

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 21, 2018
TIME: 8:00 A.M.
PLACE: Room WW55
MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Hagedorn, Senators Hill, Winder, Lodge, Vick, Anthon, Stennett, and Buckner-Webb
ABSENT/ EXCUSED: None
NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENED: **Chairman Siddoway** called the Senate State Affairs Committee (Committee) to order at 8:00 a.m. with a quorum present.

HP 1 A PROCLAMATION IN SUPPORT OF REIMBURSEMENT FOR JOYCE LIVESTOCK COMPANY AND THE LU RANCHING COMPANY from the Constitutional Defense Fund.

Representative Blanksma, District 23, addressed the unanimous decision in the case brought by Joyce Livestock Company (Joyce) and LU Ranching Company (LU) against the United States (U.S.) 2007 in the Idaho Supreme Court. Representative Blanksma said the decision affirmed the stockwater rights of Joyce/LU and established precedent setting water law that restored, maintained, and advanced the sovereignty of the State of Idaho over its water in the face of incredible federal overreach. She described in detail the positive outcome for stockwater rights and the pertinent water rights attendant to deeded ranches.

It is important to note, under the Snake River Basin Adjudication (SRBA) of 1997, the State did not contest the Bureau of Land Management's (BLM) claim to water rights with a priority date after 1934 in the Joyce/LU case. Without the Joyce/LU case, there would have been no claim by the State over its sovereignty to stockwater rights. For the last two years, the State of Idaho has been codifying the results of the Joyce/LU decisions. In the last eleven years, Joyce/LU have continued to pay the legal bills. Through this lawsuit, the State and over 17,000 stockwater rights owners have regained a public right, yet the participants in the lawsuit continue to struggle with legal fees associated with their efforts. They have managed to negotiate those fees from \$1 million each down to \$300,000 (each).

Representative Blanksma stated, legally, the Legislature does not have the ability to pass legislation for private purposes. **HP 1** does not recommend such legislation. There is no legislation pending in the House or in the Senate to pay the ranchers' fees. **HP 1** only supports the use of the Constitutional Defense Fund (CDF) to support the ranchers under the mandate of Idaho Code § 67-6301 to restore, maintain, and advance the sovereignty and authority of the State and the well-being of its citizens.

As enumerated in Idaho Code § 67-6301(4)(e), the Constitutional Defense Council's (Council) ability to examine and challenge federal law, regulations, and practices applied to Joyce/LU as shown in Idaho Code § 67-6301(2) that authorizes the Council to expend funds for the purposes of restoring, maintaining, and advancing the authority of the State over issues like the State's ownership and control over its waters as set forth in the Joyce/LU cases. (Letters in support of **HP 1** –Attachments 1-4).

Senator Winder questioned the fiscal note of \$600,000 from the CDF as this proclamation would not authorize payment. **Representative Blanksma** said the reason the fiscal note reflected \$600,000 was for transparency. There could potentially be a fiscal impact, but only if the Council takes action. **Senator Winder** emphasized, although the proclamation does not authorize any funding, the fiscal note may give the appearance it does.

Senator Stennett asked if the State has paid attorney's fees for any other industry or profession in the State. **Representative Blanksma** responded she was not an attorney and was only familiar with this case.

Senator Brackett, District 23, said the theme of his testimony is "the State got it wrong." The fact that the State got it wrong complicated the challenge Joyce/LU faced. **Senator Brackett** provided excerpts from statements by Tim Lowry, LU, and Paul Nettleton, Joyce, as well as parts of the court proceeding where some of these errors occurred.

Various excerpts from the statement made by Tom Lowry, LU who was one of the defendants: The State abandoned both Idaho water law and individual legitimate owners of stockwater rights under Idaho law. The State elected not to contest the basis of the water rights to stockwater claims after passing the Taylor Grazing Act of 1934 (43 § 315). The U.S. received stockwater rights by default and Idaho citizens were left alone to defend their rights against the U.S.

The U.S. saw no opposition from the State – the U.S. was free to aggressively attack the legitimate claims of individual stockwater users because Idaho allowed the U.S. to acquire the rights perfected by private appropriators and created a situation where it was extremely difficult for private parties to defend their rights. Consequently, a massive taking occurred without just compensation.

Various excerpts from the statement by Paul Nettleton of Joyce: The Department of Water Resources (Department) and an attorney recommended the claims for the BLM; this was in direct violation of western water law which had been recognized for 140 years. This action emboldened the BLM and gave them new impetus to challenge ranchers and secure the rights to Idaho water and the rights of Idaho ranchers.

Senator Brackett said the State was wrong, the law was clear; BLM could not claim beneficial use of stockwater when they did not own stock. The ranchers' stock use far predated the Taylor Grazing Act. In the case of Joyce, they have been in Owyhee County since 1878; over 150 years of stockwater use. Joyce (Paul Nettleton) was determined to pursue the case even though the U.S. Department of Justice negotiators quietly confided to Joyce's attorneys that they might win, but it would be expensive enough to put them into bankruptcy.

Senator Brackett shared examples of where he believes the State got it wrong including the holding of LU re: SRBA Case No. 39576. **Senator Brackett** emphasized the result of this ruling caused a situation where Joyce/LU were not only fighting the federal government, they were fighting the State. He stated he is fully in support of this proclamation.

Senator Stennett referred to an Attorney General's (AG) opinion on **HP 1** that cites questions about the propriety of using public dollars for private interests. It cites the *State of Idaho v. Hagerman Water Right Users* (Idaho 1997). The Idaho Supreme Court rejected a claim by water right holders for their attorney's fees under the private Attorney General doctrine reasoning that part of the right of water holders in the case could not be given to private interests. She asked if the Legislature agrees to this proclamation, how many different industries and professions that may have been wronged by the State will ask the State to pay their legal fees out of the CDF or other sources. **Senator Brackett** recalled that opinion does give the Council latitude.

Each case has its own unique set of circumstances and this one also has circumstances that differentiate it from the *Hagerman* case.

Vice Chairman Hagedorn commented the AG will provide the history and AG opinions to the Council to be debated and discussed when making a determination.

MOTION:

Vice Chairman Hagedorn moved to send **HP 1** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

Senator Hill declared a possible conflict of interest pursuant to Senate Rule 39(H); he is a member of the Council which this proclamation was designed to influence. He stated he plans to vote.

Senator Winder stated he supports the proclamation but would like a definitive explanation of where Idaho Code provides the right to the Council to spend money. The advantage of the proclamation is, it is purely advisory and allows the Council to do what it deems best under the Idaho Constitution and Idaho Code.

Chairman Siddoway commented this issue has been before a germane committee where the Joyce and LU Ranches testified. He stated his opinion that the State had some culpability during the SRBA process and the issue should have been resolved at that time. This case had a broad-scale effect regarding 17,800 stockwater rights in the State that are under federal control through either the U.S. Forest Service or the U.S. Bureau of Land Management. **Chairman Siddoway** stated he leases a number of those allotments from those federal agencies. The proclamation should continue through the process and show support to the Council.

Senator Stennett stated there are thousands of water users in her district who have senior water rights, but do not get the water. Only one case was pursued to no avail. She expressed concern about setting a precedent.

Representative Blanksma addressed concerns that were raised. Multiple private entities have been reimbursed from the CDF. She stated it is within the purview of the Council to review this case under Idaho Code §§ 67-6301(5) and 67-6301(4)(e). **Representative Blanksma** asked for approval of **HP 1** to allow the Council to examine the Joyce and LU case.

VOTE:

The motion carried by **voice vote**. **Senator Stennett** and **Senator Buckner-Webb** were recorded as voting **nay**.

ADJOURNED:

There being no further business, **Chairman Siddoway** adjourned the meeting at 8:25 a.m.

Senator Hagedorn
Vice Chair

Twyla Melton
Secretary