

IN THE SENATE

SENATE BILL NO. 1102

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO STOCKWATER RIGHTS; REPEALING CHAPTER 5, TITLE 42, IDAHO CODE,
2 RELATING TO STOCKWATER RIGHTS; AMENDING TITLE 42, IDAHO CODE, BY THE AD-
3 DITION OF A NEW CHAPTER 5, TITLE 42, IDAHO CODE, TO PROVIDE LEGISLATIVE
4 INTENT, TO PROHIBIT THE ACQUISITION OF CERTAIN STOCKWATER RIGHTS, TO
5 PROVIDE THAT CERTAIN PERMITTEES SHALL NOT BE CONSIDERED AGENTS OF THE
6 FEDERAL GOVERNMENT, TO LIMIT THE USE OF CERTAIN STOCKWATER RIGHTS, TO
7 PROVIDE FOR THE EFFECT OF AN ILLEGAL CHANGE OF OWNERSHIP OR TRANSFER, TO
8 PROVIDE FOR SEVERABILITY, TO PROVIDE THAT SPECIFIED LAW SHALL BE CON-
9 TROLLING; AND DECLARING AN EMERGENCY.
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11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Chapter 5, Title 42, Idaho Code, be, and the same is
13 hereby repealed.

14 SECTION 2. That Title 42, Idaho Code, be, and the same is hereby amended
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
16 ter 5, Title 42, Idaho Code, and to read as follows:

17 CHAPTER 5
18 STOCKWATER RIGHTS

19 42-501. LEGISLATIVE INTENT. In the landmark case of *Joyce Livestock*
20 *Company v. United States of America*, 144 Idaho 1, 156 P.3d 502 (2007), the
21 Idaho Supreme Court held that an agency of the federal government cannot ob-
22 tain a stockwater right under Idaho law, unless it actually owns livestock
23 and puts the water to beneficial use.

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

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

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

31 "The United States claimed instream water rights for stock watering
32 based upon its ownership and control of the public lands coupled with
33 the Bureau of Land Management's comprehensive management of public
34 lands under the Taylor Grazing Act...The argument of the United States
35 reflects a misunderstanding of water law...As the United States has
36 held, Congress has severed the ownership of federal lands from the own-
37 ership of water rights in nonnavigable waters located on such lands."

1 The court went on to state:

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

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

12 It is the intent of the Legislature to codify these important points of
13 law from the *Joyce* case to protect Idaho stockwater right holders from en-
14 croachment by the federal government.

15 42-502. FEDERAL AGENCIES -- STOCKWATER RIGHTS. (1) No agency of the
16 federal government, nor any agent acting on its behalf, shall acquire a
17 stockwater right unless the agency owns livestock and puts the water to ben-
18 eficial use.

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

22 42-503. LIMITS OF USE. If an agency of the federal government acquires
23 a stockwater right, that stockwater right shall never be utilized for any
24 purpose other than the watering of livestock.

25 42-504. EFFECT OF ILLEGAL CHANGE OF OWNERSHIP OR TRANSFER. Any appli-
26 cation for a change in ownership or any application proposing to change the
27 nature of use of a stockwater right that is in violation of the provisions of
28 this chapter shall be denied.

29 42-505. SEVERABILITY. The provisions of this act are hereby declared
30 to be severable and if any provision of this act or the application of such
31 provision to any person or circumstance is declared invalid for any reason,
32 such declaration shall not affect the validity of the remaining portions of
33 this act.

34 42-506. PROVISIONS CONTROLLING OVER OTHER ACTS. Insofar as the provi-
35 sions of this act are inconsistent with the provisions of any other law, the
36 provisions of this act shall be controlling.

37 SECTION 3. An emergency existing therefor, which emergency is hereby
38 declared to exist, this act shall be in full force and effect on and after its
39 passage and approval.