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## Joyce Livestock Co. v. United States (In re SRBA Case No. 39576), Subcase Nos. 55-10135, 55-11385 and 55-12452, 2007 WL 428947 (Idaho Feb. 9, 2007)

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Joyce Livestock Co. v. United States (In re SRBA Case No. 39576), Subcase Nos. 55-10135, 55-11385 and 55-12452, 2007 WL 428947 (Idaho Feb. 9, 2007)

## IDAHO

**Joyce Livestock Co. v. United States (In re SRBA Case No. 39576), Subcase Nos. 55-10135, 55-11061, 55-11385 and 55-12452, 2007 WL 428947 (Idaho Feb. 9, 2007)** (holding: (1) that a rancher's predecessors obtained water rights on federal land for stock watering by simply applying the water to a beneficial use; (2) that water rights obtained by ranchers are appurtenant to their patented lands; (3) that deeds to land that do not specifically exclude water rights convey those rights; (4) that grazing permit applications did not constitute an attempt to abandon any water rights or preclude findings that the priority date of a water right predated the application; and (5) that the United States did not acquire water rights through appropriations made by individuals using the water on federal land with federal permission).

Joyce Livestock Company ("Joyce") filed a claim for instream stock water rights in Jordan Creek, asserting a priority date of 1898. The United States subsequently filed overlapping claims for instream stock water rights, based on Joyce's use of the water, with a priority date of 1934. A special master heard the issue and ruled that Joyce's claim was inadequate, because its predecessors did not show intent to acquire a water right by excluding others from using their water source. The special master determined that the United States should be granted the water right with a priority date of 1934, based on the date of the enactment of the Taylor Grazing Act. The special master stated that the Taylor Grazing Act demonstrated an intent to appropriate water, through management of the rangeland and regulation of stock watering.

The District Court for the Fifth Judicial District of the State of Idaho reviewed the special master's determinations, and held that Joyce should be granted a water right. The district court found, however, that the earliest possible priority date that Joyce could claim was April 26, 1935, the date that Joyce's predecessor applied for a grazing permit under the Taylor Grazing Act. The district court further ruled that the United States had no claim to the water rights, because it had not actually appropriated any water. The district court stated that the United States could only claim water rights through Joyce's appropriation of the water if Joyce or its predecessors were acting as agents of the United States. Both the United States and Joyce appealed the decision.

The Supreme Court of Idaho first upheld the district court's decision that Joyce had acquired a water right on federal land. The United States argued that Joyce's predecessors could not obtain a water right prior to the Taylor Grazing Act, because they did not have the right to exclude others from the water sources located on federal lands. The court rejected the United States' argument, reasoning that exclusive access is not a requirement of a water right. The court cited precedent

establishing that under the Idaho constitution, prior to the creation of the mandatory permit process in 1971, individuals properly appropriated water for stock watering by actually diverting the water and putting it to a beneficial use. The court further ruled that the water rights obtained by ranchers by watering their livestock on federal lands were appurtenant to their patented properties. It stated that water rights appurtenant to real property are conveyed with the real property, unless the seller specifically reserves them. Since Joyce's predecessors did not reserve the water rights in the deeds they executed to Joyce, the court held that Joyce was the owner of those water rights.

The court next considered if the district court properly determined that the earliest possible priority date for the claim was 1935. The district court established this priority date because Joyce's predecessor did not claim that he had water rights on federal lands when he applied for a grazing permit. The court ruled that the application did not ask if the applicant claimed any water rights, and thus Joyce's predecessor did not abandon any water rights he may have had by failing to list them. The question on the application asked if the applicant owned or controlled any source of water. The court stated that since a water right holder does not own or control the source of water, the question was insufficient to demonstrate the existence of water rights. The court vacated the district court's priority date, and remanded the case, instructing the district court to consider when Joyce's predecessors actually first made a beneficial use of the water for stock watering.

Finally, the court upheld the district court's decision that the United States did not have a claim to water rights for stock watering. The United States argued that when it allowed others to use the waters on federal lands for stock watering, through the Bureau of Land Management's management plan under the Taylor Grazing Act, the United States put the water to a beneficial use. The court rejected the United States' argument, ruling that the United States could not claim water rights through the beneficial use of others. Had the United States used water on federal lands to water its livestock, it would have established a right to the water. However, under Idaho law, a landowner does not own a water right permissively obtained on its land by another appropriator, unless that appropriator is an agent of the landowner. Here, Joyce's predecessors were not agents of the United States, so the United States did not obtain a water right through their appropriations.

The United States further argued that, under the supremacy clause, Idaho law should not be applied in interpretation of the Taylor Grazing Act. Even though the act did not come into conflict with any provision of Idaho water law, the United States claimed that the supremacy clause should still apply because Idaho water laws are contrary to the purpose of the act, and would allow certain ranchers to monopolize the use of water on federal lands. The court rejected this ar-

gument, finding that Joyce only has a right to the water, that the right does not give Joyce a possessory interest in the federal land, and thus that Joyce's right does not threaten the ability of others to use the federal lands.

The court upheld the district court's ruling that Joyce had a right to water, and that the United States did not have a water right. It vacated the district court's priority date, and remanded for consideration of when Joyce's predecessors actually appropriated water for stock watering.

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***In re Sanders Beach, 147 P.3d 75 (Idaho 2006)*** (holding a lake's vegetation line may be used to determine its ordinary high water mark only under specific conditions, and owners of lakeshore property do not have littoral rights to exclude public from exposed lake bed between the ordinary high water mark and ordinary low water mark).

Lake Coeur d'Alene ("Lake") is a navigable lake located within the City of Coeur d'Alene, Idaho. On October 19, 2004, the city of Coeur d'Alene and Kootenai County Prosecuting Attorney initiated an action in the First Judicial District of Idaho to determine the ordinary high water mark ("OHWM") of Sanders Beach, which is part of the Lake's shoreline. On June 14, 2005, Sanders Beach property owners filed a motion for summary judgment, seeking a ruling that the owners' littoral rights permitted them to exclude the public from any exposed lake bed between the OHWM and the ordinary low water mark ("OLWM"). The district court determined, based on the vegetation line, that the OHWM was 2130 feet above mean sea level. In addition, the district court rejected the property owners' right to exclude the public from exposed lake bed between the OHWM and the OLWM. On appeal, the Idaho Supreme Court considered whether the OHWM was 2130 feet, and whether lakeshore property owners' littoral rights permitted them to exclude the public from exposed land between the OHWM and OLWM.

The court first addressed whether 2130 feet was the accurate OHWM of the Lake. The court explained the vegetation line is the line along a lake's shore resulting from water remaining at a level long enough to deprive the underwater soil of vegetation. The court was careful to point out that the vegetation line may be used to determine the OHWM only in certain circumstances. The line must be at a consistent elevation along the whole lake and cannot vary from place to place, cannot be determined by just one particular spot, and must be the line that existed at the time the state joined the Union. The court held that the district court erroneously used the vegetation test because it recognized varying vegetation lines along the lake, and because the court did not know the vegetation line's elevation in 1890,