Agriculture and Water Committee Meeting
Session Summary
Friday, August 18, 2017

Idaho Representative Clark Kauffman, Chair
Colorado Representative Jeni Arndt, Vice Chair

This year’s Agriculture and Water Committee meeting included presentations from guest experts on water rights adjudication, international trade and the hemp industry. The meeting also included time for committee members to report on agriculture and water-related legislative activities in their home states.

Water Rights Adjudication in the Western States
The meeting began with remarks from two water attorneys: John K. Simpson, of Barker Rosholt & Simpson LLC in Boise, Idaho, and Alan Reichman, Assistant Attorney General in Washington.

Mr. Simpson explained that in Idaho prior to the 1970s, a water user could obtain a water right simply by diverting water and putting it to beneficial use. This is known as the “Constitutional method.” But beginning in the 1970s, Idaho began requiring permits for water rights holders, which necessitated the adjudication of existing water rights to determine who owned them, how much water could be used, and who would have priority during shortages.

Adjudications began with the Snake River basin—the largest basin in the state—and ultimately, the state determined to expand adjudication to its remaining basins. After 27 years, a total of 43,822 contested claims have been adjudicated in the Snake River basin, with state judicial and administrative costs of about $94 million.

Washington, meanwhile, is experiencing “a period of soul searching” due to the impending conclusion of the 40-year old Yakima River adjudication known as Acquavella. This adjudication was initiated when the U.S. threatened to sue the state on behalf of the Yakama Nation, which claimed its fishing treaty rights were being impaired.

According to Mr. Reichman, Acquavella has prompted questions about whether water rights adjudications in other basins are necessary and worth the considerable costs. About 4,000 surface water claims serving 40,000 landowners and city residents have been adjudicated, including those of the Yakama Nation. But there remain about 170,000 unadjudicated claims, including those of many tribes. A Proposed Final Decree was issued by the Superior Court on August 10, with a Final Decree expected in the Spring of 2018. Appeals are possible.

On the other hand, Acquavella has resulted in a workable system for delivery of water in the Yakima River Basin Project, a burgeoning market for water right transfers, and case law that is applicable throughout the state for future adjudications. Legislation passed in 2002 and 2009 was aimed at streamlining the adjudication process.

International Trade Under the Trump Administration
The second portion of the committee meeting focused on international agricultural trade and featured Dr. Laurie Trautman, Director of the Border Policy Research Institute at Western Washington University, and Gary C. Martin, President and CEO of the North American Export Grain Association, and President of the International Grain Trade Coalition. This discussion
occurred on the very week that renegotiation of the North American Free Trade Agreement (NAFTA) was commencing.

Dr. Trautman offered an overview of trade with the United States’ most significant trading partners, Canada, Japan, Mexico and China. She explained that while imports from Mexico and China have increased since 1990, exports to those countries have also increased. Imports from and exports to Canada and Japan have both declined during that time period, although the drop in exports to Canada is very slight. Increased trade with China has displaced some of our trade with Canada and Mexico, but Mexico and Canada remain our top two trading partners.

Under NAFTA, agricultural trade between the three North American nations works very well, according to Dr. Trautman. Canada and Mexico combined make up over 29% of U.S. agricultural exports. Until 2016, Canada was the United States’ #1 agricultural export market, but the top spot is now held by China, with Mexico holding the #3 spot. Almost 60 percent of the agricultural goods that Canada imports come from the U.S., while over 70 percent of Mexico’s agricultural imports come from the U.S. But because of issues like the border wall and NAFTA renegotiation, Mexico is looking for new trading partners, particularly in South America.

Washington is the most trade-dependent state in the country. Bilateral trade with NAFTA partners amounts to $23 billion annually. Most of that trade is with Canada due to its proximity to the state.

The U.S. Trade Representative’s (USTR) objectives in renegotiating/modernizing NAFTA are to:

- Align regulatory standards so that goods moving across the border are not classified in different ways, such as downgrading edible wheat to feedstock, which causes it to lose value;
- Streamline border operations (i.e., “trade facilitation”) to ensure products move more efficiently across the border, particularly perishables; and
- Clarify the threshold for a product to count as being made in North America—an objective that helps agriculture, and particularly the livestock industry, because it means we would not return to country of origin labeling.

The Trump administration also wants to eliminate Chapter 19 of NAFTA, which provides for resolution of disputes between countries when one accuses another of dumping (selling below cost). According to Dr. Trautman, Canada is unlikely to give on this issue. For this and other reasons, the chances that NAFTA renegotiation will be completed before the U.S. mid-term elections and the Mexican elections, as the Trump administration hopes, are slim.

Gary Martin, however, was more optimistic about the timeline. He argued that the three nations have several common objectives relating to sanitary and phytosanitary measures, e-commerce, and those of the USTR, mentioned by Dr. Trautman. Mr. Martin indicated that the success of NAFTA renegotiations depends heavily on Canada allowing access to its markets.

Successes and Challenges for the Hemp Industry in the West

The final speaker was Colleen Keahey, Executive Director of the Hemp Industries Association. Ms. Keahey began with an overview of hemp production around the world, and then described the challenges facing the industry. One of these challenges is that the U.S. Drug Enforcement Administration continues to conflate cannabis “marihuana,” which is a controlled substance, with cannabis hemp, which is not. Also at the federal level, the administration’s stance regarding
what is and is not legal is at odds with letters of Congressional intent on this issue, leading to confusion among producers and state regulatory agencies.

Other challenges exist within the industry itself, such as a lack of shared definitions with respect to ingredient certification and acceptance from regulatory organizations. For example, the Association of American Feed Control Officials recently rejected hemp as an acceptable feed ingredient. Because the hemp industry in the U.S. is so far behind that of other countries, the U.S. lacks the infrastructure to process the product, and the lower quality of hemp products make it difficult to compete globally.

According to Ms. Keahey, 33 states have legalized hemp, including 9 western states. Colorado, Nevada, Hawaii and Oregon also allow pilot programs. Thirty-eight states and Puerto Rico considered legislation relating to industrial hemp in 2017, ranging from clarifying existing law to establishing new licensing regulations and programs. Seven western states passed hemp legislation, although the Governors in Arizona and Nevada vetoed new research programs.