



WYOMING LIVESTOCK ROUNDUP

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U.S. celebrates agriculture industry during National Ag Day

On March 21, the Agriculture Council of America (ACA) encourages American to celebrate National Ag Day with the theme, "Agriculture: Food for Life."

"Ag Day is a day to recognize and celebrate

the abundance provided by agriculture," says ACA. "Every year, producers, agricultural associations, corporations, universities, government agencies and countless others across America join together to recognize the contribu-

tions of agriculture." National Ag Day falls in the midst of National Ag Week, which is March 19-25.

"ACA hosts the campaign on a national level. However, the awareness efforts in commu-

nities across America are as influential, if not more, than the broad-scale effort," they continue.

2017 marks the 44th anniversary of National Ag Day, which marks, "over 40 years of recog-
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Sheep milk

Milk production may have opportunity, challenges in U.S. markets

According to the Food and Agriculture Organization of the United Nations, sheep milk accounts for one percent of milk that is produced globally.

During a webinar by the American Sheep Industry Association on March 14, University of Wisconsin-Madison Professor of Sheep Management and Genetics David Thomas led a discussion on the future of sheep milk production globally and in the U.S.

Global

Thomas explained that the top countries in the production of sheep milk cheese are primarily in the Mediterranean basin, including Greece, Italy, Spain, France, Turkey and Portugal.

"Italy, far and away, is the biggest country in the world as far as production of sheep milk cheese for export, followed way behind by France and then Bulgaria. Way behind them is Greece, Spain and Romania," said Thomas.

He noted that commercial milk sheep production has been occurring in these countries for centuries, and many popular cheeses are actually produced from sheep milk

"Many of us may recog-
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WATER LAW

Hageman: Numerous cases from last two years impact water law

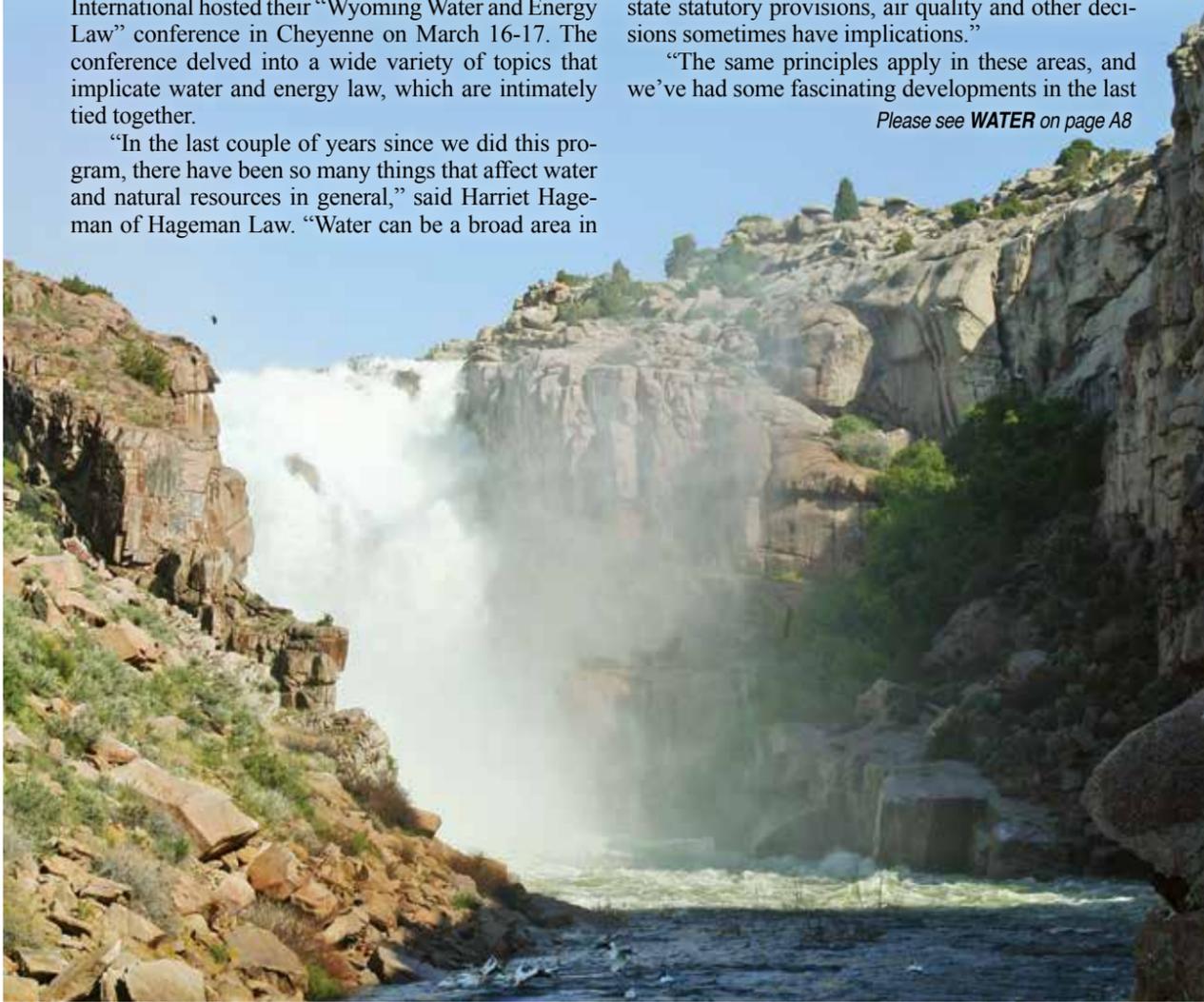
Cheyenne – For the first time in several years, CLE International hosted their "Wyoming Water and Energy Law" conference in Cheyenne on March 16-17. The conference delved into a wide variety of topics that implicate water and energy law, which are intimately tied together.

"In the last couple of years since we did this program, there have been so many things that affect water and natural resources in general," said Harriet Hageman of Hageman Law. "Water can be a broad area in

itself, but in light of how we deal with federal and state statutory provisions, air quality and other decisions sometimes have implications."

"The same principles apply in these areas, and we've had some fascinating developments in the last

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Quick Bits

Beef Value

According to the *Daily Livestock Report*, the rally in beef cutouts has been "particularly impressive." Steaks and ground beef have driven the higher prices, and the value of loin has also improved, partly due to seasonal improvement in food-service business and more positive economic factors. The Choice cutout has gained \$30 in four weeks, with \$22 coming from higher rib and loin values.

Transparency Bill

On March 8, the Judgment Fund Transparency Act was introduced in the U.S. Senate by Sens. Cory Gardner (R-Colo.) and Deb Fischer (R-Neb.) and co-sponsored by Sens. Chuck Grassley (R-Iowa) and Mike Crapo (R-Idaho). It seeks to provide increased oversight and transparency of the Treasury Department Judgment Fund. The fund is used to pay court judgments and settlements in cases brought against the federal government.

Beef Tonnage

According to USDA's Economic Research Service report from March 9, beef export tonnage was up 21% year-over-year. *The Daily Livestock Report* noted that beef exports are highly seasonal, with a peak in July. Increases for 2016 came from Japan and Mexico, up 41%, and South Korea, up 38%, with gains also seen in Vietnam, Taiwan and Canada.

LTFB Suit

Circuit Court Judge Cheryl Gering in South Dakota has dismissed Diane Sawyer from the lawsuit that Beef Products Inc. filed against ABC, Sawyer and reporter Jim Avila, but the case is scheduled to proceed against the network and Avila in early June, according to court documents.

FAPRI sees falling income

Net farm income falling for the fourth straight year is the key takeaway from a crop and livestock forecast released March 13 by the Food and Agricultural Policy Research Institute (FAPRI) at the University of Missouri.

The report projects declines in corn and wheat acres this spring, but FAPRI still sees higher corn and wheat planted acres than forecast by USDA. FAPRI also projects slightly stronger prices for both crops than USDA's initial forecast.

A small bump in grain prices is going to be offset by lower livestock prices that will pull down overall net farm income.

The numbers largely provide another forecast to compare with analysis released at the USDA Outlook Forum in late February. USDA also will release its prospective plantings report for spring crops on March 31.

FAPRI sees the average, five-area fed steer price for 2017 at \$110.66 per hundredweight, which is \$10.20 lower than 2016. USDA's initial forecast for fed steer prices was a range from \$109 to \$116 per hundredweight.

Net farm income will dip from \$68.3 billion to \$63.7 billion, a decline of \$4.6 billion overall, or 6.7 percent.

In other indicators, overall farm debt will increase \$11 billion in 2017 to hit \$387 billion. The overall debt-to-asset ratio for farmers will average 13.9 percent, up from 13.1 percent last year.

Further, FAPRI projects the debt-to-asset ratio over the next decade will climb to hit 15.5 percent.

Keck: Social media strategy is important

"It all starts with a strategy," explained Environmental Tillage Systems Marketing Director Caitlin Keck. "When we get into our marketing plan and our marketing strategy, social media is going to be a subset of that."

Keck discussed the use of social media in agricultural businesses and important considerations that should be made when deciding what the best individual strategy is.

Strategy

Businesses should first set goals for marketing before planning out social media goals, as it gives overall direction.

"We need to know how social media will support that business plan and fit into that greater marketing plan," she said.

"Then we need to get into the fine details of our budget for social media."

It is also important to consider how much time a business has to put toward social media use.

Keck commented, "Do we have one to two hours per week, or do we have five to 10? That also depends on how much our business relies on social media for finding customers and getting sales, too."

Identifying competitors and studying their social media strategy is also important to figure out how to make a business stand out.

Specifics

"The next step after really honing in
Please see SOCIAL on page A11

periodical

periodical

WATER *continued from page A1*

few years in terms of water, natural resources, the Endangered Species Act (ESA), the Clean Water Act (CWA) and the Clean Air Act (CAA)," Hageman added.

Hageman, who also serves as program chair for the conference, delved into case history, noting that several cases that have implications for water vary greatly.

Klamath irrigation

Hageman first looked at a case brought by Klamath Irrigation District against the United States.

"The decision was issued by the U.S. Court of Federal Claims on Dec. 21, 2016," she explained. "This is a matter I've been watching for many years because it's the intersect between the ESA and takings clause."

The case evolved when the Bureau of Reclamation (BuRec) told irrigators they could not take water from a reservoir used for irrigation to preserve water for three endangered species of fish.

"There is a battle between Klamath and the U.S. regarding takings," Hageman explained. "The water diverted from Upper Klamath Lake supplies water to hundreds of farms and hundreds of thousands of acres of ag lands."

In 2001, BuRec deemed the year as a critically dry year, and irrigators would not be allowed to divert water,

per a biological assessment that all three fish would be impacted.

"Essentially, the irrigators who built this project were out of luck for the benefit of the species, and they sued that it was a taking of their water rights without just compensation under the Fifth Amendment," Hageman said. "The federal claims court found that there was a taking."

The case was slated to go to trial in January 2017 but appears to have been delayed.

"The issue before the court is, is this a regulatory taking or a physical taking? If it's a physical taking, then the irrigators win. If the government takes real property, owners are entitled to just compensation," Hageman explained.

However, if the taking is a regulatory taking, a balancing test must be performed to determine if the taking is significant, if there is public policy associated and if the taking is for public benefit.

"If it is important to protect the fish, the cost should not be borne by the farmers and ranchers alone," she explained. "Rather, it ought to be borne by society as a whole, and farmers and ranchers ought to be compensated."

The court held that this was a physical taking, and

Hageman believes that landowners will likely prevail and receive compensation, according to the decision.

Impacts

Because of the amount of federal waters in the state of Wyoming, Hageman emphasized that there are implications across the country.

"This could impact Wyoming, as well," Hageman said. "To the extent that we find there is an endangered species that competes with irrigators, farmers and ranchers, it will be considered a federal taking."

She added, "I think it is a good decision, especially when there are as many federally controlled and managed reservoirs as we have."

Navigable waters

Another case that Hageman referred to as "very, very important to Wyoming because of the federal footprint we have," is U.S. Army Corp of Engineers (Corp) v. Hawkes Co.

"This is another very, very interesting case," she commented.

The case revolves around the Corps' ability to determine whether or not waters are defined as navigable, and they also are responsible for deciding whether 404 permits for discharge of pollutants may be issued.

"The Corps has jurisdiction over 270 to 300 million acres of swampy waters, including half of Alaska and an area the size of California in the lower 48 states as

it relates to waters that could affect interstate or foreign commerce," Hageman said. "When property contains such water, the landowners who discharge pollutants risk substantial criminal and civil penalties."

Obtaining a 404 permit is also a long, expensive process, said Hageman, citing a study that found the average permit took 788 days to process and over \$270,000 in expenses, not including costs related to mitigation or design changes.

Inside the case

In the case, Hawkes Co. sought to mine peat in an area of their private property, and in the course of the mining, they were seeking a permit to discharge material into wetlands also on their property.

"The Corps said the process would be expensive and take years to complete, and they also advised that the applicants would have to submit numerous assessments of various features, which would cost \$100,000," Hageman explained. "Then, the Corps would issue a jurisdictional decision (JD) to determine if they had jurisdiction of the water."

Ultimately, the Corps decided that they did have jurisdiction, and Hawkes Co. didn't agree, so they sought judicial review under the Administrative Procedures Act.

At that point, the Corps

"We've had some fascinating developments in the last few years in terms of water, natural resources, the Endangered Species Act, the Clean Water Act and the Clean Air Act." — **Harriet Hageman, Hageman Law**

alleged that the JD was not a final administrative action, which meant that it was not subject to judicial review under the APA and the company did not have the right to appeal.

Hageman added, "The court said that's not fair, and they determined that a JD is appealable."

She continued, "This is important for people who deal with resources, who are landowners or looking at developing and constructing."

Wyoming example

Interestingly, Hageman applied the decision to a case in Wyoming, where David Hamilton was sued by EPA and the Corp, who said he had violated the Clean Water Act.

"When I was hired, I contacted EPA and the Corp asking for his records," she explained. "I had to do a Freedom of Information Act (FOIA) request. They had a JD, but they didn't

provide it for us because it was a pre-decisional draft not subject to FOIA."

"We ended up in a lawsuit, and I received the document in discovery," Hageman said. "My view is if the JD is done, the landowner should be able to access that. I think, very clearly, the Supreme Court said the same thing. If they have a JD, the agency should disclose it, and it is subject to appeal."

"From the standpoint of those of us in the western U.S., I think these are important developments for the protection of landowners," Hageman commented.

Look for more from the CLE International "Water and Energy Law Conference" in future editions of the Roundup.

Saige Albert is managing editor of the Wyoming Livestock Roundup and can be reached at saige@wylr.net.

CLE International hosts a variety of conferences each year featuring topics ranging from water and environmental law to private property rights and more. Learn more about their upcoming events at cle.com.

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FR	SC	PAP	CED	DOC
5.9	41	9	7	6

LOT 11 PCC HONEYMOON 5165D



COMPOSITE AN63 SM31 GV6 DOB 2/14/16				
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HB	-0.6	54	101	25
FR	SC	PAP	CED	DOC
4.4	34.5	37	9	7

LOT 105 LND JOSHUA 4005D



COMPOSITE AN56 SM32 GV12 DOB 2/9/16				
HB	BW	WW	YW	MILK
HB	1.6	58	110	22
FR	SC	PAP	CED	DOC
6	35	40	6	6

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