

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 5
STOCKWATER RIGHTS

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

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

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

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

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

The court went on to state:

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

A rancher is not unwittingly acting as an agent of a federal agency simply by grazing livestock on federally managed lands when he files for and receives a stockwater right.

It is the intent of the Legislature to codify and enhance 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.

Further, in order to comply with the *Joyce* decision, it is the intent of the Legislature that stockwater rights acquired in a manner contrary to the *Joyce* decision are subject to forfeiture.

[42-501, added 2017, ch. 178, sec. 2, p. 408; am. 2018, ch. 320, sec. 1, p. 747.]

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

(2) For the purposes of this chapter, a permittee on a federally administered grazing allotment shall not be considered an agent of the federal government.

[42-502, added 2017, ch. 178, sec. 2, p. 409.]

42-503. FORFEITURE OF CERTAIN STOCKWATER RIGHTS. (1) Within ninety (90) days following the enactment of this section, the director of the department of water resources shall:

(a) Compile a list of all stockwater rights held by any federal agency; and

(b) Submit the list of stockwater rights to the appropriate federal agency.

(2) Following the ninety (90) day period as provided in subsection (1) of this section, the director shall, upon approval by the governor, submit an order to the federal agency identifying the stockwater right or rights held by that federal agency and requiring the federal agency to show cause before the director why the stockwater right or rights should not be lost or forfeited pursuant to section 42-222(2), Idaho Code.

(3) Any order to show cause shall contain the factual and legal basis for the order.

(4) The director shall serve a copy of any order to show cause on the stockwater right owner by personal service or by certified mail. Personal service may be completed by department personnel or a person authorized to serve process under the Idaho rules of civil procedure. Service by certified mail shall be complete upon receipt of the certified mail. If reasonable efforts to personally serve the order fail, or if the certified mail is returned unclaimed, the director may serve the order by publication by publishing a summary of the order once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the point of diversion is located. Service by publication shall be complete upon the date of the last publication.

(5) The stockwater right owner shall have a right to an administrative hearing before the director if requested in writing within twenty-one (21) days from completion of service of the order to show cause. The water right is forfeited if the water right owner fails to timely request a hearing.

(6) If the stockwater right owner timely requests a hearing, the hearing shall be in accordance with section 42-1701A, Idaho Code, and the rules of procedure promulgated by the director. If, after the hearing, the director determines that the stockwater right has been lost and forfeited pursuant to section 42-222(2), Idaho Code, the director shall issue an order declaring the stockwater right forfeited. Judicial review of any decision of the director shall be in accordance with section 42-1701A, Idaho Code.

(7) The term "stockwater right owner" as used in this section means the owner of the stockwater right shown in the records of the department of water resources at the time of service of the order to show cause.

(8) This section applies only to stockwater rights decreed to the United States that were based on a claim of beneficial use. It does not apply to stockwater water rights decreed to the United States based on federal law or acquired pursuant to chapter 2, title 42, Idaho Code.

(9) Any forfeiture under this provision shall not prejudice the ability of the current holder of a federal grazing permit or lease to graze livestock on the place of use designated in the forfeited stockwater right from filing a claim pursuant to Idaho law.

[42-503, added 2018, ch. 320, sec. 2, p. 748.]

42-504. LIMITS OF USE. If an agency of the federal government acquires a stockwater right, that stockwater right shall never be utilized for any purpose other than the watering of livestock unless otherwise approved by the state of Idaho pursuant to section 42-222, Idaho Code.

[(42-504) 42-503, added 2017, ch. 178, sec. 2, p. 409; am. and re-desig. 2018, ch. 320, sec. 3, p. 749.]

42-505. EFFECT OF ILLEGAL CHANGE OF OWNERSHIP OR TRANSFER. Any application for a change in ownership or any application proposing to change the nature of use of a stockwater right that is in violation of the provisions of this chapter shall be denied.

[(42-505) 42-504, added 2017, ch. 178, sec. 2, p. 409; am. and re-desig. 2018, ch. 320, sec. 4, p. 749.]

42-506. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[(42-506) 42-505, added 2017, ch. 178, sec. 2, p. 409; am. and re-desig. 2018, ch. 320, sec. 5, p. 749.]

42-507. PROVISIONS CONTROLLING OVER OTHER ACTS. Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

[(42-507) 42-506, added 2017, ch. 178, sec. 2, p. 409; am. and re-desig. 2018, ch. 320, sec. 6, p. 749.]