

IN THE HOUSE OF REPRESENTATIVES

HOUSE JOINT MEMORIAL NO. 3

BY WAYS AND MEANS COMMITTEE

A JOINT MEMORIAL

1  
2 TO THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CON-  
3 GRESS ASSEMBLED AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE  
4 STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

5 We, your Memorialists, the House of Representatives and the Senate of  
6 the State of Idaho assembled in the First Regular Session of the Sixty-sev-  
7 enth Idaho Legislature, do hereby respectfully represent that:

8 WHEREAS, on June 2, 2022, the United States Department of Justice sued  
9 the State of Idaho in United States v. Idaho, case no. 1:22-cv-00236-DKG, on  
10 behalf of the United States Bureau of Land Management and the United States  
11 Forest Service. The complaint contends that Idaho's stockwater forfeiture  
12 procedure violates the United States Constitution's supremacy clause. The  
13 suit claims that federal law takes precedence over state law; and

14 WHEREAS, if the Department of Justice succeeds in setting precedence  
15 establishing United States supremacy over governance of Idaho's water,  
16 Idaho's sovereignty, the livelihood of Idaho ranchers, and Idaho's right to  
17 govern ourselves is in jeopardy; and

18 WHEREAS, congress passed the Desert Land Act of 1877, 43 U.S.C. 321, as  
19 amended, which, according to the court "effected a severance of all waters  
20 upon the public domain, not heretofore appropriated, from the land itself."  
21 In California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142,  
22 55 S.Ct. 725, 79 L.Ed. 1356 (1935), the court held that following the Desert  
23 Land Act of 1877, if not before, all non-navigable waters then a part of the  
24 public domain became publici juris, subject to the plenary control of the  
25 designated states, with the rights in each state to determine for itself to  
26 what extent the rule of appropriation or the common law rule in respect to ri-  
27 parian rights should obtain. For since "Congress cannot enforce either rule  
28 upon any state, Kansas v. Colorado, 206 U.S. 46, 94, the full power of choice  
29 must remain with the state"; and

30 WHEREAS, the court in Ickes v. Fox, 300 U.S. 82 (1937), stated, "While  
31 the basics of the doctrine of prior appropriation is the same from state to  
32 state, the doctrine has evolved to meet the specific needs of each state and  
33 thus differs among the western states." Congress understood this fact and  
34 that is why the laws concerning appropriation were left up to each individual  
35 state, as provided in Idaho Department of Water Resources v. United States,  
36 122 Idaho 116, 832 P.2d 289 (1992); and

37 WHEREAS, in 1978, the Supreme Court of the United States ruled that  
38 Congress did not reserve stockwater rights to the federal government on na-  
39 tional forests. Instead, those rights are subject to state law, even if the  
40 water is on land allotments on which the federal government has issued graz-  
41 ing permits. The case of United States v. New Mexico, 438 U.S. 696 (1978),  
42 confirmed the supremacy of state water laws, including stockwater alloca-  
43 tions; and

1           WHEREAS, twenty years ago, in a technical process, the State of Idaho  
2 determined that the federal government had thousands of rights to stockwa-  
3 ter on federal land in Idaho. The federal government received many of these  
4 stockwater rights because those who would be affected by such a decree did  
5 not know how the federal government's claims over water would affect them and  
6 their grazing allotments, or did not understand the need to have legal repre-  
7 sentation to object; and

8           WHEREAS, in 2007, *Joyce v. United States*, 44 Idaho 1, 156 P. 3d 502, and  
9 the companion case of *LU Ranching Company v. United States*, were successful  
10 in winning against the federal government, upholding the ranchers' claims to  
11 instream water rights on federal range land for watering livestock. Affirm-  
12 ing Idaho's law, which states stockwater rights must be put to "beneficial  
13 use" or forfeited. The ruling further affirmed that the federal government  
14 is not exempt from Idaho's beneficial use law. The Idaho Supreme Court also  
15 ruled that in order for anyone to put the stockwater to beneficial use, in-  
16 cluding the federal government, they must water their own livestock or that  
17 of their "agents"; and

18           WHEREAS, under the United States Supreme Court's 1978 ruling in *United*  
19 *States v. New Mexico* and the Idaho Supreme Court's decisions in *Joyce v.*  
20 *United States* and *LU Ranching Co. v. United States*, Idaho is within author-  
21 ity to declare the federal government's water rights forfeited under state  
22 law; and

23           WHEREAS, we believe Idahoans must protect the principles and values  
24 that have made us strong, we believe that our founding fathers gave us a gov-  
25 ernment that is a servant of the people, not our master, and we believe the  
26 most effective, responsible, responsive government is government closest to  
27 the people, that sovereignty of the state must be protected, and that govern-  
28 ment is best that governs least; and

29           WHEREAS, we believe a strong and viable agricultural industry is one of  
30 the most important cornerstones in the foundation of our state and is vital  
31 for national and global economic security. We recognize that water is vi-  
32 tal to Idaho agriculture and other industries. We believe modification of  
33 Idaho's historic water laws must be considered with extreme caution. The  
34 federal government shall not infringe upon state jurisdiction over Idaho wa-  
35 ter; and

36           WHEREAS, we recognize the critical importance of water to this state.  
37 We will aggressively defend Idaho's right to appropriate and manage water  
38 within its own borders without interference from the federal government. We  
39 encourage policies that will more fully use and develop our water while sup-  
40 porting the Idaho state law of prior appropriation, based on the principle of  
41 "first in time is first in right" for the benefit of all Idahoans. We support  
42 all legal opposition to any and all efforts to usurp Idaho's sovereignty over  
43 water within Idaho borders. Further, we support the Attorney General in de-  
44 fending the state's position on these and all other water issues, and support  
45 the continued funding of the Idaho Constitutional Defense Fund.

46           NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Ses-  
47 sion of the Sixty-seventh Idaho Legislature, the House of Representatives  
48 and the Senate concurring therein, that the governor enlist every resource  
49 and means available to thwart this lawsuit and the attempt to usurp Idaho's  
50 sovereign water rights.

1 BE IT FURTHER RESOLVED that we call upon Senator Mike Crapo, Senator  
2 James Risch, Congressman Mike Simpson, and Congressman Russ Fulcher to  
3 request the United States Department of Justice to withdraw its lawsuit  
4 against Idaho and to take any legislative actions available to them to pro-  
5 tect the state of Idaho's sovereignty, Idaho's water rights, and the princi-  
6 ple of "first in time is first in right" for the benefit of all Idahoans.

7 BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representa-  
8 tives be, and she is hereby authorized and directed to forward a copy of this  
9 Memorial to the President of the Senate and the Speaker of the House of Repre-  
10 sentatives of Congress and to the congressional delegation representing the  
11 State of Idaho in the Congress of the United States.