**Legislative countdown underway**

By Lauren Wied, Shayne Woodard and J Pete Laney

TAD government relations

The waning days of the 85th legislative session are upon us, and deadlines have started kicking in. Hundreds of House bills died when deadlines passed for House committees and the full House to approve House bills on May 11.

Yet – it’s important to remember that nothing is really dead until the regular session ends on May 29. Hundreds of bills are still alive, and dead bill provisions can be tacked on to other bills as amendments, plus there are parliamentary tricks.

TAD continues to work hard on two issues of importance to the dairy industry.

First, TAD supports legislation that would allow trucks transporting fluid milk to run up to 90,000 pounds, with a third axle. A prescribed route would be associated with the heavy permit, allowing state regulators and milk haulers to access the safest route to the milk processing facilities along with a permit fee to assist in off-setting any potential road impact. The House bill, HB 2862, was approved by a committee but died before it could be considered by the full House. The

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**Chairman Update**

Joe Osterkamp

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**Executive Director:**

Darren Turley

dturley@milk4texas.org

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**Contact TAD:**

P.O. Box 13182
Austin, TX  78711
(817) 410-4538

[www.milk4texas.org](http://www.milk4texas.org)

Facebook: /texasdairy

Twitter: @TxDairymen

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Dairy farmers Keith Broumley of Hico (left) and Willy DeJong of Dublin (right), along with Ron Fields, president and general manager of Farmers Select, traveled to Austin to testify recently at a legislative committee hearing on behalf of the dairy industry.

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How is the Texas dairy industry faring midway through 2017?

When 2017 began, I would have said most Texas dairy producers were cautiously optimistic about the upcoming year.

A year earlier, low milk prices and the uncertainty of the presidential election clouded the thoughts of most producers. Add to that the fact that many dairies in the Texas Panhandle and eastern New Mexico were still dealing with issues caused by Winter Storm Goliath. It was easy to see why pessimism ruled the day.

With the election and Goliath behind us, mild winter weather, lower feed costs and a rising milk price due to good demand had many producers looking forward to 2017.

Now, at the midpoint of 2017 – there is still uncertainty! As we prepare for summer, milk prices are bouncing around break-even, mostly due to lower feed costs. Our region is extremely susceptible to drought conditions, and all of us keep that in the back of our minds regardless of how favorable growing conditions seem at the time. Drought can quickly cause our food costs to rise due to local feed scarcity. Regardless of irrigation, all of us need rain to grow good crops. Producers are constantly learning and investing in water conserving measures to increase efficiency of the water pulled from the aquifer or received from rain.

On an optimistic note, Texas is seeing some small scale expansion. Most of it is being done to maximize the capacity of existing facilities. Adding pens or expanding milking parlors seems to be most common.

As of this time, I am not personally aware of any new dairies under construction. Small scale expansion is being driven by low interest rates and new milk processing plants being built in the region.

Lone Star Milk has just started processing milk in a new plant near Canyon, and Select Milk producers is in the construction phase of a new powder/butter plant in Littlefield that can process up to 4 million pounds a day, due to open in (See “State of Industry,” Page 4)
The quick demise of the WOTUS rule
By Jim D. Bradbury, TAD legal counsel

Few areas of environmental law have been more embattled in recent years than the proposed changes to the Clean Water Act definition of “Waters of the United States” (WOTUS).

Under the Obama administration, the EPA and Army Corps of Engineers issued a new rule on May 27, 2015, intended to clarify WOTUS and its protections over tributaries, streams and wetlands. The true impact of the new rule was to expand the subjective “significant nexus” test from the earlier Rapanos v. United States decision of the U.S. Supreme Court, and in so doing, put forth a broad expansion of jurisdictional waters under the Clean Water Act while maintaining significant agency discretion in determining what can constitute a jurisdictional water under the Act.

Specifically, the rule included a new definition of “tributary” that includes any land feature that has a bed, banks, and ordinary high water mark and contributes water flow to a downstream WOTUS. Under this new definition, perennial, ephemeral and intermittent streams may be classified as jurisdictional waters. The new rule also captures adjacent waters, which may not be limited to waters that are located laterally to a water but may include waters connected by other water segments, whether or not those segments themselves are jurisdictional waters. The new rule captures all waters adjacent to jurisdictional waters, posing potentially significant impacts for agriculture. Agricultural operators and producers stand to lose useable land as well as face impacts to their ability to farm, build, dig, disturb and move dirt.

From the beginning, the new WOTUS rule was controversial. Numerous states and industry groups filed suit to challenge the rule and prevent its implementation. The rule was stayed pending the outcome of litigation, which is currently before the Sixth Circuit Court of Appeals.

More recently, implementation of the new WOTUS rule has come under intense scrutiny by an Executive Order issued by President Trump. In the Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule, President Trump set forth a new policy on clean water that emphasizes economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States.

The President ordered the EPA and Army Corps of Engineers to review the WOTUS rule and all other orders, rules, regulations, guidelines, or policies implementing the rule for consistency with the newly-stated policy and ordered them to rescind or revise the rule or other orders, rules, regulations, guidelines or policies to ensure consistency with this policy. Finally, the Executive Order urged the EPA and Army Corps to interpret the term “navigable waters” in a manner consistent with Justice Antonin Scalia’s opinion in Rapanos v. United States, which focused on the “hydrologic connection” of waters and found that non-navigable waters become jurisdictional only if they exhibit a relatively permanent flow, such as a river, lake, or stream.

While the litigation over the rule continues, the President’s order effectively halts implementation of the rule and will (Continued, “WOTUS,” Page 4)

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Senate version of the bill, SB 1383, remains in play as of press time.

Second, TAD opposes legislation that would expand the sale of unpasteurized (raw) milk and milk products beyond the farm where it is produced, as currently allowed. Proposed law would allow sales off-farm at farmers’ markets but not in retail stores. The House version of the bill, HB 57, died in committee. The Senate version of the bill, SB 95, was heard in committee but its fate is uncertain as of press time.

Things are changing rapidly in these final days of session, so follow TAD on social media or visit the legislative website www.capitol.state.tx.us for the latest, most up-to-date information.

Also still in play is Senate Bill 1, the state’s two-year spending plan, or budget. A budget is the one bill the Texas Legislature is required to pass each session (despite the 6,626 other bills filed in this one). Vastly different versions of SB 1 were approved by the House and Senate, but they have one thing in common—they spend more than what the Texas Comptroller says is available.

Now a joint House-Senate conference committee is trying to hammer out a compromise, examining various financing alternatives to cover proposed spending, as well as debating the proposed spending itself.

Spending items that involve the greatest degree of difference are public education, higher education, Medicaid, pre-kindergarten and the Texas Enterprise Fund.

To pay for the budget, one of the big questions facing budget negotiators is whether to tap the state's savings account, known as the Rainy Day Fund. The House’s plan takes $2.5 billion from the fund, while the Senate proposal makes up the deficit through accounting tricks involving deferment of transportation funding.

If the conference committee comes to an agreement, the compromise plan must be approved by both the House and the Senate. If not, expect Gov. Greg Abbott to call a special legislative session to complete the work, ruining lawmakers’ summer plans.

While Abbott predicted that both chambers would work out their differences on the budget before Sine Die on May 29, others are not so confident that a special session can be avoided.

Lots of long nights are ahead before we know how it will all play out. Stay tuned.

DFA members and Board member Johan and Sonya Koke of Lingleville (right) visited with Texas Congressman Mike Conaway, chairman of the U.S. House Committee on Agriculture, recently during an event in Stephenville.
Meet Sen. Borris Miles: Texas agriculture’s urban champion

Thankfully in a state where few legislators today come from agricultural roots, some urban lawmakers not only understand agriculture, they are its champions. One of those is Sen. Borris Miles, whose work on behalf of agriculture in both the Texas House and Senate over the years earned him honors as “Urban Agriculture Leader” by Texas A&M AgriLife Extension Service.

TAD recently asked Sen. Miles a few questions so our members could get to know this agriculture advocate from our state’s biggest city which is the fourth largest in the nation.

As a member of the Texas House, you served one session on the Agriculture Committee. Now, as a senator, you have a seat on the Agriculture, Water and Rural Affairs Committee. As an urban-based legislator, what draws your interest to these subject areas?

Urban agriculture contributes to food security by increasing the amount of food available to people living in cities. It also allows fresh vegetables, fruits and meat products to be made available directly to underserved urban consumers, which would help combat the urban food desert problem.

In the Houston area, several neighborhoods I represent are food deserts, where residents do not have access to fresh foods. When I first came to the Legislature, this became one of my priorities because I wanted these communities to have more healthy food options.

I have asked to be on the Agriculture committees in the House and Senate because the school nutrition programs fall under their jurisdiction. For many children, the food they get from their school meals are the only nutritious meal of the day. I have supported bills to encourage school districts to purchase locally grown fruits and vegetables. This year I am authoring a bill to allow schools to donate their excess food to non-profits to help feed the hungry.

We have read that, as a child in Houston, a lack of available fresh produce made you aware of the role of agriculture. Can you tell our readers about that?

I grew up in a part of Houston called Sunnyside, which did not have nearby grocery stores. As a result, fruits and vegetables were something that often came frozen or from a can. For myself and many of my friends, we had parents and grandparents who moved to Houston from rural Texas. So it was ironic that although many of us were only one generation removed from an agricultural life, fresh fruits and vegetables and where they came from were something foreign.

TAD’s dairy producer members, obviously, are focused on rural-based agriculture. What role do you believe urban agriculture also plays in our state?

Urban agriculture will never take the place of the rural farms and ranches in our great state.

Borris Miles
Senate District 13
D-Houston

A lifelong resident of Houston, Borris L. Miles was elected to the Texas Senate in 2016 after serving four terms in the Texas House of Representatives.

Miles is a successful businessman and developer, owning one of the largest insurance agencies in Texas and redeveloping two commercial blocks.

Miles was first elected to the House in 2006 and became a leading progressive voice. His legislative initiatives included increased funding for HIV testing, giving second chances to individuals by making it easier to seal their juvenile records, creating an ombudsman office for the juvenile justice department, and creating economic development opportunity districts in his community.

For his work, Miles’ recognitions included being named “Star of the Legislative Session” by the Texas Classroom Teachers Association, “Champion of Women’s Health” by Planned Parenthood and an “Urban Agriculture Leader” by the Texas A&M AgriLife Extension.

Active in his community, Miles conceived the Hip Hop 4 HIV concert series, which was adopted by the CDC, and has given his time to organizations like the Urban League and the Houston Sickles Cell Association. Miles’ nonprofit, the TexStars Foundation, has awarded more than 100 scholarships to pay for the college education of African-American men.

Community gardens allow urban residents to grow their own fresh produce and provide opportunities to educate city kids about how their food is grown. Urban farms are able to grow produce for people and restaurants that want and are willing to pay a premium for the locally grown food.

The rise of urban agriculture has gone hand in hand with the proliferation of farmers markets in Texas. These farmers markets have provided a market not only for urban agriculture, but also for smaller farms in rural Texas. I think urban agriculture complements our traditional agricultural producers.

Tell us about your Senate Bill 1983, which would create the Texas Urban Agricultural Innovation Authority, and Senate Bill 1984, which would create an urban farming pilot program and the Select Committee on Urban Farming.

Both of these bills would help expand urban agriculture in (Continued, “Miles,” Page 4)
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Texas. SB 1983 would promote the creation and expansion of certain urban agricultural projects. It also will create the Urban Farmer Interest Rate Reduction Program to provide reduced interest rate loans to urban farmers.

SB 1984 would create the urban farming pilot program within the Texas Department of Agriculture to provide grants to urban farmers to establish new urban farms and expand existing urban farms. •

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likely signal its ultimate revocation. It remains to be seen whether the EPA and Army Corps will go another step further and issue a new rule narrowing the definition of WOTUS and embracing Justice Scalia’s hydrologic connection test for jurisdictional waters. One thing is certain, the uncertainty over the scope of the Clean Water Act will continue for the foreseeable future. •

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late 2018.

In addition to these new plants, Hilmar Cheese Co. has completed an expansion at its Dalhart facility. Southwest Cheese in Clovis, N.M., is in the midst of expanding its production capacity.

From the producer’s view, it is great to see some new homes for our milk that will help boost our local economies while having a positive impact on the monthly milk check.

With these positives, a couple of concerns are still ahead of us (we wouldn’t be dairy producers if we didn’t have concerns).

Producers are concerned about trade issues and immigration.

All of us hope the new administration will create a guest worker program that is beneficial for the dairy farmer, employee and United States.

Secondly, we all realize how important international markets are to our bottom line, so I’m sure producers will keep close tabs on trade issues.

Finally, with the final weeks of the Texas legislative session counting down, our eyes are on Austin, where the Texas Association of Dairymen is working hard to make sure our dairy industry interests are protected once the Legislature adjourns. •

Mark Your Calendar

Oct. 18 - Southwest Dairy Day, Wildcat Dairy, Gustine, TX, 10 a.m.-5 p.m.

Aug. 9-10 - Mid-South Ruminant Nutrition Conference, Embassy Suites, Garland