

SWEET VICTORY

Determined to prove that sheer grit and the rule of law still matters, Owyhee County ranchers draw a winning hand in the Idaho Supreme Court. By Judy Boyle

Tim Lowry and Paul Nettleton are Idaho ranchers, longtime friends, battle-weary warriors—and survivors. Together they have fought both rabid environmentalists and gigantic government bureaucracies. Tim's home place lies on the western side of Owyhee County near the Oregon border; Paul's is near the

first homestead in 1865. Paul is rightfully proud that Joyce Livestock is Idaho's oldest family-owned ranch, a legacy he hopes to pass on to his children and grandchildren. In 1878, Matt Joyce became a charter member of the OCA. Paul has served on both the OCA and the ICA boards.

Owyhee County is a beautiful, isolated place with many contrasts. The fertile, row-crop fields beside the Snake River give way to sagebrush flats receiving eight inches of precipitation a year, spectacular canyon lands and rocky badlands, and recent infestations of water-gulping juniper forests. At the higher elevations evergreen trees dot the open grassy slopes. Always, there is sagebrush, a reminder of the low precipitation.

The people in Owyhee County include families who have worked the same land for generations, vacationing visitors from the growing Boise area, and a few troublemakers who create havoc for the local ranchers.

In the arid West water is essential to ranching. The right to use that water is therefore carefully guarded. The local ranchers fight passionately any attempts to negatively alter water law. When Idaho began the massive Snake River Basin Adjudication (SRBA) in 1987 to clearly affirm water rights over two thirds of the state, little did the Lowrys and Nettletons realize how it would impact their lives.

Tim and Paul thought confirming their stockwater rights would be easy. They had the Taylor Grazing Act on their side (see sidebar). The Joyce-ranch and the LU-ranch predecessors had grazed cattle on public land in the Owyhee country long before the federal Bureau of Land Management (BLM) came into existence. Matt Joyce had claimed stockwater rights in 1878. The LU water rights date back to 1872.

LU and Joyce Livestock filed their respective stockwater rights, ignoring the faulty advice from Idaho Department of Water Resources (IDWR) and the Idaho Attorney General's (AG) office that they need not file. The BLM filed claims to the ranchers' water. Tim called IDWR and the AG's office to determine the process of objecting to the BLM claims: "I was told the state would handle all objections to federal claims and I should not file individual objections." Because the BLM had objected to Tim and Paul's stockwater rights, the case went to court.

One SRBA court trial led to another. One side would win and the other would appeal. Costs continued to mount. The nearly knockout punch came when the court ruled the ranchers' water rights did not extend back to the original date of use, but instead began in 1976 (for Paul when his father bought the Joyce ranch from the rest of the family; for Tim when LU was incorporated).

If allowed to stand, these rulings would have set a horrific precedent for all water rights. Tim and Paul knew that, regardless of cost, they had to go the distance in this landmark water-rights battle. Paul points out that "losing was not an option."

Upon the recommendation of Wayne and Helen Chenoweth Hage, Joyce Livestock and LU hired the same law firm handling Hage v. U.S., McQuade, Bedford, and Van Zandt, with Elizabeth Ewens as lead attorney. Vital ranch chores went undone as they spent huge num-



It takes strong-minded and unwavering individuals and families to continue battling the federal government despite the overwhelming costs, both emotionally and financially. Tim Lowry (above) and his family, and the Nettleton family, truly symbolize the grit and spirit that built America. BELOW: Paul Nettleton's great-grandfather, Matt Joyce, settled in the area in 1865.

Snake River on the eastern side of the huge, sprawling county.

Tim and his brother Mike were raised on ranches their parents leased while saving money to buy their own places. In 1966 Bill and Nita Lowry purchased the LU ranch in Owyhee County. The high desert, sagebrush land with lush irrigated meadows was nearly identical to the eastern Oregon ranches they had worked for others. Bill and Nita immediately joined the Owyhee Cattlemen's Association (OCA), Idaho's oldest. Both Bill and Tim have served terms as president and Tim has also served on the Idaho Cattle Association (ICA) board.

Paul grew up on the Owyhee County ranch that has been in his family since his great-grandfather, Matt Joyce, took up the



bers of hours to firmly establish lines of title and research historic documents, laws and other water cases. Tim states with disgust: “The state of Idaho offered us no assistance, not even a list of BLM claims when asked. Instead, their bad advice stopped us from objecting at the proper time, which prolonged this case and greatly added to our expense.”

As the case struggled on through the courts, there were other battles to fight. Because of an ESA-listed snail, Paul was faced with demands he fence off thousands of acres on his winter allotment to prevent his cattle from drinking, or even stepping into, the Snake River. The anti-cattle Western Watersheds Project (WWP) was breathing down Tim’s neck. WWP’s judge of choice, U.S. District Judge Lynn Winmill, ruled Tim must drastically reduce AUMs on his allotments.



In January 2005, the SRBA judge ruled the ranchers did have water rights but he issued priority dates later than 1934. The state of Idaho had previously conceded to the federal government a BLM stockwater right with a priority date of 1934. The judge’s decision made the ranchers’ stockwater rights junior to the BLM. They appealed to the Idaho Supreme Court. The BLM filed a cross-appeal. The Pacific Legal Foundation (PLF), a 30-year-old, nonprofit, public law organization which fights for constitutionally protected property rights, joined the case for the ranchers at the Idaho Supreme Court level.

Finally, in February 2007, the Idaho Supreme Court ruled for Joyce and LU on every issue. It found that the ranchers had senior water rights; that BLM could not put water to beneficial use as it doesn’t own cattle so therefore could not have a stockwater right—and found the ranchers’ stockwater rights to be appurtenant to their base property.

The prolonged battle ended, and the federal government backed off. Paul bluntly states: “The federal government should think twice before challenging ranchers’ water and grazing rights. We don’t give up.” Overjoyed that their long fight and multiple sacrifices have paid off, Tim quietly says: “We struggled for eight years to get this case to the Idaho Supreme Court for we firmly believed the



ABOVE: Paul Nettleton in front of the original bunkhouse at the Joyce Ranch. The battle these families fought cost a great deal but Paul says: “The federal government should think twice before challenging ranchers’ water and grazing rights. We don’t give up.” LEFT: Matt Joyce, Paul’s great-grandfather.

justices understood the rule of law.”

The downside of the final decision is the court’s denial of the ranchers’ request for the federal government to pay their attorneys’ fees. The price for justice is a tremendous \$1.3 million for these two families. In response, the Owyhee Cattlemen’s Heritage Foundation has set up a special water-rights account. The foundation, a 501(c)(3), assists ranchers when they are sued by WWP. Donations to the foundation are 100 percent tax deductible and can be sent to: Owyhee Cattlemen’s Her-

itage Foundation, att.: water-rights case, 3946 Jump Creek Road, Homedale, ID 83628.

The landmark decision came just weeks before the untimely death of PLF attorney Russ Brooks, who was jubilant with the outcome. Brooks said: “Justice has finally been served for these dedicated ranchers who were willing to be David, challenging the federal government’s Goliath, and stood unwavering in protecting water rights in the West.” ■

Judy Boyle lives in Midvale, Idaho.

Taylor Grazing Act: A Federal Deal

Prior to the Taylor Grazing Act of 1934 (TGA), livestock grazing was largely unregulated and open to the public in general. The TGA established a grazing preference for each ranch. Applicants who had used the public land for the previous five years in connection with their livestock operation were given priority, as were those who owned “base property” of private land and preexisting water rights, and who were dependent on the public lands to make their ranch operations economical.

In the West, everyone knows that private lands alone are not sufficient to sustain an economical livestock operation. These ranches were issued grazing permits for a specific number of Animal Unit Months (AUMs). Grazing-preference rights are treat-

ed as real property—bought and sold with the ranch, used as collateral for loans—and heirs must pay inheritance tax on them. The regulations implementing the TGA, federal, and Idaho laws made the grazing-preference “appurtenant” to the base ranch property, meaning it was necessary for the use and enjoyment of the related private property.

Historical rule and law in Idaho allows that ownership of a valid water right can exist independently from ownership of the land on which the water is used. Various congressional acts acknowledge private ownership of preexisting water rights on public lands. It is well established in western water law and numerous U.S. Supreme Court cases that the federal government defers to state water law in an appropriation of water. ■