

YEWS - to ban or not to ban

by Ann Bates, INLA Executive Director

Much of my time these past few months have been spent regarding yews being placed on the Idaho noxious weed list. If yews are placed on the list it may require removal of all existing plants and or a ban on selling the plant. This article will bring you up to speed based on the timeline when it all began and where we are now.

In early February, there were dozens of big-game animals killed in the Treasure Valley by eating yews that were in landscapes. Concerned citizens contacted the INLA office, several business and other entities regarding the toxicity of the plant.

FarWest put out a press release concerning the issue. "FarWest is deeply concerned about the recent deaths of elk and other wildlife because of Yew toxicity. This year's severe weather has brought wildlife into close proximity of homes and the landscapes that have Yew plants. FarWest Landscape & Garden Center offered anyone who has a Yew plant and decides that they don't want it, a \$30 voucher toward a replacement shrub. FarWest feels each homeowner can make a decision if they want to keep their Yew plant or not. If a homeowner makes the decision to keep their Yew plant, we can show them how to wrap the Yew with frost cloth late fall through late spring. This will prevent wildlife from eating the plant during winter months. In addition, FarWest will continue to educate our customers who do want to purchase a Yew plant, about its toxicity and offer alternative plant options. We plan to add more signage and employee education on this topic. We will do more screening to prevent sale of Yews to big game zones within our city. This is valid only for Treasure Valley homeowners."

Franz Witte Nursery responded with this to a letter received from a customer. "Thank you for your business and thank you for contacting us with your concerns. While we will continue to sell yews, we will make sure that our staff is well trained in the facts about them. Yews are a very hardy and beautiful evergreen and a useful landscape plant – but should not be planted where wildlife can get to them and can be poisonous to people and pets as well. There have been Yews in many, many yards in this area for a very long time. We have had record snow fall this season as I'm sure you are aware of and that is the reason the animals ate what they did. It is the first time I have heard of that happening in this area. There are many plants in our yards that can be poisonous to people and animals such as Rhododendrons, Hydrangea, Foxglove, Delphinium and even Poinsettias. We will continue to educate our people and our customers about plants, but we must be responsible in the decisions and amount of fear we try to spread. While I am an animal lover myself, I don't believe what has happened means we should stop selling all things that can be poisonous – but we do need to do all we can in the future to share the knowledge we have."

On March 1, 2017, House bill, No. 231, was introduced by the Health and Welfare Committee for the listing of Japanese yew (*Taxus cuspidata*) as an Idaho State Noxious Weed. It was printed and referred to Agricultural Affairs. I immediately contacted the office of the House Ag committee so I could watch for its appearance on the committee's agenda. In the interim, I

began speaking personally to many of the INLA members so I could compose a letter to the ISDA director.

This is what was included in the letter I sent to Director Celia Gould, Idaho State Department of Agriculture March 17:

It is my understanding that the only reason the animals who were killed by the ingestion of the yew foliage was due to the abnormally harsh winter conditions that were experienced this year that made food sources for wildlife scarce and drove the animals into areas where they would not typically be feeding. Over the last 10 days I have spoken to several of my members regarding the issue, along with parks and recreation personnel, and have put together a few key points.

- Yews have been growing in the wild for thousands of years. Japanese yews have been planted in the rural areas and parks of Idaho for decades. It is very rare that wildlife and livestock alike encounter these plants. It is a beautiful plant that grows well in our area and is not remotely invasive.
- In the 1990's yews were used in the synthesis of the cancer drug Taxol. Taxol is used for the treatment of breast, ovarian, lung, bladder, prostate, melanoma, esophageal, as well as other types of solid tumor cancers. It has also been used in Kaposi's sarcoma.
- What kind of a burden would the removal of these plants place on our County Noxious Weed programs and all cities and counties throughout Idaho if it was placed on the list? Idaho has one of the toughest weed laws in the nation and this should require public and industry input before the Japanese yew is even considered to be included on the list.
- In House bill 231 it states that there is no fiscal impact to the state. Not only would it include a financial burden on the local, county and state entities, but also potentially put them in the back-yard of many residences.
- There are many other yew Genera that are grown in Idaho and to choose just the *Taxus cuspidata* would not be very inclusive.
- There are a few other plants that are used regularly in the urban landscape that are poisonous. Will this open Pandora's box?
- Control measures could include educating the public on the awareness of these plants as toxic and forbidding the specification of the plants in landscape where livestock and wildlife come in contact with them. There could be labeling done for not only this but other toxic plants to make people aware of the responsibility they have to keep them away from areas that could result in death to animals.

On Wednesday, March 15, I received an email from Adam Schroeder, Section Manager, Invasive Species & Noxious Weeds, ISDA, that a petition to initiate negotiated rulemaking on this issue was received. "As I am sure you are aware, there is current proposed legislation regarding the addition of Japanese Yew to the Idaho Noxious Weed List. We have also received a petition to initiate negotiated rulemaking on this issue." When I spoke to Adam on the phone, he indicated that this would most likely not be done until the completion of this legislature session.

On March 22, I received an email from the Joan Majors, Agricultural Affairs committee secretary, that notified me "Chairman Boyle received your letter" sent to Director Gould, "and H

231 will be held in the Bill drawer through session and will not receive a hearing. The best way to address this issue is the Rules process through the Department of Agriculture”.

In Idaho, rulemaking is governed by the Idaho Administrative Procedures Act ("Idaho APA") (Title 67, Chapter 52, Idaho Code). Rulemaking is conducted by state agencies for a variety of reasons, with three of the most common being the enactment or amendment of a statute by the state Legislature, new regulations adopted by the federal government or receipt of a petition from outside the agency to change or adopt a rule. Negotiated rulemaking is conducted with interested parties, in order to improve the final rule and expedite the rulemaking process by drawing upon shared information, knowledge, expertise and technical abilities.

After the time for commenting on a proposed rule has passed, and after any hearings which might be held, the agency will publish a Notice of Pending Rule. Pursuant to the Idaho APA, all pending rules are sent to the Legislature for review. Pending rules will become effective when the Legislature adjourns *sine die*, unless both chambers of the Legislature vote to disapprove a particular pending rule.

In March ISDA received petitions for rulemaking that propose to establish rules governing the sale, distribution, and possession of certain yew species in Idaho. Under consideration through negotiated rulemaking would be the addition to the Noxious Weed list of: Japanese Yew (*Taxus cuspidata*), Chinese Yew (*Taxus wallichiana var.chinensis*), and English Yew (*Taxus baccata*).

The ISDA rulemaking website was updated with links to the petitions, Notice of rulemaking and other relevant information. The web address that will take you directly to the page is: http://www.agri.idaho.gov/AGRI/Categories/LawsRules/sub_rules/2017_rules/020622_Noxious_Weeds.php. You can also navigate to it by clicking on the “Current Rulemaking” link from the main ISDA page which is found on the far right under quick references. It is the “noxious weeds” rulemaking link because that is the title of the rule which will be evaluated for changes.

On May 8, a letter was sent to Lloyd Knight Administrator-Plant Industries Division, from The Idaho Association of Weed Control Superintendents (IAWCS). IAWCS conducted a poll of their association on the possible listing of Japanese Yew (*Taxus cuspidate*) to the State Noxious Weed list. The consensus of the Association is to oppose the Japanese Yew listing at this time.

Dennis Fix, FarWest Garden Center and Landscaping; Seneca Hull, Franz Witte Nursery and Landscape and myself attended the first rule making meeting on May 16. The meeting became heated at times because of the feelings petitioners and other attendees had towards the loss of life to elk and deer this past winter. The three of us had an opportunity to share opinions and facts as to why the plant should not be listed on the noxious weed list. A second meeting took place on June 6th followed by a smaller group that met on June 20. The next schedule meeting is on July 14. I'd like to send a special thank you Jeffrey Pettingill with the Bonneville County Weed Control for first informing me of the legislation. I learned about it in other ways a few days later, but with Jeffreys heads up I could reach out to our members in a very timely manner. Dennis and Seneca thank you both for your dedication to this issue on behalf of your businesses and the association. Thanks go out to those of you that took the time to correspond with me via email on the issue and involve your employees. We have over 60 emails in to the ISDA from

those of you that let them know you were in opposition to having yews included on the Idaho noxious weed list. Thank you, thank you and thank you!

If you haven't sent an email or letter to the ISDA regarding the issue it is not too late. Email your concerns to rulesinfo@ISDA.IDAHO.GOV . It is going to take the team efforts of leadership in the INLA, association members and other concerned citizens to see that the yew is not included on Idaho's noxious weed list.