

IN THE HOUSE OF REPRESENTATIVES

HOUSE JOINT MEMORIAL NO. 2

BY RESOURCES AND CONSERVATION COMMITTEE

A JOINT MEMORIAL

1
2 TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS
3 ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE
4 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-fourth
7 Idaho Legislature, do hereby respectfully represent that:

8 WHEREAS, the Snake River, and its surface and ground water tributaries,
9 is the backbone of Idaho's economy, supplying water for 76% of Idaho's popu-
10 lation, cities, businesses, dairies, factories and more than 3 million acres
11 of irrigated lands above Idaho Power Company's Hells Canyon Complex; and

12 WHEREAS, in the first half of the 20th century, hydropower development
13 in the mid-Snake and Hells Canyon spurred economic development, irrigation,
14 industry and growth in Southern Idaho and has provided Idahoans with clean
15 electric energy at rates that are among the lowest in the nation; and

16 WHEREAS, the State of Idaho, while recognizing the benefit of hy-
17 dropower generation to the citizens of the State through sustaining economic
18 growth and agriculture, also acknowledged the value of protecting Idaho's
19 water, property rights and natural resources; and

20 WHEREAS, in 1964, the State, recognizing its sovereignty over Idaho's
21 water resources and potential intrusions upon that sovereignty, approved
22 through constitutional amendment, Section 7, Article XV, Constitution of
23 the State of Idaho, the establishment of the Idaho Water Resource Board
24 (IWRB) whose members are appointed by the Governor with the advice and con-
25 sent of the Senate, and empowered the IWRB to formulate a comprehensive State
26 Water Plan as described in Section 42-1734A, Idaho Code; and

27 WHEREAS, pursuant to Section 42-1734A, Idaho Code, the State of Idaho
28 has adopted a State Water Plan ("Plan"); and

29 WHEREAS, Policy 1A of the Plan provides that: "The State asserts sover-
30 eignty over the development and use of Idaho's water resources for the ben-
31 efits of its citizens. [And that] [a]ny action by the federal government or
32 other states that would impair Idaho's sovereignty over its water resources
33 is against state policy"; and

34 WHEREAS, Policy 1N of the Plan provides that: "Appropriation of water
35 for hydropower should be subordinated to subsequent upstream beneficial
36 uses to assure an adequate supply of water for all future beneficial uses,
37 and minimum stream flows for hydropower projects should be established by
38 state action"; and

39 WHEREAS, Policy 2B of the Plan provides that: "The State asserts pri-
40 macy over the management of its fish and wildlife and water resources. Ac-
41 cordingly, any reintroduction or introduction of federally listed species
42 or other aquatic species without state consultation and approval is against

1 the policy of the State of Idaho because it would impair or impede the state's
2 primacy over its water resources"; and

3 WHEREAS, Policy 4A of the Plan provides that the main stem Snake River
4 will be managed to meet or exceed minimum average daily flows at Milner, Mur-
5 phy, Weiser, Johnson Bar and Lime Point and that these "minimum flows provide
6 the management framework for the optimum development of water resources of
7 the Snake River Basin"; and

8 WHEREAS, Policy 4H of the Plan provides that: "Hydropower generation
9 is a beneficial use of the flow of the Snake River, and it is in the public
10 interest to protect the minimum average daily flows set forth in Policy 4A as
11 a base flow for hydropower use"; and

12 WHEREAS, Policy 4J of the Plan provides that: "The minimum stream flows
13 set forth in Policy 4A provide adequate flows for Snake River fish, wildlife,
14 recreation, and scenic values in the main stem Snake River below Milner Dam";
15 and

16 WHEREAS, Policy 4C of the State Water Plan in discussing the Swan Falls
17 Agreement, recognized the value of hydropower through the acknowledgment
18 and protection of minimum stream flows and ensured that electric rates re-
19 main beneficial to its citizens; and

20 WHEREAS, in 1976 the State of Idaho in partnership with neighboring
21 states of Oregon and Washington (collectively "States"), together with the
22 National Marine Fisheries Service filed a petition with the Federal Energy
23 Regulatory Commission (FERC) requesting that "it issue an order requiring
24 the licensee to take appropriate measures as compensation for" the loss
25 of salmon and steelhead due to the construction and operation of the Hells
26 Canyon Complex; and

27 WHEREAS, in 1980 the States and the Idaho Power Company executed a set-
28 tlement agreement that, by its terms, constituted "full and complete miti-
29 gation for all numerical losses of salmon and steelhead caused by or in any
30 way associated with the construction of, and operation within the existing
31 license" for, the Hells Canyon Complex; and "further agree not to contend
32 or support contentions by others before any agency or in any proceeding that
33 additional fish or fish facilities are required by or in any way associated
34 with the construction of, or operation within the existing license for," the
35 Hells Canyon Complex; and

36 WHEREAS, the Idaho Power Company has complied with the terms of the 1980
37 Settlement Agreement with state support; and

38 WHEREAS, in 1984 the State and Idaho Power Company entered into the
39 implementing agreements for the Swan Falls Settlement, which confirmed the
40 State's primacy over flows of the Snake River through the establishment of
41 minimum flows from Milner Dam to reaches below the Hells Canyon Complex; and

42 WHEREAS, the Idaho Power Company, since 2003, has been seeking to reli-
43 cense the Hells Canyon Complex before the FERC under the Federal Power Act;
44 and

45 WHEREAS, the State Water Plan directs the Water Resource Board to par-
46 ticipate in the Hells Canyon Complex relicensing to ensure that the condi-
47 tions in "the new license for the Hells Canyon Complex includes operational
48 conditions that preserve and enhance the generation capacity of the project
49 in a manner consistent with the State Water Plan"; and

1 WHEREAS, in 2004 the State, participating water users, and the Nez Perce
2 Tribe entered into the 2004 Snake River Water Rights Agreement providing for
3 cooperative agreements to assist in the recovery of listed species under the
4 Endangered Species Act in tributaries below the Hells Canyon Complex while
5 providing certainty to Idaho landowners and water users in the exercise of
6 property rights; and

7 WHEREAS, the 2004 Snake River Water Rights Agreement identified spe-
8 cific actions by the water users with respect to the rental of water to
9 augment flows for listed anadromous fish below the Hells Canyon Complex,
10 such agreement providing certain protections to the water users; and

11 WHEREAS, water users have benefited from the certainty regarding the
12 water supply availability and operating conditions in the reaches of the
13 Snake River upstream from the Hells Canyon Complex; and

14 WHEREAS, the Idaho Water Users Association, through Association Reso-
15 lution No. 2017-6, has and continues to oppose introduction of salmon and
16 steelhead species into surface waters above the Hells Canyon Complex due to
17 the drastic impacts on irrigated agriculture, industry, water supply and
18 electric generation; and

19 WHEREAS, Section 42-1734C, Idaho Code, requires that the Idaho State
20 Water Plan "be submitted to the Federal Energy Regulatory Commission . . .
21 as the state water plan for the conservation, development, management and
22 optimum use of the state of Idaho's water resource" and the Plan has been
23 submitted; and

24 WHEREAS, the State committed to certain actions through the 1980 Agree-
25 ment, the Swan Falls Agreement, and the 2004 Snake River Agreement, that
26 provide the citizens of Idaho certainty and appropriate management of
27 the State's resources in a manner consistent with the intentions provided
28 herein; and

29 WHEREAS, the State of Oregon has taken certain actions in the relicens-
30 ing proceeding for the Hells Canyon Complex in an attempt to mandate the pas-
31 sage and introduction of salmon and steelhead above Hells Canyon Dam and into
32 the Idaho waters of the Snake River, which form a border between Oregon and
33 Idaho, that directly infringe upon Idaho's sovereignty over its water re-
34 sources and primacy over management of its fish and water resources; and

35 WHEREAS, the Governor of the State of Idaho, through the Office of
36 Species Conservation, is charged with coordinating with all state depart-
37 ments and divisions with respect to endangered, threatened, candidate
38 species, species petitioned to be listed, and rare and declining species,
39 coordinating state response to federal recovery plans and projects, par-
40 ticipating in regional efforts and providing input to federal and state
41 agencies with regard to such species act as an ombudsman for state citizens
42 on ESA issues, and ensuring state primacy over management of its fish and
43 wildlife, including prevention of reintroduction or introduction of listed
44 species without state consultation and approval; and

45 WHEREAS, the Governor, by letter to the Natural Resources Agency Ad-
46 ministrators and Directors dated May 27, 2016, directed that: "Each agency
47 shall coordinate with the Governor's Office of Species Conservation and
48 status of any introduction or reintroduction proposals under the Endangered
49 Species Act"; and

1 WHEREAS, the Governor, by letter to Oregon Governor Brown dated July 19,
2 2016, advised that Idaho would not agree to Oregon's passage or introduc-
3 tion proposal above Hells Canyon Dam, in violation of Sections 67-818 and
4 67-6302, Idaho Code, stating in part: "Such occurrence would violate long-
5 standing Idaho law and policy opposing reintroduction of any species without
6 the express consent of the Idaho State Legislature and executive branch....
7 Based upon state law and in part on our past experiences with reintroduced
8 species (e.g., wolves), Idaho cannot and will not, agree to the reintroduc-
9 tion of salmon or steelhead above Hells Canyon Dam."; and

10 WHEREAS, while the Idaho Power Company serves customers in Idaho and
11 eastern Oregon, approximately 95% of its customers are located in Idaho; and

12 WHEREAS, the Governor, by letter to Oregon Governor Brown dated January
13 17, 2017, advised that Oregon's draft 401 conditions related to fish passage
14 and reintroduction would impact Idaho waters and citizens and interfere with
15 Idaho's sovereign interests in managing its natural resources; and

16 WHEREAS, the Governor's January 17, 2017, letter further advised that
17 with respect to "any new requirement imposed by Oregon will lead to addi-
18 tional costs that will disproportionately impact Idaho customers" and "pas-
19 sage and reintroduction conditions should be removed"; and

20 WHEREAS, protecting Idaho's sovereignty by ensuring that Oregon does
21 not impose fish passage and introduction in violation of Idaho law and policy
22 will continue to be a benefit to Idaho's citizens through greater certainty
23 regarding property rights, water supply and economic development.

24 NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Ses-
25 sion of the Sixty-fourth Idaho Legislature, the House of Representatives and
26 the Senate concurring therein, that the State of Idaho supports actions by
27 the Governor and the Attorney General to oppose passage and introduction of
28 salmon or steelhead above Hells Canyon Dam, that are necessary to protect
29 Idaho's sovereignty, including its waters and property rights, and to en-
30 sure that Idaho's sovereignty is not violated by the introduction of salmon
31 or steelhead to the reaches of the Snake River, and its Idaho tributaries,
32 above Hells Canyon Dam.

33 BE IT FURTHER RESOLVED that the Governor and the Attorney General shall
34 undertake such action as is necessary and appropriate to ensure that the
35 terms of the 1980 Agreement are complied with in regard to mitigation for the
36 Hells Canyon Complex to protect upstream water users, water rights, landown-
37 ers and economic development from the State of Oregon's efforts to pass and
38 introduce salmon and steelhead above Hells Canyon Dam into waters of the
39 State.

40 BE IT FURTHER RESOLVED that consistent with the authority of Section
41 67-6302, Idaho Code, the Legislature of the State of Idaho does not approve
42 of the efforts by the State of Oregon and opposes any action by a federal
43 agency, or any entity acting on behalf of a federal agency, or other groups,
44 entities or individuals to require the passage and introduction or reintro-
45 duction of salmon or steelhead above Hells Canyon Dam, including trying to
46 include in the FERC license for the Hells Canyon Project any provision that
47 would result in introduction or reintroduction of any such species into the
48 waters of the State of Idaho.

49 BE IT FURTHER RESOLVED that, the State of Idaho supports the relicens-
50 ing of Hells Canyon Complex consistent with the following policies: (A) The

1 license is consistent with the policies set forth in the Idaho State Water
2 Plan; (B) The license recognizes that no salmon and steelhead populations
3 can be introduced or reintroduced above Hells Canyon Dam; (C) The license
4 recognizes that the water rights for the Hells Canyon Complex are subordi-
5 nated to future upstream uses as set forth in the partial decrees for each of
6 the three dams; and (D) The mitigation requirements in the license for salmon
7 and steelhead comply with the terms of the 1980 Settlement Agreement.

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