

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF APPLICATION FOR PERMIT
NO. 74-16187 IN THE NAME OF KURT W. BIRD
AND JANET E. BIRD

RESOLUTION AUTHORIZING EXECUTION OF
STIPULATION RE PERMIT 74-16187

1 WHEREAS, a number of applications for permits to divert water from various tributaries of the
2 Lemhi River for irrigation and other purposes were filed with the Idaho Department of Water Resources
3 ("IDWR") in October of 2018; and
4

5 WHEREAS, the group of applications filed in October 2018 included application for permit no. 74-
6 16187 under the name of Kurt W. Bird and Janet E. Bird ("Bird"), and sought a permit to divert water from
7 Big Timber Creek for irrigation purposes; and
8

9 WHEREAS, protests to application for permit no. 74-16187 and the other applications were filed
10 by the Idaho Water Resource Board ("Board"), the Idaho Department of Fish and Game ("IDFG"), and
11 certain other parties; and
12

13 WHEREAS, the applications and the protests raised questions relating to the use of so-called "high
14 flow" waters in the Lemhi River Basin, and to efforts to recover certain fish species that have been listed
15 under the Endangered Species Act ("ESA"); and
16

17 WHEREAS, IDWR issued an order conditionally approving application for permit no. 74-16187
18 following an administrative hearing on the application and the protests thereto, and the Board and IDFG
19 sought judicial review of IDWR's order in the district court; and
20

21 WHEREAS, in light of the complexity and significance of the issues raised by the Lemhi River Basin
22 applications, the Idaho Legislature adopted Senate Concurrent Resolution No. 137, a copy of which is
23 attached hereto as **Attachment A**, that directed the Board, with technical support from IDWR, to work
24 expeditiously with local water users in the Lemhi River Basin to develop a comprehensive settlement that
25 resolves current tensions and conflicts that are the result of competing water demands in the Lemhi River
26 Basin; and
27

28 WHEREAS, in conjunction with the efforts to develop a comprehensive settlement for the Lemhi
29 River Basin, the Board, IDFG, and Bird agreed to explore the possibility of resolving the judicial review
30 litigation through mediated settlement negotiations; and
31

32 WHEREAS, in light of progress made in the mediated settlement negotiations, the Board, IDFG,
33 and Bird agreed, after all briefs had been submitted in the judicial review litigation, to postpone the
34 judicial review hearing while the mediated negotiations continued; and
35

36 WHEREAS, the mediated settlement negotiations have resulted in a STIPULATION RE PERMIT 74-
37 16187 ("Stipulation"), a copy of which is attached hereto as **Attachment B**, that calls for dismissal of the

38 judicial review litigation with a remand to IDWR so the parties can request issuance of a permit with
39 certain agreed-upon elements and conditions; and
40

41 WHEREAS, the stipulation also includes provisions setting forth the parties' agreements regarding
42 (1) Bird's future "Stream Flow Maintenance" water right for Big Timber Creek, and (2) the Board's future
43 minimum stream flow water right for Big Timber Creek; and
44

45 WHEREAS, IDFG and Bird have verbally accepted the Stipulation, and Board staff considers the
46 Stipulation to be a reasonable and equitable resolution of the issues raised in the administrative and
47 judicial proceedings regarding application for permit no. 74-16187; and
48

49 WHEREAS, after reviewing the Stipulation and consulting with Board staff and legal counsel, the
50 Board agrees the Stipulation is a reasonable and equitable resolution of the issues raised in the
51 administrative and judicial proceedings regarding application for permit no. 74-16187;
52

53 NOW, THEREFORE BE IT RESOLVED that the Board authorizes its chairman to execute, on behalf
54 of the Board, the STIPULATION RE PERMIT 74-16187.

DATED this 21st day of January, 2022.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 

JO ANN COLE-HANSEN, Secretary

ATTACHMENT A

IWRB Resolution Authorizing Execution of STIPULATION RE PERMIT 74-16187

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 137

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

1 STATING FINDINGS OF THE LEGISLATURE AND DIRECTING THE IDAHO WATER RESOURCE
2 BOARD TO WORK EXPEDITIOUSLY WITH LOCAL WATER USERS TO DEVELOP A COMPRE-
3 HENSIVE SETTLEMENT THAT RESOLVES CURRENT TENSIONS AND CONFLICTS THAT
4 ARE THE RESULT OF COMPETING WATER SUPPLY DEMANDS IN THE LEMHI RIVER
5 BASIN AND THAT THE COMPREHENSIVE SETTLEMENT, TO THE BEST OF THE ABILI-
6 TIES OF THE PARTICIPATING PARTIES AND IN THE SPIRIT OF COMPROMISE AND
7 RESOLUTION, IS CONSISTENT WITH PAST PRACTICES, FUTURE NEEDS, AND IDAHO
8 LAW.
9

10 Be It Resolved by the Legislature of the State of Idaho:

11 WHEREAS, Lemhi irrigators have diverted natural flow in the Lemhi River
12 Basin in excess of their decreed rights for their shared benefit during the
13 spring runoff in late May or June when flows exceed the amount of water re-
14 quired to satisfy all existing water rights for almost as long as there has
15 been irrigation in the Lemhi River Basin; and

16 WHEREAS, the 1982 Lemhi Basin Decree memorialized the high-flow prac-
17 tice in a general provision that allowed irrigators whose rights were de-
18 creed in the Lemhi Adjudication to continue to divert "so called 'high wa-
19 ters' or 'flood waters' in addition to the quantified rights as described in
20 the recommended decree of water rights"; and

21 WHEREAS, the 1982 Lemhi Basin Decree defined high water or flood water
22 as the diversion of "natural flow of water over and above the amount required
23 to fulfill (1) existing quantified rights as shown in the decree of water
24 rights and (2) any future rights that may be established pursuant to statu-
25 tory procedures of the State of Idaho"; and

26 WHEREAS, Lemhi irrigators sought to decree the high-flow practice
27 through the filing of claims in the Snake River Basin Adjudication (SRBA);
28 and

29 WHEREAS, the Lemhi water users' claims were denied by the SRBA District
30 Court as a result of objections to the claims by the United States, the Nez
31 Perce Tribe, and conservation groups; and

32 WHEREAS, the SRBA District Court reaffirmed the Lemhi Basin Decree
33 high-flow general provision through the inclusion of the Basin 74 General
34 Provision in the SRBA Final Unified Decree; and

35 WHEREAS, since the early 1990s, Lemhi irrigators have led an effort to
36 protect and enhance salmon runs in the Lemhi River Basin, including but not
37 limited to providing passage flows for salmon, screening diversion works,
38 and implementing habitat improvement projects; and

39 WHEREAS, the National Marine Fisheries Services (NOAA Fisheries), in
40 the spring of 2000, threatened to bring an enforcement action under the En-
41 dangered Species Act (ESA) against Lemhi irrigators for dewatering of the
42 Lemhi River at the L-6 diversion; and

1 WHEREAS, the 2001 Idaho Legislature enacted Section 42-1506, Idaho
2 Code, at the request of the Lemhi River Basin irrigators, which authorized
3 the Idaho Water Resource Board to appropriate a minimum stream flow in the
4 lower reach of the Lemhi River to provide fish passage and protect Lemhi wa-
5 ter users from ESA enforcement actions; and

6 WHEREAS, the Lemhi minimum stream flow is sustained, in part, through
7 the Lemhi water bank and voluntary agreements not to divert when the minimum
8 stream flow is not being met; and

9 WHEREAS, the biological and business goals of the Lemhi irrigators
10 are to conserve, restore, and enhance sufficient habitat to sustain viable
11 fish populations in the Lemhi River Basin while protecting private property
12 rights and preserving and enhancing the farming and ranching lifestyle and
13 economy of the Lemhi River Basin; and

14 WHEREAS, in the absence of storage reservoirs in the Lemhi River Basin,
15 the high-flow practice helps to achieve the Lemhi irrigators' stated biolog-
16 ical and business goals by extending the water supply for irrigators and en-
17 hancing the natural flow of the Lemhi River during the dry summer months; and

18 WHEREAS, consistent with the Lemhi irrigators' biological and business
19 goals, 15 cubic feet per second (cfs) of the 35 cfs of the Lemhi minimum in-
20 stream flow water right diversion rate is subordinated to high water or flood
21 water authorized under the Lemhi Basin Decree; and

22 WHEREAS, a consequence of the SRBA District Court not decreeing the
23 Lemhi irrigators' high-flow claims is that the high-flow practice does not
24 have an established priority date and therefore is not protected from junior
25 water rights diverting and diminishing the water supply available for future
26 high-flow diversions; and

27 WHEREAS, without protection for the Lemhi high-flow practice,
28 high-flow water supplies historically available to the irrigators could be
29 reduced, maintenance of the Lemhi minimum stream flow could be compromised,
30 and Lemhi water users could face an increased risk of ESA enforcement ac-
31 tions; and

32 WHEREAS, the SRBA decreed the U.S. Forest Service federal reserved wa-
33 ter rights 75-13316 and 77-11941 on the main stem Salmon River in the SRBA;
34 and

35 WHEREAS, the quantity of the U.S. Forest Service's Salmon River re-
36 served water rights would have precluded most future development in the
37 Salmon River Basin, the Forest Service agreed to subordinate its water
38 rights to up to "150 cfs (including not more than 5,000 acres of irriga-
39 tion...) when the mean daily discharge at the Shoup gage is [less than] 1,280
40 cfs" and "an additional diversion of 225 cfs (including up to an additional
41 10,000 acres of irrigation...) when the mean daily discharge at the Shoup
42 gage is [greater than or equal to] 1,280 cfs"; and

43 WHEREAS, since the decree of the Lemhi minimum stream flow water right
44 and the Salmon River federal reserved water rights, certain irrigators in
45 the Lemhi River Basin have or are in the process of perfecting water rights in
46 the Lemhi River Basin; and

47 WHEREAS, the SRBA Final Unified Decree establishes that 27 tributaries
48 to the Lemhi River "shall be administered separately from all other water
49 rights in [the Lemhi] Basin ... in accordance with the prior appropriation
50 doctrine as established by Idaho law"; and

1 WHEREAS, the SRBA District Court held the separate streams general pro-
2 vision does not preclude the U.S. Forest Service from making a delivery call
3 under its Salmon River federal reserved water rights; and

4 WHEREAS, new applications to appropriate water on tributary streams
5 have led to numerous protests by downstream Lemhi water users, conservation
6 groups, and state agencies; and

7 WHEREAS, the Idaho Department of Water Resources has recently condi-
8 tioned certain protested water right permit applications in the Lemhi River
9 Basin limiting the diversion of water authorized by the permits to times
10 when stream flows at specified locations within the Lemhi River Basin exceed
11 certain minimum flow rates, and these conditioned stream flow diversion
12 limitations are separate and apart from the Lemhi minimum stream flow water
13 right; and

14 WHEREAS, the State of Idaho must harmonize its competing duties to pro-
15 tect existing water rights, to safeguard the provisions of the Forest Ser-
16 vice settlement, to allocate additional water rights, to conserve, restore,
17 and enhance sufficient habitat to sustain viable fish populations, and to
18 enhance the farming and ranching lifestyle and the economy of the Lemhi River
19 Basin; and

20 WHEREAS, the above described legal developments have created legal un-
21 certainty for all water users in the Lemhi River Basin; and

22 WHEREAS, the Legislature finds it is in the public interest for affected
23 stakeholders to work collaboratively to develop a comprehensive solution
24 that achieves the Lemhi irrigators' biological and business goals of con-
25 serving, restoring, and enhancing sufficient habitat to sustain viable
26 fish populations in the Lemhi River Basin while protecting private property
27 rights and preserving and enhancing the farming and ranching lifestyle and
28 economy of the Lemhi River Basin; and

29 WHEREAS, Section 42-1734, Idaho Code, provides authority to the Idaho
30 Water Resource Board to cooperate in water studies, planning, and research;
31 and

32 WHEREAS, the Idaho Legislature established the Aquifer Planning and
33 Management Fund to provide moneys for "monitoring, measurement and com-
34 prehensive plan development as well as for personnel costs, operating
35 expenditures and capital outlay associated with the statewide comprehensive
36 aquifer planning and management effort."

37 NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular
38 Session of the Sixty-fifth Idaho Legislature, the Senate and the House of
39 Representatives concurring therein, that we direct the Idaho Water Resource
40 Board, with technical support from the Idaho Department of Water Resources,
41 to work expeditiously with local water users to develop a comprehensive
42 settlement that resolves current tensions and conflict that are the result
43 of competing water supply demands in the Lemhi River Basin and that the com-
44 prehensive settlement, to the best of the abilities of the participating
45 parties and in the spirit of compromise and resolution, is consistent with
46 past practices, future needs, and Idaho law.

47 BE IT FURTHER RESOLVED that the Idaho Water Resource Board report to the
48 First Regular Session of the Sixty-sixth Idaho Legislature on the implemen-
49 tation of this resolution.

ATTACHMENT B

IWRB Resolution Authorizing Execution of STIPULATION RE PERMIT 74-16187

STIPULATION RE PERMIT 74-16187

This Stipulation is entered into by Kurt W. Bird and Janet E. Bird (“Bird”), the Idaho Water Resource Board (“IWRB”), and the Idaho Department of Fish and Game (“IDFG”) (collectively, the “Parties”), to resolve litigation over Bird’s application for a permit to appropriate the public waters of the State of Idaho, identification number 74-16187 (“Application”), and protests to the Application (“Protests”) filed by IWRB and IDFG.

RECITALS

WHEREAS, the Application was filed with the Idaho Department of Water Resources (“IDWR”) on or about October 12, 2018, and the Protests were filed on or about January 17, 2019; and

WHEREAS, IDWR held an administrative hearing on the Application and the Protests on August 28 and August 29, 2019; and

WHEREAS, the hearing officer issued a preliminary order approving the Application with certain conditions on January 9, 2020, and an amended preliminary order approving the Application with certain conditions on February 6, 2020; and

WHEREAS, the Director of IDWR issued a final order approving the Application with certain conditions on May 21, 2020; and

WHEREAS, IWRB and IDFG filed a petition for judicial review of the final order on June 22, 2020; and

WHEREAS, the judicial review proceeding was stayed at the Parties’ request after briefs were submitted but before the hearing was held, while the Parties attempted to negotiate a settlement of the litigation; and

WHEREAS, the Parties have reached agreement regarding approval of the Application with certain conditions, dismissal of the judicial review proceeding, and certain related matters, and the Parties now desire to memorialize the terms of the agreement.

AGREEMENT

NOW, THEREFORE, the Parties stipulate and agree as follows:

I. The Application should be approved with the following elements and conditions:

Current Owner: Kurt W. Bird or Janet E. Bird
Priority Date: October 12, 2018
Source: Big Timber Creek tributary to Lemhi River
Beneficial Use: Irrigation

Season of Use: March 15 – July 31

Diversion Rate: 6.40 cfs

Point of Diversion: NWNW, Section 20, T15N, R26E (Home Ditch)

Place of Use: 320 acres

SWSE, SESE, Section 8, T15N, R26E

SW1/4, Section 9, T15N, R26E

NENE, NWNE, Section 17, T15N, R26E

Conditions of Approval:

1. Subject to all prior rights.
2. Proof of Application of water to beneficial use shall be submitted on or before the date established by the Director.
3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of approval, this water right is within State Water Districts 170 and 74W.
4. Prior to the diversion and use of water under this right, the right holder shall install and maintain acceptable measurement devices at the authorized point(s) of diversion and in accordance with Department specifications or shall obtain an approved variance from the Department to employ an alternative method to determine and record the amount of water diverted.
5. Prior to diversion of water under this right, the right holder shall install and maintain a locking controlling works, subject to the approval of the Department, in manner that will provide suitable control of the diversion.
6. When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
7. This right does not grant any right-of-way or easement across the land of another.
8. This right is only available when flow at the Big Timber Gage 13304050, located at Latitude 44°41'19.65", Longitude 113°22'13.46", Lemhi County (BT Gage) is at least 18 cfs. Any flows present as a result of the Idaho Water Resource Board's

water transactions program will be included (“counted”) in determining whether the 18 cfs flow requirement is satisfied.

9. The right holder shall cease diversion under this right if the flow of Big Timber Creek is less than 18 cfs at the BT Gage. Any flows present as a result of the Idaho Water Resource Board’s water transactions program will be included (“counted”) in determining whether the 18 cfs flow requirement is satisfied.
10. This right benefits from the subordination described in Paragraph 10(b)(6)(A)(ii) of water rights 75-13316 and 77-11941 and may only be diverted when the mean daily discharge at the Salmon River Shoup gage is greater than or equal to 1,280 cfs.
11. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
12. Rights 74-32, 74-34, 74-7165, 74-15926, 74-15927, 74-15928, 74-15929, 74-15930, 74-15931 and 74-16187 when combined shall not exceed a total diversion rate of 52.77 cfs.
13. This right fully satisfies any and all claims of right or authorization to divert “high flow” water, as that term is defined in the Basin 74 “General Provisions” decreed in the Snake River Basin Adjudication, for use within the place of use for this right. This limitation applies to all acres within the place of use for this right, including any acres that are also covered by other water rights.
14. Bird will allow IDFG to install and maintain fish screens on Bird’s diversions, including execution of an access agreement for such purposes, and will not protest IDFG applications for fish propagation water rights required for operation of the fish screens. Bird will cooperate with IDFG to consolidate Bird’s diversions where feasible.
15. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

- II. The Parties will jointly move the court presiding over the pending judicial review litigation for an order requesting that the case be remanded back to IDWR for consideration of the settlement set forth in this stipulation.
- III. If the court grants the joint motion to remand the case back to IDWR, the Parties will jointly move the Director of IDWR to:
 - a. Approve the Application with the elements and conditions set forth above in paragraph I;
 - b. Issue instructions to the watermasters for Water Districts 170 and 74W regarding administration of the elements and conditions of the Application.
- IV. After the Application has been approved and permit 74-16187 has been issued, Bird will file a transfer application with IDWR to remove from the place of use for permit 74-16187 the approximately 22.2 acres of lands covered by existing water rights. The IWRB and IDFG will not protest or oppose the transfer application.
- V. IWRB and IDFG will not oppose a future application by Bird to appropriate “high flow” water he currently diverts from Big Timber Creek under the SRBA High Flow General Provisions for Basin 74, provided that a copy of this stipulation is filed with the application, and that the application:
 - a. Proposes a purpose of use of “stream flow maintenance,” or a substantially similar purpose;
 - b. Proposes March 15 to November 15 as the season or period of use;
 - c. States that the proposed use of water is ancillary to existing uses authorized by water rights 74-32, 74-34, 74-1801, 74-7165, 74-15926, 74-15927, 74-15928, 74-15929, 74-15930, and 74-15931 (“Base Rights”);
 - d. States that the proposed use of the water is limited to the authorized places of use for the Base Rights;
 - e. Seeks a diversion rate no greater than that necessary to fill the current (July 2021) physical capacity of the diversion works and ditches that convey water to the authorized places of use for the Base Rights;

- f. States that the proposed use of water is in full satisfaction of, and supersedes, any existing or future claim by Bird of a right to divert “high flow” from Big Timber Creek under the Basin 74 High Flow General Provision decreed in the Snake River Basin Adjudication for use on the place of use of the Base Rights;
- g. States that water may be diverted under the right only when the flow is 18 cfs or greater from March 15 to July 31, and 10 cfs or greater from August 1 to November 15 as measured at the BT Gage, and that any flows present as a result of the Idaho Water Resource Board’s water transactions program will be included (“counted”) in determining whether the 18 cfs and 10 cfs flow requirements are satisfied; and
- h. States that water may not be diverted under this right for three (3) consecutive days in each of two (2) years during every five (5) year period (“bypass flow”). The five-year period will be “rolling” to provide adequate habitat for salmon and steelhead cohorts. In the event bypass flows are provided in two consecutive years, then there will not be a requirement to not divert in the following 3 years. The Idaho Department of Fish and Game and Bird will jointly determine the years in which this condition applies and the dates in those years during which diversions will not be allowed and will provide this information to the Water District 74W watermaster in joint written instructions. Weekly runoff forecasts will be monitored and used to select the dates for the bypass flow, which shall be timed to occur, as near as possible, to the peak of high flow between May 21st to July 6th. Notwithstanding the foregoing, any natural runoff occurrence that meets or exceeds 420 cfs for three consecutive days as measured at the McFarland Gage shall be counted towards satisfaction of the two in five -year condition. This condition may be adjusted at the time of licensing to conform to: any analogous condition required by a comprehensive settlement of “high flow” issues in the Lemhi Basin, if one has been reached; or any modifications to this condition to which the Idaho Department of Fish and Game and Bird have agreed.

- i. States that water diverted under this right will not receive the benefit of Wild and Scenic subordination.
 - j. This right will be subordinated to other Big Timber stream flow maintenance water rights, except for those held by David Udy and Jerry Foster.
- VI. If Bird files an application consistent with the requirements set forth above in paragraph V, IWRB and IDFG may file protests for the sole and exclusive purpose of monitoring the proceedings and ensuring that any permit or license issued pursuant to such an application conforms to the requirements of paragraph V. IWRB and IDFG will not oppose an application that conforms to the requirements of paragraph V, or seek any conditions in addition to those required by paragraph V. IWRB and IDFG retain their rights to protest and oppose any future application(s) by Bird to appropriate water from Big Timber Creek that do not conform to the requirements set forth above in paragraph V.
- VII. Bird will not oppose an application by the IWRB under chapter 15, Title 42, of the Idaho Code to appropriate a minimum stream flow for Big Timber Creek, provided that a copy of this stipulation is filed with the application, and that the application:
 - a. Proposes a diversion rate of 18 cfs from March 15 to July 31, and 10 cfs from August 1 to March 14, as measured at the BT Gage.
 - b. Is either filed later in time than Bird's application for a streamflow maintenance water right, or is expressly subordinated to any future application by Bird for a stream flow maintenance water right that satisfies the requirements set forth above in paragraph V; and
 - c. States that any flows present as a result of the Idaho Water Resource Board's water transactions program will be included ("counted") in determining whether the 18 cfs and 10 cfs flow requirements are satisfied.
- VIII. If the IWRB files an application consistent with the requirements set forth above in paragraph VII, Bird may file a protest for the sole and exclusive purpose of monitoring the proceedings and ensuring that any permit or license issued pursuant to such an application conforms to the requirements of paragraph VII.

Bird will not oppose an application that conforms to the requirements of paragraph VII, or seek any conditions in addition to those required by paragraph VII. Bird retains his right to protest and oppose any future application(s) for minimum stream flows on Big Timber Creek that do not conform to the requirements set forth above in paragraph VII.

- IX. The Parties have entered into this stipulation to settle their disagreements regarding the Application and the Protests, and to resolve the pending litigation. This stipulation represents a compromise between the Parties regarding their disagreements over the issues and subjects addressed herein, and sets forth the entire agreement between the Parties related to these matters. Except as specifically provided in this stipulation, nothing in this stipulation waives the rights, positions, or arguments of the Parties as to any issue of fact or law. This stipulation may not be used or held against any of the Parties other than to show the terms of their agreement on the issues and subjects expressly addressed and resolved herein.
- X. The parties agree that the terms and provisions of this Stipulation embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor of, or more strictly against, any party.
- XI. The provisions of this Stipulation are not severable. If any provision of this Stipulation is found to be unlawful and of no effect and/or the Idaho Department of Water Resources fails to approve the stipulation, then the parties hereto shall resume negotiations to revise such unlawful provision.
- XII. This Stipulation shall be voidable by any party if the Idaho Department of Water Resources fails to approve the Stipulation as submitted.
- XIII. This Stipulation shall bind and inure to the benefit of the respective successors of the parties.
- XIV. This Stipulation may be executed in counterparts, each of which shall be an original, but all of which, taken together, shall constitute one and the same agreement.
- XV. Each of the undersigned represent that they are authority to execute this Stipulation.

XVI. This Stipulation shall become effective and binding on the Parties upon execution by all the signatories.



Jeff Reybould
Chairman
Idaho Water Resource Board

Dated: 1-21-22

Ed Schriever
Director
Idaho Department of Fish and Game

Dated: _____

Kurt W. Bird

Dated: _____

Janet E. Bird

Dated: _____

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE FINANCE COMMITTEE'S
RECOMMENDATIONS

RESOLUTION TO ADOPT THRESHOLD
CRITERIA FOR REGIONAL WATER
SUSTAINABILITY PROJECTS AND ALLOCATE
ARPA FUNDS CONTEMPLATED IN THE
GOVERNORS PROPOSED BUDGET

1 WHEREAS, The Water Management Account is created pursuant to Idaho Code 42-1760 and is
2 administered by the Idaho Water Resource Board (IWRB) for certain purposes; and
3

4 WHEREAS, through House Bill 285 the 2019 Legislature appropriated \$20 million to the Water
5 Management Account to be used for the Anderson Ranch Reservoir Enlargement or the Mountain Home
6 Air Force Base Sustainable Water Project ; and
7

8 WHEREAS, House Bill 286 passed and approved by the 2021 Idaho legislature made amendments
9 to Idaho Code 42-1760, including but not limited to, stating that the Anderson Ranch Reservoir
10 Enlargement, the Mountain Home Air Force Base Sustainable Water project, additional aquifer recharge
11 infrastructure, and other projects selected by the IWRB may be undertaken with funds in the Water
12 Management Account; and
13

14 WHEREAS, through Senate Bill 1121 the 2021 legislature appropriated additional \$50 million to
15 the Water Management Account; and
16

17 WHEREAS On March 19, 2021, the IWRB allocated those HB 285 and SB 1121 funds to the Anderson
18 Ranch Dam Raise, the Mountain Home Air Force Base Sustainable Water Project, Eastern Snake Plain Aquifer
19 Recharge Infrastructure, and Bear Lake Additional Water Storage, and
20

21 WHEREAS, Governor Little's Leading Idaho budget recommendation includes \$100 Million in
22 American Rescue Plan Act (ARPA) funds to be appropriated for IWRB water sustainability projects for Fiscal
23 year 2023, and \$50 Million in three subsequent years, for a total of \$250 Million in ARPA Funds; and
24

25 WHEREAS, Governor Little's Leading Idaho budget recommendation also includes \$75 Million is
26 state General Funds to be appropriated to the Water Management Account as a Fiscal Year 2022
27 supplemental appropriation; and
28

29 WHEREAS, on July 23, 2021 the IWRB adopted a Regional Water Sustainability Projects Priority
30 List, and it is anticipated the Priority List will help the IWRB guide spending for water sustainability projects
31 from ARPA funds, state general funds, or other applicable sources; and
32

33 WHEREAS, on January 14, 2022, the IWRB Finance Committee met a considered the adopting a
34 threshold criteria for determining if a proposed water project should be added to the Regional Water
35 Sustainability Projects Priority List, and is recommending the following threshold criteria be adopted by
36 the IWRB: "a project the helps achieve water supply sustainability on a regional, basin-wide, or state-
37 wide basis," and
38

39 WHEREAS, also on January 14, 2022 the IWRB Finance Committee reviewed the allowable uses
40 of ARPA funds for water projects, and reviewed the Priority List and prior legislative direction, and
41 recommended an initial allocation of ARPA funds as follows:
42

- 43 • Anderson Ranch Reservoir Enlargement \$90 Million
 - 44 • Mountain Home AFB Water Project \$30 Million
 - 45 • ESPA Recharge Infrastructure \$75 Million
- 46 **TOTAL \$195 Million**

47 provided that the legislature appropriates ARPA funds to the IWRB as recommended by the
48 Governor.
49

50 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the threshold criteria of "a project that
51 helps achieve water supply sustainability on a regional, basin-wide, or state-wide basis" for inclusion of a
52 project on the Regional Water Sustainability Projects Priority List, provided that the Finance Committee
53 develop a process for periodic consideration of project proposals and updating of the Priority List.
54

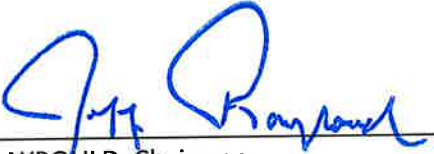
55 NOW, THEREFORE BE IT FURTHER RESOLVED that the IWRB adopts the Finance Committee's
56 recommendation of an initial ARPA funds allocation of:
57

- 58 • Anderson Ranch Reservoir Enlargement \$90 Million
 - 59 • Mountain Home AFB Water Project \$30 Million
 - 60 • ESPA Recharge Infrastructure \$75 Million
- 61 **TOTAL \$195 Million**

62 provided that the legislature appropriates ARPA funds to the IWRB as recommended by the
63 Governor.
64

65 NOW THEREFORE BE IT FURTHER RESOLVED that the Finance Committee at a future date will
66 consider the allocation of the remaining ARPA funds and state general funds included in the Governor's
67 budget, provided the legislature appropriates ARPA funds and general funds to the IWRB as
68 recommended by the Governor, and the Finance Committee will consider the potential re-allocation of
69 Water Management Account funds now dedicated to projects that may be paid for using ARPA funds.

DATED this 21st day of January 2022.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 

JO ANN COLE-HANSEN, Secretary

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE CLOVERDALE RIDGE
WATER CORPORATION LOAN REQUEST

RESOLUTION TO AUTHORIZE LOAN FUNDING
FOR COSTS RELATED TO INSTALLTION OF A
NEW PUMP AND

1 WHEREAS, Cloverdale Ridge Water Corporation (Corporation) submitted a loan application to
2 the Idaho Water Resource Board (IWRB) in the amount of \$56,615.00 to cover costs for a project to
3 reconfigure its irrigation water supply system (Project); and
4

5 WHEREAS, the Corporation delivers water for approximately 320 acres of irrigated lands in Ada
6 County near Kuna, Idaho; and
7

8 WHEREAS, the Company's delivery system was originally constructed in the 1970's, and involves
9 pumping ground water from a well into a holding pond for storage and then into convenience lines for
10 irrigation; and
11

12 WHEREAS, to improve the efficiency of the system and reduce operational costs, the
13 Corporation will eliminate the diversion of water from a storage pond and pump directly from its well
14 into a fully pressurized system, making the necessary upgrades to its pipelines to accommodate the new
15 system; and
16

17 WHEREAS, the total estimated cost for the Project is approximately \$57,615; and
18

19 WHEREAS the Corporation will provide project funding in the amount of \$1000 and has been
20 approved for a \$13,000 energy savings incentive from Idaho Power Company; and
21

22 WHEREAS, the Corporation is a qualified applicant, and the proposed Project is eligible for a loan
23 from the IWRB's Revolving Development Account; and
24

25 WHEREAS, the proposed Project is in the public interest and is in compliance with the State
26 Water Plan.
27

28 NOW THEREFORE BE IT RESOLVED that the IWRB approves a loan not to exceed \$56,615 from
29 the Revolving Development Account at 2.6% interest with a 15-year repayment term.
30

31 NOW THEREFORE BE IT FURTHER RESOLVED that the IWRB provides authority to the Chairman
32 of the IWRB, or his designee, to enter into contracts, to effectuate the loan, on behalf of the IWRB.
33

34 NOW THEREFORE BE IT FURTHER RESOLVED that this resolution and the approval of the loan are
35 subject to the following conditions:
36

- 37 1) The Corporation shall comply with all applicable rules and regulations that apply to the
38 proposed Project.

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- 2) Prior to the disbursement of any funds, the Corporation will provide acceptable security for the loan to the IWRB, including but not limited to its water rights, shareholder assessment income, and the Project infrastructure.
- 3) The Corporation shall maintain a reserve fund equal to one annual loan payment until the loan has been satisfied.

DATED this 21st day of January 2022.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 

JO ANN COLE-HANSEN, Secretary

BEFORE THE IDAHO WATER RESOURCE BOARD

**IN THE MATTER OF THE MOUNTAIN
HOME PLATEAU**

**RESOLUTION TO AUTHORIZE FUNDING
FOR THE MOUNTAIN HOME HYDROLOGIC
INVESTIGATION**

1 WHEREAS, significant water level declines on the Mountain Home Plateau resulted in the
2 establishment of the Cinder Cone Butte Critical Ground Water Area (CGWA) on May 7, 1981, and the
3 Mountain Home Ground Water Management Area on November 9, 1982; and
4

5 WHEREAS, over the last 40 years, IDWR Hydrology staff have tracked the continuation of these
6 groundwater issues through bi-annual measurement of groundwater levels and development of localized
7 water budgets; and
8

9 WHEREAS, the Cinder Cone Butte CGWA continues to see groundwater declines of up to four feet per
10 year; and
11

12 WHEREAS, in May 2021 a request was made by Elmore County for the IWRB to begin developing
13 a groundwater model for the Mountain Home Plateau; and
14

15 WHEREAS, the Fiscal Year 2022 Budget Resolution for the IWRB's Secondary Aquifer Planning,
16 Management, and Implementation Fund (Fiscal Year Budget Resolution) included \$700,000 in funds for
17 Mountain Home/Elmore County Water Sustainability Projects, but required an additional resolution
18 approval by the IWRB for funds to be utilized; and
19

20 WHEREAS, IDWR staff is now requesting authorization to utilize budgeted funds to conduct a
21 comprehensive investigation of the Mountain Home Plateau hydrologic system, ranging from King Hill in the
22 east to the Treasure Valley model boundary in the west; and
23

24 WHEREAS, the hydrologic investigation will be completed over four years and include the following:
25 1) developing a water budget and hydrogeologic framework, and performing water level synoptic
26 measurements through the USGS and 2) drilling new monitoring wells and improving the existing monitoring
27 network through contracted work managed by IDWR staff; and
28

29 NOW, THEREFORE, BE IT RESOLVED that the IWRB authorizes funds in the amount of \$700,000 from
30 the IWRB's Second Aquifer Planning, Management, and Implementation Fund for the completion for the
31 Mountain Home Hydrologic Investigation.

Dated this 21st day of January 2022



Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST 

Jo Ann Cole-Hansen, Secretary