

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 586

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO STOCKWATER; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE AD-
2 DITION OF A NEW SECTION 42-224, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF
3 ORDERS TO SHOW CAUSE, TO PROVIDE FOR CONTENT OF ORDERS TO SHOW CAUSE, TO
4 PROVIDE FOR SERVICE OF ORDERS TO SHOW CAUSE, TO PROVIDE FOR PUBLICATION,
5 TO PROVIDE FOR COPIES OF THE ORDER, TO PROVIDE FOR REQUESTS FOR HEAR-
6 ING, TO PROVIDE THAT MULTIPLE STOCKWATER RIGHTS HELD BY A SINGLE OWNER
7 MAY BE CONSIDERED IN A SINGLE ORDER TO SHOW CAUSE, TO PROVIDE FOR HEAR-
8 INGS, TO PROVIDE FOR ORDERS, TO PROVIDE FOR JUDICIAL REVIEW, TO DEFINE
9 TERMS, AND TO PROVIDE FOR APPLICABILITY; AMENDING SECTION 42-501, IDAHO
10 CODE, TO PROVIDE THAT CERTAIN STOCKWATER RIGHTS ARE SUBJECT TO FORFEI-
11 TURE PURSUANT TO SPECIFIED LAW AND TO MAKE A TECHNICAL CORRECTION; RE-
12 PEALING SECTION 42-503, IDAHO CODE, RELATING TO THE FORFEITURE OF CER-
13 TAIN STOCKWATER RIGHTS; AND AMENDING SECTION 42-504, IDAHO CODE, TO RE-
14 VISE PROVISIONS REGARDING LIMITS OF USE.
15

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

17 SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
19 ignated as Section 42-224, Idaho Code, and to read as follows:

20 42-224. FORFEITURE OF STOCKWATER RIGHTS. (1) Whenever the director
21 of the department of water resources finds, based on available information,
22 that a stockwater right has not been put to beneficial use for a term of five
23 (5) years, the director shall expeditiously issue an order to the stockwater
24 right owner to show cause before the director why the stockwater right has
25 not been lost through forfeiture pursuant to section 42-222 (2), Idaho Code.

26 (2) Any order to show cause shall contain the director's findings.

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

38 (4) If the order affects a stockwater right where the place of use is
39 a federal grazing allotment, the director shall provide a copy of the order
40 to the holder or holders of any livestock grazing permit or lease for said
41 allotment.

1 (5) The stockwater right owner shall have twenty-one (21) days from
 2 completion of service to request in writing a hearing pursuant to section
 3 42-1701A, Idaho Code. If the stockwater right owner fails to timely respond
 4 to the order to show cause, the stockwater right shall be considered for-
 5 feited, and the director shall issue an order declaring the stockwater right
 6 to be forfeited pursuant to section 42-222(2), Idaho Code.

7 (6) The director may consider multiple stockwater rights held by a sin-
 8 gle owner in a single order to show cause.

9 (7) If the stockwater right owner timely requests a hearing, the hear-
 10 ing shall be in accordance with section 42-1701A, Idaho Code, and the rules
 11 of procedure promulgated by the director. If, after the hearing, the di-
 12 rector confirms that the water right has been lost and forfeited pursuant to
 13 section 42-222(2), Idaho Code, the director shall issue an order declaring
 14 the water right forfeited. Judicial review of any decision of the director
 15 shall be in accordance with section 42-1701A, Idaho Code.

16 (8) For purposes of this section, the following terms have the follow-
 17 ing meanings:

18 (a) "Stockwater right" means water rights for the watering of livestock
 19 meeting the requirements of section 42-1401A(11), Idaho Code.

20 (b) "Stockwater right owner" as used in this section means the owner of
 21 the stockwater right shown in the records of the department of water re-
 22 sources at the time of service of the order to show cause.

23 (9) This section applies to all stockwater rights except those stockwa-
 24 ter rights decreed to the United States based on federal law.

25 (10) The director shall not issue an order to show cause, and shall not
 26 proceed under the provisions of this section, where the holder or holders of
 27 any livestock grazing permit or lease on a federal grazing allotment asserts
 28 a principal/agent relationship with the federal agency managing the grazing
 29 allotment.

30 SECTION 2. That Section 42-501, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 42-501. LEGISLATIVE INTENT. In the landmark case of *Joyce Livestock*
 33 *Company v. United States of America*, 144 Idaho 1, 156 P.3d 502 (2007), the
 34 Idaho Supreme Court held that an agency of the federal government cannot ob-
 35 tain a stockwater right under Idaho law, unless it actually owns livestock
 36 and puts the water to beneficial use.

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

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

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

44 "The United States claimed instream water rights for stock watering
 45 based upon its ownership and control of the public lands coupled with
 46 the Bureau of Land Management's comprehensive management of public
 47 lands under the Taylor Grazing Act...The argument of the United States
 48 reflects a misunderstanding of water law...As the United States has

1 held, Congress has severed the ownership of federal lands from the own-
2 ership of water rights in nonnavigable waters located on such lands."

3 The court went on to state:

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

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

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

18 Further, in order to comply with the *Joyce* decision, it is the intent of
19 the Legislature that stockwater rights acquired in a manner contrary to the
20 *Joyce* decision are subject to forfeiture pursuant to sections 42-222(2) and
21 42-224, Idaho Code.

22 SECTION 3. That Section 42-503, Idaho Code, be, and the same is hereby
23 repealed.

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

26 42-504. LIMITS OF USE. If an agency of the federal government, or
27 the holder or holders of any livestock grazing permit or lease on a federal
28 grazing allotment, acquires a stockwater right, that stockwater right shall
29 never be utilized for any purpose other than the watering of livestock ~~unless~~
30 ~~otherwise approved by the state of Idaho pursuant to section 42-222, Idaho~~
31 ~~Code on the federal grazing allotment that is the place of use for that stock-~~
32 ~~water right.~~