

LEGISLATURE OF THE STATE OF IDAHO

## Sixty-fourth Legislature

## Second Regular Session - 2018

IN THE HOUSE OF REPRESENTATIVES

HOUSE PROCLAMATION NO. 1

## BY WAYS AND MEANS COMMITTEE

## A PROCLAMATION

THAT THE JOYCE LIVESTOCK COMPANY AND THE LU RANCHING COMPANY SHOULD BE REIMBURSED FROM THE CONSTITUTIONAL DEFENSE COUNCIL FUND FOR ATTORNEY'S FEES THAT THEY INCURRED FOR RESTORING, MAINTAINING AND ADVANCING THE SOVEREIGNTY AND AUTHORITY OF THE STATE OF IDAHO OVER STOCKWATER RIGHTS.

We, the members of the House of Representatives of the State of Idaho assembled in the Second Regular Session of the Sixty-fourth Idaho Legislature, proclaim as follows:

WHEREAS, pursuant to Section 67-6301, Idaho Code, the Constitutional Defense Council Fund is to be used to restore, maintain and advance the sovereignty and authority of the State of Idaho and the well-being of its citizens; and

WHEREAS, water rights are part and parcel of the sovereignty and authority of the state as evidenced by Article XV of the Constitution of the State of Idaho and the Idaho Code, and water rights are fundamental to the well-being of Idaho's citizens, especially those citizens whose livestock businesses depend on federal lands in the state; and

WHEREAS, the United States Supreme Court, the Idaho Territory, and the State of Idaho have held since 1890 that the acquisition of water by prior appropriation for a beneficial use is entitled to protection (see *Drake v. Earhart*, 2 Idaho 750, 23 P. 541 (Idaho Terr. 1890)); and

WHEREAS, in its unanimous *Joyce Livestock Co. v. United States of America* and *LU Ranching Co. v. United States of America* decisions in 2007, the Idaho Supreme Court made a number of important and precedent-setting water law rulings that restore, maintain and advance the sovereignty and authority of the State of Idaho and the well-being of its citizens; for example, that water rights on federal lands acquired by a rancher's predecessor are appurtenant to their deeded ranches and that when the United States does not apply stockwater to a beneficial use on federal lands, it may not avail itself of the constitutional method of appropriation to obtain a stockwater right from the state; and

WHEREAS, based on the Snake River Basin Adjudication Court's 1997 orders in the *Joyce Livestock Co.* case, the State of Idaho did not subsequently contest, as a matter of law or fact, the Bureau of Land Management's claim to water rights even though the United States Supreme Court held in *United States v. New Mexico*, 438 U.S. 696 (1978) that when the United States is not claiming a reserved water right, it may exercise no more rights than any ordinary appropriator under state law; and

WHEREAS, the 2017 Legislature of the State of Idaho amended the Idaho Code to codify the *Joyce Livestock Co.* decision in Section 42-501 et seq., Idaho Code, with the intent of enhancing "these important points of law from the *Joyce* case to protect Idaho stockwater right holders from encroachment by the federal government in navigable and nonnavigable waters"; and

1        WHEREAS, the House of Representatives assembled in the Second Regular  
2 Session of the Sixty-fourth Idaho Legislature passed and transmitted to the  
3 Senate House Bill No. 603 to further amend Section 42-501 et seq., Idaho  
4 Code, to address the over 17,000 stockwater rights conveyed by the State of  
5 Idaho to the federal agencies prior to the Idaho Supreme Court's ruling in  
6 the *Joyce Livestock Co.* and *LU Ranching Co.* cases, reflecting once again the  
7 abiding and long-term positive impacts of the two decisions on water law and  
8 rights in Idaho; and

9        WHEREAS, the equitable principle of law known as the Private Attorney  
10 General Doctrine provides for recovery of attorney's fees when a successful  
11 plaintiff shows: (1) the strength or societal importance of the public pol-  
12 icy vindicated by the litigation; (2) the necessity for private enforcement  
13 and the magnitude of the resultant burden on the plaintiffs; and (3) the num-  
14 ber of people standing to benefit from the decision (see *Miller v. EchoHawk*,  
15 126 Idaho 47, 49, 878 P.2d 746, 748 (1994)); and

16        WHEREAS, those equitable principles of fairness apply with equal force  
17 to the successful plaintiffs in the *Joyce Livestock Co.* and *LU Ranching Co.*  
18 cases; and

19        WHEREAS, Joyce Livestock Co. filed a claim in 1992 to protect its stock-  
20 water rights on federal lands having an 1878 priority date, and LU Ranching  
21 Co. similarly sought to protect its stockwater rights having an 1872 pri-  
22 ority date, said rights having been finally vindicated by the Idaho Supreme  
23 Court's 2007 decision; and

24        WHEREAS, Joyce Livestock Co. and LU Ranching Co. incurred substantial  
25 attorney's fees that they negotiated down significantly to \$600,000 with  
26 each company bearing the sum of \$300,000; and

27        WHEREAS, the Constitutional Defense Council's payment of the negoti-  
28 ated attorney's fees would comport with the purpose of the Constitutional  
29 Defense Council and its use of funds in support of Idaho's sovereignty and  
30 authority over stockwater rights on federal lands in the State of Idaho.

31        NOW, THEREFORE, BE IT PROCLAIMED by the members of the House of Repre-  
32 sentatives assembled in the Second Regular Session of the Sixty-fourth Idaho  
33 Legislature, that Joyce Livestock Co. and LU Ranching Co. should receive  
34 funds from the Constitutional Defense Council Fund to offset the attorney's  
35 fees paid by them to restore, maintain and advance the sovereignty and au-  
36 thority of the State of Idaho over stockwater rights on federal lands within  
37 the State of Idaho.