

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 pursuant to sections [42-222](#) (2) and [42-224](#), Idaho Code.

[42-501, added 2017, ch. 178, sec. 2, p. 408; am. 2018, ch. 320, sec. 1, p. 747; am. 2020, ch. 253, sec. 2, p. 739.]

42-502. FEDERAL AGENCIES -- STOCKWATER RIGHTS. No agency of the federal government 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.

[42-502, added 2017, ch. 178, sec. 2, p. 409; am. 2020, ch. 253, sec. 3, p. 740.]

42-504. LIMITS OF USE. If an agency of the federal government, or the holder or holders of any livestock grazing permit or lease on a federal grazing allotment, acquires a stockwater right, that stockwater right shall never be utilized for any purpose other than the watering of livestock on the federal grazing allotment that is the place of use for that stockwater right.

[(42-504) 42-503, added 2017, ch. 178, sec. 2, p. 409; am. and redesign. 2018, ch. 320, sec. 3, p. 749; am. 2020, ch. 253, sec. 5, p. 740.]

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 redesign. 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 redesign. 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 redesign. 2018, ch. 320, sec. 6, p. 749.]