From Regulation to Legislation: Recent Developments in DC

By Ian Lyle, Executive Vice President, NWRA

America celebrated our nation’s independence on the 4th of July. A few weeks later water users were given another reason to celebrate—a different kind of independence. A measure of regulatory independence. On July 16th, the Council on Environmental Quality (CEQ) announced its final rule updating the National Environmental Policy Act (NEPA).

NEPA is one of the nation’s foundational environmental rules, yet it had not been meaningfully updated in four decades. The updated rule received over 1 million comments. NWRA, with input from groups like the Idaho Water Users Association (IWUA), was one of the organizations to comment.

The updated rule improves the NEPA process while providing important protections for the environment. Several of the most notable changes include: limiting document length to 150 pages, setting a two year time limit on the NEPA process, directing federal agencies to work together on a joint schedule, and allowing project developers (like water managers or their consultants) to play a larger role in developing NEPA documents.

July also saw significant movement in Congress on water infrastructure legislation. On July 1st, the U.S. House of Representatives passed H.R. 2, the Moving Forward Act. This bill is the U.S. House majority party’s approach to a broad infrastructure proposal. The 2,700-page bill contained authorizations for surface, aviation, and water infrastructure. The bill included several provisions of interest to NWRA members—some good and some that will need to be monitored. For example, it authorized $70 billion dollars for a variety of water related projects, however it also introduced new regulatory requirements to access funding for surface water storage.

Interestingly, the sections of H.R. 2 that could be of most use to water providers are found in the tax provisions of the bill. Section 90101 would reauthorize the advance refunding of bonds. Together these two provisions provide improved access to favorable bond terms that can benefit water infrastructure development. This bill is not likely to get signed into law based on concerns expressed in the Senate. The Administration has also indicated that it would veto the proposal.

The U.S. House wrapped up July with a flurry of activity passing several bills including H.R. 7575 the 2020 Water Resources Development Act (WRDA) a U.S. Army Corps of Engineers (USACE) focused bill, and several appropriations bills. Of note to water suppliers, H.R. 7575 directed the USACE to study making water supply one of its primary missions.

At the time of drafting this article, the House of Representatives was poised to pass H.R.7617, a consolidated appropriations package. This package includes funding for the Energy and Water Appropriations bill that funds the Bureau of Reclamation (Reclamation) and the USACE. The bill provides $1.66 billion for Reclamation and $7.63 billion for the USACE.

In addition to these base appropriations, H.R.7617 contains an additional $3 billion for Reclamation and $17 billion for the Army Corps for COVID-19 funding aimed at stimulating economic recovery through infrastructure development. The importance of water infrastructure to the economy was highlighted earlier this year when IWUA Executive Director Paul Arrington was invited to testify on behalf of NWRA and IWUA on the Energy and Water Appropriations bill. The hearing was canceled due to COVID-19 but Mr. Arrington’s testimony, which was submitted for the record, highlighted the importance of water infrastructure to the economy.

IWUA has been and continues to be a valuable member of the NWRA. If you would like to become more involved in NWRA please email NWRA Executive Vice President Ian Lyle at ilyle@nwra.org.
IDAHO DEQ RECEIVES PERMITTING AUTHORITY FOR GENERAL PERMITS

Effective July 1, 2020, the Environmental Protection Agency (EPA) transferred permitting authority for facilities covered under general permits to Idaho Department of Environmental Quality (IDEQ). This includes the pesticide general permit utilized by IWUA members for their pesticide and chemical applications.

In 2014, Idaho’s Legislature and IDEQ sought EPA authorization for a state-operated pollutant discharge elimination system permitting program. The Clean Water Act (CWA) authorizes states to take over permitting under the National Pollutant Discharge Elimination System (NPDES) Program. On June 5, 2018, the EPA approved the Idaho Pollutant Discharge Elimination System (IPDES) Program and authorized the transfer of permitting authority to the state beginning on July 1, 2018. Similar to the NPDES program, the purpose of IPDES is to address water pollution by regulating point sources that discharge pollutants to waters of the United States.

The transfer of permitting authority has been a phased process, as follows:

- July 1, 2018: Publicly owned treatment works and pretreatment programs
- July 1, 2019: Industrial direct dischargers
- July 1, 2020: Facilities covered under general permits, except storm water
- July 1, 2021: Storm water (municipal, construction and industrial), biosolids and federal facilities

For more information about the IPDES program, visit IDEQ’s webpage at: https://www.deq.idaho.gov/water-quality/ipdes/.

As IDEQ has obtained permitting authority, it has also engaged stakeholders in developing guidance for the IPDES program. IWUA, and several of its members, have been involved in this guidance-development process, including submitting comments.

In order to gain approval for the IPDES program, IDEQ must implement rules that meet the requirements of the CWA and federal regulations. These rules, found in IDAPA 58.01.25, establish procedures for submitting permit applications, writing and issuing IPDES permits, filing appeals, fee structures, developing general permits, and other required components of a NPDES program. The guidance documents being developed by IDEQ will clarify implementation of the IPDES rules.

More information about the guidance development process can be found at: https://www.deq.idaho.gov/water-quality/ipdes/guidance-development/.

A Virtual Meeting you Don’t Want to Miss!

In lieu of the Western Water Seminar, NWRA presents a six part series of virtual interactive sessions. Topics include judicial water rulings, the WRDA Act, water management, infrastructure efforts, and more! Virtual sessions begin August 6, 2020 and are held once weekly through September 17.

To register, visit http://www.nwra.org/western-water-table-talk.html

IWUA Water Law & Resource Issues Seminar

Register now for IWUA’s Water Law & Resource Issues Seminar, August 31—September 1, 2020, in Sun Valley, Idaho. This year, registrations are available in-person and virtually. The seminar will cover a number of robust topics, including cloud seeding, title transfer, and adjudication updates. To view the complete program agenda, and to register for the seminar, visit http://www.iwua.org/2020-water-law-seminar/

Hurry! Due to COVID-19, in person registration is limited to 100 registrants.

IN THIS EDITION

- Idaho DEQ Receives Permitting Authority (Page 2)
- Issue Tracker (Page 3)
- ISDA Applicator Rulemaking (Page 4)
- News Droplets (Page 4)
- 10 Questions with Steve Nielson (Page 5)
- From the Archives (Page 6)
- Kibitzing with Kathryn (Page 7)
- IWUA Committee Updates (Page 8)
On April 10, 2020, a memo was sent to each Idaho agency instructing them to “seek to eliminate outdated or unnecessary provisions within your area of Idaho Code.” On July 1, 2020, IWUA’s legislative committee held a meeting to review the proposals submitted by the Idaho Department of Water Resources (IDWR).

IDWR identified several provisions for consideration, including:

- **Idaho Code 42-238b**: This statute allows “proceedings commenced prior to July 1, 1951, for the acquisition of the rights to the use of ground water” to proceed unaffected by the 1951 Ground Water Act. IDWR considers this provision outdated as it has no pending applications for permit dated 1951 or earlier.

- **Chapter 19, Title 42, Idaho Code**: These provisions authorize the construction of dams and booms in the Clearwater River and its tributaries. The chapter dates back to 1917, when timber was commonly transported by river. Construction of dams and booms in the Clearwater River for timber transport is no longer practiced—the last log drive in the basin happened in 1971. Finally, there are more recent statutory provisions that regulate the construction of dams and other in-stream structures statewide, including Idaho Code 42-1709 -1721.

- **Idaho Code 42-237b through 42-237g**: These provisions allow for a water right delivery call based on ground water interference to be referred to a local ground water board. IDWR has no recollection this process was ever used. Furthermore, with the Rules for the Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11), which establishes a process for addressing delivery calls made by ground water users, the statutory provisions are no longer necessary.

IDWR identified several other provisions. If you would like a copy of the memo discussing these provisions, contact the IWUA office.

### REGIONAL

**By Tom Myrum, Executive Director, WSWRA**

On December 20, 2019, the U.S. Court of Appeals for the Ninth Circuit ordered the Environmental Protection Agency (EPA) to establish total maximum daily loads (TMDLs) for water temperature for the Columbia and Snake Rivers. The Ninth Circuit’s decision in Columbia Riverkeeper et al. v. Wheeler, 9th Cir. No. 18-35982, applied the “constructive submission” doctrine to force the EPA to issue the long overdue TMDL.

The panel held that a “constructive submission” of a TMDL has occurred where a state has failed over a long period of time to submit a TMDL, and clearly and unambiguously decided not to submit any TMDL. The 9th Circuit Court further held that where a state has failed to develop and issue a particular TMDL for a prolonged period of time, and has failed to develop a schedule and credible plan for producing that TMDL, it has no longer simply failed to prioritize this obligation. Instead, there has been a constructive submission of no TMDL, which triggers the EPA’s mandatory duty to act.

On May 18, 2020, EPA issued for public review and comment the TMDL for temperature on the Columbia and Lower Snake Rivers. EPA will accept public comments on the TMDL from May 21 through August 20 (extended from July 21). The TMDL addresses portions of the Columbia and lower Snake Rivers that have been identified by the states of Washington and Oregon as impaired due to temperatures that exceed those states’ water quality standards.

Section 303(c) of the CWA requires states to establish water quality standards that identify each waterbody’s designated uses and the criteria needed to support those uses. CWA section 303(d) requires states to develop lists of impaired waters that fail to meet the standards set by jurisdictions even after implementing technology-based and other pollution controls. A TMDL.

**Continued on page 4**
ISDA COMMENCES RULEMAKING ON APPLICATOR RULES

The Idaho State Department of Agriculture (ISDA) has engaged stakeholders in negotiated rulemaking for its Rules Governing Pesticide and Chemigation Use and Application (IDAPA 02.03.03). IWUA is participating in this rulemaking. We are regularly communicating with IWUA managers about the proposed rule changes and working to minimize any impacts on IWUA members operations.

As we have worked through this process, a few questions have been asked by IWUA managers that bear repeating here.

Historically, irrigation districts have not had to pay fees for taking tests and renewing licenses. Will this continue under the revised rules? Yes. The irrigation district fee requirement exemption is codified in Idaho Code 22-3404(7)(b), which states that “Federal, state, and other governmental agencies are exempt from the licensing fees provision.”

Historically, irrigation entity applicators have fallen under the category of “AP” or “Aquatic Weed & Pest Control.” However, they may also fall under the category of “RW” or “Right-of-Way Herbicide,” given that they are applying chemicals to canals and associated rights of way. What category should IWUA member applicators fall under? We reached out to ISDA on this question. We received the following response: “The vast majority of applications that a canal company employee would be doing would be covered by the AP category (ditches, canals, canal banks and land appurtenant to ditches and canals). There may be a situation where an RW category would be required and that would be in parking areas, roadways that are not adjacent to a ditch or canal. These requirements are the same as they have historically been.”

For more information about this rulemaking process, visit https://agri.idaho.gov/main/56-2/pesticides/.

DROPLETS
QUICK UPDATES ON WATER NEWS

The Final Environmental Impact Statement on the Columbia River Systems Operation was released on July 31, 2020. The final Record of Decision, or “ROD”, is expected September 30, 2020. These documents provide an extensive review of the operations of the federal power system on the Columbia River, including the Lower Snake River.

To review the final documents, visit www.crsn.info.

A draft environmental impact statement analyzing a raise of Anderson Ranch Dam on the South Fork of the Boise River was issued on July 31, 2020. Comments on the Draft Environmental Impact Statement will be accepted for 45 days, no later than September 14, 2020. IWUA is reviewing the document and will submit comments.

To learn more about this process, go to Reclamation’s Boise River Basin Feasibility Study webpage at www.usbr.gov/pn/studies/boisefeasibility/.

The U.S. and Canada continue to negotiate the terms of a modernized Columbia River Treaty. During recent negotiations, the countries exchanged proposals on a revised treaty. Details about the proposals have not been made public. The 10th round of negotiations was held virtually on July 27-28, 2020. The next round has not yet been scheduled.

Learn more about the process at the State Department’s Columbia River Treaty webpage, www.state.gov/columbia-river-treaty/.
10 QUESTIONS WITH STEVE NIELSON
SNake River Valley Irrigation District

Paul Arrington (PA): Tell us a little bit about yourself, your background, education, family, hobbies etc.

Steve Nielson (SN): I was born and raised on my family’s farm in Shelley, Idaho. I began working part time for Snake River Valley Irrigation District (SRVID) in 1992 doing canal maintenance. I attended Utah State University, and served a 2 year mission for my church in Florida. After returning home, I thought it would be a good idea to farm. After I ran out of money, I applied for the manager position at SRVID in 2003. The rest is history. Between my wife and myself, we have 7 children and 2.5 grand kids. I love to ride my Harley and golf as much as possible.

PA: Tell us a little bit about your organization—when it was founded, number of acres, etc.

SN: SRVID was organized in 1906 with 23,176 acres. We draw water from the Gem Lake Reservoir out of Idaho Falls, and service from Shelley almost down to Blackfoot.

PA: Tell us something about your organization that other water users might find interesting?

SN: We do a lot of automation with our headgates and recharge. We are working toward automation for all headgates. We started by automating the biggest headgates and are working our way to automating the smallest gates. We run almost everything by our phones. We can raise and lower gates, see flows, and we have emergency alerts in place.

PA: What do you see as the biggest challenges your organization will face in the future?

SN: The biggest challenge we will face in the future is urban growth. There are new subdivisions going in all over. When contractors are building they like to tap into wells instead of using surface water. SRVID has learned to stay in contact with planning and zoning to be at the forefront of any expansion projects.

PA: What do you see as the most exciting opportunities your organization will face in the future?

SN: Innovations for water delivery, environmental issues, and recharge.

PA: Tell us about someone that has influenced your career and how they influenced your career.

SN: My father, Carlos Nielson influenced my career. He was on the SRVID board for 47 years and was inducted into the IWUA Hall of Fame. I learned through his example the importance of water, and that we need to safeguard water for the farmer.

PA: What has been the toughest lesson you have learned during your career?

SN: One tough lesson I’ve learned is to always see issues through other people’s eyes. I’ve had people call me just madder than mad, but I’ve learned I have a talent for listening – if you hear the other person out and learn how they feel, it’s easier for both sides to find a resolution and make things better for next time. If you listen to and learn from others, you will always walk away shaking hands.

PA: What advice would you give to someone who is new to your line of work?

SN: Don’t take life so serious. Enjoy!

PA: If you could have a billboard anywhere, what would you put on that billboard (i.e. quote, picture, etc.)?

SN: Be the change you want to see in the world.

PA: If you were king of the world for one day, what would be your first decree?

SN: No speeding tickets on Monday!

To hear more from Steve about his career at SRVID, join us at the IWUA Water Law & Resource Issues Seminar.

NWRA 89th Annual Conference

NWRA National Water Resources Association

Make plans to attend NWRA’s 89th Annual Conference, November 9-11, 2020 at The Scottsdale Resort at McCormick Ranch, in Scottsdale, Arizona.

Come mingle with water users from throughout the West. Go to www.nwra.org for more information about the agenda and registration.
WATER LARCENY?

Recent proposals by the Los Angeles County Board of Supervisors once again bring home the fact that the arid southwest is continuing its interest in obtaining water from Idaho and other northwest states. A recent proposal by Supervisor Kenneth Hahn suggests that two aqueducts should be constructed, one from the Columbia River near Portland and the other from the Snake River in Idaho across Nevada to Lake Mead, in order to provide water for 8 million Los Angeles County residents. Regardless of the fact that federal law prohibits even studying such a proposal and that Idaho does not have water available for such a project, Mr. Hahn and the Board of Supervisors are moving rapidly ahead in efforts to at least develop the ability to study and propose this difficult project. The Board of Supervisors has voted unanimously to initiate a program, if possible, and to ask the California Congressional delegation to attempt to change federal law in order to allow the study.

The Idaho Attorney General’s office in cooperation with the Idaho Water Users Association drafted and passed a law in the 1990 Legislature that erects several road blocks to prevent out-of-state diversion of state waters. The legislation sets criteria for handling such proposals through the Idaho Department of Water Resources and requires applicants to exhaust all water conservation options before applying for water for out-of-state diversions. The Attorney General’s office conducted significant research into the constitutionality of the law and it is believed that the law will pass the constitutional test required of such types of legislation.

While existing federal and state laws create significant difficulty relating to the California proposal, it must be remembered that California has tremendous economic and political power and Idaho water users must be vigilant in order to turn such programs aside and demonstrate that Idaho’s water is for Idaho’s citizens. It is also important to note that many water managers in California do not agree with Supervisor Hahn’s proposal and feel there are more reasonable and economically feasible alternatives closer to home. In order to more accurately determine the philosophy of California water managers, Mr. Carl Boronkay, General Manager of the Metropolitan Water District of California, has been invited to speak at the IWUA Water Law and Resource Issues Seminar to be held July 20 at Elkhorn near Sun Valley. Mr. Boronkay will address California water needs and alternatives for the future.

Also in this edition:

- **New IWUA Members**: IWUA was excited to welcome the following new members: South Side Bruneau Canal Company, Sublett Irrigation Company, West End Project (Nampa), Arrowhead Machinery Company, Central Equipment Company, ICS Software, Inc., L.B. Industries, Inc. and Wilbur Ellis Company
- **1990 Legislation**: A summary of legislation passed during the 1990 legislative session, including a uniform definition of “domestic” in Idaho code, the Irrigation District exclusion and annexation process and criteria for the use of water outside the state of Idaho.
- **Pesticide Issues**: An article outlining attacks on the agricultural community’s use of agricultural chemicals. “If agriculture is denied the use of chemical fertilizers and pesticides, the world will be doomed, not by chemical poisoning, but by starvation.”
Hold fast, my good friends, to your blue bonnet. 
Sit, while you hear my quarantine sonnet.

I have settled into COVID-19-
Work during the day, then home for ice cream!

Dinnertime meals have become more involved. 
Much more downtime to get a crossword solved!

Ag Water Safety is here in full swing,
May our radio ads hit you with “zing”.

Summer seminar is finally on,
Sun Valley here we come—our masks donned!

But! If you would rather join us unseen, 
Just tune in via internet machine.

Ta ta for now, and I bid you farewell. 
Miss you all and hope you’re living well.

Kibitz ya later --K

Water Word Search

Infrastructure
Irrigation
Canal
Pivot
Shoshone Falls
Pesticide
Arrowrock
Ditch
Cloud Seeding
Black Canyon
Lateral
Agriculture
Palisades
WOTUS
## COMMITTEE UPDATES

### EDUCATION COMMITTEE

Thank you for making the first H2-Know a success! The Education Committee hopes that this can be a useful tool for our members, while at the same time allowing the Education Committee the funds to complete some projects—like updating the water measurement video for the IWUA Ditchrider Workshops, and converting our media library to digital.

The committee is excited for the Summer Seminar on August 31-September 1, 2020. We continue to work with the resort to ensure that the event is safe and healthy for everyone. NEW THIS YEAR—you may participate in the seminar virtually! IWUA will send out links to of the recorded presentations to watch from the comfort of your own home.

### LEGISLATIVE COMMITTEE

Chairman Randy Brown has called a Legislative Committee meeting on October 19, 2020 at 1:30 p.m. mountain time at the Hyatt Place Boise/Downtown, 1024 W Bannock Street, Boise, Idaho 83702. A virtual streaming option will be made available for those who wish to attend online.

### RESOLUTIONS COMMITTEE

At the Annual Convention, IWUA members adopted their resolutions. These resolution will be used by IWUA to guide its advocacy actions throughout the year. We use these resolutions as we provide comments to Congressional leaders and agencies on issues affecting Idaho’s water user community. We urge you to be familiar with IWUA’s resolutions.

You can review IWUA’s resolutions at [www.iwua.org](http://www.iwua.org).

### NOMINATING & AWARDS COMMITTEE

As you go through the year, consider employees, board members, and others who may warrant recognition. For example:

Outstanding Employee Award Criteria—This award is given to individuals who work for IWUA General Members. Individuals may be considered for this award based on their efforts inside and/or outside of the member organization, including (but not limited to) service to the public and/or the coordination of difficult tasks. Nominations for this award are made by the nominee’s board of directors or supervisor.


### RURAL & URBAN AFFAIRS COMMITTEE

Irrigation season has arrived and water is turned on in irrigation canals. Watch and listen for our Ag Water Safety campaign—including radio ads throughout southern Idaho.

Keep an eye out on IWUA’s social media for an IWUA member profile video coming soon! Here’s a hint: Pioneer Irrigation District.

Ag Water Awareness videos may be found on the webpage here: [http://www.iwua.org/iwua-media-library/](http://www.iwua.org/iwua-media-library/)

### WATER QUALITY COMMITTEE

Idaho Department of Environmental Quality has recently received permitting authority for the Idaho Pollutant Discharge Elimination System program. If you would like to submit comments or participate in this guidance process, please contact the IWUA office.

The Nampa Fire Department and Pioneer Irrigation District work together to provide canal rescue training to first responders.