idaho, a licensed seller/buyer program.

IFBF has considered this issue since the passage of H312a in 2015 and arrived at a number of considerations important to Farm Bureau as well as agriculture and the general business community:

Enforcement actions (EAs) should be based on probable cause. We oppose implied consent.

The State of Idaho must have sole jurisdiction over the DFE program.

We oppose joint jurisdiction of a DFE program with the Internal Revenue Service. ISTC's report indicates that of the surrounding states with DFE programs, only Washington and California share jurisdiction with the IRS. Records obtained through state enforcement should not be shared with the IRS.

EAs should be limited to a single incident, individual vehicle occurrence. Dyed fuel offenses do not provide probable cause to inspect other diesel-powered vehicles owned by the company or individual or the bulk storage tank(s) from which the dyed fuel may have

originated.

All licensed diesel-powered passenger cars and other diesel-powered vehicles shall be subject to any DFE program.

Dyed fuel offenses should be classified as secondary offenses, similar to seat belt violations.

Unlike the Washington system which imposes an immediate \$1,000 fine for refusal to allowed dyed fuel testing, if adopted, the Idaho fine should not exceed the minimum fine for the first offense.

There shall be no loss of privileges or accrual of driving offense points for dyed fuel offenses as there are no public safety considerations attached to the non-compliant use of dyed fuel.

First offense shall be an infraction.

Current fine schedule should be retained: first- \$250, second- \$500, third- \$1,000.

DFE programs should utilize existing state government personnel and agencies and not establish a new bureaucracy.

Dyed fuel should be subject to registration and licensing.

Any program should provide significant consumer notice and education. Greater visual identification of dyed diesel pumps and obvious signage at the retail level will help educate consumers. The IRS currently requires pump signage identifying dyed diesel pumps, but this is often minimal.

In the case of state or federally declared emergencies which seriously restrict fuel availability, e.g. Hurricane Katrina, highway use of dyed fuel may occur as allowed in the declaration of emergency.

Vehicle history should be considered in certain situations, e.g., purchase of a former county-owned diesel powered vehicle by a private individual. Evidence of dyed fuel use may be present after the vehicle is sold even if the new owner uses only clear fuel.

IFBF is concerned about the practical aspects of a DFE program. Alternative forms of documentation of clear fuel use might be considered for a positive dyed fuel test during a stop. We are very concerned about some of the assumptions used and the ability of a DFE program's

Dyed Fuel

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to be self-sustaining. For example, ISTC says increased enforcement will force offenders to use clear fuel, resulting in increased tax revenues.

ISTC estimated a 16 percent non-compliance rate and lost tax revenues of approximately \$11.4 million. This is in spite of relatively stable dyed fuel use since 2010. Using averages for the last five years and the ISTC's 16 percent violation estimate results in 36.8 million gallons of dyed fuel used illegally on Idaho's roads in 2015. This number approximates two months of dyed fuel use during any of the first ten months of 2015. If dyed fuel use is relatively consistent for the last two months of 2015, it is reasonable to ask whether 1/6 of the dyed fuel purchased in the state of Idaho is illegally used on Idaho's roads.

The non-compliance rate could be much lower than 16 percent. Numbers provided on page 10 of the ISTC presentation to the House and Senate Transportation Committees indicate a 5.83 percent violation rate for 10,892 tests from the state of Washington from 2009-2014. Total fines for that period equal \$984,664 or \$196,333 per year. Montana numbers in the ITSC report indicate 469 violations for the same period. This is 0.26 percent (1/4 of 1%) of 180,385 tests, resulting in total fines of \$461,835 or \$92,367 per year for the five-year period. We are unaware if fines included uncollected fuel tax.

Anecdotally, 60-70 commercial trucks were stopped at a Washington state inspection station when ISP officers were observing DFE enforcement procedures. Seven trucks were illegally using dyed fuel. If an average of 65 trucks is used, 10.77% of the commercial trucks were in violation. Two of these trucks were from Idaho.

Program sustainability becomes a question when fines collected are compared to ISTC's estimated cost to administer Option 1 (Page 10: ISTC report "*Enhanced Enforcement of Fuel Tax Law*"). That option's initial startup costs are \$1.25 million with \$800,000 continued annual costs. Costs to create the enforcement and prosecution units in Option 2 are the same for each unit of the cost to create the initial unit in Option 1.

Many in the industry, including IFBF, think a minimally invasive, random, small-scale program will accomplish the compliance objectives desired by many of DFE's legislative proponents; especially if driver notification, enforcement, and citations are widely publicized. A minimally expensive DFE program using existing personnel and agencies seems to be the focus of a program's legislative supporters right now. However, no bill has come forward or specific details shared, so stakeholders are pretty much in the dark. As we've learned, the devil is in the details.

IFBF tells its members to comply with

the law. Although there is no state DFE program at this time, dyed fuel is for off-road use only and should not be used in vehicles licensed for highway use. To use dyed fuel in these vehicles is tax evasion.

It is observed that IFBF and others who share the Farm Bureau's perspective on a potential DFE program are protecting tax evaders. What these organizations are doing is acting on behalf of the great majority of diesel vehicle drivers and owners, both commercial and private, who do not use dyed fuel on Idaho's roads. IFBF and other like-minded organizations do not want businesses and individuals subject to intrusive or unnecessary search. The normal flow of commerce should not be impeded. Unfortunately, the unknown minority of dyed fuel violators are the donee beneficiaries of this effort.

Members of the Idaho agriculture community remain open to taking part in discussions which will lead to a mutually-agreed-upon resolution of this issue. Agriculture wants to be at the table, not on the plate. At this point, agriculture and other stakeholders have provided significant input on DFE with little or no feedback. A DFE program that is minimally intrusive, fair and includes all diesel-powered vehicles is what all parties seem to want. Reaching that goal may be problematic, but needs to be openly discussed by all affected parties.

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