

VIII. OTHER STATE STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of state laws in Idaho.

A. Farmland Preservation

1. *Planning and Zoning*

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline each local area's requirements, a producer should check with local boards to determine local planning and zoning regulations which may affect an operation.

Local governments may take part in farmland preservation through land use planning.⁵⁴ Land uses may be planned so as to encourage the protection of prime agricultural, forestry, and mining lands for production of food, fiber, and minerals. Environmental protection may be a component of the land use plan. All operators should check with local authorities to determine if a local land use plan will affect the use of their property.

2. *Conservation Easements*

Producer Note: Many states have passed laws allowing preservation or conservation of agricultural land through the use of easements. When easements are used for these purposes, the law frequently has certain requirements relating to the creation, compensation, and enforcement of the easement.

In Idaho, the Uniform Conservation Easement Act⁵⁵ allows real property to be protected to insure its availability for agricultural, forest, recreational, or open space use, for protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property. To create a conservation easement, an owner of land conveys an easement to a governmental body or to a charitable group

⁵⁴ IDAHO CODE § 67-6501 *et seq.* (1995 & Supp. 1996).

⁵⁵ IDAHO CODE § 55-2101 *et seq.* (1994).

whose purposes include protection of real property. The owner ensures that the property remains in the use that the easement states. If the owner attempts to violate the easement by developing the property, or in some other manner, a third party may enforce the easement.

3. *Recreation Districts*

Recreation districts⁵⁶ may also be created in Idaho for the purpose of providing adequate recreation facilities for public use, and may have an impact on farmland preservation. Landowners may request to be included in a recreation district, and, so long as enough land is included and voters or landowners consent, a district may be created.

B. **Nuisance and Right-to-Farm**

Producer Note: Many producers are confronted with concerns of local residents. These problems may originate from dust or odor generated by the operation or may result from a lack of knowledge of what is involved in an agricultural operation. While not specifically an area where the state or federal authorities may become involved, court actions can be brought against the operation. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

1. *Nuisance*

Generally, in Idaho, a nuisance is defined as anything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway.⁵⁷ A nuisance suit may be brought by any person whose property is injured, or whose personal enjoyment is lessened by a nuisance. The individual is entitled to damages and the nuisance may be enjoined or abated.

A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. It can be remedied criminally, civilly, or by abatement. Public nuisances can be controlled by suit of a private person or the state. In addition, private persons may abate the nuisance if it is specially injurious to them by removing or, if necessary, destroying the nuisance without committing a breach of the peace or doing unnecessary injury.

⁵⁶ IDAHO CODE § 31-4301 *et seq.* (1996).

⁵⁷ IDAHO CODE § 52-101 *et seq.* (1994).

A private nuisance, on the other hand, can be remedied by a civil action or abatement only. In addition, a person injured by a private nuisance may abate it by removing, or, if necessary, destroying, the thing which constitutes the nuisance without committing a breach of the peace or doing unnecessary injury. However, where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon the land, reasonable notice must be given before entering to abate it.

2. *Right-to-Farm*

Agricultural activities, however, will not be considered a nuisance as a result of any changed conditions in or around the surrounding nonagricultural activities if the agricultural operation has been in operation for more than one year and the operation was not a nuisance at the time it began.⁵⁸ The protection does not apply if a nuisance results from the improper or negligent operation of any agricultural operation. An agricultural operation includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities. Improper or negligent operation means that the agricultural operation has not been undertaken in conformity with federal, state, and local laws and regulations, and adversely affects the public health and safety.

In addition, no city, county, taxing district or other political subdivision of this state may adopt an ordinance or resolution that declares any agricultural operation operated in accordance with generally recognized agricultural practices to be a nuisance, nor may any zoning ordinance that forces the closure of an agricultural operation be adopted. Zoning and nuisance ordinances do not apply to agricultural operations that have been established outside the corporate limits of a municipality and were then incorporated into the municipality by annexation.

C. *Noxious Weeds*

Idaho has established the Plant Pest Control and Research Commission⁵⁹ for the purpose of preventing public economic loss from insect and other agricultural pest infestations, preventing invasions by and introduction of agricultural pests, and eliminating existing pest infestations. The term pest includes all organic causative factors perilous to Idaho agriculture, and is to be broadly construed.

In addition, certain areas of the state may be designated as crop management areas to help produce crops within those areas that are free from pests, diseases or other detrimental

⁵⁸ IDAHO CODE § 22-4501 *et seq.* (1995).

⁵⁹ IDAHO CODE § 22-2101 *et seq.* (1995).

influence.⁶⁰ As a result, crop management practices, which include the use of clean seed, destruction of infested or undesirable plants, use of chemicals, and prohibitions on the introduction of host materials, may be implemented to protect the crops of Idaho.

Noxious weeds,⁶¹ which are defined as any designated plant having the potential to cause injury to public health, crops, livestock, land or other property, are also controlled by the Department of Agriculture. If necessary, the Department has the authority to establish, maintain and enforce a statewide or regional quarantine⁶² to protect all aspects of agriculture and horticulture from infestation or infection by any insect or animal pest, plant disease or noxious weed.

Finally, the Department has implemented special rules and regulations to aid in the eradication of green peach aphids to protect the state's potato crops.⁶³

D. Soil and Water Conservation Districts

In order to protect the farm, ranch, range and forest lands in Idaho, soil conservation districts⁶⁴ are created to encourage the conservation of soil resources, to control and prevent soil erosion, to prevent floodwater and sediment damages, and to further the conservation, development, utilization, and disposal of water. Methods of soil conservation which are encouraged include:

- ! Engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodwaters, dikes, ponds, ditches, and the like;
- ! The utilization of strip croppings, lister furrowing, contour cultivating, and contour furrowing;
- ! Land drainage;
- ! Land irrigation;

⁶⁰ IDAHO CODE § 22-1001 *et seq.* (1995).

⁶¹ IDAHO CODE § 22-2401 *et seq.* (1995 & Supp. 1996).

⁶² IDAHO CODE § 22-2001 *et seq.* (1995).

⁶³ IDAHO CODE § 22-4401 *et seq.* (1995).

⁶⁴ IDAHO CODE § 22-2714 *et seq.* (1995).

- ! Seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses;
- ! Forestation and reforestation;
- ! Rotation of crops;
- ! Soil stabilization with trees, grasses, legumes, and other thick-growing soil holding crops;
- ! Retardation of runoff by increasing absorption of rainfall; and
- ! Retirement from cultivation of steep, highly erosive areas and areas badly gullied or otherwise eroded.

In addition to establishing soil conservation districts, Idaho also has a policy of seeding burned areas with range grasses and legumes in order to prevent erosion and to provide feed and cover for wildlife and range for livestock.⁶⁵

E. Aquaculture

Aquaculture includes the husbandry of aquatic plants and animals, both public and private. A commercial fish rearing license is required for the purposes of obtaining, possessing, preserving, or propagating fish for the purpose of selling.⁶⁶ The license for conducting an aquaculture operation is \$25 and the applicant must show compliance with all state, federal, and local laws and regulations. Penalties for noncompliance with the commercial fish facilities law can include a fine up to \$1,000 per offense, suspension or revocation of the license, or both.

F. Environmental Audits

Producer Note: Several states have passed environmental audit protection laws which give businesses an immunity from the use of environmental audit findings in administrative, civil, or criminal actions against the business for environmental problems found and corrected. In other words, businesses cannot be prosecuted, civilly or criminally, for environmental problems they found and corrected in a self-audit process. Fewer than half of the states have this type of law. Idaho has granted this type of protection.

⁶⁵ IDAHO CODE § 38-501 *et seq.* (1994 and Supp. 1996).

⁶⁶ IDAHO CODE § 22-4601 *et seq.* (1995).

In Idaho, to encourage individuals conducting activities that are regulated under federal, state, and local environmental laws to conduct voluntary internal environmental audits, to develop compliance programs, and to implement management systems, the legislature has established immunities for violations of laws and rules voluntarily disclosed to environmental agencies.⁶⁷ These environmental audit provisions, however, expire on December 31, 1997.

Caution: Some federal courts have concluded that state environmental audit protection laws do not bind the federal government, particularly in criminal actions. All producers should confer with an attorney, consultant, or advisor before engaging in an environmental audit.

G. Water Rights

Idaho's system of water rights is prior appropriation.⁶⁸ In addition, the state has established priorities for the appropriation of water rights when the water is not sufficient to meet all needs. The priorities established include the following:

- ! Those using the water for domestic purposes shall have preference over those claiming for any other purpose;
- ! Those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes; and
- ! In any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes.

⁶⁷ IDAHO CODE § 9-801 *et seq.* (Supp. 1996).

⁶⁸ IDAHO CONST. art. XV.