

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 592

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO STOCKWATER; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE
2 ADDITION OF A NEW SECTION 42-224, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF
3 ORDERS TO SHOW CAUSE, TO PROVIDE FOR CONTENT OF ORDERS TO SHOW CAUSE, TO
4 PROVIDE FOR SERVICE OF ORDERS TO SHOW CAUSE, TO PROVIDE FOR PUBLICATION,
5 TO PROVIDE FOR COPIES OF THE ORDER, TO PROVIDE FOR REQUESTS FOR HEARING,
6 TO PROVIDE THAT MULTIPLE STOCKWATER RIGHTS HELD BY A SINGLE OWNER MAY
7 BE CONSIDERED IN A SINGLE ORDER TO SHOW CAUSE, TO PROVIDE FOR HEARINGS,
8 TO PROVIDE FOR ORDERS, TO PROVIDE FOR JUDICIAL REVIEW, TO DEFINE TERMS,
9 AND TO PROVIDE FOR APPLICABILITY; AMENDING SECTION 42-501, IDAHO CODE,
10 TO PROVIDE THAT CERTAIN STOCKWATER RIGHTS ARE SUBJECT TO FORFEITURE
11 PURSUANT TO SPECIFIED LAW AND TO MAKE A TECHNICAL CORRECTION; AMENDING
12 SECTION 42-502, IDAHO CODE, TO REMOVE PROVISIONS REGARDING AGENTS OF
13 THE FEDERAL GOVERNMENT AND PERMITTEES ON FEDERALLY ADMINISTERED GRAZ-
14 ING ALLOTMENTS; REPEALING SECTION 42-503, IDAHO CODE, RELATING TO THE
15 FORFEITURE OF CERTAIN STOCKWATER RIGHTS; AND AMENDING SECTION 42-504,
16 IDAHO CODE, TO REVISE PROVISIONS REGARDING LIMITS OF USE.
17

18 Be It Enacted by the Legislature of the State of Idaho:

19 SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 42-224, Idaho Code, and to read as follows:

22 42-224. FORFEITURE OF STOCKWATER RIGHTS. (1) Whenever the director of
23 the department of water resources receives a petition making a prima facie
24 showing, or finds, on his own initiative based on available information,
25 that a stockwater right has not been put to beneficial use for a term of five
26 (5) years, the director shall expeditiously issue an order to the stockwater
27 right owner to show cause before the director why the stockwater right has
28 not been lost through forfeiture pursuant to section 42-222 (2), Idaho Code.

29 (2) Any order to show cause shall contain the director's findings.

30 (3) The director shall serve a copy of any order to show cause on the
31 stockwater right owner by personal service or by certified mail. Personal
32 service may be completed by department personnel or a person authorized to
33 serve process under the Idaho rules of civil procedure. Service by certi-
34 fied mail shall be complete upon receipt of the certified mail. If reason-
35 able efforts to personally serve the order fail, or if the certified mail is
36 returned unclaimed, the director may serve the order by publication by pub-
37 lishing a summary of the order once a week for two (2) consecutive weeks in a
38 newspaper of general circulation in the county in which the point of diver-
39 sion is located. Service by publication shall be complete upon the date of
40 the last publication.

41 (4) If the order affects a stockwater right where the place of use is
42 a federal grazing allotment, the director shall provide a copy of the order

1 to the holder or holders of any livestock grazing permit or lease for said
2 allotment.

3 (5) The stockwater right owner shall have twenty-one (21) days from
4 completion of service to request in writing a hearing pursuant to section
5 42-1701A, Idaho Code. If the stockwater right owner fails to timely respond
6 to the order to show cause, the stockwater right shall be considered for-
7 feited, and the director shall issue an order declaring the stockwater right
8 to be forfeited pursuant to section 42-222(2), Idaho Code.

9 (6) The director may consider multiple stockwater rights held by a sin-
10 gle owner in a single order to show cause.

11 (7) If the stockwater right owner timely requests a hearing, the hear-
12 ing shall be in accordance with section 42-1701A, Idaho Code, and the rules
13 of procedure promulgated by the director. If, after the hearing, the di-
14 rector confirms that the water right has been lost and forfeited pursuant to
15 section 42-222(2), Idaho Code, the director shall issue an order declaring
16 the water right forfeited. Judicial review of any decision of the director
17 shall be in accordance with section 42-1701A, Idaho Code.

18 (8) For purposes of this section, the following terms have the follow-
19 ing meanings:

20 (a) "Stockwater right" means water rights for the watering of livestock
21 meeting the requirements of section 42-1401A(11), Idaho Code.

22 (b) "Stockwater right owner" as used in this section means the owner of
23 the stockwater right shown in the records of the department of water re-
24 sources at the time of service of the order to show cause.

25 (9) This section applies to all stockwater rights except those stockwa-
26 ter rights decreed to the United States based on federal law.

27 (10) The director shall not issue an order to show cause, and shall not
28 proceed under the provisions of this section, where the holder or holders of
29 any livestock grazing permit or lease on a federal grazing allotment asserts
30 a principal/agent relationship with the federal agency managing the grazing
31 allotment.

32 SECTION 2. That Section 42-501, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 42-501. LEGISLATIVE INTENT. In the landmark case of *Joyce Livestock*
35 *Company v. United States of America*, 144 Idaho 1, 156 P.3d 502 (2007), the
36 Idaho Supreme Court held that an agency of the federal government cannot ob-
37 tain a stockwater right under Idaho law, unless it actually owns livestock
38 and puts the water to beneficial use.

39 In *Joyce*, the court held that the United States:

40 "bases its claim upon the constitutional method of appropriation. That
41 method requires that the appropriator actually apply the water to a ben-
42 efiticial use. Since the United States has not done so, the district court
43 did not err in denying its claimed water rights."

44 The court also held that federal ownership or management of the land alone
45 does not qualify it for stockwater rights. It opined:

46 "The United States claimed instream water rights for stock watering
47 based upon its ownership and control of the public lands coupled with
48 the Bureau of Land Management's comprehensive management of public
49 lands under the Taylor Grazing Act...The argument of the United States

1 reflects a misunderstanding of water law...As the United States has
 2 held, Congress has severed the ownership of federal lands from the own-
 3 ership of water rights in nonnavigable waters located on such lands."

4 The court went on to state:

5 "Under Idaho Law, a landowner does not own a water right obtained by
 6 an appropriator using the land with the landowner's permission unless
 7 the appropriator was acting as agent of the owner in obtaining that wa-
 8 ter right...If the water right was initiated by the lessee, the right
 9 is the lessee's property, unless the lessee was acting as the agent of
 10 the owner...The Taylor Grazing Act expressly recognizes that ranchers
 11 could obtain their own water rights on federal land."

12 A rancher is not unwittingly acting as an agent of a federal agency sim-
 13 ply by grazing livestock on federally managed lands when he files for and re-
 14 ceives a stockwater right.

15 It is the intent of the Legislature to codify and enhance these impor-
 16 tant points of law from the *Joyce* case to protect Idaho stockwater right
 17 holders from encroachment by the federal government in navigable and nonnav-
 18 igable waters.

19 Further, in order to comply with the *Joyce* decision, it is the intent of
 20 the Legislature that stockwater rights acquired in a manner contrary to the
 21 *Joyce* decision are subject to forfeiture pursuant to sections 42-222(2) and
 22 42-224, Idaho Code.

23 SECTION 3. That Section 42-502, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

25 42-502. FEDERAL AGENCIES -- STOCKWATER RIGHTS. ~~(1) No agency of the~~
 26 ~~federal government, nor any agent acting on its behalf,~~ shall acquire a
 27 stockwater right unless the agency owns livestock and puts the water to ben-
 28 efiticial use. For purposes of this chapter, "stockwater rights" means water
 29 rights for the beneficial use for livestock.

30 ~~(2) For the purposes of this chapter, a permittee on a federally ad-~~
 31 ~~ministered grazing allotment shall not be considered an agent of the federal~~
 32 ~~government.~~

33 SECTION 4. That Section [42-503](#), Idaho Code, be, and the same is hereby
 34 repealed.

35 SECTION 5. That Section 42-504, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 42-504. LIMITS OF USE. If an agency of the federal government, or
 38 the holder or holders of any livestock grazing permit or lease on a federal
 39 grazing allotment, acquires a stockwater right, that stockwater right shall
 40 never be utilized for any purpose other than the watering of livestock ~~unless~~
 41 ~~otherwise approved by the state of Idaho pursuant to section 42-222, Idaho~~
 42 ~~Code on the federal grazing allotment that is the place of use for that stock-~~
 43 ~~water right.~~