

LEMHI SETTLEMENT FRAMEWORK

I. Water Right Settlement Goals

- A. Business goal is to preserve and enhance farming and ranching lifestyle and to promote economic develop in the Lemhi Basin.
- B. Biological goal is to conserve, restore, and enhance sufficient habitat to sustain viable fish populations within the Lemhi River Basin.

II. Settlement Sideboards

- A. All water rights are protected/unaffected by settlement.
- B. Actions will be done in conformance with Idaho law.
- C. **Participation in the settlement is voluntary.**

III. Settlement Principles

- A. Pending applications of parties to settlement on Big Timber, Little Timber, Big Eightmile, and Mill Creeks.
 - 1. Will be subject to a bypass flow condition.
 - 2. Season of use will be 3/15 to 7/31.
 - 3. No right to use high flow on place of use.
 - 4. Will benefit from Paragraph 10(b)(6)(A)(ii) subordination.
 - 5. Agreement to allow IDFG at its expense to install and maintain fish screens on Big Timber Creek.
- B. Stream flow maintenance applications.
 - 1. Option to convert existing high flow use to protectable water right on place of use of water rights decreed in the Lemhi General Stream Adjudication.
 - 2. All stream flow maintenance water rights shall be ancillary to base rights.
 - 3. All streamflow maintenance water rights from a common source will share proportionately when rights are in priority; provided however, applications of III.A. parties will have a priority date one day later than other applications on Big Timber, Little Timber, Big Eightmile, and Mill Creeks.
 - 4. Season of use will be 3/15 to 7/31.
 - 5. Right on Big Timber, Little Timber, Big Eightmile, and Mill will contain a bypass flow condition.
 - 6. All rights will contain a condition that requires holder to not divert for three consecutive days two out of every five-year rolling period to provide water for satisfaction of McFarland Campground minimum flow water right.
 - a. McFarland Campground minimum flow water right of 420 cfs.
 - b. Season of use of right will be limited to 3/15 to 7/31.

Lemhi Settlement Document Subject to IRE 408 and 507 11-10-2021

- c. The right may only be exercised twice during a rolling five-year period for three consecutive days.
 - d. Any years in which the natural flow at the McFarland Campground exceeds 420 cfs for three consecutive days shall count toward satisfaction of the McFarland Campground minimum flow.
 - e. All years in which the Board affirmatively exercises the McFarland Campground minimum stream flow counts regardless of whether the 420 cfs quantity is achieved.
 - f. Right will not have a right to call for delivery of water from streams administered separate from the Lemhi River, except as provided for in stream flow maintenance water rights acquired pursuant to this settlement.
 - g. Board will seek to exercise the right as close to the peak of the high flow as possible.
 - h. Board will coordinate with the parties in the exercise of the right.
7. Right will not receive the benefit of subordination under the Wild and Scenic Rivers Agreement.
 8. Rights will be limited to place of use and cannot be transferred independent of base rights.
 9. Rights will be in full satisfaction of use of high flow under Basin 74 High Flow General Provision on place of use of base rights.
 10. Streamflow maintenance water rights maybe held by Lemhi Irrigation District or holder of base water right, except for Big and Little Timber, Eightmile, and Lee Creek, which shall be held by holder of base right.
- C. Minimum Stream Flows on Big Timber, Bohannon, Canyon and Hayden Creek.
1. Amounts as described in settlement agreement.
 2. Rights will be junior to all existing water rights.
 3. Will be in satisfaction of the local public interest as it pertains to Big Timber, Bohannon, Canyon and Hayden Creek.
- D. Water Supply Program
1. Recharge
 2. Cloud Seeding
- E. Miscellaneous Conditions.
1. Fish screens.
 2. Fish propagation water rights.
 3. Notice of water transactions.
- F. Steering Committee
- G. Administration

LEMHI HIGH FLOW ALLOCATION SETTLEMENT

WORK IN PROGRESS

PRESENTATION BY

NORM SEMANKO AND CLIVE STRONG

FACILITATORS FOR IDAHO WATER RESOURCE BOARD

NOVEMBER 11, 2021



PROPOSED LEMHI COMPREHENSIVE SETTLEMENT

PARTICIPATION IN THE SETTLEMENT

IS

VOLUNTARY



DEVELOPMENT OF THE SETTLEMENT PROPOSAL

- Lemhi Settlement Working Group:
 - Lemhi Water User Representatives: Carl Ellsworth, Kurt Bird, RJ Smith, Lowell Cerise, Carl Lufkin, James Whittaker, and Steven Johnson
 - Agencies - IWRB, IDFG, ID Office of Species, IDWR
 - Legislators: Senator Burt Brackett, Representative Dorothy Moon, Representative Terry Gestrin
- Working group held 12 meetings from June 2020 through October 2021.
- Norm Semanko and Clive Strong facilitated the meetings as well as conducting shuttle diplomacy between the Parties.
- Framework was vetted with local water users on June 30, 2021.

“HIGH FLOW PRACTICE”

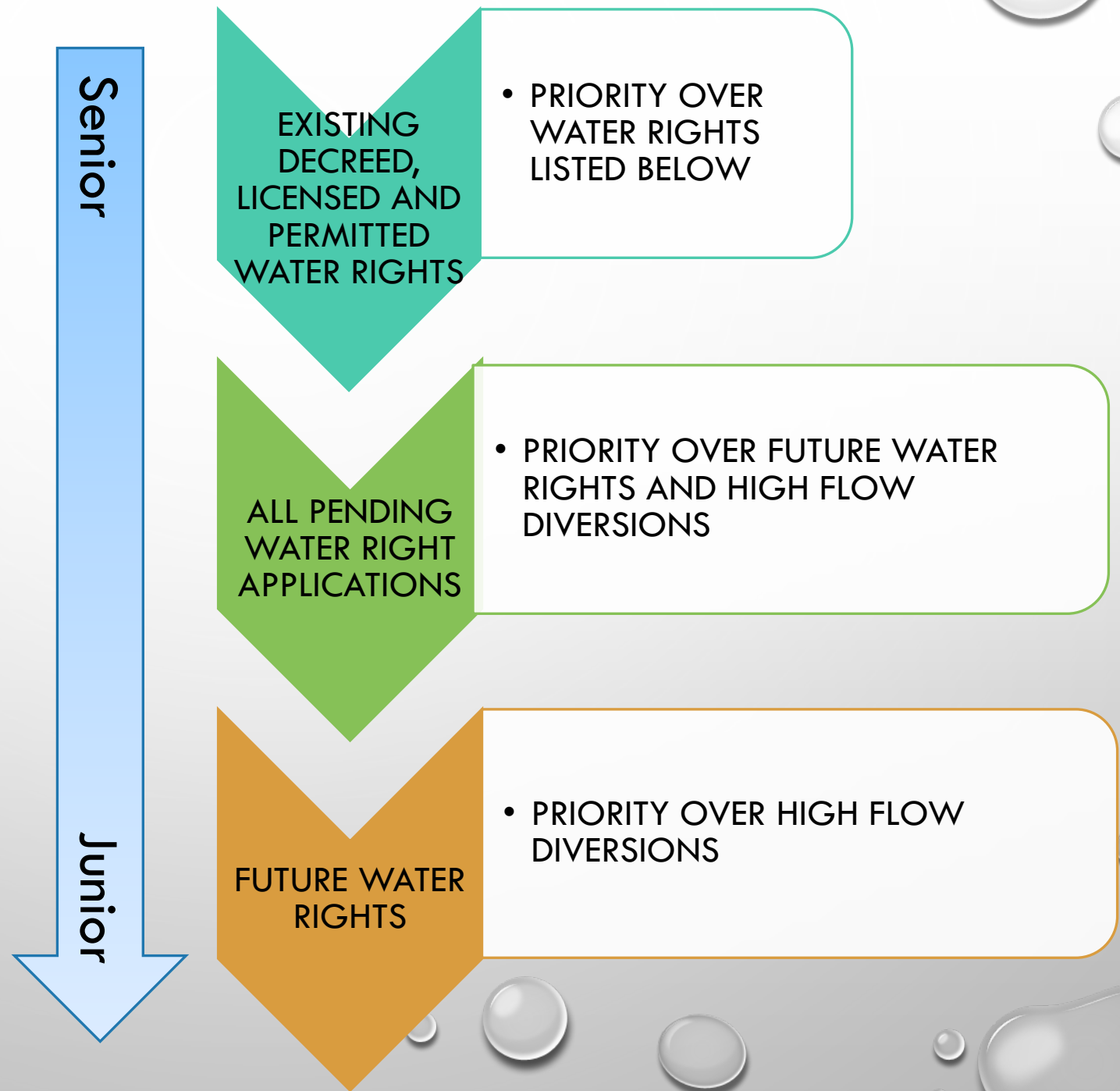
THE FOLLOWING GENERAL PROVISION SHALL GOVERN THE USE OF "HIGH FLOW" SURFACE WATER FOR IRRIGATION USE WITHIN THE LEMHI BASIN:

The practice of diverting high flows in the Lemhi Basin, in addition to diverting decreed and future water rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provided:

- (a) the waters so diverted are applied to beneficial use.
- (b) existing decreed rights and future appropriations of water are first satisfied.

HIGH FLOW PRACTICE IS NOT A PROTECTABLE WATER RIGHT.

- High flow practice is subordinate to all existing and future uses.
- High Flows are unappropriated water



SOURCE OF HIGH FLOW CONFLICT

- **SRBA High flows Claims Disallowed**
- **Salmon Wild & Scenic River**
- **New irrigation water right applications on tributary streams**
- **Endangered Species Act**

APPLICATION FOR PERMIT NO. 74-16187 (BIRD)

- High flows are unappropriated flow subject to appropriation
- Director held it is in “the local public interest to maintain the anadromous fisheries”
- Director imposed bypass flow condition based on BOR Instream flow studies
- Director held resource agencies failed to prove amount of flow required for channel maintenance
- First tier of Wild and Scenic subordination should only be allocated to water rights that will actually benefit from additional subordination

SENATE CONCURRENT RESOLUTION 137

PURPOSE: To harmonize Idaho's competing duties

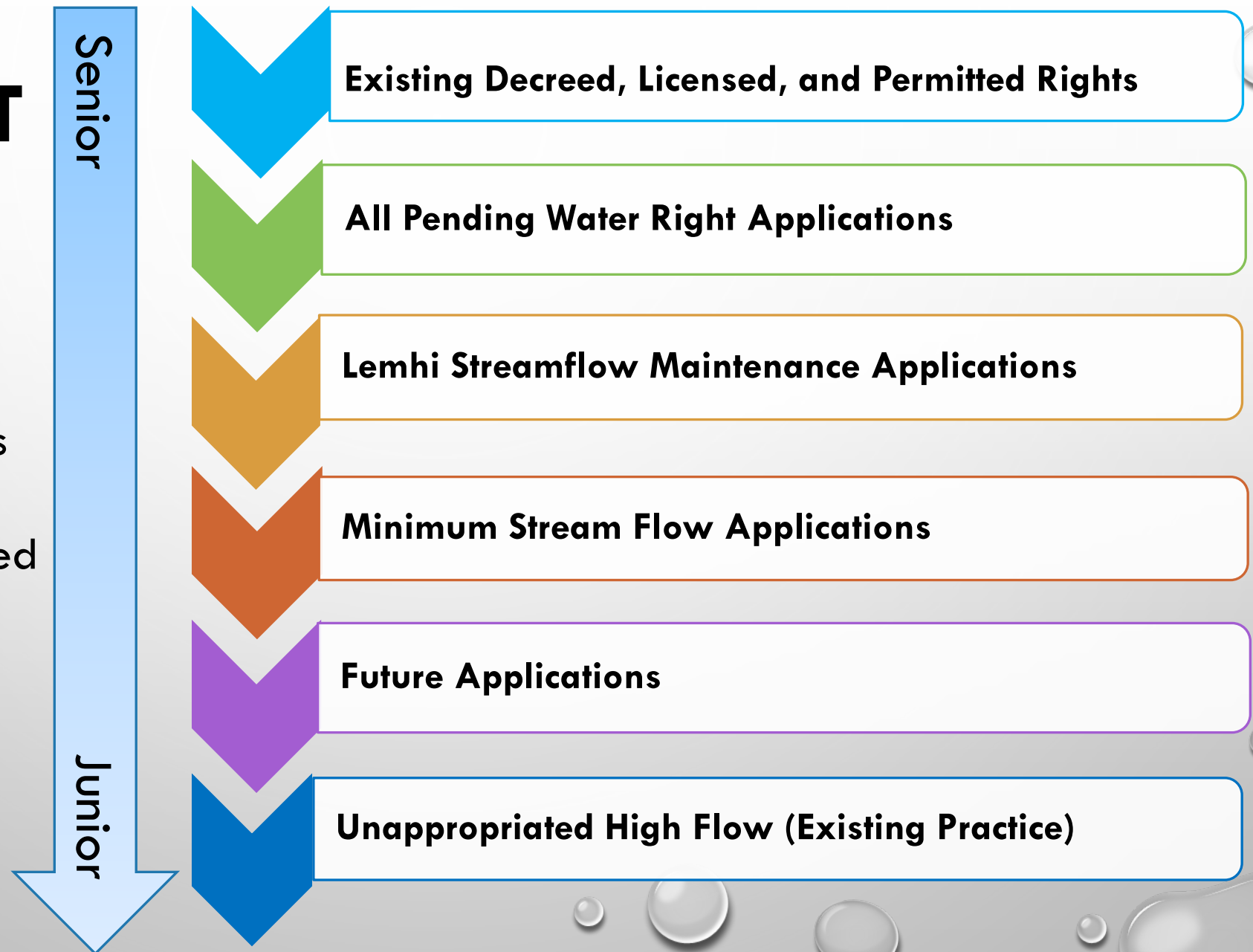
- to protect existing water rights,
- to safeguard the provisions of the FOREST SERVICE [WILD AND Scenic] settlement,
- to allocate additional water rights,
- to conserve, restore, and enhance sufficient habitat to sustain viable fish populations, and
- to enhance the farming and ranching lifestyle and economy of the Lemhi river basin.

LONG TERM CONSERVATION PLAN GOAL

Conserve, restore, and enhance sufficient habitat to sustain viable fish populations while protecting private property rights and preserving and enhancing the farming and ranching lifestyle and economy of the Lemhi River Basin.

SETTLEMENT PRINCIPLES

- I. Protect Existing Uses
- II. Resolve Protests to Pending Applications
- III. Convert High Flow Practice into Protected Water Rights
- IV. Protect Fish Habitat
- V. Provide for Future Development
- VI. Ensure Local Control





I. PROTECT EXISTING USES

- **SETTLEMENT WILL NOT** alter or change water rights existing on the date of settlement.
- All existing water rights will have priority over any water rights proposed to be recognized by the settlement.



II. RESOLVE PROTESTS TO PENDING APPLICATIONS

Parties to the settlement will agree to:

- withdraw protests to pending water right applications on Big Timber, Big Eightmile, Eighteenmile and Mill Creeks
- Bypass Flows:
 - Big Timber Creek accept director's 18 cfs bypass flow condition from the Bird Order
 - Big Eightmile and Eighteenmile Creeks based upon the BOR instream flow studies
- Season of use: March 15th - July 31st
- Support tier 2 subordination for applications
- No use of high flow on place of use of new water right



III. CONVERT HIGH FLOW PRACTICE INTO PROTECTABLE WATER RIGHTS

- Legislation will be enacted allowing irrigators who historically diverted surface water high flow ancillary to their Base rights to file an application for a stream flow maintenance water right.
- Base rights are irrigation water rights decreed in the Lemhi general stream adjudication with a priority date prior to march 15, 1966.
- If granted, the right will be in lieu of diversion of water under the basin 74 high flow general provision for use on the place of use of the base right.



ELEMENTS OF STREAM FLOW MAINTENANCE WATER RIGHTS

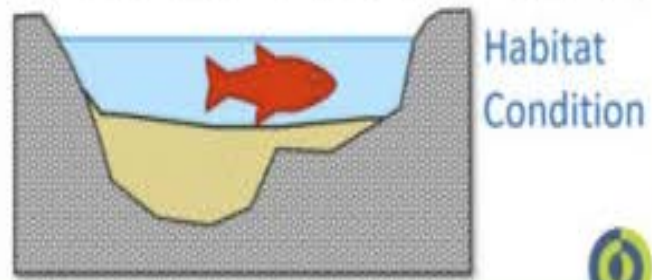
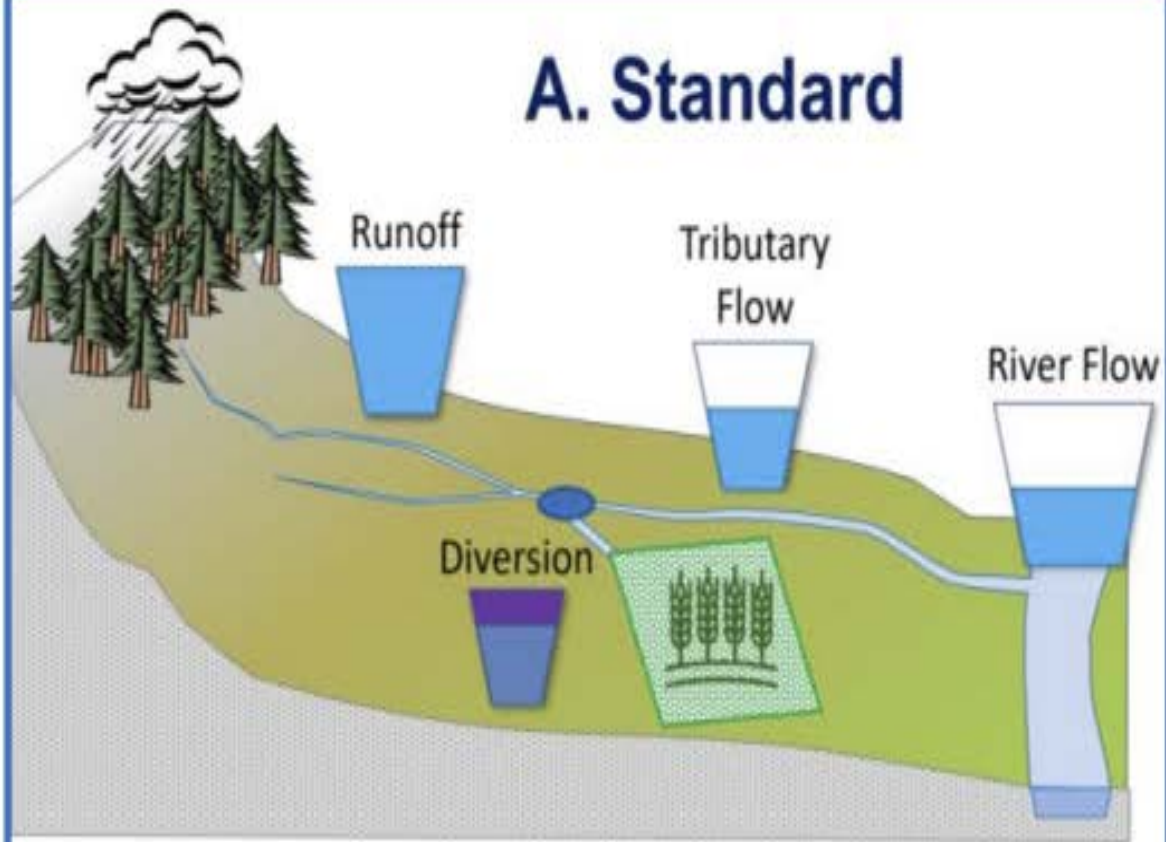
- Quantity will be limited to
 - Diversion rate is the historic use, not to exceed ditch capacity
 - Place of use of the existing irrigation base right(s).
 - Season of use: March 15th - July 31st
- Right will **not** receive benefit of Salmon Wild & Scenic River subordination.
- All rights on a tributary stream will be administered under a common priority date, except stream flow Maintenance applications filed by applicants for new water rights on Big Timber, Big Eightmile, Eighteenmile and Mill Creeks which will have a priority date one day later than other stream flow maintenance applications.
- Right will be conditioned to require bypass of high flow for 3 consecutive days, 2 out of every 5 years.



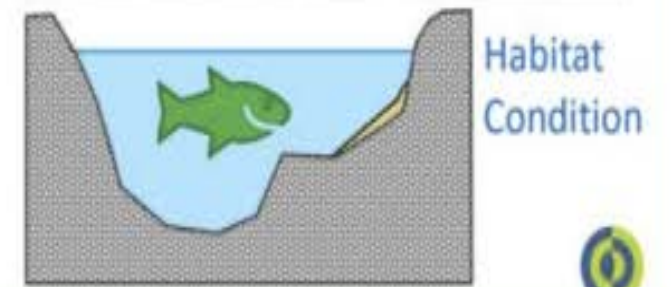
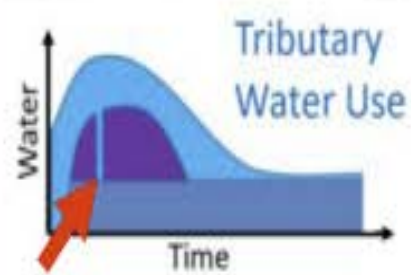
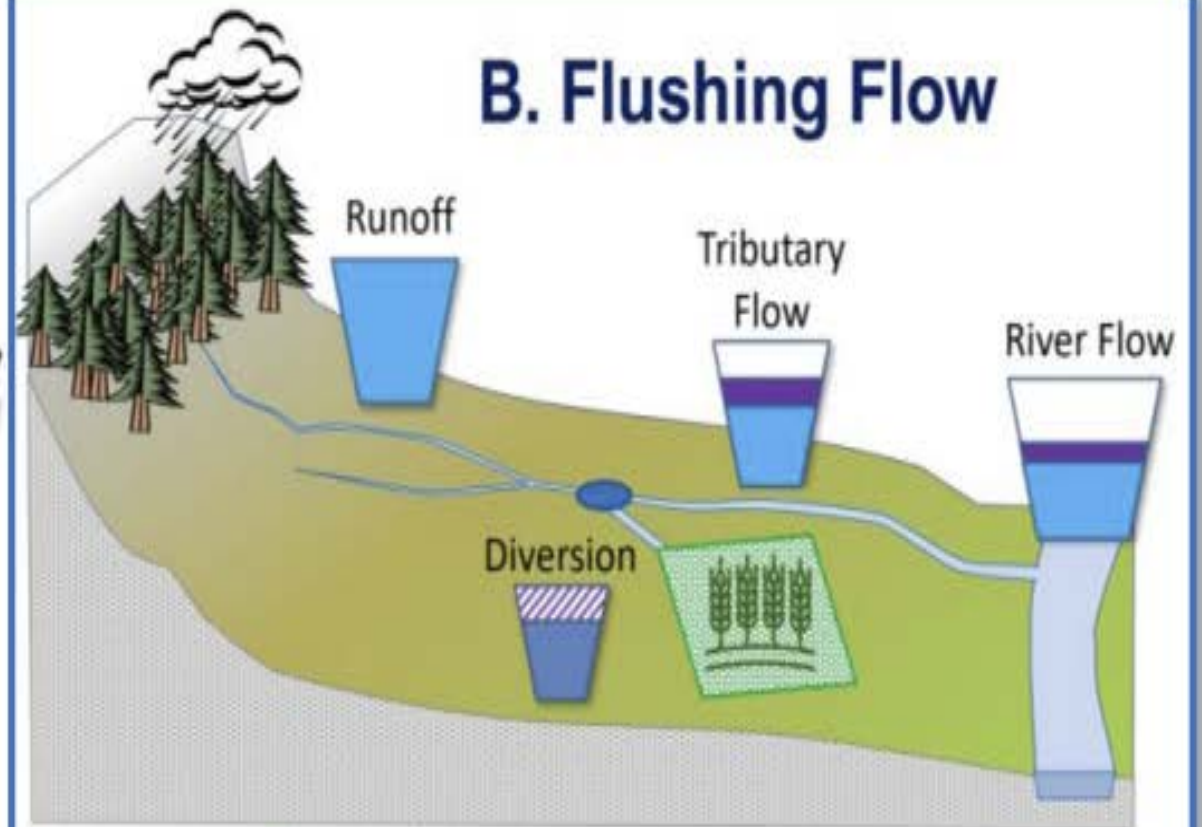
HIGH FLOW BYPASS CONDITION

- Diverting high water reduces the Lemhi River's power to move sediment and “flush” fine sediment from pools and riffles, thus limiting the habitat for fish and their prey.
- High flow bypass condition will provide water to increase river flows sending a pulse of water downstream to perform channel maintenance.
- Pulse flow removes fine sediment from runs and riffles, move gravels and cobbles to clean them of fine sediment, and scour pools and channel banks to improve stream habitat for fish and their prey.
- The bypass flow will have no effect on base water rights.

A. Standard



B. Flushing Flow





MCFARLAND CAMPGROUND MINIMUM STREAM FLOW WATER RIGHT

- Right established pursuant to chapter 15, title 42, Idaho code and held by IWRB
- Modeled after the Lemhi I-6 Minimum stream flow water right. Elements:
 - Flow Objective: 420 cfs at McFarland Campground
 - Frequency: Exercised only 2 years out of every 5 years
 - Duration: 3 consecutive days
 - Timing: between May 21st and July 6th timed to occur as near to peak of high flow
- Right satisfied and **no bypass flow** required in any year that natural flow exceeds 420 cfs for 3 consecutive days.
- Junior to all existing decreed, licensed, and permitted water rights as well as pending applications.
- Right will be satisfied through water from stream flow maintenance bypass condition.



IV. PROTECT FISH HABITAT

- Minimum stream flows will be created on the following streams:
 - Big Timber
 - Bohannon
 - Canyon
 - Hayden
- Minimum stream flows will be junior to all previously decreed, licensed and permitted rights, all pending applications and all stream flow maintenance water rights.



5. PROVIDE FOR FUTURE DEVELOPMENT

- **Comprehensive settlement of future claims to high flow**
- **Recharge study and pilot recharge projects**
- **Cloud seeding and storage study**
- **Water distribution**

6. ENSURE LOCAL CONTROL

- Local water users establish process for allocation of high flow
- Local committee to implement settlement agreement
- Water master instructions
- Computerized accounting
- Notice of water transactions

SETTLEMENT PROCESS

- The process gives you the opportunity to shape your future rather than having courts and/or state or federal agencies making water allocation and distribution decisions for the basin.

NEXT STEPS

- Lemhi Settlement proposal is being vetted through public meetings.
- If there is sufficient local support for the Lemhi Settlement, it will be presented to the Idaho Legislature.
- If the Lemhi Settlement is approved, water users will have an opportunity to file stream flow maintenance claims with the department of water resources on or before July 1, 2024.

ARE WATER USERS REQUIRED TO CONVERT HIGH FLOW PRACTICE INTO A STREAM FLOW MAINTENANCE WATER RIGHT?

- NO, participation in the settlement is **VOLUNTARY**.
- Water users have the option to convert high flow practice into a protectable water right or to continue to divert high flow under the basin 74 high flow general provision.

QUESTIONS



CONTACT INFORMATION

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