FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff - Appellant*, v. STATE OF IDAHO; IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho; MATHEW WEAVER, in his official capacity as the Director of the Idaho Department of Water Resources, *Defendants - Appellees*, IDAHO HOUSE OF REPRESENTATIVES; IDAHO SENATE; CHUCK WINDER; MIKE MOYLE; JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO.; IDAHO FARM BUREAU FEDERATION, INC., *Intervenor-Defendants - Appellees*.	No. 25-947 D.C. No. 1:22-cv-00236-DCN OPINION

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UNITED STATES OF AMERICA, *Plaintiff - Appellee*, v. STATE OF IDAHO; IDAHO DEPARTMENT OF WATER RESOURCES; MATHEW WEAVER, *Defendants - Appellants*, and IDAHO HOUSE OF REPRESENTATIVES, IDAHO SENATE, CHUCK WINDER, MIKE MOYLE, JOYCE LIVESTOCK CO., LU RANCHING CO., PICKETT RANCH & SHEEP CO., IDAHO FARM BUREAU FEDERATION, INC., *Intervenor-Defendants*.	No. 25-1191 D.C. No. 1:22-cv-00236-DCN
UNITED STATES OF AMERICA, *Plaintiff - Appellee*, v. STATE OF IDAHO, IDAHO	No. 25-1203 D.C. No. 1:22-cv-00236-DCN

DEPARTMENT OF WATER RESOURCES, MATHEW WEAVER,

Defendants,

IDAHO HOUSE OF REPRESENTATIVES; IDAHO SENATE; JASON MONKS, in his official capacity as Majority Leader of the House; KELLY ANTHON, in his official capacity as President Pro Tempore of the Senate,

Intervenor-Defendants - Appellants,

MIKE MOYLE, JOYCE LIVESTOCK CO., LU RANCHING CO., PICKETT RANCH & SHEEP CO., IDAHO FARM BUREAU FEDERATION, INC.,

Intervenor-Defendants.

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STATE OF IDAHO, IDAHO DEPARTMENT OF WATER RESOURCES, MATHEW

No. 25-1214
D.C. No.
1:22-cv-00236-DCN

WEAVER,

Defendants,

IDAHO FARM BUREAU FEDERATION, INC.; JOYCE LIVESTOCK CO.; LU RANCHING CO.; PICKETT RANCH & SHEEP CO.,

Intervenor-Defendants - Appellants,

IDAHO HOUSE OF REPRESENTATIVES, IDAHO SENATE, CHUCK WINDER, MIKE MOYLE,

Intervenor-Defendants.

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Argued and Submitted April 14, 2026
Portland, Oregon

Filed September 18, 2026

Before: John B. Owens, Jennifer Sung, and Holly A. Thomas, Circuit Judges.

Opinion by Judge Sung

SUMMARY*

Water Rights / Idaho Law

In a suit brought by the United States against the State of Idaho and others challenging a series of Idaho statutes known as the "stockwater amendments," the panel (1) affirmed the district court's jurisdictional holdings, (2) reversed the district court's holding that Idaho Code § 42-224 is constitutional as applied to the United States, and (3) affirmed the district court's holding that Idaho Code § 42-113(2)(b) is facially unconstitutional.

Idaho enacted the stockwater amendments after a state court issued a final decree in the Snake River Basin Adjudication ("SRBA"), which confirmed thousands of federal stockwater rights on federal land. The United States argued that the stockwater amendments enacted standards and procedures aimed at divesting the United States of its SRBA-decreed stockwater rights.

The panel affirmed the district court's jurisdictional holdings. First, the doctrine of prior exclusive jurisdiction—which provides that when one court is exercising *in rem* jurisdiction, a second court will not assume *in rem* jurisdiction over the same *res*—did not apply. Although the doctrine is a mandatory jurisdictional limitation that applies in the water rights context, it applies only to actions that are *in rem*, and this action is not *in rem*. Second, the requirements for *Burford* abstention—which allows federal courts to decline to rule on an essentially local issue arising

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

out of a complicated state regulatory scheme—were not met, and therefore the district court did not have discretion to abstain.

The panel reversed the district court's holding that Idaho Code § 42-224—which establishes a procedure by which a party can initiate an action to determine whether a holder of stockwater rights has forfeited those rights—is constitutional as applied to the United States. Reading the stockwater amendments as a whole, the panel agreed with the United States that § 42-224 is part of a statutory scheme that is designed to divest the United States of its SRBA-decreed water rights. Section 42-224 discriminates against the United States in violation of the Supremacy Clause, which generally immunizes the Federal Government from state laws that directly regulate or discriminate against it. Accordingly, the panel reversed the district court's denial of the United States' motion for summary judgment with respect to its as-applied challenge to § 42-224.

The panel affirmed the district court's holding that Idaho Code § 42-113(2)(b)—which changes the appurtenance rules for stockwater rights acquired under the state-law constitutional method but only if those rights are associated with grazing on federally owned or managed land—is facially unconstitutional under the Supremacy Clause. Because § 42-113(2)(b) regulates only stockwater rights associated with land owned by the United States and creates a mechanism by which permittees can divest the United States of its stockwater rights, § 42-113(2)(b) unlawfully discriminates against the United States.

COUNSEL

John L. Smeltzer (argued), Stephen G. Bartell, Thomas K. Snodgrass, Jeffrey N. Candrian, and John E. Bies, Attorneys; Environment & Natural Resources Division; Adam R.F. Gustafson, Acting Assistant Attorney General; United States Department of Justice, Washington, D.C.; Christine G. England, Assistant United States Attorney, Office of the United States Attorney, United States Department of Justice, Boise, Idaho; for Plaintiff-Appellant.

Michael C. Orr (argued) and Joy M. Vega, Deputy Attorneys General; Scott L. Campbell, Deputy Attorney General, Chief, Energy and Natural Resources Division; Raúl R. Labrador, Idaho Attorney General; Office of the Idaho Attorney General, Boise, Idaho; for Defendants-Appellees.

Katy D. Riker, William G. Myers III, and Murray D. Feldman, Holland & Hart LLP, Boise, Idaho; Norman M. Semanko, Parsons Behle & Latimer, Boise, Idaho; Kole W. Kelley and Ivan L. London, Mountain States Legal Foundation, Lakewood, Colorado; for Intervenor-Defendants-Appellees.

OPINION

SUNG, Circuit Judge:

This case concerns the constitutionality of a series of Idaho statutes referred to as the "stockwater amendments." Idaho enacted the stockwater amendments after a state court issued a final decree in the Snake River Basin Adjudication ("SRBA"), which confirmed thousands of federal stockwater rights on federal land. The stockwater amendments affect the United States' stockwater rights in multiple ways, including by changing rules, such as the appurtenance rules for stockwater rights on federal land, and by establishing new rules, such as a procedure for divesting a rightsholder of its stockwater rights for alleged forfeiture. The United States sued the State of Idaho, the Idaho Department of Water Resources ("IDWR"), and the Director of IDWR (collectively, "the State of Idaho"), alleging that several provisions of the stockwater amendments are unconstitutional. Two groups intervened as defendants: (1) The Idaho House of Representatives, the Speaker of the Idaho House, the Idaho Senate, and the President Pro Tempore of the Idaho Senate (collectively, "Idaho Legislature"), and (2) Joyce Livestock, Joyce Livestock Co., LU Ranching Co., Pickett Ranch & Sheep Co., and the Idaho Farm Bureau Federation (collectively, "Ranchers").

At summary judgment, the district court rejected arguments that it lacked jurisdiction over the claims under the doctrines of *Rooker-Feldman*, prior exclusive jurisdiction, *Burford* abstention, and claim preclusion. On the merits, the district court concluded that Idaho Code § 42-224 is constitutional as applied to the United States, but that Idaho Code §§ 42-113(2)(b), 42-502, and 42-504 are facially unconstitutional under the Supremacy Clause.

The United States appeals the district court's conclusion that § 42-224 is constitutional as applied. The State Defendants (the State of Idaho and the Idaho Legislature) and Ranchers cross-appeal the district court's conclusions that it has jurisdiction and that § 42-113(2)(b) is facially unconstitutional. We affirm the district court's jurisdictional holdings; reverse its holding that § 42-224 is constitutional as applied to the United States; and affirm its holding that § 42-113(2)(b) is facially unconstitutional.

I. BACKGROUND

A. The Taylor Grazing Act and SRBA

In 1934, Congress enacted the Taylor Grazing Act, which provided for the division of public rangelands into federal "grazing districts," known as "allotments," and authorized the Secretary of the Interior to issue permits to ranchers so they could graze livestock on federal lands. 43 U.S.C. §§ 315, 315b; *see also Pub. Lands Council v. Babbitt*, 529 U.S. 728, 733-34 (2000).

In 1985, Idaho enacted legislation requiring a general adjudication in state court of all water rights in the Snake River Basin—the proceedings that became known as the SRBA. *See* Idaho Code § 42-1406A (uncodified 1994). From 1987 to 2014, the state court adjudicated hundreds of thousands of water rights.

During the SRBA, the United States filed numerous claims, including thousands of claims for stockwater rights under the state-law "constitutional method" of appropriation. Under that method, a party validly appropriates stockwater by "putting it to beneficial use," and watering livestock qualifies as a beneficial use. *Joyce*

Livestock Co. v. United States, 156 P.3d 502, 509, 512 (Idaho 2007).[1]

The SRBA court issued a final unified decree in 2014. The final decree confirmed that the United States held thousands of stockwater rights that it claimed under the constitutional method. The final decree is "conclusive as to the nature and extent of all water rights" with a priority date before November 19, 1987 (subject to some unrelated exceptions), and binding against all persons. *In re SRBA Case No. 39576 Subcase No. 37-00864*, 429 P.3d 129, 133 (Idaho 2018); Idaho Code § 42-1420(1).

B. Joyce Livestock

When the United States filed its constitutional method claims for stockwater rights during the SRBA, it informed its federal permittees of its claims, and most neither objected nor filed competing claims. But some permittees, including the Joyce Livestock Company ("Joyce"), did so.

Joyce argued that, because its predecessor had first watered livestock on federal land in 1898, before the federal government established its permitting program, its predecessor acquired stockwater rights under the constitutional method. *Joyce Livestock Co.*, 156 P.3d at 505. It was undisputed that the United States had not "used any of the water at issue to water its [own] livestock." *Id.* at 519. The United States argued that it acquired water rights merely by owning and managing the land used by Joyce and its predecessors. *Id.* at 506, 518.

[1] The constitutional method of appropriation generally requires both diversion of water from the water source and beneficial use, but no actual diversion is needed to establish a valid appropriative water right for livestock watering. *Joyce*, 156 P.3d at 508.

The Idaho Supreme Court held that the United States did not acquire water rights merely by owning and managing the land. *Id*. at 518–19. It then explained that the United States did not own the rights acquired by Joyce or its predecessors. The court recognized that the United States had "permitted ranchers to graze their livestock on public lands" with "implied license" before the enactment of the Taylor Grazing Act and with "express permission" afterwards. *Id*. at 519 (citation omitted). But, the court explained, "[u]nder 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." *Id*. And, in the *Joyce* litigation, the United States "d[id] not contend that any of the ranchers who obtained the water rights at issue did so as an agent of the United States." *Id*. Because the United States did not argue that Joyce or its predecessors acted as its agents, the court's opinion in *Joyce* does not address whether or when an agency relationship between the United States and federal grazing permittees exists.

C. The Stockwater Amendments

In 2017, several years after the SRBA court issued the final unified decree, Idaho repealed and replaced "Chapter 5" of its water code. *See* 2017 Idaho Sess. Laws, Ch. 178 (adopting Idaho Code §§ 42-501 to 42-506). As amended, § 42-501 states: "It is the intent of the Legislature to codify and enhance . . . 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." Idaho Code § 42-501 ("Legislative Intent"); *see also* 2017 Idaho Sess. Laws, Ch. 178. Idaho made relevant amendments to Chapter 5 and other parts of the water code in 2018, 2020, and 2022. *See* 2018 Idaho Sess. Laws, Chs.

146 & 320; 2020 Idaho Sess. Laws, Ch. 253; 2022 Idaho Sess. Laws, Ch. 215. These statutory changes are referred to collectively as the "stockwater amendments."

The United States contends that the stockwater amendments do not merely codify *Joyce* but instead enact standards and procedures aimed at divesting the United States of its SRBA-decreed stockwater rights. Specifically, the United States challenges four statutory provisions enacted or modified by those amendments: Idaho Code §§ 42-224, 42-113(2)(b), 42-502, and 42-504.

Under § 42-224, the stockwater amendments establish a procedure by which a party can initiate an action to determine whether a holder of stockwater rights has forfeited those rights under Idaho Code § 42-222(2). Section 42-222(2) was first enacted in 1903, and it provides that a stockwater right is "lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated." Under the new procedure established by the stockwater amendments, if the Director of the Idaho Department of Water Resources receives "a petition . . . that a stockwater right has not been put to beneficial use for a term of five (5) years," the Director must determine whether the petition "presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2)." *Id*. § 42-224(1). If so, the Director must issue an order to show cause why the right has not been forfeited. *Id*. § 42-224(2). Under § 42-224(4), "[i]f the order affects a stockwater right where all or a part of the place of use is on federal or state grazing lands," the Director "shall not issue an order to show cause" where the Director has or timely receives "written evidence signed by the principal and the agent . . . that a principal/agent relationship existed" during the alleged five-year term of forfeiture "or currently

exists between the owner of the water right as principal and a permittee or lessee as agent for the purpose of obtaining or maintaining the water right."

If the Director issues a show-cause order, the rightsholder may request a hearing, after which the Director "must issue an order regarding forfeiture." Idaho Code § 42-224(6), (8). At that point, the State of Idaho must initiate a civil action in a state district court requesting a declaration that the right has been forfeited, and the district court must issue an order resolving the forfeiture dispute. *Id*. § 42-224(10), (12). In the state court proceeding, the Director's "order determining forfeiture shall constitute prima facie evidence that the right has been forfeited." *Id*. § 42-224(11). The district court concluded that § 42-224 is constitutional as applied to the United States, and the United States appeals that holding.

Through § 42-113(2)(b), the stockwater amendments change the rules regarding appurtenance for stockwater rights acquired under the constitutional method of appropriation—but only if those rights are "associated with grazing on federally owned or managed land." The general rule in Idaho is that water rights acquired under the constitutional method (meaning, diverted for beneficial use) are appurtenant to the land where the water "is being applied." *Id*. § 42-101; *see also id*. § 42-1402 (decreed rights "shall become a part of the land on which the water is used"). Section 42-113(2)(b) changes that general rule only for stockwater rights "associated with grazing on federal[]" land by providing: "For rights to the use of water for in-stream or out-of-stream livestock purposes, associated with grazing on federally owned or managed land, established under the diversion and application to beneficial use method of appropriation … [t]he water right shall be an appurtenance

to the base property." And "[w]hen a federal grazing permit is transferred or otherwise conveyed to a new owner, the associated stockwater rights may also be conveyed and, upon approval of an application for transfer, shall become appurtenant to the new owner's base property." *Id*. § 42-113(2)(b). The district court concluded that § 42-113(2)(b) facially discriminates against the United States in violation of the Supremacy Clause, and Defendants challenge that holding in their cross-appeal.

Through § 42-502, the stockwater amendments restrict the United States' ability to acquire stockwater rights under Idaho law. Section 42-501 provides: "No agency of the federal government shall acquire a stockwater right unless the agency owns livestock and puts the water to beneficial use." The district court concluded that § 42-502 facially discriminates against the United States, and Defendants do not appeal that ruling.

Through § 42-504, the stockwater amendments impose restrictions on the use of stockwater rights that apply only to the federal government and holders of federal grazing permits. Section 42-504 provides:

> 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.

The district court concluded that § 42-504 facially discriminates against the United States, and Defendants do not appeal that ruling.

In sum, on appeal, it is undisputed that two of the stockwater amendments, §§ 42-502 and 42-505, facially discriminate against the United States in violation of the Supremacy Clause. The parties dispute only whether § 42-224 is unconstitutional as applied to the United States, and whether § 42-113 is facially unconstitutional.

II. JURISDICTION

We have jurisdiction over the appeal and cross-appeals under 28 U.S.C. § 1291. On appeal, the State of Idaho argues the district court did not have jurisdiction to hear the United States' challenge to § 42-224 under the doctrines of prior exclusive jurisdiction and *Burford* abstention.[2]

[2] The district court held that § 42-222(2) is constitutional. The United States does not appeal that holding; indeed, it contends it "never brought a stand-alone challenge to § 42-222(2)," but rather challenged § 42-222(2) only "as applied together with the stockwater amendments." Still, the State of Idaho contends the district court erred by deciding the validity of § 42-222(2); in its view, the United States could have challenged the validity of § 42-222(2) during the SRBA and therefore the present challenge is barred by claim preclusion. The State of Idaho is incorrect. The United States is not "relitigating issues that were or could have been raised" in the SRBA. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). Although § 42-222 was enacted before the SRBA, the United States could not have brought its present challenge during the SRBA because it contests § 42-222 only "as applied together with the stockwater amendments," which did not exist during the SRBA.

A. Prior Exclusive Jurisdiction

We review de novo the district court's conclusion that the doctrine of prior exclusive jurisdiction does not apply. *Gila River Indian Cmty. v. Schoubroek*, 145 F.4th 1058, 1069 (9th Cir. 2025).

Under the doctrine of prior exclusive jurisdiction, "when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*." *Id*. at 1070 (citation omitted). The prior exclusive jurisdiction doctrine is a "mandatory jurisdictional limitation" that applies in the water rights context. *State Eng'r of State of Nev. v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians of Nev.*, 339 F.3d 804, 810 (9th Cir. 2003).

This doctrine, however, applies only to actions that are *in rem*. "An action is *in rem* when it determines interests in specific property as against the whole world." *Goncalves By & Through Goncalves v. Rady Child.'s Hosp. San Diego*, 865 F.3d 1237, 1254 (9th Cir. 2017) (citation omitted) (cleaned up). We look "behind the form of the action to the gravamen of a complaint and the nature of the right sued on" to determine whether an action is *in rem*, considering whether the relief requested would "interfere with the jurisdiction or control by the state court over the *res*." *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 592–93 (9th Cir. 2022) (citations omitted).

This action is not *in rem*. The United States challenges the constitutionality of the Idaho statutes. It does not assert claims over new water rights or attempt to relitigate already-decreed water rights, so it is not an action to "determine[] interests in specific property as against the whole world." *Goncalves*, 865 F.3d at 1254 (citation omitted). Further, the

district court did not need to "assume *in rem* jurisdiction over" any particular water rights to exercise jurisdiction in this case. *Gila River*, 145 F.4th at 1070 (citation omitted). Thus, we agree with the district court that the prior exclusive jurisdiction doctrine does not apply.

B. *Burford* Abstention

"We review de novo whether the requirements for *Burford* abstention have been met," and we review a district court's decision not to abstain for abuse of discretion. *Blumenkron v. Multnomah County*, 91 F.4th 1303, 1312 (9th Cir. 2024).

Burford abstention allows federal courts to "decline to rule on an essentially local issue arising out of a complicated state regulatory scheme." *United States v. Morros*, 268 F.3d 695, 705 (9th Cir. 2001) (citation omitted). But the doctrine is an "extraordinary and narrow exception" to a court's duty "to adjudicate a controversy properly before it." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996) (citation omitted). It does not apply whenever a complex state regulatory scheme is implicated or even when there is "a 'potential for conflict' with state regulatory law or policy." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 362 (1989) (citation omitted).

There are three requirements for applying *Burford* abstention:

> [F]irst[,] that the state has chosen to concentrate suits challenging the actions of the agency involved in a particular court; second, that federal issues could not be separated easily from complex state law issues with respect to which state courts

> might have special competence; and third, that federal review might disrupt state efforts to establish a coherent policy.

City of Tucson v. U.S. W. Commc'ns, Inc., 284 F.3d 1128, 1133 (9th Cir. 2002) (quoting *Morros*, 268 F.3d at 705). None are met here.

First, Idaho has chosen to concentrate suits challenging the IDWR's determination of water rights in its state courts, but the United States does not challenge the IDWR's actions. It challenges the federal constitutionality of Idaho statutes. Idaho has not concentrated—and cannot concentrate—suits challenging the federal constitutionality of state statutes in its courts.

Second, state courts have special competence in resolving water right disputes under state law, but this case does not require resolution of such disputes. Rather, it requires us to determine whether state statutes are valid under the U.S. Constitution, and Idaho state courts have no special competence in evaluating such issues.

Third, federal review does not disrupt state efforts to establish a coherent policy. We agree with the district court that a state policy is not "coherent" if it is unconstitutional, and "there is . . . no doctrine requiring abstention merely because resolution of a federal question may result in the overturning of a state policy." *Zablocki v. Redhail*, 434 U.S. 374, 379 n.5 (1978).

Because the requirements for *Burford* abstention are not met, the district court did not have discretion to abstain.

III. THE UNITED STATES' APPEAL

"We review the constitutionality of a statute de novo." *Nguyen v. Bonta*, 140 F.4th 1237, 1240 (9th Cir. 2025).

The United States contends that § 42-224 is unconstitutional as applied to federal stockwater rights on federal grazing lands under the Supremacy Clause because it is part of a statutory scheme designed to effectively divest the United States of its SRBA-decreed stockwater rights. The State Defendants respond that § 42-224 merely creates a procedure for enforcing existing forfeiture standards. To understand the parties' arguments and our resolution of this issue, it helps to understand the parties' conflicting views about the basis for the United States' SRBA-decreed stockwater rights. After we provide that background, we address the constitutionality of § 42-224.

A. The United States' SRBA-Decreed Stockwater Rights

The United States contends that it acquired its SRBA-decreed stockwater rights through grazing permittees who acted as agents of the United States for the purposes of acquiring water rights when they watered their livestock on federal land.

The State of Idaho contends that the United States lacked any agency relationship with its permittees—and that the sole basis for the United States' SRBA-decreed stockwater rights was the United States' ownership and management of federal grazing lands—while noting that, under *Joyce*, mere ownership of land is not a valid basis for acquiring stockwater rights under the constitutional method.

It is undisputed that the United States had no express agency agreements with its permittees. But the United States

contends it had implied agency relationships with permittees "who initiate[d] water use under federal permits and/or in connection with federally approved or funded improvements."

The State of Idaho contends that, under *Joyce*, an agency relationship cannot be implied based solely on a federal grazing permit. But *Joyce* did not address whether or when an implied agency relationship is established between the United States and its permittees under the permitting program. *See supra* Section I.B. The Idaho Supreme Court held that Joyce's predecessor acquired stockwater rights on its own behalf when it first watered livestock on the public domain *before* the Taylor Grazing Act established the federal permitting program, and that the predecessor and its successors retained their pre-existing water rights when they became federal permittees. *Joyce Livestock Co.*, 156 P.3d at 509–21. That does not mean, however, that a permittee cannot act as the United States' agent when it has no pre-existing private water rights and first uses water on federal land as a permittee. *See id*. Defendants do not cite any authority holding that an implied agency relationship is not established under such circumstances, and we have found none.

The State Defendants cite *McInturff v. Shippy*, 447 P.3d 937 (Idaho 2019), but that case is inapposite. In *McInturff*, tenants obtained a water-right license to irrigate crops the tenants were growing on the landowner's property, and the license listed the tenants as the owners of the water right. *Id*. at 942–43. Over thirty years later, the landowner's successor claimed that it owned the licensed water right, not the tenants' successor. *Id*. at 943–44. The Idaho Supreme Court rejected the successor landowner's claim for multiple reasons. *Id*. at 943–46. Relevant here, the court concluded

that there was no evidence that the landowner had an agency relationship with the tenant, in part because the landowner contended that no lease with the tenant ever existed. *Id*. at 946. In that context, the court explained that "[m]erely allowing the tenant to use the water on land owned by the landlord . . . [wa]s not enough to establish an agency relationship between landowner and tenant." *Id*. But here, the United States does not merely rely on the fact that it allows permittees to use water on federal land; rather, it contends that an implied agency relationship exists for the purpose of acquiring water rights when it issues a grazing permit under the terms and conditions of the federal grazing program and the permittee has no pre-existing private stockwater right.

The State of Idaho also argues that, because neither the SRBA's partial decrees nor the Final Unified Decree expressly state that the United States acquired its rights through permittees acting as its agents, we cannot infer that was the basis for the SRBA-decreed rights. The State, however, cites no authority holding that the basis of a decreed stockwater right cannot be implied where, as here, the decree does not expressly state otherwise. The State of Idaho cites only *United States v. Black Canyon Irrigation Dist.*, 408 P.3d 52 (Idaho 2017). But in that case, the decrees at issue expressly granted rights for "specific, measurable quantities of water," and the United States later filed claims asserting storage water rights based on the amount of water needed to complete "one physical fill of its reservoirs." *Id*. at 55–56, 61. The court rejected those late claims because "[t]he quantities set forth in the decrees are binding and must control." *Id*. at 61. Unlike in *Black Canyon*, there is no conflict between the United States' position and the SRBA decrees' express terms.

B. Section 42-224 Is Unconstitutional as Applied to the United States

The Supremacy Clause "generally immunizes the Federal Government from state laws that [1] directly regulate or [2] discriminate against it." *Nwauzor v. GEO Grp., Inc.*, 127 F.4th 750, 759 (9th Cir. 2025) (citation omitted) (alterations in original). A state law unlawfully discriminates against the federal government by singling it out "for less favorable treatment" or regulating it "unfavorably on some basis related to [its] governmental status." *United States v. Washington*, 596 U.S. 832, 839 (2022) (quotation marks and citations omitted). The United States contends that § 42-224 singles the federal government out for less favorable treatment because it was enacted for the purpose of divesting the United States of its SRBA-decreed stockwater rights and effectively facilitates such divestments.

As explained, § 42-224 establishes a new procedure for determining whether a holder of stockwater rights has forfeited those rights. *See supra* pp. 12–13. To recap: Under § 42-224, if the Director of the Idaho Department of Water Resources receives a petition and determines there is prima facie evidence that a stockwater right has not been put to beneficial use for a term of five (5) years, the Director must issue a show-cause order. Idaho Code § 42-224(1)–(2). The rightsholder may then request a hearing, after which the Director must issue an order regarding forfeiture. *Id*. § 42-224(6), (8). Then, the State of Idaho must initiate a civil action in state district court requesting a declaration regarding the forfeiture, and the district court must issue an order resolving the dispute. *Id*. § 42-224(10)–(12). If, however, the show-cause order will affect stockwater rights on federal or state grazing lands, the Director must mail a

copy of the order to the rightsholders before officially issuing it. *Id*. § 42-224(4). If the Director receives written evidence, signed by both principal and agent, showing an agency relationship existed between the owner of the water right and a permittee for the purpose of obtaining or maintaining the water right during the relevant time period, then the Director shall not issue the show-cause order. *Id*.

Section 42-224's provisions—except for subsection 42-224(4)—appear facially neutral, applying to all holders of state-law stockwater rights. However, we must construe § 42-224 in its statutory context, particularly the other stockwater amendments. Section 42-501 expressly states the legislative purpose of the stockwater amendments and declares:

> 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.

This legislative statement misconstrues *Joyce*: the Idaho Supreme Court did not actually hold that the federal government can acquire stockwater rights *only* by owning livestock. *See Joyce Livestock Co.*, 156 P.3d at 509–21; *see also supra* Section I.B. But the statement accurately reflects the State Defendants' view that the United States' SRBA-decreed rights lack a valid basis because the United States did not actually own livestock. *See supra* Section III.A. And consistent with § 42-501, Idaho provides in § 42-502 that

"[n]o agency of the federal government shall acquire a stockwater right unless the agency owns livestock and puts the water to beneficial use."

Section 42-501 also declares: "It is the intent of the Legislature . . . to protect Idaho stockwater right holders from encroachment by the federal government" and to ensure 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." As explained, the State Defendants maintain that the United States acquired its SRBA-decreed stockwater rights in a manner contrary to *Joyce*. *See supra* Section III.A. Thus, the express legislative purpose of the stockwater amendments is to subject the United States' rights to forfeiture under § 42-224.

Section 42-501 also states: "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." When Idaho first enacted § 42-502 in 2017, it provided, consistent with § 42-501: "For the purposes of this chapter, a permittee on a federally administered grazing allotment shall not be considered an agent of the federal government." Idaho Code § 42-502(2) (2017). When Idaho amended § 42-502 in 2020, it removed this subsection but preserved the related statement of legislative purpose in § 42-501. *See* 2020 Idaho Sess. Laws Ch. 253, § 3; Idaho Code § 42-502 (2020).

Two other stockwater amendments, §§ 42-502 and 42-504, facially discriminate against the United States by placing restrictions on the ability to acquire and use stockwater rights that apply only to the federal government or federal grazing permittees. *See supra* pp. 14–15.

Reading the stockwater amendments as a whole, we agree with the United States that § 42-224 is part of a statutory scheme that is designed to divest the United States of its SRBA-decreed water rights. Section 42-224 effectively jeopardizes the United States' SRBA-decreed stockwater rights because the United States has historically acquired and retained those rights not by actually owning livestock but rather through its permittees' beneficial use, and it does not have express agency agreements with permittees that comply with § 42-224(4).

The State Defendants argue that § 42-224 merely provides a process for enforcing longstanding forfeiture standards and does not preclude the United States from prevailing in a forfeiture proceeding when it lacks an express agency agreement that complies with § 42-224(4). This argument rings hollow given that the stockwater amendments expressly reflect the State's position that, without such agreements, permittees cannot be considered agents of the United States. But even if § 42-224(4) does not require the United States to obtain express agency agreements to avoid forfeiture of its SRBA-decreed stockwater rights, § 42-224 at least forces the United States to defend against burdensome collateral attacks against those rights—as shown by the record of § 42-224 petitions and orders to show cause issued against the United States.

Because Idaho Code § 42-224 discriminates against the United States in violation of the Supremacy Clause, we reverse the denial of the United States' motion for summary judgment with respect to its as-applied challenge to § 42-224.[3]

[3] We do not reach the United States' alternative challenges to § 42-224.

IV. DEFENDANTS' CROSS-APPEAL

Defendants appeal the district court's conclusion that § 42-113(2)(b) is facially unconstitutional under the Supremacy Clause. We affirm.

Recall that § 42-113(2)(b) changes the appurtenance rules for stockwater rights acquired under the state-law constitutional method (that is, diverted for beneficial use)—but only if those rights are "associated with grazing on federally owned or managed land." *See supra* pp. 13–14. Generally, in Idaho, water rights diverted for beneficial use are appurtenant to the land where the water "is being applied," meaning the land where the water rights are used. Idaho Code § 42-1401. But under § 42-113(2)(b), if such water rights are associated with grazing on federally owned or managed land, they are appurtenant to the "base property"—the property where a federal grazing permittee's livestock herd is housed. Section 42-113(2)(b) further provides that, when a federal grazing permit is transferred or conveyed to a new owner, the associated stockwater rights may also be conveyed and become appurtenant to the new permit owner's base property.

The statute has the effect of divesting the United States of its stockwater rights established under the state-law constitutional method: Under the general rule, those stockwater rights would be appurtenant to the federal land where the water is being used, but under § 42-113(2)(b), those stockwater rights are appurtenant to the federal grazing permittee's private property where their livestock is housed. Those stockwater rights, moreover, can be conveyed to a new permittee, in which case, the rights become appurtenant to the new permittee's private property.

The State Defendants argue that § 42-113(2)(b) merely codifies *Joyce*, but they are incorrect. In *Joyce*, the Idaho Supreme Court held that the stockwater rights acquired by Joyce's predecessors were appurtenant to the land on which their deeded ranches were located (not the federal grazing land where the water was used), and that water rights appurtenant to land pass with the land when it is conveyed. 156 P.3d at 513–15. Section 42-113(2)(b) does not merely codify those holdings. *Joyce* addressed only stockwater rights associated with federal land that were privately held by ranchers, but § 42-113(2)(b) applies to all stockwater rights associated with federal land—including the rights held by the United States. Further, *Joyce* addressed the effect of a transfer of land on a water right that is appurtenant to the land, but § 42-113(2)(b) addresses the effect of a transfer of "a federal grazing permit" on a water right "associated" with the federal permit. Moreover, under § 42-113(2)(b), when a federal grazing permit is transferred to a new owner, the existing permittee may convey the associated water rights to the new owner—even if the United States, not the permittee, owns those water rights.

Because § 42-113(2)(b) regulates only stockwater rights associated with land owned by the United States and creates a mechanism by which permittees can divest the United States of its stockwater rights, § 42-113(2)(b) unlawfully discriminates against the United States. Therefore, § 42-113(2)(b) violates the Supremacy Clause, and is facially invalid.

V. CONCLUSION

The district court had jurisdiction to hear the United States' claims. We reverse the denial of the United States' motion for summary judgment with respect to its as-applied

challenge to § 42-224, and we affirm the grant of the United States' motion for summary judgment with respect to its facial challenge to § 42-113(2)(b).

AFFIRMED IN PART; REVERSED IN PART.

We award costs to Appellant, the United States of America. Fed. R. App. P. 39(a).