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Opinion

Editor & Publisher
Joe Beach
Managing Editor
Carl Sampson
opinions@capitalpress.com | CapitalPress.com/opinion

Our View

Irrigators must not turn to violence, intimidation

Though a few weeks have passed since the Bureau of Reclamation announced it would not this season divert irrigation water to the Klamath Project, we are sure that the emotions of producers, farmworkers and their families are still raw.

The bureau shut down the Project's A Canal for the entire irrigation season May 12 in response to worsening drought conditions — allotting zero surface water from Upper Klamath Lake for thirsty crops and livestock.

It is the first time in more than a century the A Canal will deliver no water to irrigators, using that water instead to serve protected species.

The decision means that more than 150,000 acres of farmland will receive zero irrigation water this season. The impact will be devastating, not only to the farm community but to the region's economy at-large.



Lee Juillerat/For the Capital Press

A tractor with a message during a peaceful demonstration last year over the availability of water for Klamath Project irrigators.

Farmers are understandably on edge. A gut punch like that takes the wind out of everyone.

Many who we spoke to last week expressed equal parts of outrage and despair. Some hope to hang on another year, others just don't see that as possible. But it is still early days and it will take time for everyone to fully process the news and objectively assess their situations.

What can be done?

Members of Congress and senators representing Oregon and California are working on a relief package. Irrigators could take the bureau to court, though prospects of success are slim. Protests are planned.

None of these things will produce immediate relief, or perhaps the satisfactory result that many would like. But, they are a start.

There are things that will only make the situation worse for irrigators, the community and misguided individuals who take inappropriate actions.

Peaceful protesters last week demanded that the Klamath Irrigation District defy the bureau and charge the canal. District officials declined, citing the legal ramifications of forcibly opening federal headgates.

Last week it came to light that someone had put the names and addresses of bureau employees on

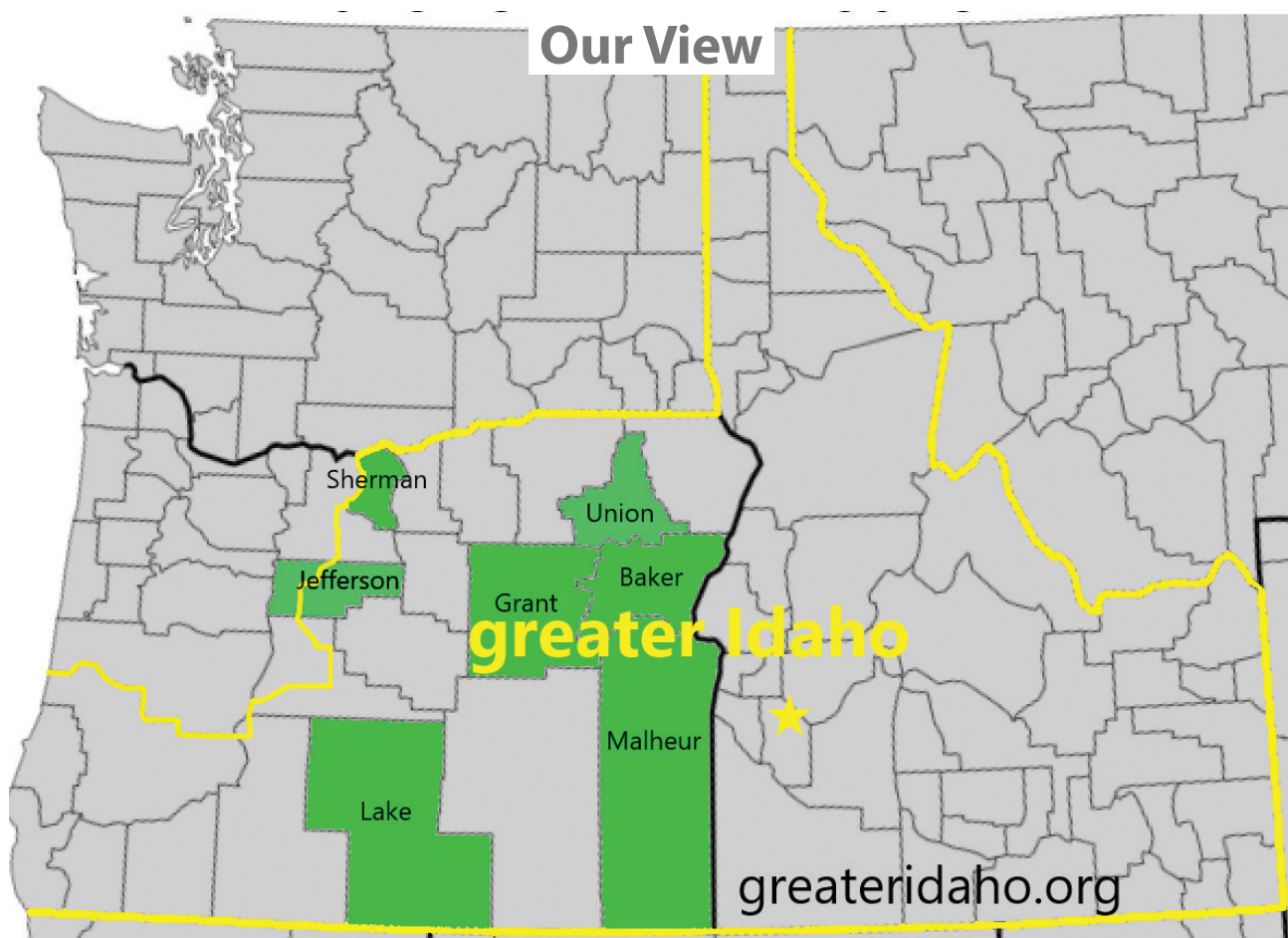
social media and had urged people to subject them to public intimidation for carrying out their duty. There are also concerns that less savory, outside elements will be recruited this summer to cause trouble during planned demonstrations.

Leaders of the Klamath Water Users Association, which represents irrigation districts served by the project, were quick to rebuke rogue elements.

"The personal health and safety of every individual and their families is paramount," said Klamath Water Users Association Vice President Ry Klierer. "I will protest, I will demonstrate, but I will be peaceful. And I will respect others the way I expect them to respect me and my family."

The rage and desperation that farmers are feeling are understandable, but irrigators must put their faith in the political and legal systems. Violence and intimidation are not the answer.

Our View



Courtesy of Citizens for Greater Idaho

Counties that have voted in favor of the Greater Idaho movement.

A message in a ballot

The good people of Eastern Oregon sent a message last week to politicians and others in Portland and the rest of Western Oregon. The short version: They want out — out of the state and away from its Portland-centric politics.

Voters in five Eastern Oregon counties passed measures that will require their county courts and commissioners to consider unhitching from Western Oregon's circus wagon and joining Idaho. Two other counties have already passed similar measures.

Called Greater Idaho, the movement is a rejection of the dominance asserted by Portland and its crowd of political and environmental activists. Supporters say they would rather be a part of Idaho, which is more oriented toward agriculture and rural values.

Portlanders have only themselves to blame for this. Many actively work against the interests of rural Oregon. They think some dairy farms are too big and should be banned. They put the well-being of fish above all else. And they think it's wrong to harvest trees, which is ironic since the timber industry originally helped build Oregon's economy.

The economy of Eastern Oregon — and much of the rest of the state — has suffered mightily because of cutbacks in logging. Not only have environmentalists sued to stop forest treatments that would help prevent wildfires, they have sued to stop salvage logging after wildfires. The damage to the rural economies has been so great that each year Congress has had to send checks to many rural counties just to keep the lights on.

Through these and other efforts such as trying to ban certain types of fuel and increasing the minimum wage, Portlanders and others have inflicted profound damage on the economy of Eastern Oregon.

Still another example is a ballot initiative that would shut down animal agriculture in Oregon.

What person would want to destroy the dairy and livestock industries, major parts of Eastern Oregon's economy? What person would think he has the right to do that? Is it a coincidence that the measure comes out of Portland?

Western Oregon-based environmental groups also want to turn massive swaths of rural Oregon into a national monument and "protect" thousands of miles of rivers from, apparently, anything and everything.

In the process, they have run over Eastern Oregonians, many of whom have lived there for generations.

That's why many folks in rural Oregon say they want out. They believe their voices are more likely to be heard in Boise, which is an hour's drive away, than in Salem, which is a seven-hour drive away.

Instead of talking about — and listening to — diverse ideas, politicians in Salem count votes to see what they can push through. When the steamroller gets going in the state Capitol, the only way to stop it is for rural legislators to walk out in an effort to deny a quorum.

These foibles are not the problem. They are symptoms of the problem. When people sit around talking about how "other people" should live or work, that's a problem, particularly when many Western Oregonians appear to know so little about rural Oregon.

That's why the idea of leaving Oregon is attractive to so many who live east of the Cascade Range.

We don't know what the odds of Greater Idaho's success are. At the very least, two state legislatures and Congress would have to approve it — and that's after it's been approved by the voters and all the many details have been worked out.

But we do know this: Rural Oregonians are tired of being second-class citizens whose jobs are taken away and whose lifestyles are damaged by thoughtless activists on the west side of the Cascades.

Implications of ESSB 5172 and overtime pay for ag workers

Last year, Washington's Supreme Court disrupted the state's agricultural industry when it held that the agricultural overtime exemption violated the state's constitution as applied to dairy workers. As a result, all dairy employers immediately had to start paying their workers overtime at a rate of 1.5 times their regular hourly rate.

While not explicitly addressed, the *Martinez-Cuevas v. DeRuyter Brothers Dairy* decision raised significant concerns throughout the agricultural industry regarding (1) whether the decision would be applied to all agricultural employers, not just dairy employers, and (2) whether the decision would be applied retroactively.

Shortly after the Supreme Court's decision, approximately 30 putative class action claims were filed against dairy employers seeking retroactive application of the decision and three years of unpaid overtime. The potential financial consequences of these claims to many dairy employers were staggering.

Recently, the Washington legislature addressed both unanswered questions from the *Martinez-Cuevas* decision in ESSB 5172, which is currently on the governor's desk for signature.

Sunset for ag overtime exemption

In December, the original agricultural overtime exemption will expire. In its place, the legislature built in a phased scale for payments of overtime to agricultural workers. On Jan. 1, 2022, agricultural employees will be entitled to overtime for all hours worked more than 55 per week. As of Jan. 1, 2023, they will be entitled to overtime for all hours worked more than 48 per week. By Jan. 1, 2024, all agricultural employees shall be entitled to receive overtime for all hours worked more than 40 per week.

California has a similar phased approach, although employer size is also considered. The Oregon legislature is considering a bill that would eliminate its agricultural overtime exemption. Further, Congress is considering similar legislation at the federal level.

Agricultural employers protected

With one very specific and narrow exception, all

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agricultural employers, including dairy employers, will not be subject to damages, penalties, attorneys' fees, costs, or other relief from employees seeking unpaid overtime.

In other words, dairy employers who were either sued or threatened with putative class action lawsuits for three years of unpaid overtime wages will not be liable for any damages or attorneys' fees for paying their employees as required by law as it existed until Nov. 4, 2020. This exclusion does not apply to the parties in the *Martinez-Cuevas v. DeRuyter Bros. Dairy* case.

ESSB 5172 represents a compromise bill that brings much needed certainty to these significant unsettled issues. Unlike dairy employers, the balance of Washington agricultural employers has some time to prepare for the changes to overtime pay requirements. Here are some suggestions:

- Review hours worked and consider whether adjustments need to be made. For example, hire additional workers or invest in technology to increase worker efficiency.

- Have a realistic plan for how to manage overtime and prepare a policy consistent with that plan.

- Train managers and supervisors on overtime issues for consistent and fair implementation.

- Review piece rate or flat rate work calculations to ensure they include pay for all rest breaks, non-productive time, and any overtime that may be required.

- To the extent applicable, review the job duties and functions of any individuals in positions classified as exempt from overtime under the executive, administrative, or professional exemptions.

Stephanie Berntsen is a shareholder with Schwabe, Williamson & Wyatt. She is part of the firm's Real Estate and Construction, Ports and Maritime industry group. She provides proactive, common-sense legal advice on employment issues for companies operating in the Pacific Northwest.