

IN THE SENATE

SENATE BILL NO. 1305

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO STOCKWATER; AMENDING SECTION 42-113, IDAHO CODE, TO PROVIDE THAT
2 FOR RIGHTS TO THE USE OF WATER FOR IN-STREAM OR OUT-OF-STREAM LIVESTOCK
3 PURPOSES ASSOCIATED WITH GRAZING ON FEDERALLY OWNED OR MANAGED LAND ES-
4 TABLISHED UNDER THE DIVERSION AND APPLICATION TO BENEFICIAL USE METHOD
5 OF APPROPRIATION, THE WATER RIGHT SHALL BE AN APPURTENANCE TO THE BASE
6 PROPERTY, TO PROVIDE THAT WHEN A FEDERAL GRAZING PERMIT IS TRANSFERRED
7 OR CONVEYED TO A NEW OWNER THE ASSOCIATED STOCKWATER RIGHTS MAY ALSO
8 BE CONVEYED UNDER CERTAIN CONDITIONS AND BECOME APPURTENANT TO THE NEW
9 OWNER'S BASE PROPERTY AND TO MAKE A TECHNICAL CORRECTION.
10

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

12 SECTION 1. That Section 42-113, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 42-113. IN-STREAM AND OTHER WATER USE FOR LIVESTOCK. (1) A permit
15 may be issued, but shall not be required for appropriation of water for the
16 in-stream watering of livestock. In the consideration of applications for
17 permits to appropriate water for other purposes, the director of the de-
18 partment of water resources shall impose such reasonable conditions as are
19 necessary to protect prior downstream water rights for in-stream livestock
20 use, and in the administration of the water rights on any stream, the direc-
21 tor, and the district court where applicable, shall recognize and protect
22 water rights for in-stream livestock use, according to priority, as they
23 do water rights for other purposes. As used in this section, the phrase
24 "in-stream watering of livestock" means the drinking of water by livestock
25 directly from a natural stream, without the use of any constructed physical
26 diversion works.

27 (2) For rights to the use of water for in-stream or out-of-stream live-
28 stock purposes, associated with grazing on federally owned or managed land,
29 established under the diversion and application to beneficial use method of
30 appropriation:

31 (a) The priority date shall be the first date that water historically
32 was used for livestock watering associated with grazing on the land,
33 subject to the provisions of section 42-222(2), Idaho Code; and

34 (b) The water right shall be an appurtenance to the base property. When
35 a federal grazing permit is transferred or otherwise conveyed to a new
36 owner, the associated stockwater rights may also be conveyed and, upon
37 approval of an application for transfer, shall become appurtenant to
38 the new owner's base property.

39 (3) This subsection is established to promote the watering of livestock
40 away from streams and riparian areas, but not to require fencing of livestock
41 away from streams and riparian areas.

1 (a) Any person having an established water right or appropriating wa-
2 ter for in-stream watering of livestock pursuant to subsection (1) of
3 this section may, in addition to the in-stream use, divert the water for
4 livestock use away from the stream or riparian area. The diversion may
5 occur only if the following conditions are met:

6 (i) The water is diverted from a surface water source to a trough
7 or tank through an enclosed water delivery system;

8 (ii) The water delivery system is equipped with an automatic shut-
9 off or flow control mechanism or includes a means for returning un-
10 used water to the surface water source through an enclosed deliv-
11 ery system, and the system is designed and constructed to allow the
12 rate of diversion to be measured;

13 (iii) The diversion is from a surface water source to which the
14 livestock would otherwise have access and the watering tank or
15 trough is located on land from which the livestock would have ac-
16 cess to the surface water source from which the diversion is made;

17 (iv) The diversion of water out of the stream in this manner does
18 not injure other water rights;

19 (v) The use of the water diverted is for watering livestock; and

20 (vi) The bed and banks of the source shall not be altered as that
21 term is defined in section 42-3802, Idaho Code, except that an in-
22 let conduit may be placed into the source in a manner that does not
23 require excavation or obstruction of the stream channel, unless
24 additional work is approved by the director of the department of
25 water resources.

26 (b) The amount of water diverted for watering of livestock in accor-
27 dance with this subsection shall not exceed thirteen thousand (13,000)
28 gallons per day per diversion.

29 (c) Before construction and use of a water diversion and delivery sys-
30 tem as provided in this subsection, the person or other entity propos-
31 ing to construct and use the system shall give notice to the director of
32 the department of water resources. Separate notice for each diversion
33 shall be provided on a form approved by the director and shall be accom-
34 panied by a twenty-five dollar (\$25.00) fee for each notice filed. Fil-
35 ing of the notice as herein provided shall serve as a substitute for fil-
36 ing a notice of claim to a water right pursuant to section 42-243, Idaho
37 Code. The director may provide notice to holders of water rights and
38 others as the director deems appropriate.

39 (d) Compliance with the provisions of this subsection is a substitute
40 for the requirements for transfer proceedings in section 42-222, Idaho
41 Code. In the administration of water diverted for livestock watering
42 pursuant to this subsection, the director, and the district court where
43 applicable, shall recognize and protect water rights for out-of-stream
44 livestock watering use pursuant to this subsection as they would
45 in-stream livestock watering use. The priority date for out-of-stream
46 watering of livestock pursuant to this subsection shall be the first
47 date that water historically was used for livestock watering and shall
48 not be altered due to the diversion out-of-stream.

49 (e) Any water right holder who determines that diversion or use of wa-
50 ter under the provisions of this subsection is depriving the water right

1 holder of water to which the water right holder is entitled may petition
2 the director of the department of water resources to curtail the diver-
3 sion or use of water for livestock purposes. Upon such petition, the di-
4 rector shall cause an investigation to be made and may hold hearings or
5 gather information in other ways. If the director finds that an inter-
6 ference is occurring, the director may order curtailment of diversion
7 or use of the water or may require the water diversion and delivery sys-
8 tem to be modified to prevent injury to other water rights. Any person
9 feeling aggrieved by an order of the director in response to a petition
10 filed as herein provided shall be entitled to review as provided in sec-
11 tion 42-1701A, Idaho Code.

12 (4) No change in use of any water right used for watering of livestock,
13 whether proposed under this section or section 42-222, Idaho Code, shall be
14 made or allowed without the consent of the permittee in the federal grazing
15 allotment, if any, in which the water right is used for the watering of live-
16 stock.