

IN THE HOUSE OF REPRESENTATIVES

HOUSE JOINT MEMORIAL NO. 4

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, TO THE CONGRESSIONAL DELEGATION REPRESENTING THE
4 STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES, TO THE GOVERNOR OF
5 THE STATE OF IDAHO, AND TO THE ATTORNEY GENERAL OF THE STATE OF IDAHO.

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

9 WHEREAS, Idaho submitted new and revised Human Health Water Quality
10 Criteria (HHWQC) rules (docket number 58-0102-1201) to the United States
11 Environmental Protection Agency (EPA) on December 16, 2016, after years of
12 extensive engagement with stakeholders, data collection, and final approval
13 of the Idaho Legislature; and

14 WHEREAS, on April 4, 2019, the EPA approved Idaho's new HHWQC for toxics
15 and other water quality standards criteria; and

16 WHEREAS, Idaho is the only state in the union to complete a comprehen-
17 sive longitudinal study funded by the state to determine the actual fish con-
18 sumption rate (FCR) of its citizens, which was conducted by Boise State Uni-
19 versity; and

20 WHEREAS, Idaho acted in accordance with the United States Clean Water
21 Act in utilizing the best available scientific data to apply a FCR within
22 the water quality formula to establish its HHWQC as part of its overall wa-
23 ter quality standards (WQS); and

24 WHEREAS, the EPA recently published new proposed nationwide regula-
25 tions (at 87 Fed Reg. 74361 (December 5, 2022)) that would effectively
26 establish an unrealistic and unattainable WQS for state waters that are not
27 based on actual FCR but on Indian treaties approved in the 19th century; and

28 WHEREAS, the federal regulation notice completely ignores the require-
29 ment of Executive Order 13132 for Federalism implications, instead stating
30 that the rule will not have substantial direct effects on the states, on the
31 relationship between the federal government and the states, or on the dis-
32 tribution of power and responsibilities among levels of government; and

33 WHEREAS, the federal regulation notice economic analysis states that
34 there will potentially be only incremental administrative burdens and
35 costs, but it does not establish any requirements for regulated entities.
36 However, it could lead to additional compliance costs with new permit lim-
37 its, which the EPA is unable to provide cost estimates for; and

38 WHEREAS, it is clear that the EPA-proposed rules will circumvent and
39 undo the scientifically established WQS in Idaho, require the establishment
40 of unattainable standards in an effort to take control of Idaho's waters
41 in violation of the Clean Water Act's directive that states retain primary
42 responsibility to control pollution and develop land and water resources for
43 state waters, and violate the long-established principle of federalism.

1 NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Ses-
2 sion of the Sixty-seventh Idaho Legislature, the House of Representatives
3 and the Senate concurring therein, that the people of the State of Idaho op-
4 pose the EPA-proposed rules that circumvent science and invalidate Idaho's
5 WQS based on the flawed and elusive premise of 19th century water quality
6 standards for Idaho waters in 2023. Idaho will defend its scientifically
7 based standards in court if necessary.

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 Rep-
11 resentatives of Congress, to the congressional delegation representing the
12 State of Idaho in the Congress of the United States, to the Governor of the
13 State of Idaho, and to the Attorney General of the State of Idaho.