

MINUTES
SENATE AGRICULTURAL AFFAIRS COMMITTEE

DATE: Tuesday, January 24, 2012
TIME: 8:00 A.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Smyser, Senators Corder, Pearce, Hammond, Vick, Nuxoll, Bock, and Schmidt
ABSENT/ EXCUSED: None
NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
MINUTES: **Chairman Siddoway** called the meeting to order at 8:00 a.m.

GUBERNATORIAL APPOINTMENT **Chairman Siddoway** introduced **Mr. Gerald "Jerry" Trebesch** of Boise, Idaho, who was appointed to the State Soil and Water Conservation Commission to serve a term commencing on October 4, 2011 and expiring July 1, 2016. **Chairman Siddoway** asked **Mr. Trebesch** to update the Committee and describe his career and qualifications for serving on this Commission.

Mr. Trebesch shared his extensive background in the banking industry, with much of his career relating to agricultural lending, as well as his experience in the cattle business over the past ten years. **Mr. Trebesch** told the Committee of his deep love for agriculture, especially as he was raised on a farm in Montana.

Vice Chairman Smyser thanked **Mr. Trebesch** for his willingness to serve, and asked him what his contribution will be and what kind of changes he'd like to make. **Mr. Trebesch** replied that he would like to expand the home program in a prudent manner and that low rate loans for long periods of time will assist the growers in the State of Idaho. **Senator Corder** commented on his common interest in cattle. **Senator Vick** commented on his common interest in Montana.

Chairman Siddoway thanked **Mr. Trebesch** for his time and excused him from the meeting, indicating his appointment will be voted upon at the Agricultural Affairs Committee meeting on Thursday, January 26, 2012.

GUBERNATORIAL APPOINTMENT **Chairman Siddoway** introduced **Mr. H. Norman Wright** of American Falls, Idaho, who was appointed to the State Soil and Water Conservation Commission to serve a term commencing on October 4, 2011 and expiring July 1, 2012. **Chairman Siddoway** asked **Mr. Trebesch** to update the Committee and describe his career and qualifications for serving on this Commission.

Mr. Wright shared that he has spent much of his life working in agriculturally related professions, including the USDA Farm Service Agency, the soil conservation service, and on a farm as a child, and he currently serves as a Councilman for the City of American Falls, Idaho. **Mr. Wright** emphasized that service to community and his fellow person is very important to him, and that soil and water are life blood and he'd fight hard to keep that going.

Vice Chairman Smyser welcomed his experience and asked what he does in his spare time. **Mr. Wright** shared that he spends time with his wife and children.

Chairman Siddoway thanked **Mr. Wright** for his time and excused him from the meeting, indicating his appointment will be voted upon at the Agricultural Affairs Committee meeting on Thursday, January 26, 2012.

RS 21009

Chairman Siddoway introduced **Senator Corder** to present RS 21009. This legislation contains revisions designed to modernize and clarify the provisions governing the Idaho Wheat Commission. Language put in place when the Commission was established is no longer applicable or narrowly addressed the conditions at that time. Clarifications in the legislation include the process for removing a Commission member, a reference to soliciting donations, the process for calling a meeting, and providing additional authority over the rate assessed for wheat production in the state of Idaho.

Senator Corder indicated that RS 21009 is essentially the same as the RS that this committee sent to print earlier this session, with the exception of a provision outlining responsibilities for the Governor, explaining that this version contains a correction in wording that should have been caught in the first version.

MOTION:

Senator Hammond moved, seconded by **Vice Chairman Smyser**, to print RS 21009. The motion carried by **voice vote**.

Chairman Siddoway passed the gavel to **Vice Chairman Smyser** for the presentation of pending rules.

**DOCKET NO:
60-0504-1101**

Vice Chairman Smyser introduced **Teri Murrison** and **Kristin Magruder** of the Idaho Soil and Water Conservation Commission who outlined the rules governing allocation of funds to Conservation Districts. **Ms. Murrison** introduced herself to the Committee as a new administrator to the Idaho Soil and Water Conservation Commission, and then invited **Kristin Magruder** to present the docket.

Ms. Magruder outlined the pending rule which defines the requirements for the allocation of state general funds to the 50 local conservation districts across the state. The process for this rulemaking was initiated after the 2010 legislative session due to a statutory change in Idaho Code 22-2727. The complete written testimony is available in the Senate Agricultural Affairs Committee Record.

From the temporary rule version, updates to the pending rule include: clarifying the language within some definitions; reducing the required reports from four to three, which was a direct result of district feedback; clarifying funds and services that are eligible to claim for match funding; and, added 'organizations' alongside 'local units of government' as contributing entities for match funding. **Ms.**

Magruder added the intent is to find a needed balance between accountability and ease of reporting.

Chairman Siddoway asked what are the fund sources available for the maximum allocation. **Ms. Magruder** answered that sources typically come from their local counties, and that they are also available from other organizations as defined in rule, such as local businesses, but may be anything other than an individual, as long as the funds are designated for general purposes and not a specific project.

MOTION:

Senator Bock moved, seconded by **Senator Nuxoll**, to adopt Rule No. 60-0504-1101. The motion carried by **voice vote**.

**DOCKET NO:
02-0432-1101**

Vice Chairman Smyser introduced **John Bilderback**, Dairy and CAFO Programs, Idaho State Department of Agriculture (ISDA), who outlined the Pending Fee Rules governing Poultry Operations. The rule coincides with the Poultry Environmental Control Act passed in April 2011 and authorizes collection fees to support the regulatory oversight program. Negotiated rulemaking was engaged by representatives from ISDA, Department of Environmental Quality (DEQ), Water Resources, Idaho Conservation League, Agricultural industry consultants, Idaho Cattlemen's Association, Soil and Water Commissioners and a few others.

Mr. Bilderback explained more about a few areas that were expanded in this rule: Four additional definitions for "discharge," "manure," "operator," and "runoff." Specific Waste Containment and Nutrient Management Standards was incorporated by reference and an added annual requirement to test the ground water for nitrogen at all poultry operations that fall under this rule.

Senator Vick asked about the meaning of common control for the purposes of permitting and who determines that. **Mr. Bilderback** replied that the Department of Agriculture will determine whether or not two facilities would be considered one. Typically that is if the facilities were using the same systems for something like manure management or waste water management.

Senator Vick asked for clarification on inspections during the process of building the facilities. **Mr. Bilderback** noted that the building would have to comply with all codes in that county in which the facility is built.

Senator Vick asked for further information on how the three cents per square foot of production area assessment would be assessed. **Mr. Bilderback** stated that the Department of Agriculture will assess it annually, noting that facilities will receive 30-days notice if the fee is changed. Right now the fee is set at two cents per square foot, which currently would be adequate to cover the cost of the program.

Senator Pearce asked about the number of facilities that will operate under this rule. **Mr. Bilderback** replied that there is one existing facility, one that finished construction and began operation in September 2011, one that is currently under construction, with the anticipation of two more facilities in the future. **Mr. Bilderback** commented on how **Senator Corder** championed this legislation prior to the industry showing up in Idaho.

Senator Pearce asked about the existence of any opposition or disagreement while this rule was being created. **Mr. Bilderback** indicated that whenever there is negotiated rulemaking, there will probably be people who would say we could do more, and others who say we could do less; however, this rule was a consensus of the negotiated rule process. **Senator Pearce** asked if there were any major hang-ups from the industry itself. **Mr. Bilderback** answered no.

Senator Bock asked for information on the location and size of these facilities. **Mr. Bilderback** said one is in Franklin County, another in Hazelton that began operations in 2011, and another is under construction in Cassia County. The new facilities are expected to house 36,000 birds, while the existing one holds approximately 150,000, but the official numbers won't be in until reports arrive in April. **Senator Bock** asked how that compares to other large facilities in other states. **Mr. Bilderback** said he's not a poultry facilities expert, but he has heard that other facilities that could come to Idaho may house seven (7) million birds with an annual production of about seventy (70) million birds.

MOTION:

Senator Vick moved, seconded by **Senator Hammond**, to adopt Rule No. 02-0432-1101. The motion carried by **voice vote**.

**DOCKET NO:
02-0430-1101**

John Bilderback outlined a pending rule governing Nutrient Management, which adds the definition of poultry concentrated animal feeding operations and revises the rule to incorporate the most current version (2007) of a document. He indicated that the major change is to be consistent with the Nutrient Act and that there was not any comment after the notice publication.

MOTION:

Senator Hammond moved, seconded by **Chairman Siddoway**, to adopt Rule No. 02-0430-1101. The motion carried by **voice vote**.

**DOCKET NO:
02-0418-1101**

John Bilderback outlined a pending rule governing the CAFO Site Advisory Team. This rule incorporates new county CAFO definitions and establishes the application fees for the CAFO Site Advisory Team in order to conform with the passage of House Bill No. 150aa passed in April 2011.

Senator Corder asked about the removal of the definition of "animal unit" from this section. **Mr. Bilderback** replied that "animal unit" was a term used a lot "back in the day" but was confusing to an extent, and many of the rules have been changed to be animal-based, so it's just strictly the number of animals and gets away from the mathematical calculation and conversions.

Senator Corder asked about the definition of best management practices and why the rule doesn't indicate who determines what a best management practice is. **Mr. Bilderback** yielded to **Brian Oakey**, Deputy Director of the Idaho State Department of Agriculture, for a response. **Mr. Oakey** replied that because the definition in the statute is relatively clear, it was not necessary to mirror that definition in the rule, and that department will always follow the definition in statute first.

Senator Corder asked that it be noted that there was an error in editing and the words "with in" in the last line of 6D of page 27 of the pending rule book should read "within" so it doesn't change the meaning, and that if the rule is approved, it would be approved with that correction.

Chairman Siddoway asked if a county could make the definition of a CAFO more stringent, could they also make it less stringent? **Mr. Bilderback** replied that no, they cannot make it less stringent, but there is no mandate that they have to request a Siting Team. **Chairman Siddoway** asked for explanation on the benefits or advantages of making well logs available. **Mr. Bilderback** explained that the well logs have always been requested because it helps the Department of Environmental Quality (DEQ) determine environmental risk of having a CAFO on a certain type of ground, such as on soil or on sand or gravel. This information helps geologists.

MOTION:

Senator Nuxoll moved, seconded by **Senator Hammond**, to adopt Rule No. 02-0418-1101. The motion carried by **voice vote**.

**DOCKET NO:
02-0420-1101**

Chairman Siddoway introduced **Dr. Bill Barton**, Administrator of the Division of Animal Industries for the Idaho State Department of Agriculture, and also serves as State Veterinarian. **Dr. Barton** outlined pending rules governing brucellosis. This rule amends the temporary rule concerning the dates within which cattle that have resided in the Designated Surveillance Area (DSA) must be officially tested for brucellosis. The amendments came about as a change to the federal brucellosis regulations took effect in January 2011 which mandates a requirement for those states that have a reservoir of brucellosis in wildlife in and near their borders, which affects the Yellowstone states of Idaho, Wyoming and Montana.

The federal rule says that states that do have a wildlife reservoir are required to designate a DSA for brucellosis in livestock as well as in wildlife and provide adequate surveillance to assure the USDA, the trading partner states, as well as Idaho producers, that Idaho livestock are brucellosis free. Several trading partner states were dissatisfied with the amount of surveillance being done in Idaho.

Dr. Barton stated that although negotiated rulemaking was not held in regard to this pending rule, numerous discussions were held with members of the Idaho cattle industry, leadership of the Idaho Cattle Association, Idaho Dairy Association and representatives of the Farm Bureau, as well as outreach in DSA's to inform them of the rule and to facilitate compliance with the rule.

There are two new definitions in this rule: Brucellosis Herd Management Plan and Designated Surveillance Area. The rule designates that animals have been in the DSA between January 1 and June 15 of the calendar year are subject to a couple of requirements. One is individual identification of those animals. The other is a brucellosis testing requirement for changing ownership or movement out of the DSA within 30 days prior to movement.

There is also a variance or exception allowed, which goes back to the Brucellosis Herd Management Plan. There are many grazing animals that get into the DSA but do not have the facilities with which to work the cattle prior to leaving. If they had a Brucellosis Herd Management Plan on file with the ISDA, the Department can designate when the cattle would be tested.

Vice Chairman Smyser asked about the concerns of other states had about Idaho surveillance practices. **Dr. Barton** replied that Wyoming and Montana have for years had a testing requirement for animals moving out of their DSA. Idaho has been operating since 2006 by completing a whole herd test every two to three years on herds in the DSA. Other states were not comfortable with that as they don't want to receive a potentially infected animal. As a result, two states, Minnesota and South Dakota, have instituted restrictions on all cattle from Idaho, not just those in the DSAs. Colorado and Nebraska were posed to do the same thing but stopped short. Other states are waiting to see the outcome of this rule.

Senator Bock asked about the variance of stringency of testing and restrictions among the states. **Dr. Barton** replied that this rule will mirror the requirements in both Montana and Wyoming. Change of ownership testing or movement testing out of the DSA will ensure that infected animals are identified at the time of change of ownership or movement, rather than once every three years, as was Idaho's previous protocol. For example, in 2009, there was a possible infected herd in Eastern Idaho. There was not change of ownership or movement testing at that time. Had that testing been in place, those infected animals would have been identified at the time of change of ownership rather than several years later after a large group of cattle had been assembled and then commingled with numerous other producers in the state. This is no more stringent than either Montana or Wyoming.

Senator Pearce asked about the expectations and perimeters of a Brucellosis Herd Management Plan and what will be allowed and not allowed. **Dr. Barton** said the Brucellosis Herd Management Plan is a method that allows the producer to be in compliance with the rule but do it in the fashion that disrupts his production processes the least. This helps producers who have no facility with which to test their cattle. He said the plan can be as simple as: "I'm there. I don't have facilities. When I do, when I pregnancy test my cattle in the fall, I will test them at that point." The plan will be based on the needs of the producers on a quarterly basis with the Department.

Senator Pearce asked if a rancher who would move yearlings in would have a different plan than cow-calf, and if the cattle will be retested every fall. **Dr. Barton** replied that there is an age limitation on this testing requirement, which is intact females eighteen (18) months of age and over. Yearlings, whether heifer or steer, would not need to be tested. Yes, this will be an annual test if they went into the DSA every year. The reason for that is it is known that there are infected elk in the area, so the risk of exposure is continual every year. The goal is to make sure potentially infected animals are not allowed to leave that area and commingle with other animals outside the DSA, especially the risk of shipping a potentially infected animal to one of the trading partner states.

Senator Pearce asked for clarification on the movement of young cattle, who are born in February, March or April, and another 18-19 months goes by, if the testing is enforced or moved by? **Dr. Barton** replied that one of the benefits of a Herd Management Plan is that age factors can be considered, based on the risk factor. It's not strict and hard core, but gives the ability to make appropriate decisions.

Senator Pearce asked for a further break down of the individual identification part of the rule. **Dr. Barton** explained that in all of the orders implemented by trading partner states, the one common factor was that they all required individual identification on cattle that had been within a DSA, which is why individual identification is included in this rule. If heifers eighteen (18) months of age or older are being moved into a DSA, they are required to be brucellosis vaccinated, and therefore will already have been identified. **Dr. Barton** gave an example of how the identification could be helpful tracing the possible origin of a brucellosis infection. The Department is providing at no cost to the producers official identification that they can put in any animals they choose.

Senator Bock asked about the protocol for producers failing to test animals and about the possibility of movement without testing. **Dr. Barton** replied that the Department has done, and will continue to do, outreach with the producers to emphasize the importance of the testing requirement. The Department has penalty authority under rules, but elects to educate before penalizing. If it was blatant disregard of the rule that put not only animals in the DSA but also in the rest of the state at risk, the Department would elect to penalize. **Senator Bock** asked at what point it would become necessary to quarantine the animals. **Dr. Barton** replied that it would be in a repeat-offender type of situation.

Senator Nuxoll asked for clarification that the testing and rules govern just the designated areas. **Dr. Barton** said, correct, this does not affect the rest of the state, and that is what emphasizes the importance of the testing. Currently South Dakota and Minnesota are requiring cattle from anywhere in the state of Idaho to be tested. The goal of this rule is to encourage them to relax the requirement back to just cattle in the DSA. The department has good indication that is what will happen if this rule passes.

Chairman Siddoway expressed his concern that if an animal from Idaho is moved to another state and has an identification and was vaccinated and followed all the protocol and still has the identification, yet a couple years later tests as infected, that it may unjustly turn the spotlight on where the animal originated, and asked **Dr. Barton** to address that concern. **Dr. Barton** replied that having an individual identification in an animal, regardless of when it should show up with the disease, gives a very clear methodology to determine the likely source of that infection. **Dr. Barton** indicated that if such a scenario were to occur, he doesn't feel it reflects negatively on Idaho, and it would give the Department an opportunity to catch potential pockets of disease so it can be addressed and eliminated and dealt with quickly.

Chairman Siddoway said he's not sure that satisfies his concern, adding that if he were a producer and his cow left the state and he had followed all the protocol up to that point, that his liability would have left when that cow left. **Chairman Siddoway** also asked about the definitions of "cattle" being "all bovidae" and the "test eligible" being used interchangeably throughout the rule, being "all sexually intact cattle," which raises the question if bull calves are vaccinated and tested.

Dr. Barton explained the test eligible age for testing purposes under this rule is those females eighteen (18) months or older, so a six month old heifer would not be required to be tested, unless the state of destination required it. Minnesota requires all cattle from Idaho twelve months of age or older to be tested for brucellosis. South Dakota is eighteen (18) months of age or older. Under this rule, the Idaho Department would not require cattle under eighteen (18) months of age to be tested for brucellosis either prior to change of ownership or prior to moving out of the DSA. The vaccination requirement, as state law already, requires all female cattle in Idaho to be vaccinated between four and twelve months of age.

Chairman Siddoway asked if all bull calves get vaccinated. **Dr. Barton** answered that no, bull calves do not need to be vaccinated, nor do they need to be tested under this protocol. It is sexually intact female calves. **Chairman Siddoway** quoted from the rule that "test eligible" is defined as all sexually intact cattle, and asked if bull calves fall into that category.

Dr. Barton replied that if a state of destination wanted the bulls over twelve (12) months or eighteen (18) months of age to be tested, then it would be part of their import requirement that producers would need to meet. That is something that the Department could more clearly define in this rule is the intent of cattle leaving the DSA on change of ownership or movement is that only the sexually intact female cattle eighteen (18) months of age or older. **Chairman Siddoway** asked if this rule needs to be changed before the Committee proceeds. **Dr. Barton** replied that under the way the rule is being implemented at this point, he would hate to hold the rule and suffer the potential trade implications and that he is comfortable with the rule the way it is now and make the appropriate adjustment to the rule in the next session.

Chairman Siddoway asked for an update on the results in the House on this matter. **Dr. Barton** answered that the House Subcommittee voted to strike the individual identification requirement from the rule.

Senator Pearce asked about vaccine efficacy. He inquired about the cattle infection of brucellosis from elk in the DSA and if those cattle were vaccinated or not vaccinated. **Dr. Barton** replied the last occurrence of infected cattle in Idaho was in 2009 and they were vaccinated, and that the current vaccine for brucellosis is not 100% efficacious in preventing infection, and that it is only 70% to 80% effective, which is the best available. The Department would like better and more effective vaccines but the development of a brucellosis vaccine is at a stand still in the wake of the 9/11 events, because numerous agents were put on a bio-terrorism list, which makes vaccine development extremely difficult. State Veterinarians have been working to remove this brucella agent from the list, but until that happens, it's not feasible for drug companies to do research to develop a more efficacious vaccine.

Senator Corder asked for clarification on some other states' requirements on individual identification. **Dr. Barton** explained that Minnesota, Nebraska, Colorado and South Dakota all require that to receive Idaho cattle, they must have individual identification. Nebraska and Colorado have placed that requirement only on cattle that have been in the DSA. Minnesota and South Dakota have placed that requirement on all Idaho cattle.

Vice Chairman Smyser welcomed **Wyatt Prescott** to the Committee. **Mr. Prescott** is the Executive Vice President of Idaho Cattle Association, who testified in support of the rules changes, citing the organizations stand that the rules are crucial to maintain economic viability of the cattle industry as well as marketability of all Idaho cattle. He went on to further explain another perspective on individual identification requirement and was then excused as **Dr. Barton** returned to the podium for more questions.

Senator Nuxoll asked how long has Idaho been vaccinating cattle in Idaho, is it possible that the cattle are becoming immune to the vaccine, and what can be done to help the Department in getting the testing changed. **Dr. Barton** replied that brucellosis has been battled in the United States for many years. The first program was implemented on behalf of the USDA in the 1930s. It wasn't until 2007 that all states were considered to be brucellosis free in livestock. At that point Idaho did not have any infected cattle, but there was a reservoir of brucellosis in wildlife in and around the Yellowstone area. **Dr. Barton** went on to describe the varieties of vaccines that have been used in recent decades, that it is not anticipated to develop any resistance to the vaccine and it is as efficacious now as when it first came on the market.

Chairman Siddoway asked if abortion occurs in sheep, once they've aborted that first lamb, they have a lifetime immunity to that, and if that is the same with brucellosis in cattle? **Dr. Barton** said that a cow that is infected with brucellosis will typically abort the first fetus following infection. She can continue to produce live calves; however, she is still infected with the organism and will continue to shed that organism in fetal membranes associated with the birthing process.

MOTION: **Senator Pearce** moved, seconded by **Chairman Siddoway**, to reconsider Rule No. 02-0420-1101 at the Agricultural Affairs Committee meeting on Thursday, January 26, 2012, stating the desire to learn more from the members of the House about their opposition to the individual identification. The motion carried by **voice vote**, with **Senator Corder** voting nay.

DOCKET NO: **02-0426-1101** **Dr. Barton** outlined the Pending Fee Rules Governing Livestock Marketing. This rule will make for consistency with the statutory requirement which provides that a charter fee be submitted annually by all livestock markets in Idaho. The charter renewal fee will be \$100 per year.

MOTION: **Chairman Siddoway** moved, seconded by **Senator Nuxoll**, to adopt Rule No. 02-0426-1101. The motion carried by **voice vote**.

Chairman Siddoway thanked ISDA Director, **Celia Gould**, for her attendance at today's meeting.

ADJOURNED: **Chairman Siddoway** adjourned the meeting at 9:30am.

Senator Siddoway
Chairman

Christy Stansell
Secretary