

Statement of June Shoemaker, Deputy State Director for Resources and Science, Bureau of Land Management, Idaho State Office, in Opposition to HB 592

Good Afternoon, I'm June Shoemaker, I'm the Deputy State Director for Resources and Science with the Bureau of Land Management Idaho State Office here in Boise. I'm joined today by Jennifer Jones, Deputy State Director for Communications for BLM Idaho and John Murdock and Kathleen Carr with the U.S. Department of the Interior Solicitor's Office. Thank you for the opportunity to address you today on behalf of BLM Idaho.

BLM Idaho greatly appreciates the Idaho Legislature's interest in stockwater rights. This is an issue of critical importance to BLM Idaho as the manager of approximately 12 million acres of public land in the State. BLM Idaho manages approximately 1,885 grazing permits and leases that provide for 1.3 million Animal Unit Months of forage on 2,100 livestock grazing allotments on public land in Idaho.

The Idaho BLM urges that HB 592 *not* be approved in its current form, but we stand ready to work with this committee to craft a bill that can resolve matters stemming from the *Joyce Livestock* decision and withstand legal scrutiny.

HB 592 makes important improvements over 2017's SB 1111 and 2018's HB 718, statutes that went well beyond the *Joyce Livestock* decision itself. Helpfully,

HB 592 proposes to modify SB 1111 to allow livestock owners to act as agents in retaining the United States stockwater rights. The possibility of an agency relationship was a pathway specifically recognized in the *Joyce Livestock* decision itself. This proposed change is a welcome development and suggests to the Idaho BLM that HB 592 could eventually become a bill that we could fully support.

To this point, though, the bill has moved at lightning speed through the Legislature, having just been introduced on March 3<sup>rd</sup> and having already passed the House. Now, it is before this committee in the Senate and we are here having only learned of the bill's existence late last week. The BLM recognizes that time is relatively short in the legislative session, but we believe that there is adequate time to work together to modify this bill in a way that can resolve rather than prolong the issues surrounding stockwater rights.

While HB 592 eliminates the explicit mass forfeiture proceeding that was created under HB 718 in 2018, it still allows for the possibility of such large-scale forfeiture proceedings utilizing existing state law that has long sat dormant. It is very much an open legal question whether Idaho or any other state can extinguish a United States property right through a forfeiture statute. In 1960, for example, a federal district court in New Mexico held that a statute very similar to Idaho Code 42-222(2) could not be applied against the federal government.

I do not wish to dive into the details of the legal and policy issues today, but instead I have come here on short notice simply to ask the committee to push the *pause* button so that we can work together to address the remaining issues. In recognition of the calendar and the limited time left in this session, I pledge that the Idaho BLM would work intensely with members and staff in the coming days. We believe that this process can be done in days, not weeks or months.

HB 592 provides us all with a chance to resolve the uncertainty that has surrounded stockwater rights since the *Joyce Livestock* decision. In its current form, however, the BLM is not able to support HB 592 and we worry that its passage could ultimately result in litigation. It is our strong preference to work together to craft a bill that eliminates rather than creates legal risks. We urge that the committee not send HB 592 on to the full Senate today, but instead create a window of time for us to work together.

Thank you again for the chance to provide this information to you today.