

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 558

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1 RELATING TO STOCKWATER; AMENDING SECTION 42-224, IDAHO CODE, TO REVISE PRO-  
2 VISIONS REGARDING THE FORFEITURE OF STOCKWATER RIGHTS; AND DECLARING AN  
3 EMERGENCY.  
4

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

6 SECTION 1. That Section 42-224, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 42-224. FORFEITURE OF STOCKWATER RIGHTS. (1) ~~Whenever~~ Within thirty  
9 (30) days of receipt by the director of the department of water resources  
10 receives of a petition making a prima facie showing, or finds, on his own ini-  
11 tiative based on available information, or other information that a stock-  
12 water right has not been put to beneficial use for a term of five (5) years,  
13 the director must determine whether the petition or other information, or  
14 both, presents prima facie evidence that the stockwater right has been lost  
15 through forfeiture pursuant to section 42-222(2), Idaho Code. If the direc-  
16 tor determines the petition or other information, or both, is insufficient,  
17 he shall expeditiously issue an order to the stockwater right owner to show  
18 cause before the director why the stockwater right has not been lost through  
19 forfeiture pursuant to section 42-222(2), Idaho Code notify the petitioner  
20 of his determination, which shall include a reasoned statement in support of  
21 the determination and otherwise disregard for the purposes of this subsec-  
22 tion the other, insufficient, information.

23 (2) If the director determines the petition or other information, or  
24 both, contains prima facie evidence of forfeiture due to nonuse, the direc-  
25 tor must within thirty (30) days issue an order to the stockwater right owner  
26 to show cause before the director why the stockwater right has not been lost  
27 through forfeiture pursuant to section 42-222(2), Idaho Code. Any order to  
28 show cause shall must contain the director's findings of fact and a reasoned  
29 statement in support of the determination.

30 (3) The director ~~shall~~ must serve a copy of any order to show cause on  
31 the stockwater right owner by personal service or by certified mail with re-  
32 turn receipt. Personal service may be completed by department personnel or  
33 a person authorized to serve process under the Idaho rules of civil proce-  
34 dure. Service by certified mail shall be complete upon receipt of the certi-  
35 fied mail. If reasonable efforts to personally serve the order fail, or if  
36 the certified mail is returned unclaimed, the director may serve the order by  
37 publication by publishing a summary of the order once a week for two (2) con-  
38 secutive weeks in a newspaper of general circulation in the county in which  
39 the point of diversion is located. Service by publication shall be complete  
40 upon the date of the last publication.

41 (4) If the order affects a stockwater right where all or a part of the  
42 place of use is a on federal or state grazing allotment lands, the director

1 ~~shall provide~~ must mail by certified mail with return receipt a copy of the  
2 order to show cause to the holder or holders of any livestock grazing permit  
3 or lease for said allotment lands.

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

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

12 (6) The stockwater right owner has twenty-one (21) days from completion  
13 of service of the order to show cause to request in writing a hearing pursuant  
14 to section 42-1701A(1) and (2), Idaho Code.

15 ~~(7) If the stockwater right owner fails to timely requests a hearing,~~  
16 ~~the hearing shall be in accordance with section 42-1701A, Idaho Code, and the~~  
17 ~~rules of procedure promulgated by the director. If, after the hearing, the~~  
18 ~~director confirms that the water right has been lost and forfeited pursuant~~  
19 ~~to section 42-222(2), Idaho Code, the director shall issue an order declar-~~  
20 ~~ing the water right forfeited. Judicial review of any decision of the direc-~~  
21 ~~tor shall be in accordance with section 42-1701A, Idaho Code. respond to the~~  
22 ~~order to show cause, the director must issue an order within fourteen (14)~~  
23 ~~days regarding forfeiture stating the stockwater right has been forfeited~~  
24 ~~pursuant to section 42-222(2), Idaho Code; provided, however, that the di-~~  
25 ~~rector shall not issue an order regarding forfeiture where the director re-~~  
26 ~~ceives written evidence signed by the principal and the agent, prior to is-~~  
27 ~~suance of said order, that a principal/agent relationship existed or exists~~  
28 ~~between the owner of the water right as principal and a permittee or lessee as~~  
29 ~~agent for the purpose of obtaining or maintaining the water right.~~

30 (8) If the stockwater right owner timely requests a hearing, the hear-  
31 ing shall be in accordance with section 42-1701A(1) and (2), Idaho Code, and  
32 the rules of procedure promulgated by the director. Following the hearing,  
33 the director must issue an order regarding forfeiture that sets forth find-  
34 ings of fact, conclusions of law, and a determination of whether the stockwa-  
35 ter right has been forfeited pursuant to section 42-222(2), Idaho Code. The  
36 director must issue the order regarding forfeiture no later than forty-five  
37 (45) days after completion of the administrative proceeding.

38 (9) Any order determining that a stockwater right has been forfeited  
39 pursuant to subsection (7) or (8) of this section shall have no legal effect  
40 except as provided for in subsection (11) of this section. No judicial chal-  
41 lenge to an order determining that a stockwater right has been forfeited pur-  
42 suant subsection (7) or (8) of this section shall be allowed except within  
43 the civil action authorized in subsections (10) and (11) of this section.

44 (10) Within sixty (60) days after issuance of an order by the director  
45 determining that a stockwater right has been forfeited, the state of Idaho,  
46 by and through the office of the attorney general, must initiate a civil ac-  
47 tion by electronically filing in the district court for the fifth judicial  
48 district, Twin Falls county, the following: a complaint requesting a dec-  
49 laration that the stockwater right is forfeited; certified copies of the or-  
50 der regarding forfeiture; and the record of the administrative proceeding.

1 A copy of the complaint and accompanying documents shall be served on the  
2 stockwater right holder who shall be named as the defendant in the action,  
3 all parties to the administrative proceeding, and any holder or holders of  
4 livestock grazing permits or leases for the place of use of the stockwater  
5 right for which the director possesses an address. Any person may move to  
6 intervene in the action pursuant to the Idaho rules of civil procedure, but  
7 only if such a motion is filed at least twenty-one (21) days before the date  
8 set for the hearing under the scheduling order.

9 (11) After the initiation of the civil action required by this section,  
10 the proceedings in the district court shall be like those in a civil action  
11 triable without right to a jury, provided that the department of water re-  
12 sources shall not be a party to the civil action but may appear as a witness to  
13 explain the basis for the director's forfeiture determination. In any such  
14 proceeding, the director's order determining forfeiture shall constitute  
15 prima facie evidence that the right has been forfeited but shall not change  
16 the standard of proof for forfeiture of the water right established by sec-  
17 tion 42-222(2), Idaho Code.

18 (12) At the conclusion of the action, the district court shall issue an  
19 order determining whether the stockwater right has been forfeited pursuant  
20 to section 42-222, Idaho Code. If the district court determines that the  
21 stockwater right has been forfeited, the court shall also enter a judgment  
22 that the stockwater right has been forfeited.

23 (§13) For purposes of this section, the following terms have the fol-  
24 lowing meanings:

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

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

30 (914) This section applies to all stockwater rights except those stock-  
31 water rights decreed to the United States based on federal law.

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

37 SECTION 2. An emergency existing therefor, which emergency is hereby  
38 declared to exist, this act shall be in full force and effect on and after its  
39 passage and approval.