

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 718

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO STOCKWATER RIGHTS; AMENDING SECTION 42-501, IDAHO CODE, TO
2 PROVIDE ADDITIONAL LEGISLATIVE INTENT REGARDING CERTAIN STOCKWATER
3 RIGHTS; AMENDING CHAPTER 5, TITLE 42, IDAHO CODE, BY THE ADDITION OF A
4 NEW SECTION 42-503, IDAHO CODE, TO PROVIDE FOR THE FORFEITURE OF CERTAIN
5 STOCKWATER RIGHTS AND TO PROVIDE A PROCEDURE; AMENDING SECTION 42-503,
6 IDAHO CODE, TO CLARIFY THAT IF AN AGENCY OF THE FEDERAL GOVERNMENT AC-
7 QUIRES A STOCKWATER RIGHT, THAT RIGHT SHALL NEVER BE UTILIZED FOR ANY
8 PURPOSE OTHER THAN WATERING OF LIVESTOCK UNLESS OTHERWISE APPROVED
9 BY THE STATE AND TO REDESIGNATE THE SECTION; AMENDING SECTION 42-504,
10 IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 42-505, IDAHO
11 CODE, TO REDESIGNATE THE SECTION; AND AMENDING SECTION 42-506, IDAHO
12 CODE, TO REDESIGNATE THE SECTION.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 42-501, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 42-501. LEGISLATIVE INTENT. In the landmark case of *Joyce Livestock*
18 *Company v. United States of America*, 144 Idaho 1, 156 P.3d 502 (2007), the
19 Idaho Supreme Court held that an agency of the federal government cannot ob-
20 tain a stockwater right under Idaho law, unless it actually owns livestock
21 and puts the water to beneficial use.

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

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

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

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

36 The court went on to state:

37 "Under Idaho Law, a landowner does not own a water right obtained by
38 an appropriator using the land with the landowner's permission unless
39 the appropriator was acting as agent of the owner in obtaining that wa-
40 ter right...If the water right was initiated by the lessee, the right
41 is the lessee's property, unless the lessee was acting as the agent of

1 the owner...The Taylor Grazing Act expressly recognizes that ranchers
2 could obtain their own water rights on federal land."

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

6 It is the intent of the Legislature to codify and enhance these impor-
7 tant points of law from the *Joyce* case to protect Idaho stockwater right
8 holders from encroachment by the federal government in navigable and nonnav-
9 igable waters.

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

13 SECTION 2. That Chapter 5, Title 42, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 42-503, Idaho Code, and to read as follows:

16 42-503. FORFEITURE OF CERTAIN STOCKWATER RIGHTS. (1) Within ninety
17 (90) days following the enactment of this section, the director of the de-
18 partment of water resources shall:

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

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

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

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

31 (4) The director shall serve a copy of any order to show cause on the
32 stockwater right owner by personal service or by certified mail. Personal
33 service may be completed by department personnel or a person authorized to
34 serve process under the Idaho rules of civil procedure. Service by certi-
35 fied mail shall be complete upon receipt of the certified mail. If reason-
36 able efforts to personally serve the order fail, or if the certified mail is
37 returned unclaimed, the director may serve the order by publication by pub-
38 lishing a summary of the order once a week for two (2) consecutive weeks in a
39 newspaper of general circulation in the county in which the point of diver-
40 sion is located. Service by publication shall be complete upon the date of
41 the last publication.

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

46 (6) If the stockwater right owner timely requests a hearing, the hear-
47 ing shall be in accordance with section 42-1701A, Idaho Code, and the rules
48 of procedure promulgated by the director. If, after the hearing, the di-
49 rector determines that the stockwater right has been lost and forfeited pur-

1 suant to section 42-222(2), Idaho Code, the director shall issue an order
2 declaring the stockwater right forfeited. Judicial review of any decision
3 of the director shall be in accordance with section 42-1701A, Idaho Code.

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

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

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

15 SECTION 3. That Section 42-503, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 42-503~~4~~. LIMITS OF USE. If an agency of the federal government ac-
18 quires a stockwater right, that stockwater right shall never be utilized for
19 any purpose other than the watering of livestock unless otherwise approved
20 by the state of Idaho pursuant to section 42-222, Idaho Code.

21 SECTION 4. That Section 42-504, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 42-504~~5~~. EFFECT OF ILLEGAL CHANGE OF OWNERSHIP OR TRANSFER. Any appli-
24 cation for a change in ownership or any application proposing to change the
25 nature of use of a stockwater right that is in violation of the provisions of
26 this chapter shall be denied.

27 SECTION 5. That Section 42-505, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 42-505~~6~~. 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 SECTION 6. That Section 42-506, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 42-506~~7~~. PROVISIONS CONTROLLING OVER OTHER ACTS. Insofar as the pro-
37 visions of this act are inconsistent with the provisions of any other law,
38 the provisions of this act shall be controlling.