

*Protecting Idaho's dairy industry through environmental,  
legal and legislative leadership since 1924*

April 2016

### **From the Boardroom**

*By Tony VanderHulst, IDA President*

It has been a busy 2016 for the Idaho Dairymen's Association. We successfully ran three pieces of legislation this session, with the most involved being changes to the Dairy Environmental Control Act (DECA). Now that the statute changes complete, IDA's focus will be on the Rules process, which is administered by the Idaho State Department of Agriculture (ISDA). Rules outline the details of how the statute will be implemented by the ISDA. Rules meetings will run through the summer months. Before they take effect, they will need to be approved by either the House or Senate during the 2017 legislative session.

The IDA staff recently completed our first series of Nutrient Management Workshops. We had a great lineup of speakers from the Kimberly USDA Ag Research Station, the University of Idaho, and IDA Consulting Services. Their presentations focused on soil and manure sampling, whole dairy nutrient balances,

irrigation management, and manure recommendations for Idaho crops. If you would like copies of any of those presentations, please contact Dr. Stephanie Kulesza at [steph@idahodairymens.org](mailto:steph@idahodairymens.org). We had great attendance and feedback from the workshops, and will be making them an annual event.

Worker safety and training on agricultural operations is getting more attention following a fatality at a Magic Valley dairy earlier this year. The accident spurred a dialog between the IDA and local processors to help bolster awareness and training for worker safety on Idaho dairies. The joint effort, named the *Idaho Worker Safety Initiative*, aims to help dairymen increase worker training, and document that training so we are able to demonstrate to customers and consumers the seriousness Idaho's dairy industry takes in keeping its workforce safe.

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### **Time to Take Your PSNT Samples**

*By Dr. Stephanie Kulesza, IDA Consulting Services*

With spring upon us and field work in full swing, I wanted to remind you of a topic we discussed earlier this year at the district meetings and nutrient management workshops: taking PSNT samples to determine in-season nitrogen application rates. The Pre-Sidedress Nitrate Test (PSNT) is a very useful soil test when growing corn or potatoes on manured soils. Much of the nitrogen in manure is in the organic form and unavailable to plants until it undergoes a transformation, called mineralization, to inorganic forms (nitrate or ammonium) that are taken up by plants.

It can be difficult to predict how much of the organic nitrogen will become available over the growing season because the transformation process is controlled by soil microbes, and microbial activity is controlled by temperature, moisture, availability of oxygen, etc. in the soil. So, warm, wet weather in the spring can lead to more available nitrogen than if the weather is cold and dry. Because this process is very dependent on the weather, it can be difficult to determine how much nitrogen, if any, will be needed throughout the growing season.

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## Federal Dairy Issues Update

By Charlie Garrison

As many people anticipated, 2016 is shaping up to be a difficult time to get things done in Washington, D.C. The presidential primaries dominate the headlines as those move into the homestretch. House and Senate members are following those races closely to try to determine the impact the party nominees for president might have on their races.

Republican leaders in both the House and the Senate are continuing to work on spending bills even though it looks like the fight over the federal budget is very likely to stall that process. If that happens, the door is left open for the prospect of either funding the federal agencies by simply extending current spending levels past September 30<sup>th</sup> or forcing a government shutdown just weeks before the general election. With the constitutional requirement that all tax and spending bills originate in the House of Representatives, Speaker Paul D. Ryan (R-WI), just six months into the job, has his work cut out for him over the next several weeks.

### GMO Labeling

One of the most difficult issues before the Congress in 2016 is the issue of mandatory labeling of foods for genetically modified organism (GMO) content. The House of Representatives passed a bill last summer that prevents state or local governments from requiring labels on GMO foods. That bill calls for development of a voluntary labeling protocol for foods that qualify for a "GMO-free" label claim. The House bill goes on to stipulate that meat and milk from animals fed GMO feed cannot qualify for a "GMO-free" label. That provision is especially troublesome for dairy producers since upwards of 90% of the corn and soybeans grown in the U.S. is from GMO seed.

The driving factor in the need for national preemptive legislation on GMO labeling is a Vermont state law that goes into effect July 1<sup>st</sup>. That law requires food with GMO content sold in the state to be labeled as such. While the wording of national legislation on the issue remains an open question, the food industry has long known that complying with potentially 50 different sets of state laws and regulations on GMO labeling would be impossibly expensive and quite likely confusing to consumers.

With that in mind the U.S. Senate is trying to come up with legislation that can garner the 60 votes nec-

essary to overcome a likely filibuster and get to the floor for a vote. The chairman of the Agriculture Committee came up with what was thought to be a workable compromise – to preclude labeling requirements directly on the package but offer the information via a barcode on the product that a consumer could scan with a handheld electronic device like a smartphone. Interests demanding what many consider to be the equivalent of an on-package warning label shot that down and the bill didn't even get a vote. IDA appreciates the strong support of both Senators Mike Crapo and Jim Risch for legislation that would provide individual consumers the amount of information they want on GMO foods.

### Trans Pacific Partnership (TPP) Trade Agreement

Most organizations in the U.S. dairy industry have come out in support of the 12-nation Trans Pacific Partnership agreement. While that support is decidedly measured due to the lack of significant progress on opening new markets for U.S. dairy products in Japan and Canada, the agreement does offer progress on limiting other countries' use of baseless food safety concerns to keep our products out. It also makes modest progress on limiting demands by some countries to deny the use of common food names by claiming exclusive rights to certain location names, also known as "geographic indications" (GIs).

A recent letter from several members of the U.S. House of Representatives to U.S. Trade Representative Michael Froman and USDA Secretary Tom Vilsack underscored the importance of the U.S. government enforcing provisions of the TPP regarding food safety concerns and common food names. IDA thanks Congressman Mike Simpson for his early and strong support of that letter.

Ratification of the TPP is a major for President Obama's final months in office. With little support from Democrats in either the House or the Senate, it will be up to Republicans to deliver the votes to pass it. At this point, GOP leaders are asking the President to delay presenting the agreement to Congress until after the election.

### Immigration Reform

The political rhetoric in the Republican primaries, consistently out-of-sync with voter attitudes that improperly documented immigrants should be given a chance at earned legalization, has meant continued inaction on one of agriculture's main priorities for 2016. Prospects for immigration reform that works

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## Vault Technologies Joins IDA as an Associate Member

Vault Technologies is excited to join IDA as an Associate Member. We, as a company, recognize that dairy farmers in Idaho are uniquely progressive and eager to take on the challenges of the industry and grow their businesses. That fits our goal of continuing to relentlessly build a powerful engine for dairy business growth. The traditional ways of keeping financial projections in an excel spreadsheet have grown into a second generation. Vault is actively pushing the boundaries of innovation and hopes Idaho dairymen join us in disrupting the old ways of running a dairy business.

**What exactly is Vault?** Vault helps dairies across the country see into the future of their business through our cutting edge online software. It includes a unique milk check calculator, profit margin projections, and scenario mode and risk management functionality.

**The milk check calculator** runs your milk production, components and dairy futures prices through a custom pay price calculator to project your mailbox price each month for the next two years. Can you improve your bottom line through increased production or components? Let's find out.

Ultimately, you will be able to see your **projected profit margin** which can help you prepare for the future. Capital allocation decision can be made much more easily when you have an idea of whether you will be making money or losing money. Build out projections for those decisions such as building a new barn and find out if you will get a return on your investment.

**Our scenario mode** allows you to see what would happen in worst-case or best-case price movements for the next two-years. It can help you think ahead for a situation like 2009.

The above functionality puts you in a position of knowledge to make the right **risk management** decisions. To hedge or not to hedge? Vault will make that decision much clearer when you have the forward-looking numbers in front of you. Instantly link your brokerage account and see a live-updated view of all your hedging positions. See how these positions help protect your business against those price swings seen in the scenario mode.

**Where will Vault be in the future?** Anything you want it to be! Vault is already a game-changing technology for many dairies, but we are never done growing. As a Vault user, you are a stakeholder in that growth. We value your feedback to strive to bring direct value back to your business.

For more information on Vault, go online to [www.VaultDairy.com](http://www.VaultDairy.com). You can also contact Lawson Thalmann, Director of Business Development, at (312) 492-4250 or [ljt@vaultdairy.com](mailto:ljt@vaultdairy.com). Lawson will be in the Twin Falls area during the first two weeks of May and is availa-



*(From the Boardroom - Continued from page 1)*

The Occupational Safety and Health Administration (OSHA) is also working on rules that would allow them to spot inspect ag facilities for worker safety compliance. Their efforts will not be solely focused on dairy operations, but all ag operations. IDA staff are working with Dr. Robert Hagevoort from New Mexico State University and Dr. David Douphrate from the University of Texas School of Public Health to see if training programs they have developed and deliver are appropriate in preparing dairymen for OSHA inspections, and addressing the goals of the Idaho Worker Safety Initiative. Undoubtedly, there will be more to come on this subject in future issues of the Idaho Dairy Focus.

Finally, we are pleased to announce a recent hire by the University of Idaho. Dr. Hernan Tejeda will be the new Assistant Professor/Extension Specialist in Dairy/Livestock economics. He and his family will be moving to Twin Falls, where he will begin this position August 1st.

Hernan originates from Chile, where he obtained a B.S degree in Mechanical Engineering at the Pontificia Catholic University of Chile in 1990. This was followed by an MBA from the University of Notre Dame in 2000, and a M.S. in Economics from North Carolina State University in 2005. He completed his PhD in Economics with a minor in statistics at North Carolina State University in 2010.



You may be thinking where could Nick possibly be going with this title? Well, I'm not talking about the cream cheese I spread on my bagel this morning. And I'm not talking about the butter I will lather over my steak tonight. Instead, I'm talking about that which many commodities traders watch on a day to day basis to gain insights into market behavior: the relationship between two different commodities or the *spread* relationship.

There's a whole smorgasbord of spreads for the hungry trader. A processor in Des Moines may be looking at the Soybeans crush spread: buying beans, selling meal, selling soyoil. An Oil Major CFO in Houston may be concerned with the spread between RBOB Gasoline vs Heating Oil. What should someone in all places Jerome or even Nampa, Idaho be informed of? I would strongly argue the relationship between Class III Milk and Class IV Milk prices.

A famous rap artist put it pretty well: "It's all about the cheddar". He probably did not associate himself with too many dairymen, but he was onto something: **It's all about the cheddar. And really cheddar pricing relative to nonfat dry milk powder and butter in my opinion.**

Maybe a short story is in order to add some perspective.

Back in 2013, I started my career out of school in the suburbs of Philadelphia, which was home to the 3<sup>rd</sup> largest milk trading house in the world. Anyway I got my start with a senior ex trader of that firm with his brand new company. I learned the ropes pretty quick, and realized the dairy markets are not one dimensional.

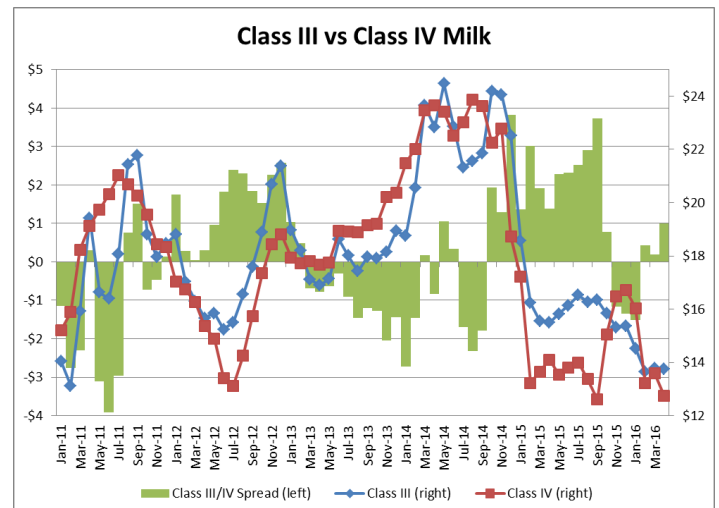
The summer of 2013 was particularly memorable for a new guy entering the dairy industry as the market bulls were beginning their trot. First, the Kiwis had a decent drought that spooked the market. Then China stepped in and showed a firm bid for proteins in the world market. Meanwhile, something peculiar was brewing in the US milk markets.

Class III Milk prices started to decouple from its more traditional premium status over Class IV Milk as

## Table Manners: A discussion on dairy spreads as they pertain to the Idaho marketplace

By Nick Buyse

shown by the green bars in the chart below. Class III went from \$1/cwt discount to Class IV in the summer months to a \$2 discount in November 2013! (Illustrated in 1<sup>st</sup> chart) Back in Philadelphia our trade desk took notice. Clearly the market was flashing a signal here; it was screaming the world was short milk! At the time Class III futures were chopping around \$18 while Class IV was over \$20. It was clear Class III was likely to be bid up with this discrepancy, so we positioned ourselves accordingly. Next thing we knew the market skyrocketed to over \$22/cwt in Q1 2014.



Industry participants panicked. Historicals and seasonals were thrown out the window. The funny thing is I recall a Magic Valley Times article that started circulating, which quoted my (at the time *future*) FCStone colleague Dave Kurzawski, entitled: **"Milk Powder Demand Led to Glanbia's Layoffs"**. Glanbia had to lay off workers because milk was so tight they couldn't fill their plants! See the 2<sup>nd</sup> chart shows the declines in Idaho American cheese production illustrated by the blue line.

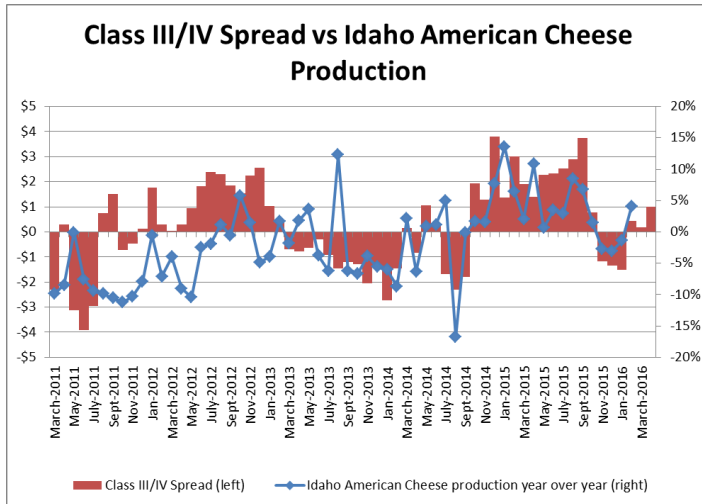
Last year was a much less exciting year of course. The spreads flipped back to a more typical trading pattern with Class III trading from \$1 to more than a \$3 premium last summer. The spreads were signaling to the market to stop making so much NFDM. Make more cheese. And the industry answered. As you can see from the 2<sup>nd</sup> chart more milk moved into American Cheese production responding to the

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spreads. Coming into fall 2015 the meteoric rise in butter prices also helped to correct the spreads back in line.

When the spread has Class III at a deep discount to Class IV that would signal global demand is strong. When Class III is at a premium to Class IV that either signals domestic demand is strong or global demand is in a slump - or a variation of both.



Watching the spreads in different markets can tell you a lot about the present fundamentals. Right now the market spreads are not indicative of much change in the current situation. But we are expecting a little more life to the Class IV side of the equation as we move through mid-year. NFDN looks like it has made more substantial bottom at this point and, although that it only one side of the Class IV equation, we will be watching closely how these spreads relate as we move towards mid-year.

Comments in this article are market commentary and are not to be construed as market advice. Trading is risky and not suitable for all individuals.

(PSNT Test - Continued from page 1)

The PSNT is a great tool that can be used to determine the amount of nitrogen available to crops before peak uptake of nutrients, making it possible to sidedress nitrogen in a way that prevents over application and reduces the likelihood of nitrogen deficiency and yield loss. When growing corn, take the PSNT samples between V4 and V6 growth stage or 12-15" tall. It is very important to take the samples within this timeframe because corn takes up **50%** of the required nitrogen for the entire growing season immediately after this time period. Now, let's review how to take a PSNT sample.

First, you'll want to collect all the materials needed: soil probe/shovel, CLEAN plastic bucket, plastic bags, and a permanent marker. Label the bags with the date and location of the samples. Next, collect approximately 10-20 cores from the first foot of soil (20-30 cores for fields over 50 acres), and **THOROUGHLY MIX** the composite sample. Make sure these samples are representative of the field and not taken from the edges. Field edges typically have lower yields, which can impact the nutrient content of the soil.

Once the samples are collected, they can be air dried or immediately shipped to the soil testing lab. If you decide to air dry the soil, make sure they are dried in an area free of fertilizer dust. If you decide to ship the samples immediately, make sure they are kept cool until arrival at the lab. Once you receive the test results from the lab, use the tables from "Nutrient Management for Field Corn Silage and Grain in the Inland Pacific Northwest" by Brown et al. (2010) to determine the amount of nitrogen to sidedress based on your soil nitrate levels and expected crop yield.

Table 3. Recommended fertilizer N rates for field corn harvested for silage in soils manured for extended periods (lb/acre).

Pre-side-dress soil nitrate-N (ppm) <sup>1</sup>	Silage yield (tons/acre)				
	20	25	30	35	40
0-10	100-175	140-215	180-255	220-295	260-335
10-20	50-100	90-140	130-180	170-220	210-260
20-25	0-50	40-90	80-130	120-170	160-210
25-30	0	0	30-80	70-120	110-160
>30	0	0	0	30-80	70-120

<sup>1</sup> Soil test nitrate-N values for only the first foot of soil.

Brown et al. (2010)

While I believe the PSNT is an awesome tool, there are a couple drawbacks. 1.) The test is only useful if you sidedress nitrogen. If you apply all of the nitrogen pre-plant, this test isn't very helpful. 2.) The samples must be collected in a short time frame during a busy time of the year. BUT, the PSNT can save money by reducing nitrogen application rates. So, consider adding the PSNT to your routine this year!

If you have any questions or want to know more, give me a call at 208-358-4005. I'm always happy to help in any way I can!

## Water Rights Portfolio Planning and Protection; Do You Own What You Think You Own?

*by Andrew J. Waldera, attorney, Sawtooth Law Offices, PLLC*

For many, water rights can be a bit of a mystery and are often left as an afterthought during many real property transactions. Oftentimes, the “afterthought” treatment works out ok because water rights and ditch rights are forms of real property rights under Idaho law, and as a general matter they carry through in a property transaction under the boilerplate “tenements, hereditaments, and appurtenances” language (or some similar variation) found in almost every purchase and sale agreement and subsequent deed. However, water rights and ditch rights (i.e., ditch easement and use rights) can be severed from a property transaction, and that can leave the uninformed purchaser with dry ground worth a fraction of what they may have paid for it.

Similarly, the configuration of water rights, particularly their purpose of use, period of use, and place of use elements may no longer match actual on-the-ground uses and practices (or those planned by the prospective purchaser). These gaps can expose the water user to investigation and liability for the illegal use of water should the Idaho Department of Water Resources (“IDWR”) catch wind of such a situation (either through its own review, or through the prompting of nosy neighbors). So, do you own what you think you do? And, are the rights you do own configured properly on paper to match your real world use? The following provides a thumbnail sketch of a variety of considerations when planning and protecting one’s water rights portfolio.

### Pre-Purchase Due Diligence

As foreshadowed above, there are a number of big picture questions one should ask and investigate before purchasing real estate. These include:

--Are the water rights intact and travelling with the property in the transaction, or are they being severed in whole or in part?

--Are the water rights burdened by any other use agreements, such as leases or rotation use agreements?

--Are the water rights actually shares or entitlements of water owned and delivered by an irrigation entity (i.e., canal company, ditch company, or irrigation district)? If shares in a company, one should procure them under an assignment agreement as personal

property. Are any outstanding assessments current?

--Are the water rights fully vested (i.e., formally adjudicated or administratively licensed, or are they merely permits subject to follow-up documentation and assignment as personal property)?

--Have the water rights been inadvertently forfeited in whole or in part due to non-use?

--Are the necessary easements and/or ditch rights sound?

--Do the water rights meet the purchaser’s needs and projected operations (i.e., does irrigation water need to be used for commercial or industrial purposes or vice-versa; changes in use and period of use require administrative transfer proceedings before IDWR to effect)?

### Post-Purchase Chain of Title

After a property transaction, Idaho statute requires new owners to update chain of title with the IDWR through the filing of a Notice of Change of Water Rights Ownership form. This is an important task. Without it, new owners likely will not receive notice of actions (sometimes adverse) that IDWR might take regarding the rights (either at the agency’s behest, or the behest of unscrupulous former owners or nosy neighbors). Likewise, if you maintain a security interest in the property, the water rights are an integral component of the value of that collateral. You would be wise to file a Notice of Security Interest with IDWR to stay informed of the status of the water rights.

### Evolving On-The-Ground Water Use

Water use can change over time. Are the water rights configured accordingly to support the changed uses, or place of use patterns? Perhaps you installed a pivot that waters ground not identified in the existing place of use described in the underlying water rights. This is illegal, even if you dried up other ground to accommodate the change. Maybe your water rights portfolio has fragmented places of use that are too specific to promote the flexible comingling of rights in a common irrigation system (i.e., you use water appurtenant to Parcel B in a comingled system that also irrigates Parcel A and vice-versa). This too, can be illegal, but fixed through

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for the labor needs of dairy producers in the U.S. are simply frozen in place at least until after the election.

The one positive note on immigration reform is that our allies in Congress know that mandatory E-Verify would be devastating to food production in the U.S. We've had to play defense on that issue for a few years now and so far common sense has prevailed.

The U.S. Supreme Court heard oral arguments April 18<sup>th</sup> in the suit by 28 states challenging the President's authority to shield as many as five million people from possible deportation. The President's Executive Action from November of 2014 offering deferred deportation for parents of citizen children who have been in the country for at least five years is on hold after a lower court agreed with the challenge by the states. A Supreme Court decision is expected in June.

#### Waters of the U. S. (WOTUS) Rule

The WOTUS rule continues to be on hold as federal

courts determine which have jurisdiction before proceeding on the merits of individual challenges to the rule. The lawsuits claim the WOTUS rule is a regulatory overreach by the U.S. EPA.

Efforts to force the EPA to pull back the WOTUS rule continue in Congress. All four members of the Idaho delegation, Senators Mike Crapo and Jim Risch and Representatives Mike Simpson and Raul Labrador continue their strong support for those efforts.

#### Resource Conservation and Recovery Act (RCRA) Clarification

It has been more than a year since a federal judge applied the Resource Conservation and Recovery Act (RCRA) to an agriculture operation for the first time in the decades since the law was passed. With farmers now potentially liable under the Clean Water Act, the Safe Drinking Water Act and RCRA for the same issue, legislation is being drafted in the U.S. House of Representatives to clarify congressional intent regarding regulation of nutrient storage, handling and application.

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designation of an overall "permissible place of use" covering the entire farm/ranch, which allows the commingling and rotation of water rights around the entire property provided diversion quantity and irrigated acreage limits present in the water rights are not exceeded when aggregated. Maybe you need a commercial component for your operation, not just irrigation. To do so under an irrigation right would require an IDWR transfer adjusting nature of use and accommodating year-round season of use beyond the typical irrigation season.

#### Protection Against Forfeiture

Idaho statute forfeits water rights after five continuous years of non-use. However, Idaho law also allows "resumption of use" post-statutory forfeiture provided the resumption of use occurs before forfeiture proceedings are initiated against the "technically" forfeited rights. Where are your water rights on the forfeiture timeline: two years of non-use, more? If nearing five years, or in year five, the water rights can be leased to the State Water Supply Bank as one means of shielding against forfeiture. There are other statutory exemptions that could apply as well under Idaho Code Section 42-223. And, if five years have passed already, one should resume use as soon as possible to defeat potential forfeiture claims.

#### Need More Water?

If the water rights you purchase are insufficient to meet your needs, what is the best method for you to acquire more:

--A new application for permit with IDWR for a new, junior water right (which process is public and subject to protest and various burdens of proof to obtain and develop)?

--The purchase of existing water rights from other neighboring landowners, and then transfer of the same to your property (also a public process subject to protest and various burdens of proof to complete)?

Consideration of your options will include consideration of your locale, such as any pending moratoria, critical groundwater management districts, conjunctive management concerns, and source and priority date issues.

The considerations mentioned in this article are by no means an exhaustive list, and each transaction is unique. However, treatment of water rights as a transactional "afterthought" can have dire consequences for those who fail to ask and investigate the most basic questions, and for those who fail to maintain, protect, and update their water rights portfolio as needed.



National DHIA is excited to partner with nationally renowned cartoonist Leigh Rubin to offer this exclusive book to our members. This beautiful, full-color, hardcover book will feature more than 250 Rubes® Cartoons hand selected by the cartoonist himself specifically for this project! Only a limited number of this hardcover collector's item will be produced. Reserve yours today at just \$34.95 per book to be sure you don't miss out! A softbound version of The Big Book of Moo is also available at \$14.95.

By purchasing this unique book, you will be supporting the National DHIA Scholarship Program. Established more than 20 years ago, this program awards scholarships to full time, incoming and continuing enrolled in two-year and four-year college/university students whose families are members of National DHIA. Scholarships are also awarded to students enrolled in a college of veterinary medicine in the United States. Approximately 20 total scholarships are awarded each year.



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