



AGENDA

IDAHO WATER RESOURCE BOARD

Board Meeting No. 15-21

WORK SESSION

Thursday, November 18, 2021

Executive Session 8:00 a.m. (MT)

Open Meeting 9:30 a.m. (MT)

Water Center

Conference Rooms 602 B, C & D / Zoom Online

322 E. Front St.

BOISE

[Click here to join our Zoom Meeting](#)

Dial in Option: 1(253) 215-8782 Meeting ID: 886 3389 9518 Passcode: 574002

Brad Little
Governor

Jeff Raybould
Chairman
St. Anthony
At Large

Roger W. Chase
Vice-Chairman
Pocatello
District 4

Jo Ann Cole-Hansen
Secretary
Lewiston
At Large

Dale Van Stone
Hope
District 1

Albert Barker
Boise
District 2

Dean Stevenson
Paul
District 3

Peter Van Der Meulen
Hailey
At Large

Brian Olmstead
Twin Falls
At Large

1. Roll Call
2. Executive Session: Board will meet pursuant to Idaho Code § 74-206(1) subsection (f) to communicate with legal counsel regarding legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Topics: WR 74-16187, Recharge Water Rights, & Priest Lake. Closed to the public; no actions taken during executive session.
3. Lemhi Basin Settlement Working Group Update
4. Anderson Ranch Dam Raise Update
5. Administrative Rules Update
6. Priest Lake Water Management Project Update
7. Elmore County Water Supply Issues
8. Loan Program
 - a. Point Springs Grazing Association Loan Modification
 - b. Program Interest Rate Proposal
 - c. King Hill Irrigation District Loan Application
 - d. Blaine County Canal Company Loan Application
 - e. Lakeview Estates Subdivision HOA Loan Application
9. Cloud Seeding Program
 - Operations & Maintenance Budget
 - Research & Development
 - Program Update
10. Regional Manager's Report
11. Non-Action Items for Discussion
12. Adjourn

Aquifer Stabilization Committee Meeting No. 2-21

Upon completion of Work Session

1. Introductions and Attendance
2. ESPA Recharge Update
3. Standards & Procedures
4. Other Items
5. Adjourn

The board will break for lunch at approximately noon.

* Action Item: A vote regarding this item may be made this meeting. Identifying an item as an action item on the agenda does not require a vote to be taken on the item. **Americans with Disabilities:** If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email: jennifer.strange@idwr.idaho.gov or by phone at (208) 287-4800.

**LEMHI RIVER BASIN COMPREHENSIVE SETTLEMENT AGREEMENT
BETWEEN THE IDAHO WATER RESOURCE BOARD, IDAHO DEPARTMENT
OF FISH AND GAME, IDAHO OFFICE OF SPECIES CONSERVATION
AND VARIOUS LEMHI BASIN WATER USERS**

SIGNATORIES (“Parties”)

Lemhi Irrigation District
Kurt Bird
David Udy
Steven Johnson
Carl Ellsworth
Carl Lufkin
Lowell Cerise
RJ Smith

Idaho Water Resource Board
Idaho Department of Fish and Game
Office of Species Conservation

Other Water Users Who Agree to be Bound by this Settlement Agreement as provide Section XI.1 below.

INTRODUCTION

This Settlement Agreement (“Agreement”) memorializes the Parties’ comprehensive settlement of the Lemhi high flow issues as directed by Idaho Senate Concurrent Resolution 137, 2020 Idaho Sess. Laws at 1028-30 (“SCR 137”), and Idaho House Concurrent Resolution 21, 2021 Idaho Sess. Laws at 1169.

SETTLEMENT AGREEMENT

I. Goals of the Parties

1. The recognized biological and business goals of the Parties are to “conserve, restore, and enhance sufficient habitat to sustain viable fish populations within the Lemhi River Basin while protecting private property rights and preserving and enhancing the farming and ranching lifestyle and economy of the Lemhi River Basin.” SCR 137.
2. The undersigned state agencies desire to work with Lemhi water users to protect existing private water rights and to promote economic development in the Lemhi River Basin.
3. The undersigned Lemhi water users desire to work with the undersigned state agencies to implement flow, passage, and screening projects to enhance listed salmon, bull trout and steelhead in accordance with this Agreement.
4. The Parties recognize and agree that all actions in this Agreement will be done in conformance with Idaho water law.

II. Resolution of State and Private Protests to Pending Water Right Applications.

1. **Withdrawal of Protests to Pending Applications.** To promote economic development in the Lemhi River Basin the undersigned state agencies and private water users agree to withdraw their protests to the following water right applications of parties to this Settlement Agreement (“Agreement”) subject to the following terms and conditions.
2. **Big Timber Applications**
 - a. **Permit 74-16187** (Kurt Bird) will be subject to the terms and conditions set forth in the Stipulation between the parties to the contested case dated _____:
 - b. **Application 74-16205** (David Udy) will be subject to the following conditions:
 1. 18 cfs bypass flow. Water Transaction Flows counts toward satisfaction of bypass flow.
 2. Season of Use: 3/15 to 7/31.
 3. If applicable, include Permissible Place of Use (PPU) and other flexibility options.
 4. No right to divert water under Little Timber Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16205 Place of Use (POU).
 5. 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.
 - c. **David Udy stream flow maintenance application** will be subject to the following conditions:
 1. Application will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
 2. Right will be limited to the place of use of the Base Right and cannot be transferred to other places of use independent of the Base Right.
 3. Season of use will be 3/15 to 7/31.
 4. Right may be exercised only when the flow in Big Timber is 18 cfs or greater at the Big Timber Gage 13304050, located at Latitude 44°41’19.65”, Longitude 113°22’13.46”, Lemhi County . Water Transaction Flows counts toward satisfaction of bypass flow.
 5. Right will be subject to the conditions described in Section III

below.

6. Right will have a priority date one day later than all other Big Timber and Little Timber high flow applications other than Kurt Bird and Jerry Foster.
 7. Right will not receive benefit of Wild and Scenic subordination.
 8. Right will be in full satisfaction of, and supersede, any existing or future claim by Udy of a right to divert “high flow” from Big Timber and Little 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 Right.
 9. No right to divert water available under Little Timber Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16205 POU.
- d. **Application 74-16186** (Jerry Foster) will be subject to the following conditions:
1. 18 cfs bypass flow. Water Transaction Flows counts toward satisfaction of bypass flow.
 2. Season of Use: 3/15 to 7/31.
 3. If applicable, include PPU and other flexibility options.
 4. No right to divert water under Big Timber Basin stream flow maintenance right or Basin 74 High Flow General Provision for used on 74-16186 POU.
 5. 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.
- e. **Jerry Foster stream flow maintenance application** will be subject to the following conditions:
1. Application will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
 2. Right will be limited to the place of use of the Base Rights and cannot be transferred to other places of use independent of the Base Right.
 3. Season of use will be 3/15 to 7/31.
 4. Right may be exercised only when the flow in Big Timber is 18 cfs or greater at the Big Timber Gage 13304050, located at Latitude 44°41’19.65”, Longitude 113°22’13.46”, Lemhi County. Water Transaction Flows counts toward satisfaction of bypass flow.
 5. Right will be subject to the conditions described in Section III. below.

6. Right will have a priority date one day later than all other Big Timber and Little Timber high flow applications other than David Udy and Kurt Bird.
 7. Right will not receive benefit of Wild and Scenic subordination
 8. Right will be in full satisfaction of, and supersede, any existing or future claim by Foster of a right to divert “high flow” from Big Timber and Little 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 Right.
 9. No right to divert water under Big Timber Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16186 POU.
- f. **Other Big Timber Stream Flow Maintenance Applications** will be subject to the following conditions:
1. Applications for other water users will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
 3. Right will be limited to the place of use of the Base Right and cannot be transferred to other places of use independent of the Base Right.
 4. Season of use will be 3/15 to 7/31.
 5. Rights may be exercised only when the flow in Big Timber is 18 cfs or greater at the Big Timber Gage 13304050, located at Latitude 44°41’19.65”, Longitude 113°22’13.46”, Lemhi County. Water Transaction Flows counts toward satisfaction of bypass flow.
 6. Rights will be subject to conditions described in Section III below.
 7. Rights will not receive benefit of Wild and Scenic subordination.
 8. Right will be in full satisfaction of, and supersede, any existing or future claims of a right to divert “high flow” from Big Timber and Little Timber Creeks 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.
- f. Applicants agrees to allow Idaho Fish and Game to install and maintain fish screens on all Big Timber Creek diversions.
- g. Applicants will not protest Idaho Fish and Game applications for fish propagation flows required for operation of the fish screens.
- h. Applicants will cooperate with Idaho Fish and Game to consolidate diversion were feasible.

- i. Parties will not oppose IWRB application for a minimum streamflow water right on Big Timber of 18 cfs from March 15th to July 31st and 10 cfs from August 1st to March 14th.
- j. The application will be junior to all applications pending with the Idaho Department of Water Resources. IWRB Water Transaction Flows will count toward satisfaction of the minimum flow.

9. **Big Eightmile Applications**

- a. **Application 74-16196** (Steven Johnson) will be subject to the following conditions:
 - 1. 5 cfs bypass flow measured at Big Eightmile Lower gage at Lee Creek Road in the NE1/4NE1/4, Section 28, T16N, R25E, B.M., Lemhi County. Water Transaction Flows count toward satisfaction of bypass flow.
 - 2. Season of Use: 3/15 to 07/31.
 - 3. If applicable, include PPU and other flexibility options.
 - 4. No right to divert water under Big Eightmile Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16196 POU.
 - 5. 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.
- b. **Steven Johnson Big Eightmile stream flow maintenance applications** will be subject to the following conditions:
 - 1. Application will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
 - 2. Right will be limited to the place of use of the Base Right and cannot be transferred to other places of use independent of the Base Right.
 - 3. Season of use will be 3/15 to 7/31.
 - 4. Right may be exercised only when the flow in Big Eightmile is 5 cfs or greater measured at Big Eightmile Lower gage at Lee Creek Road in the NE1/4NE1/4, Section 28, T16N, R25E, B.M., Lemhi County. Any water transaction flows count toward satisfaction of bypass flow.
 - 5. Right will be subject to conditions described in Section III below.
 - 6. Right will not receive benefit of Wild and Scenic subordination.

7. Right will have a priority date one day later than Big Eightmile stream flow maintenance applications other than Kent Bird.
 8. Right will be in full satisfaction of, and supersede, any existing or future claim by Johnson of a right to divert “high flow” from Big Eightmile under the Basin 74 High Flow General Provision decreed in the Snake River Basin Adjudication for use on the place of use of Base Right(s).
 9. No right to divert water under Big Eightmile Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16196 POU.
- c. **Application 74-16204** (Kent Bird) will be subject to the following conditions:
1. 5 cfs bypass flow measured at Big Eightmile Lower gage at Lee Creek Road in the NE1/4NE1/4, Section 28, T16N, R25E, B.M., Lemhi County. Water Transaction Flows count toward satisfaction of bypass flow.
 2. Season of Use: 3/15 to 7/31.
 3. If applicable, include PPU and other flexibility options.
 4. No right to divert water under Big Eightmile Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16204 POU.
 6. 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.
- d. **Kent Bird Big Eightmile stream flow maintenance applications** will be subject to the following conditions:
1. Application will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
 2. Right will be limited to the place of use of the Base Right and cannot be transferred to other places of use independent of the Base Right.
 3. Season of use will be 3/15 to 07/31.
 4. Right may be exercised only when the flow in Big Eightmile is 5 cfs or greater measured at Big Eightmile Lower gage at Lee Creek Road in the NE1/4NE1/4, Section 28, T16N, R25E, B.M., Lemhi County. Water Transaction Flows count toward satisfaction of bypass flow.
 5. Rights will be subject to the conditions described in Section III below.

6. Rights will not receive benefit of Wild and Scenic subordination.
7. Rights will have a priority date one day later than Big Eightmile stream flow maintenance applications other than Steven Johnson.
8. Right will be in full satisfaction of, and supersede, any existing or future claim by Bird of a right to divert “high flow” from Big Eightmile 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 Right(s).
9. No right to divert water under Big Eightmile Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16204 POU.

e. Other Big Eightmile Lemhi Basin Stream Flow Maintenance Applications will be subject to the following conditions:

1. Applications for other water users will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
2. Right will be limited to the place of use of the Base Right and cannot be transferred to other places of use independent of the Base Right.
3. Season of use will be 3/15 to 7/31.
4. Rights may be exercised only when the flow in Big Eightmile is 5 cfs or greater measured at Big Eightmile Lower gage at Lee Creek Road in the NE1/4NE1/4, Section 28, T16N, R25E, B.M., Lemhi County. Water Transaction Flows count toward satisfaction of bypass flow.
5. Rights will be subject to the conditions described in Section III below.
6. Rights will not receive benefit of Wild and Scenic subordination.
7. Rights will be in full satisfaction of, and supersede, any existing or future claim of a right to divert “high flow” from Big Eightmile 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.

4. Mill Creek Applications

a. Application 74-16194 (Steven Johnson) will be subject to the following conditions:

1. Season of Use for Irrigation: 3/15 to 7/31.
2. If applicable, include PPU and other flexibility options.

3. No right to divert water under Mill Creek Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16194 POU.
 4. Irrigation portion of 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.
 5. The recharge portion of the right does not benefit from the Wild and Scenic River subordination.
- b. **Application 74-16195** will be withdrawn at request of applicant.
- c. **Steven Johnson Mill Creek stream flow maintenance application** will be subject to the following conditions:
1. Application will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
 2. Right will be limited to the place of use of the Base Right and cannot be transferred to other places of use independent of the Base Right.
 3. Season of use will be 3/15 to 7/31.
 4. Right will be subject to the conditions described in Section III below.
 5. Right will not receive benefit of Wild and Scenic subordination.
 6. Right will have a priority date one day later than other Mill Creek stream flow maintenance applications.
 7. Right will be in full satisfaction of, and supersede, any existing or future claim of a right by Steven Johnson to divert “high flow” from Mill 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 Right.
- d. **Other Mill Creek stream flow maintenance applications** will be subject to the following conditions:
1. Applications for other water users will be based on the historic high flow use ancillary to existing uses authorized by decreed irrigation water rights with priority dates on or before March 15, 1966 (“Base Right”).
 2. Right will be limited to the place of use of the Base Right and cannot be transferred to other places of use independent of the Base Right.
 3. Season of use will be 3/15 to 7/31.

4. Rights will be subject to the conditions described in Section III below.
 5. Rights will not receive benefit of Wild and Scenic subordination.
 6. Rights will be in full satisfaction of, and supersede, any existing or future claim of a right to divert “high flow” from Mill 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.
5. **Nonconsumptive fish propagation flow applications.** Parties will not protest nonconsumptive fish propagation flow water right applications 74-16224, 74-16225, 74-16227 and Transfer No. 83870.
6. **Separate Streams Administration.** The above listed water rights that divert from streams listed in the SRBA Basin 74 Separate Stream General Provision “shall be administered separately from all other water rights in Basin 74 in accordance with the prior appropriation doctrine as established by Idaho Law, except as required by the Wild and Scenic Rivers Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees dated September 1, 2003 and as required by conditions included in stream flow maintenance water rights acquired pursuant to this Agreement.
7. **IDWR Authority Not Affected.** Nothing herein is intended to nor shall affect IDWR’s authority with respect to its review and approval of the pending applications listed above. In the event IDWR fails to approve the applications as set forth above the Parties shall meet and determine whether such disapproval requires renegotiation, modification, or termination of the Agreement.

III. **Lemhi Basin Stream Flow Maintenance Applications**

1. **Lemhi Basin Stream Flow Maintenance Applications.** To protect private property rights and to preserve the historic farming and ranching lifestyle and the economy of the Lemhi River Basin, the Parties agree to support legislation set forth in Attachment A that provides for the filing of Lemhi Basin stream flow maintenance applications. The applications will be ancillary to and may only be used on the place of use of base rights entitled to divert high flow under the Basin 74 High Flow General Provision. The diversion rate is limited to the historic use of high flow.
2. **Distribution of Lemhi Basin Stream Flow Maintenance Water Rights.**
 - a. When Lemhi Basin stream flow maintenance water rights are in priority, the water supply legally available to such rights shall be distributed proportionately among water users diverting from a common source, except as otherwise provided in Section III.2.b.

below.

- b. Water users whose lands are within the Lemhi Irrigation District and who are authorized to divert and use water under a stream flow maintenance water right held by the Lemhi Irrigation District shall establish a process for sharing water available under the stream flow maintenance water right.
 - c. Lemhi Basin stream flow maintenance water rights diverting from streams listed in the SRBA Basin 74 Separate Stream General Provision “shall be administered separately from all other water rights in Basin 74 in accordance with the prior appropriation doctrine as established by Idaho Law, except as required by the *Wild and Scenic Rivers Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees* dated September 1, 2003.”
3. **Owner of Lemhi Basin Stream Flow Maintenance Water Rights.** Irrigation water right holders entitled to divert water under the SRBA High Flow General Provision may either file an application in their own name or have the Lemhi Irrigation District file applications on their behalf; provided, however, all Lemhi Basin stream flow maintenance applications on Big Timber, Eightmile, Lee and Mill Creeks shall be filed only in the name of the water users whose lands are authorized to be irrigated with water rights decreed in the Lemhi Adjudication, Civil Case No. 4948 (1982). While applications filed by the Lemhi Irrigation District will show the Lemhi Irrigation District in the Name and Address section of the water right, the right shall include a condition stating that as a matter of Idaho constitutional and statutory law title to the use of the water under the right is held by those water users whose lands are authorized to be irrigated with water rights decreed in the Lemhi Adjudication, Civil Case No. 4948 (1982).
4. **McFarland Campground Minimum Stream Flow Application.** The parties agree to support legislation set forth in Attachment A authorizing the Idaho Water Resource Board to appropriate a minimum stream flow at McFarland Campground.
5. **McFarland Campground Minimum Stream Flow Condition.** As a condition of obtaining a stream flow maintenance water right, an applicant for a stream flow maintenance water right agrees to inclusion of a condition on the applicant’s stream flow maintenance water right requiring the applicant to cease diversions under the right when the McFarland Campground minimum stream flow water right is in priority.
6. **Waiver of Use of High Flow Under General Provision.** Each Lemhi Basin stream flow maintenance water right shall contain a condition stating that the right is in full satisfaction of all rights of the holder under SRBA Basin 74 High Flow General Provision to the use of high flow on the place of use of the Base Right.

7. **Satisfaction of Local Public Interest.** The McFarland Campground minimum stream flow is in satisfaction of the local public interest requirement of Idaho Code 42-203A(5)(e) as it pertains to processing of Lemhi Basin stream flow maintenance water rights provided for by this Agreement.
8. **Priority of Existing Rights.** The McFarland Campground minimum stream flow water right provided for in this Section shall be junior to all previously decreed, licensed, or permitted water rights and all water right applications on file with the Idaho Department of Water Resources with a priority earlier than the McFarland Campground priority date.
9. **Agreement to Not Protest Applications.** Parties agree to not protest a stream flow maintenance application filed with the Idaho Water Resource Department pursuant to this Agreement provided the elements of the application are consistent with the historic use of high flow on the place of use of the base right under the Basin 74 High Flow General Provision.
10. **Good Faith.** Parties agree to cooperate in good faith in the filing and perfection of stream flow maintenance water rights.
11. **Stream Flow Maintenance Applications Do Not Create a Precedent.** The Lemhi Basin stream flow maintenance applications provided for in this Agreement are based upon the historic practice recognized by the Seventh Judicial District of the State of Idaho in the Lemhi Adjudication, Civil Case No. 4948 (1982), and therefore, are not intended to nor shall be construed as establishing a precedent for issuance of any future water rights in the State of Idaho.

IV. **Additional Minimum Stream Flow Applications.**

1. **Minimum Stream Flow Legislation.** The Parties agree to support the legislation set forth in Attachment A authorizing the IWRB to file applications for permit for minimum stream flow water rights on the following creeks:

STREAM	QUANTITY	Period of Use	GAGE	CONDITIONS
Big Timber	18 cfs 10cfs	3/15 to 7/31 8/1 to 3/14	Big Timber Gage located at Highway 28 Bridge in the SWNW of Sec. 28, T16N,	Water Transaction flows count toward satisfaction of minimum flow. (Current amount is 7.2 c.f.s.)

			R26E.	
Bohannon	13 cfs 8.5 cfs	3/15 to 7/31 8/1 to 3/14	Lower Bohannon Gage, 28 21N23E SENE	Water Transaction flows count toward satisfaction of minimum flow. (Current amount is 8.58 c.f.s.).
Canyon	16 cfs 4 cfs	3/15 to 7/31 8/1 to 3/14	Canyon Creek, 28 16N26E NWNE	Water Transaction flows count toward satisfaction of minimum flow. (Current amount 4 c.f.s.)
Hayden	60 cfs 13 cfs	3/15 to 7/31 8/1 to 3/14	21 18N24E SWSW	

2. **Local Public Interest.** These minimum stream flow water right applications for permit are in satisfaction of the local public interest requirement of Idaho Code 42-203A(5)(e) as it pertains to processing of existing and future water right applications on Big Timber, Bohannon, Canyon and Hayden Creeks.
3. **Priority of Existing Rights.** The minimum stream flow water rights provided for in this Section shall be junior to all previously decreed, licensed, or permitted water rights. The minimum stream flows shall also be junior to all pending water right applications and stream flow maintenance rights acquired pursuant to this Agreement.

V. Lemhi Basin Water Supply Program

1. **Recharge.** To enhance the farming and ranching lifestyle and economy of the Lemhi River Basin, the IWRB will commission a managed recharge feasibility study to evaluate the costs and benefits of managed recharge as a long-term water management tool in the Lemhi River Basin and determine if a program can be carried out. The study will assess the volume of water available for recharge and the potential areas within the Lemhi Basin suitable

for managed recharge and it will develop preliminary cost estimates for implementing managed recharge.

- a. As part of the managed recharge feasibility study, the IWRB will identify two pilot recharge projects. The Parties agree to not protest recharge water right applications for the pilot projects and to cooperate in obtain access to lands for development of the pilot projects.
 - b. Recharge applications for permit shall be subject to the same conditions applied to the streamflow maintenance water rights set forth in this Agreement.
2. **Cloud Seeding and Water Storage Feasibility Study.** The IWRB will commission a feasibility study to evaluate whether cloudseeding and water storage projects are potential long-term water management strategies in the Lemhi River Basin.

VI. **Miscellaneous Provisions**

1. **Fish Screens.** The Parties agree to install and maintain fish screens at no cost to landowners on Big Timber Creek diversions and on other diversions in the Lemhi Basin as determined by mutual agreement of the landowner and the Idaho Department of Fish and Game. Landowners agree to grant access to Idaho Fish and Game to install and maintain fish screens. Fish screens will be installed with available federal and ratepayer funding. Landowners agree to cooperate with IDFG to consolidate their diversions where possible.
2. **Fish Propagation Water Right Applications.** The Parties to this Agreement agree to not protest fish propagation flows required for operation of fish screens because these are nonconsumptive flows that are returned immediately downstream of the fish screen.
3. **Notice of Water Transactions.** The IWRB will establish and maintain a list of persons and entities interested in receiving notifications of IWRB meetings or its committees in which water transaction projects will be proposed or discussed. Persons or entities interested in receiving such notifications must provide their names and email addresses to IWRB staff. IWRB staff will send to each person or entity on the list an email with a copy of the final agenda and a link to the IWRB briefing book for each IWRB or committee meeting, as soon as practicable after the agenda is finalized. This paragraph does not restrict or expand any rights that interested persons or entities have under Idaho law to submit comments, testimony, or exhibits to the IWRB or one of its committees regarding a water transaction project or proposal; and the failure to receive an email or a copy of a meeting agenda shall not be a basis for challenging any decision or action of the IWRB or one of its committees regarding a water transaction project or proposal.

VII. Steering and Technical Committees.

1. **Steering Committee.** The Parties will establish a Steering Committee to oversee implementation of the Agreement. The Steering Committee shall consist of two (2) representatives of the Lemhi Irrigation District, two (2) representatives of the Upper Lemhi Basin Water Users, one (1) representative of the Idaho Department of Fish and Game, one (1) representative of the Office of Species Conservation, and one (1) representative of the Idaho Water Resource Board. The Basin 74 water master or an IDWR employee shall serve as an ex officio member of the Steering Committee.
2. The Steering Committee shall operate on a consensus basis.

VIII. Administration

1. **Distribution of Water Rights.** Distribution of water rights by water district watermasters shall be under supervision of the Director of IDWR consistent with Idaho Code Title 42 Chapter 6. In accordance with the provisions of this Agreement, local water district watermasters are expected to distribute water in accordance with the seasons of use established by water rights within local water districts, including water rights and applications for permit identified in this Agreement.
2. **Funding for Water Districts.** The water users of local water districts shall be responsible for adopting sufficient budgets to allow watermasters to distribute water rights during all periods when water rights within the water district are entitled to divert and when water is being diverted pursuant to the Basin 74 High Flow General Provision in the SRBA Unified General Decree, including water rights and applications for permit identified in this Agreement. The Director of IDWR may give specific direction to watermasters regarding the delivery of water during high flow periods or other times of the year as necessary in accordance with Idaho Code §§ 42-602 and 42-607.
3. **Computerized Accounting System.** IDWR will work with the water districts to develop and maintain a computerized accounting system for the Lemhi Basin. IDWR will provide the technical and programming resources to develop computerized accounting resources. The Parties agree the watermasters will use the computerized accounting system for priority administration of water rights.
4. **Water Master Instructions.** The Parties will jointly request the Director of the Idaho Department of Water Resources to issue such water master instructions as necessary for the implementation of this Agreement.

XI. General Conditions

1. **Additional Parties:** In addition to the Parties listed below, other persons

may become parties to this Agreement by signing the form in Attachment B acknowledging they will be bound by all terms and conditions set forth herein.

2. **Binding on Successors.** This Agreement shall be recorded in the official real property records of Lemhi County, Idaho, shall run with the properties described in the stream flow maintenance water rights authorized by this Agreement and shall be binding upon and inure to the benefit of the owners thereof.
3. **Amendment.** This Agreement may be amended only by an instrument in writing.
4. **No Waiver.** The failure to enforce or perform any provision set forth in this Agreement shall not be deemed a waiver of any such right.
5. **Entire Agreement.** Except to the extent otherwise provided herein, this Agreement constitutes the entire agreement between the Parties. No other agreements have been made modifying, adding to, or changing the terms hereof. This Agreement may not be abrogated, modified, rescinded, or amended in whole or in part without the consent of all signatories to the Agreement, in writing and executed by each of them. No purported modifications or amendments, including, without limitation, any oral agreement, course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.
6. **Governing Law.** This Agreement shall be governed by the laws of State of Idaho.
7. **Interpretation.** The Parties agree that the terms and provisions of this Agreement 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.
8. **Authority of Parties.** Each of the Parties represent to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power, and authority to enter and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.
9. **Good Faith and Fair Dealing; Reasonableness.** The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval, or similar action shall be in writing and not be unreasonably withheld, conditioned, delayed or denied, and (ii) wherever this Agreement gives a Party a right to determine, require, specify, or take similar

action with respect to matters, such determination, requirement, specification, or similar action shall be reasonable.

10. **Cooperation.** The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.
11. **Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute one and the same Agreement.

SIGNATURES

Lemhi Irrigation District

Kurt Bird

Steven Johnson

Carl Ellsworth

Carl Lufkin

Lowell Cerise

RJ Smith

David Udy

Idaho Water Resource Board

Idaho Department of Fish and Game

Office of Species Conservation

Date of last signature:

ATTACHMENT A

STATEMENT OF PURPOSE

RS _____

In 2020, the Idaho Legislature adopted Senate Concurrent Resolution 137 (SCR 137). SCR 137 directed “the Idaho Water Resource Board, with technical support from the Idaho Department of Water Resources, to work expeditiously with local water users to develop a comprehensive settlement that resolves current tensions and conflict that are the result of competing water supply demands in the Lemhi River Basin and that the comprehensive settlement, to the best of the abilities of the participating parties and in the spirit of compromise and resolution, is consistent with past practices, future needs, and Idaho law. SCR 137 further directed the Idaho Water Resource Board to report to the First Regular Session of the Sixty-sixth Idaho Legislature on the implementation of this resolution.

In 2020, the Idaho Water Resource Board retained two mediators to facilitate discussions with the affected interests. On _____, 2021, the affected water users and state agencies entered into the Lemhi Basin Comprehensive Settlement Agreement. As part of the Settlement Agreement, the participating parties agreed to seek enactment of this proposed legislation to provide for the filing of Lemhi Basin stream flow maintenance applications and minimum stream flow applications on selected tributary streams. Thus, the participating parties jointly request the Idaho Legislature approve this legislation. **ADD DETAILS WHEN FINAL SETTLEMENT REACHED**

FISCAL NOTE

The Idaho Water Resource Board will incur costs for the filing of the minimum stream flow water rights. Applicants for Lemhi Basin stream flow maintenance water rights will pay applications fees that will reimburse the Department of Water Resources for costs of advertising and processing the applications.

Contact:

Representative _____

SECTION 1

42-251 APPROPRIATION OF UNAPPROPRIATED FLOWS FOR LEMHI BASIN STREAM FLOW MAINTENANCE – LEGISLATIVE FINDINGS OF FACT CONCERNING HISTORIC USE OF HIGH FLOWS IN THE LEMHI RIVER BASIN AND NEED FOR PROTECTION AND EFFECTIVE MANAGEMENT OF SUCH USE.

(1) LEGISLATIVE FINDINGS: (a) In the absence of storage reservoirs in the Lemhi Basin, the diversion of “high water or flood water” onto irrigated land in the spring developed as a way of holding water underground within the basin, which would later contribute to the flows in the Lemhi River and its tributaries.

(b) The 1982 Lemhi Basin Decree recognized the practice of diverting “high water or flood water” onto irrigated lands. It defined “high water or flood water” as “natural flow of water over and above the amount required to fulfill (1) existing quantified rights as shown in the decree of water rights and (2) any future rights that may be established pursuant to statutory procedures of the State of Idaho.” *Proposed Findings of Water Rights, In the Matter of the General Determination of the Rights to the Use of the Surface Waters and Tributaries from Whatever Source of the Lemhi River Drainage Basin, Civil No. 4948, Feb. 16, 1982*, at 3, paragraph n. The Lemhi Decree included a conclusion of law stating the practice “of diverting so called ‘high waters or flood waters’ in addition to the quantified rights as described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) [is] allowed provided: (a) the waters so diverted are applied to beneficial use. (b) the existing quantified rights (including future appropriations of water) are first satisfied.”

(c) Based on the conclusions of law in the Lemhi Decree, many Lemhi Basin irrigators filed claims in the Snake River Basin Adjudication (SRBA) seeking water rights for their historical “high water or flood water” uses.

(d) On January 3, 2012, the SRBA Court affirmed the *Special Master’s Report and Recommendation* finding that “Idaho case law precludes the high flow claimants from seeking to establish high flow water rights in the SRBA as a matter of law.” *Memorandum Decision and Order on Challenge* at 11, Subcase Nos. 74-15051, In re SRBA Case No. 39576. Although the SRBA Court disallowed the high flow claims, it reaffirmed the Lemhi Decree conclusion of law regarding “high water or flood water” use through its Partial Decree pursuant to I.R.C.P. 54(b) of the Basin 74 High Flow General Provision (Basin 74 General Provision). Basin 74 General Provision provides: “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 provide (a) the waters so diverted are applied to beneficial use. (b) existing decreed rights and future appropriations of water are first satisfied.”

(e) Since the early 1990s Lemhi irrigators, with the assistance of state agencies, have led an effort to protect and enhance salmon runs in the Lemhi River Basin, including but not limited to providing passage flows for salmon, screening diversion works and implementing habitat improvement projects.

(f) The long-term goal of the Lemhi irrigators is to conserve, restore, and enhance sufficient habitat to sustain viable fish populations in the Lemhi River Basin while protecting private property rights and preserving and enhancing the farming and ranching lifestyle and

economy of the Lemhi River Basin.

(g) In 2001, the Idaho Legislature enacted Idaho Code § 42-1506 at the request of the Lemhi Basin irrigators. This statute authorized the Idaho Water Resource Board to appropriate a minimum stream flow in the lower reach of the Lemhi River for the purpose of providing fish passage and for protection of Lemhi water users from enforcement actions under the Endangered Species Act.

(h) Use of high flows under the Basin 74 General Provision is not a protected property interest under Idaho law. Because of the SRBA Court's disallowal of the "high water or flood water" claims a conflict has developed between irrigators who rely on the use of high flows under the Basin 74 High Flow General Provision and persons desiring to appropriate high flow for new uses.

(h) The legislature finds 1) that the use of Lemhi River Basin high flow for holding water underground to augment the natural flow of the Lemhi River during the summer is a beneficial use of water; and 2) that it is in the public interest to protect through the appropriation process the entitlements to divert and use high flows under the Lemhi Basin 74 High Flow General Provision for efficient administration of such uses and to aid in the proper planning for future development of the water resources of the Lemhi River Basin.

(2) STREAM FLOW MAINTENANCE APPLICATIONS. Lemhi irrigators who hold decreed irrigation water rights with a priority date prior to March 15, 1966, and claim authority to divert and use Lemhi Basin high flows for stream flow maintenance pursuant to Basin 74 General Provision may file an application for permit with the department of water resources to convert such use into a protectable water right not to exceed the extent of actual historic beneficial use on or before July 1, 2024. The application shall be upon forms provided by the department and the department shall process the application as provided in section 42-203A, Idaho Code.

(3) PROOF OF BENEFICIAL USE. The department may consider as part of its beneficial use examination for licensing of an application under this section an applicant's past historic use of high flows pursuant to the Basin 74 General Provision.

(4) COMPREHENSIVE SETTLEMENT. All applications filed under this section shall be subject to the terms and conditions of the Lemhi Basin Comprehensive Settlement dated _____.

(5) NOTICE — HOW GIVEN — REQUIREMENTS. To ensure all persons claiming authority to divert or withdraw and use waters of the under the Basin 74 General Provision are notified of the provisions of this section, the department of water resources is directed to give notice of the provisions of this section as follows:

(a) by regular mail upon all persons who currently own an irrigation water right decreed in the Lemhi Decree a notice in writing of the existence of this section;

(b) by publishing a notice in writing in a prominent and conspicuous place in at least one (1) newspaper of general circulation in Lemhi County, for at least one day a month for three (3) consecutive months;

(c) by posting a written notice, with the cooperation of the Lemhi County commission, in a prominent and conspicuous location in the Lemhi County courthouse;

(d) by providing sufficient number of copies of the notice and declaration to the Lemhi County treasurer for enclosure with each mailing of one (1) or more statements of taxes due issued in 2023; and

(e) by such other means the director of the department in his discretion determines

will carry out the purposes of this section.

SECTION 2

42-1506A. LEMHI RIVER — MCFARLAND CAMPGROUND MINIMUM STREAM FLOW APPROPRIATION. (1) The water resource board is hereby authorized and directed to appropriate and hold in trust for the people of the state of Idaho a minimum stream flow water right in a designated reach of the Lemhi River in accordance with the provisions of this section. The minimum stream flow appropriation shall be in the amount of 420 cfs from May 21st to July 6th at McFarland Campground located on the Lemhi River in the NWSE of Section 14, Township 17 North, Range 24 East, Boise Meridian; provided, however, this right may not call against water rights with points of diversion from streams administered as separate streams pursuant to the SRBA Basin 74 General Provision approved by the SRBA District Court on January 2, 2006, except as to stream flow maintenance water rights appropriated pursuant to section 42-251, Idaho Code. The elements of this water right shall include the following:

- A) This water right may be exercised only two years out of every five years. The five-year period shall be a rolling period.
- B) The exercise of the right shall be limited to a duration of three days, during the May 21st to July 6th period of use. The three-day period shall be timed to occur as near as possible to the peak of Lemhi runoff.

(2) The water resource board shall appropriate the minimum stream flow water right authorized under this section in accordance with the provisions of section [42-1503](#), Idaho Code. In acting upon the application for permit, the director of the department of water resources need not determine that the appropriation is capable of being maintained based upon records of existing stream flows because it is anticipated that the water right will be maintained through conditions on water rights acquired pursuant to 42-251, Idaho Code and operation of the water supply bank within the Lemhi river basin consistent with the provisions of section [42-1765A](#), Idaho Code.

(3) Upon the board's filing of an application for permit to appropriate water as directed by this section, the director of the department of water resources is authorized and directed, on an interim basis pending final action on the application for permit, to distribute water under the filing in accordance with the doctrine of prior appropriation using a priority date as of the filing of the application for permit.

(4) Nothing herein shall be construed to preclude a water right holder with established water rights on streams designated as separate streams by SRBA General Provision 74 from leasing such rights through the water supply bank to maintain the Lemhi minimum stream flow water right authorized by this section.

SECTION 3.

42-1506B. BIG TIMBER, BOHANNAN, CANYON, AND HAYDEN — MINIMUM STREAM FLOW APPROPRIATIONS. (1) The water resource board is hereby authorized and directed to appropriate and hold in trust for the people of the state of Idaho minimum stream flow water rights for Big Timber, Bohannan, Canyon, and Hayden creeks in accordance with the provisions of this section.

(a) The minimum stream flow for Big Timber Creek shall be 18 cfs from March 15 to July 31 and 10 cfs from August 1 to March 14 from the headwaters of Big Timber Creek in Section 30, Township 14 North, Range 25 East, Boise Meridian to its confluence with the Lemhi River in the southeast quarter of Section 20, Township 16 North, Range 26 East, Boise Meridian.

(b) The minimum stream flow appropriation for Bohannon Creek shall be 13 cfs from March 15 to July 31 and 8.5 cfs from August 1 to March 14 from the headwaters of Bohannon Creek in the northwest quarter of Section 19, Township 22 North, Range 24 East, Boise Meridian to its confluence with the Lemhi River in the northwest quarter of Section 33, Township 21 North, Range 23 East, Boise Meridian.

(c) The minimum stream flow for Canyon Creek shall be 16 cfs from March 15 to July 31 and 4 cfs from August 1 to March 14 from the headwaters of Canyon Creek in Government Lot 5, Section 18, Township 17 North, Range 27 East, Boise Meridian to its confluence with the Lemhi River in the northwest quarter of Section 28, Township 16 North, Range 26 East, Boise Meridian.

(d) The minimum stream flow for Hayden Creek shall be 60 cfs from March 15 to July 31 and 13 cfs from August 1 to March 14 from the headwaters of Hayden Creek in Section 14, Township 16 North, Range 22 East, Boise Meridian to its confluence with the Lemhi River in the southwest quarter, Section 21, Township 18 North, Range 24 East, Boise Meridian.

(2) In acting upon the applications for permit, the director of the department of water resources need not determine that the appropriation is capable of being maintained based upon records of existing stream flows because it is anticipated the water rights will be maintained through operation of the water supply bank within the Lemhi river basin consistent with the provisions of section [42-1765A](#), Idaho Code.

(3) The minimum stream flows provided for in this Section shall be junior to all previously decreed, licensed, or permitted water rights. The minimum stream flows shall also be junior to all pending water right applications and to the Lemhi Basin stream flow maintenance water right applications set forth in Appendix A to the Lemhi Basin Comprehensive Settlement Agreement.

(4) Upon the board's filing of applications for permit to appropriate water as directed by this section, the director of the department of water resources is authorized and directed, on an interim basis pending final action on the applications for permit, to distribute water under the filings in accordance with the doctrine of prior appropriation using a priority date as of the filing of the application for permit.

(5) These minimum stream flow applications for permit are in satisfaction of the local public interest requirement of Idaho Code 42-203A(5)(e) as it pertains to processing of existing and future water right applications on Big Timber, Bohannon, Canyon and Hayden Creeks.

ATTACHMENT B

CONSENT TO BE BOUND BY INDIVIDUALS

I _____ am the owner of Lemhi Irrigation Water Right(s) no. _____, and I have reviewed the ***Lemhi Basin Comprehensive Settlement Agreement between the Idaho Water Resources Board, Idaho Department of Fish and Game, Idaho Office of Species Conservation*** (“Agreement”) dated _____, and that I desire to become a party to the Agreement and by signing this form agree to be bound by all terms and conditions of the Agreement.

_____ Dated: _____

Print Name

CONSENT TO BE BOUND BY ORGANIZATIONS

I _____ am the agent/officer of _____ the owner of Lemhi Irrigation Water Right(s) no. _____. I represent that the owner has reviewed the ***Lemhi Basin Comprehensive Settlement Agreement between the Idaho Water Resources Board, Idaho Department of Fish and Game, Idaho Office of Species Conservation*** (“Agreement”) dated _____, and granted me the the full right power, and authority to sign this form binding the owner to all terms and conditions of the Agreement on its behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this consent to be bound by the Agreement.

_____ Dated: _____
Officer/Agent

Print Name and Title

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”

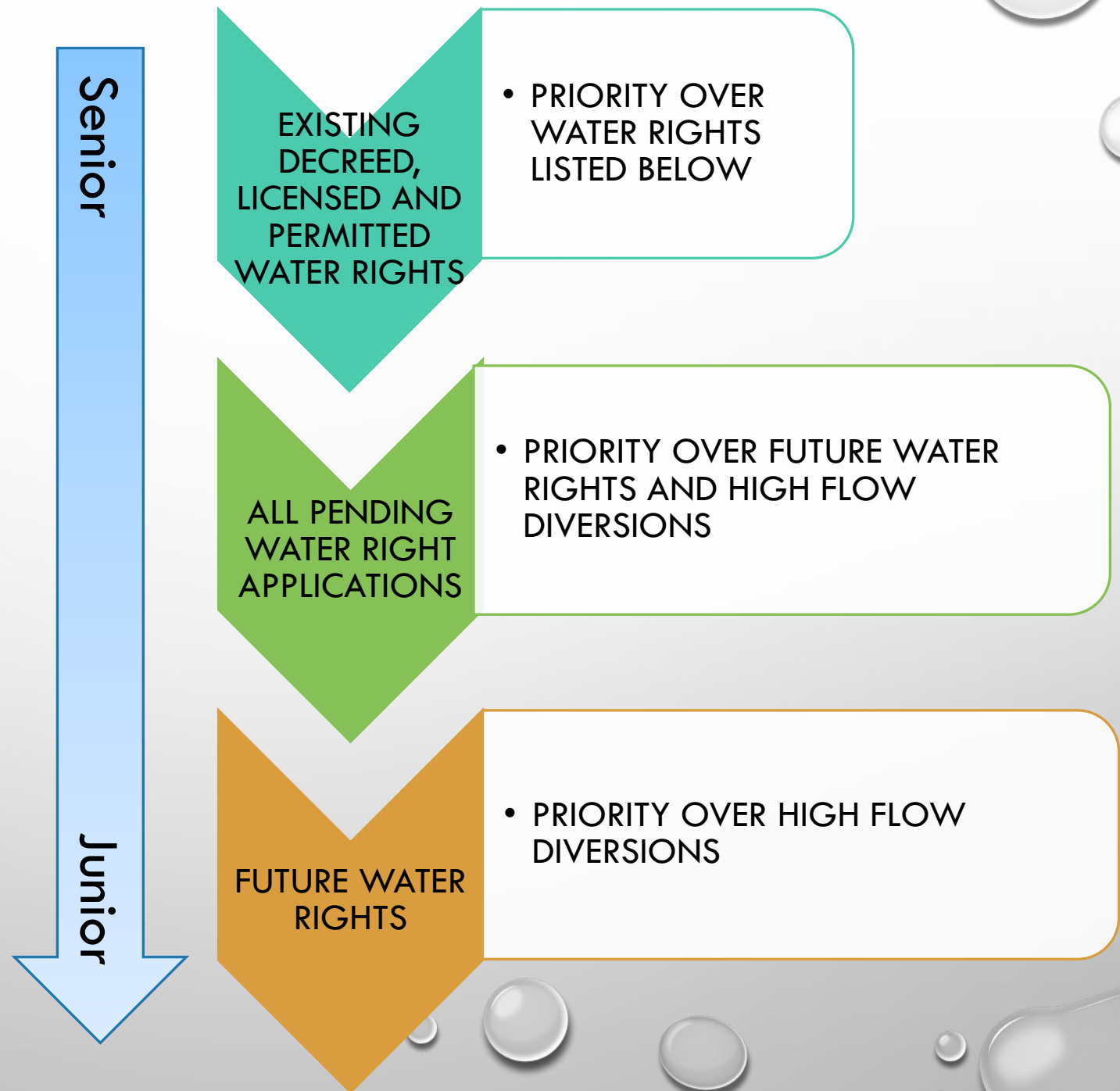
THE FOLLOWING GENERAL PROVISION SHALL GOVERN THE USE OF "HIGH FLOW" SURFACE WATER FOR IRRIGATION USE WITHIN THE LEMHI BASIN:

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

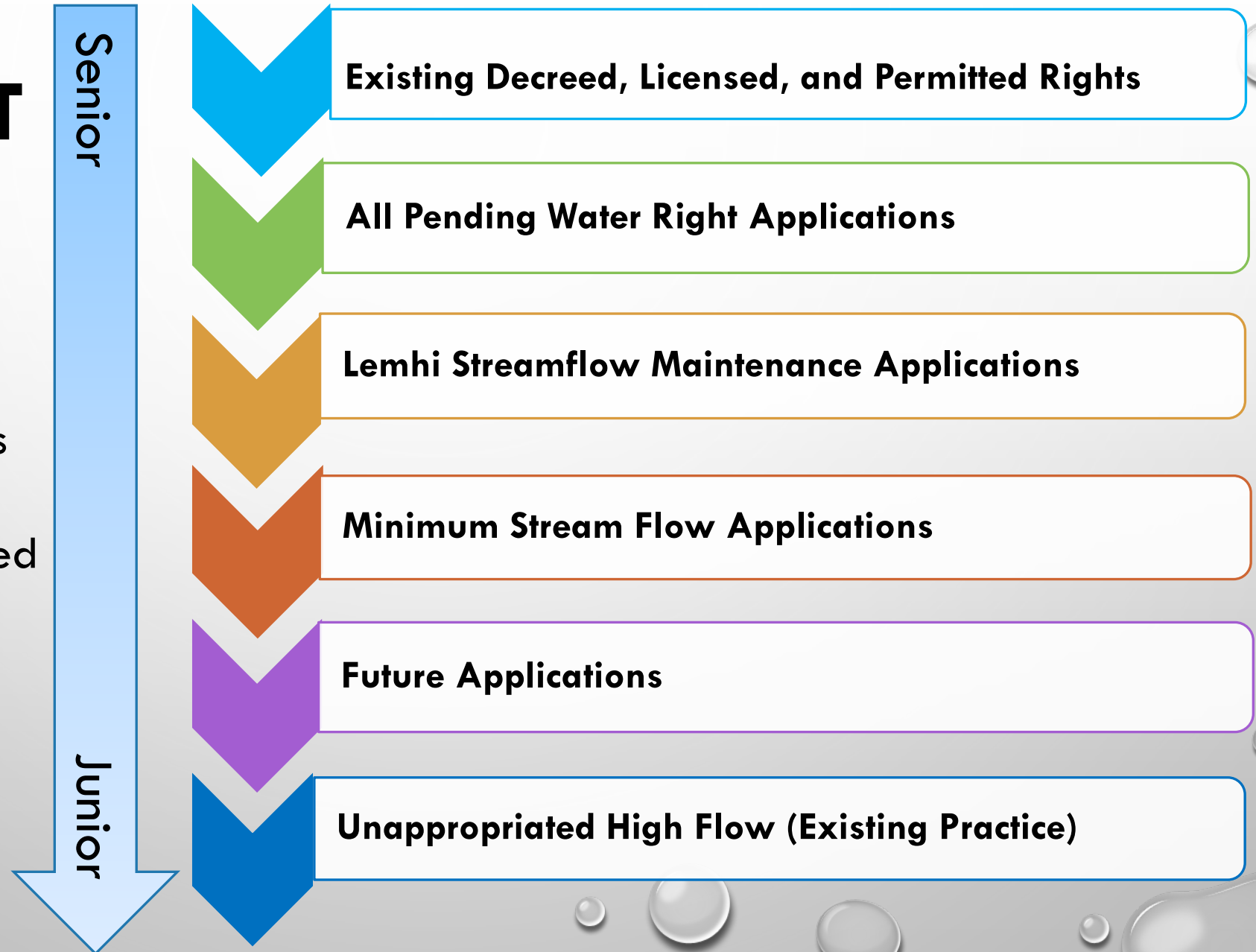
- to protect existing water rights,
- to safeguard the provisions of the FOREST SERVICE [WILD AND Scenic] settlement,
- to allocate additional water rights,
- to conserve, restore, and enhance sufficient habitat to sustain viable fish populations, and
- to enhance the farming and ranching lifestyle and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

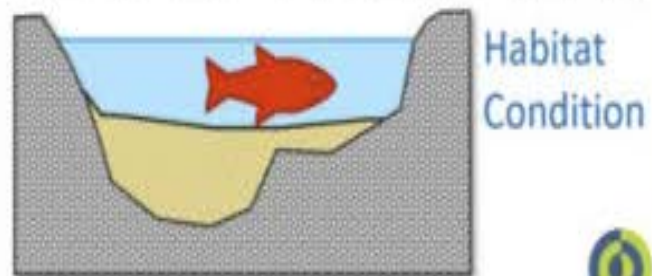
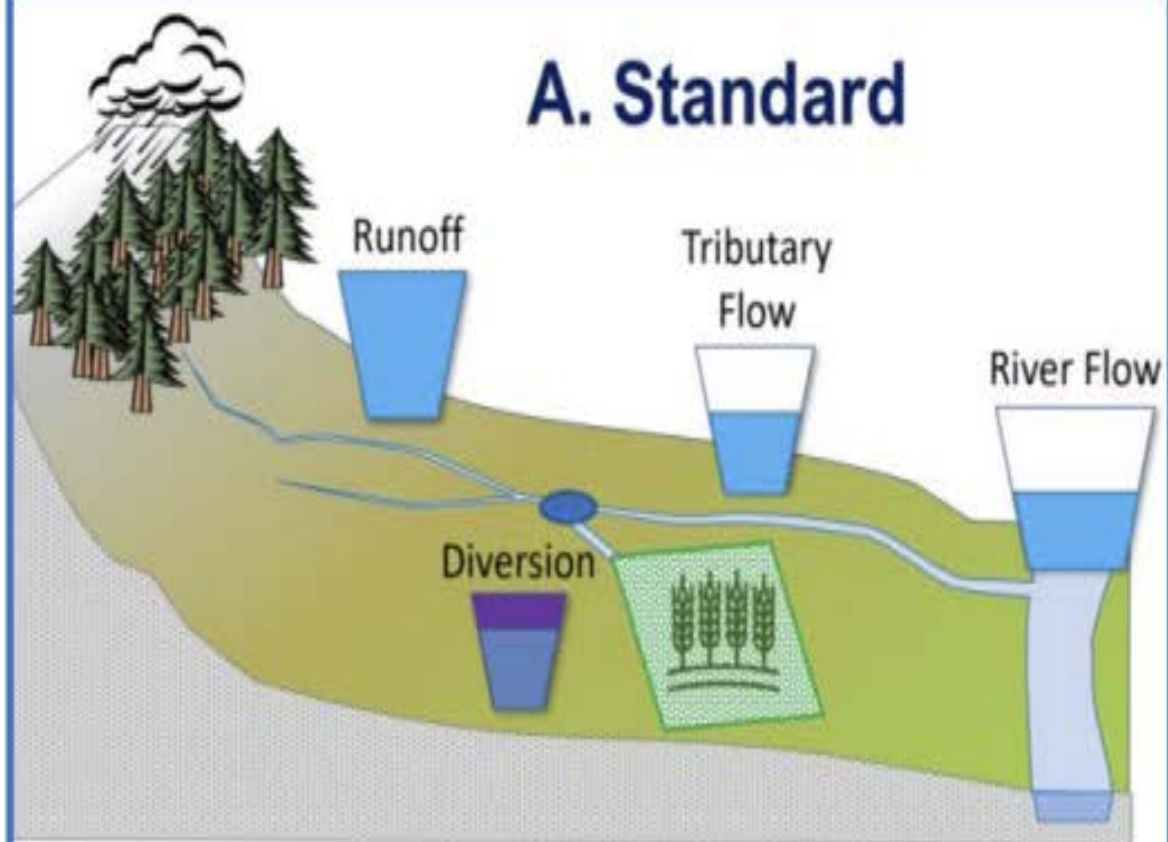
- Quantity will be limited to
 - Diversion rate is the historic use, not to exceed ditch capacity
 - Place of use of the existing irrigation base right(s).
 - Season of use: March 15th - July 31st
- Right will **not** receive benefit of Salmon Wild & Scenic River subordination.
- All rights on a tributary 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.



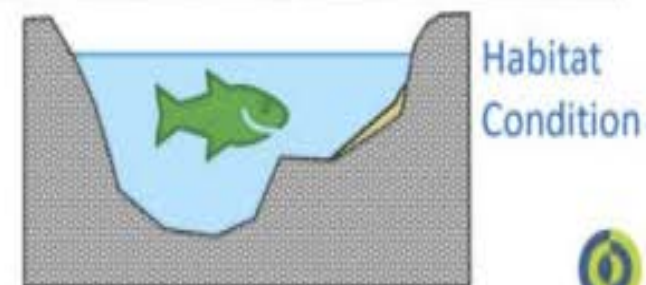
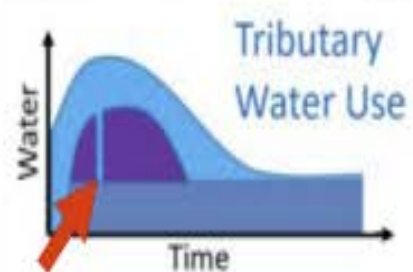
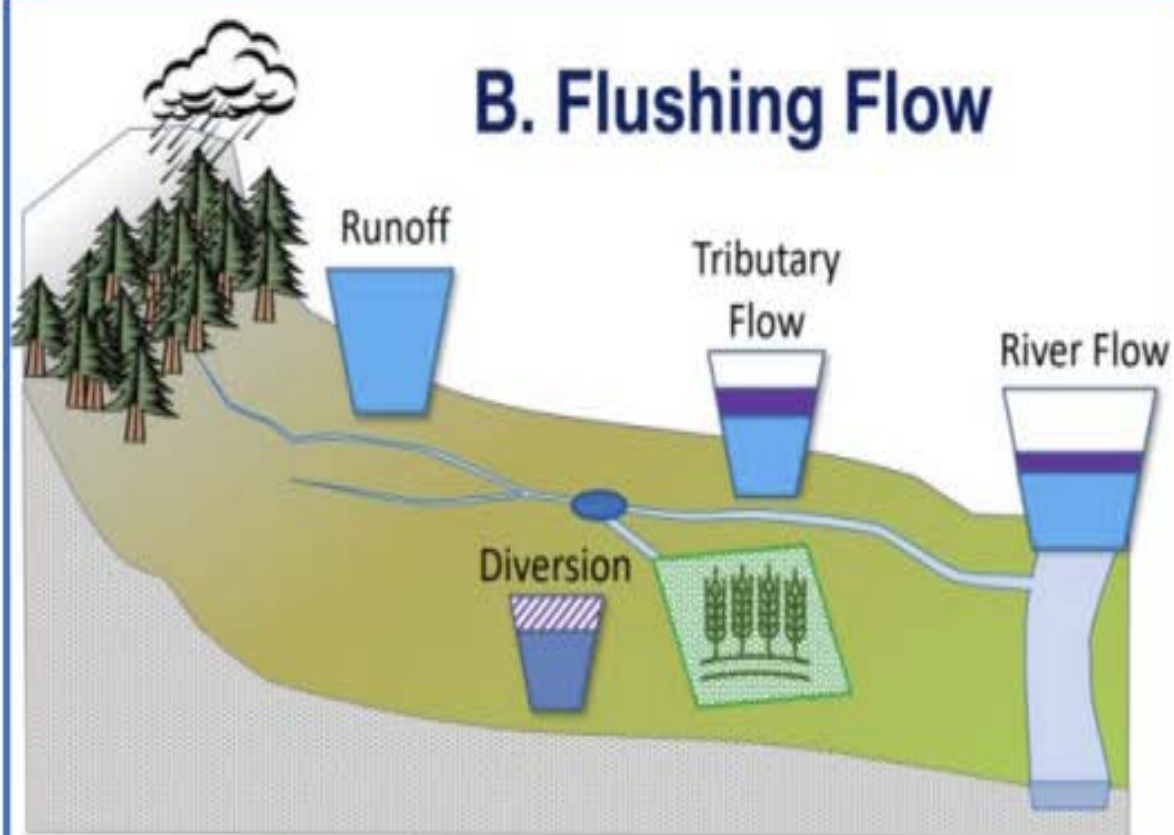
HIGH FLOW BYPASS CONDITION

- 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

- CLIVE STRONG –(208) 850-7792
CLIVEJSTRONG@GMAIL.COM
- NORMAN SEMANKO (208) 562-4900
NSEMANKO@PARSONSBEHLE.COM
- LINK:
[HTTPS://IDWR.IDAHO.GOV/IWRB/RELATED-RESOURCES/](https://idwr.idaho.gov/iwrB/related-resources/)

Memorandum



To: Idaho Water Resource Board

From: Cynthia Bridge Clark and Emily Skoro

Date: November 10, 2021

Re: Boise River Feasibility Study & Anderson Ranch Dam Raise

REQUIRED ACTION: Consider resolution to authorize funding and execution of a contract with Reclamation for final design and construction of the Anderson Ranch Raise Project.

To help address future water needs in the Treasure Valley and southwest Idaho, the Idaho Water Resource Board (IWRB) partnered with the Bureau of Reclamation (Reclamation) to complete a feasibility study of new surface water storage within the Boise River Drainage (study). The concept recommended in Reclamation's Final Feasibility Study is a 6-foot dam raise resulting in approximately 29,000 acre-feet of storage capacity.

The study was authorized under the WIIN Act which included the following general requirements:

- Continuing authority only applied to projects determined to be feasible before January 1, 2021. The Secretary of Interior determined the study's recommended plan to be feasible in December 2020 and Fiscal Year Appropriations legislation secured \$12.88 million in WIIN Act funding for completing the study, environmental compliance, and construction.
- The WIIN Act requires the project to be under construction by December 16, 2021. The term "construction", as defined by the WIIN Act, means the designing, materials engineering and testing, surveying, and building of water storage including additions to existing water storage and construction of new storage facilities, exclusive of any Federal statutory or regulatory obligations relating to any permit, review, approval, or other such requirement.
- To meet the above referenced requirement, Reclamation must secure agreement(s) with project partner(s) for construction of the raise, including providing for upfront funding of the non-federal share of the capital costs, or post-authorization costs of the project prior to December 16, 2021.

In 2019, the Idaho Legislature passed House Joint Memorial 4 (HJM004) and House Bill No. 285 (HB285). HJM004 was passed to support the raising of Anderson Ranch Dam as one of the priorities for the State of Idaho in the interest of promoting additional water security. HB285 provided a \$20M General Fund transfer to the IWRB's Water Management Account (WMA) to address the fiscal impact of HJM004. In 2021, the Idaho Legislature passed House Bill 286 which made amendments to the Idaho Code 42-1760, stating, in part, that the Anderson Ranch Dam Raise and other projects selected by the IWRB may be undertaken with funds from the WMA. Senate Bill 1121 was also passed in 2021 which appropriated an additional \$50M to the WMA.

On March 19, 2021, the IWRB passed a resolution allocating \$17.6M of the WMA funds for Anderson Ranch Dam Raise Interim Funding for activities required to advance the project to construction. Anticipated activities included final design, contracting, and financial planning.

A cost-share agreement between Reclamation and a non-federal partner(s) is required to continue project development and must be executed timely to meet WIIN Act requirements to initiate construction by December 16, 2021. The cost-share agreement or contract with Reclamation includes final design and

construction of the raise, as well as general terms related to use of water and operations and maintenance for the new storage. IWRB resolution no. 14-2021, passed May 21, 2021, authorized staff to pursue contract negotiations with Reclamation.

The IWRB and Reclamation negotiation teams convened in a series of four public meetings from September 22 through October 28, 2021. During the meetings, both parties reviewed the contract language and negotiated contract terms and conditions. The public was also given the opportunity to provide oral or written comments throughout the entire negotiation process. Both parties have come to agreement on the contract language. The contract and resolution will be presented to the IWRB for consideration at the November meetings.

The current draft contract is under final review by Reclamation but will be provided prior to the IWRB meeting. A draft resolution is attached.

ATTACHMENTS

1. Draft resolution to authorize funding and execution of a contract with Reclamation for final design and construction of the Anderson Ranch Raise Project.
2. Transmittal letter dated November 10, 2021 and *Contract for The Raise of Anderson Ranch Dam Between the United States of America and the Idaho Water Resource Board* (Contract No. 21WN102130)

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF BOISE RIVER BASIN
FEASIBILITY STUDY AND ANDERSON RANCH
DAM RAISE

RESOLUTION TO COMMIT FUNDS AND
PROVIDE SIGNATORY AUTHORITY TO
CONTRACT WITH BUREAU OF RECLAMATION
FOR THE ANDERSON RANCH DAM RAISE
PROJECT

1 WHEREAS, the Idaho Water Resource Board (IWRB) partnered with the U.S. Bureau of
2 Reclamation (Reclamation) to complete a feasibility study of new surface water storage options on the
3 Boise River. Reclamation issued the Final Feasibility Study and Draft Environmental Impact Statement
4 (DEIS) in 2020 which recommended a 6-foot raise of the Anderson Ranch Dam and approximately 29,000
5 acre-feet of new storage space; and

6
7 WHEREAS, the Feasibility Study was authorized under the Water Infrastructure Improvements for the
8 Nation Act (WIIN Act) which provides study and potential construction authority and Federal funding
9 proportionate to Federal benefits for projects deemed feasible as of January 2021. The WIIN Act further
10 requires Reclamation's project partner(s) to pay the non-federal share of project capital costs upfront and
11 requires the project to be under construction by December 16, 2021; and

12
13 WHEREAS, in December 2020, the Secretary of Interior determined the Feasibility Study's
14 recommended plan to be feasible in accordance with the WIIN Act, and Fiscal Year 2021 Appropriations
15 legislation secured \$12.88 Million in WIIN Act funding as the federal cost share for completing the
16 Feasibility Study, environmental compliance, and construction; and

17
18 WHEREAS, based on the findings of the Feasibility Study, the IWRB and water users requested
19 additional project design and cost information to address questions about final project costs, water
20 availability, and concerns about impacts to existing Anderson Ranch Reservoir spaceholders. The IWRB
21 stressed the importance of this information for determining the viability of the project for local water
22 users and new spaceholders; and

23
24 WHEREAS, to address IWRB questions and meet the WIIN Act deadline for construction,
25 Reclamation proposed a modified project approach and schedule. The modified approach included: 1)
26 negotiation and execution of a cost-share agreement (agreement) prior to December 16, 2021 between
27 the IWRB and Reclamation detailing a commitment to initiate final design and complete project
28 construction, 2) begin design as an element of construction under the WIIN Act, and 3) delay release of
29 the Final Environmental Impact Statement (FEIS) and the Record of Decision in order to incorporate the
30 additional project information generated during the final design process; and

31
32 WHEREAS, Reclamation confirmed that execution of an agreement with a partner capable of
33 funding the non-federal share of the project costs through construction and initiation of final design
34 activities prior to December 16, 2021 will satisfy WIIN Act requirements. Reclamation agreed to consider
35 early contract termination clauses to allow the parties to further consider the viability of the project based
36 upon additional information developed through the final design process; and

37
38 WHEREAS, through IWRB Resolution No. 19-2020, IWRB expressed its belief that contracting
39 directly with Reclamation for all the non-federal new storage space resulting from a raise of Anderson

40 Ranch Dam will be the most efficient and best method to ensure stakeholder and state support for
41 reasonable financing for the project. The IWRB also stated its preference to contract with Reclamation
42 and then negotiate directly with potential water users for the new storage space and how it would be
43 allocated and priced; and
44

45 WHEREAS, through IWRB Resolution No. 07-2021, IWRB allocated \$17.6M of the funds in the
46 Water Management Account provided by House Bill 285 and Senate Bill 1121 to meet Federal project
47 funding and authorization deadlines set forth in the WIIN Act and authorized spending those funds
48 allocated for the Anderson Ranch Dam Raise for activities required to advance the project to construction,
49 including final design, contracting, and financial planning. House Bill 285 allocated \$20M to be used for
50 the Anderson Ranch Reservoir Enlargement or the Mountain Home Air Force Base Sustainable Water
51 Project. Senate Bill 1121 appropriated an additional \$50M to the Water Management Account; and
52

53 WHEREAS, through IWRB Resolution No. 14-2021, the IWRB authorized the IWRB Chairman or
54 designee to pursue negotiations with Reclamation regarding the design and construction of the Anderson
55 Ranch Dam Raise Project; and
56

57 WHEREAS, through the summer and fall of 2021, the IWRB and Reclamation negotiation teams
58 completed a series of four public negotiation meetings. A mutually acceptable contract (Contract) was
59 developed for execution by the IWRB and Reclamation for Non-Contract Post-Authorization activities,
60 final design, and construction of the Anderson Ranch Dam Raise Project (Attachment A - *Contract for the*
61 *Raise of Anderson Ranch Dam between the United State of America and the Idaho Water Resource Board,*
62 *Contract No. 21WN102130*); and
63

64 WHEREAS, the following are defined in the Feasibility Study and considered in the Contract:
65

- 66 • Anderson Ranch Dam Raise Project (Project) includes all components of the dam raise
67 and associated required projects around the reservoir rim.
- 68 • The Feasibility Study estimate for total design and construction cost of the project is
69 \$83.3M, not including applicable interest during construction. The Non-Federal share of
70 the total project construction costs is 88.95% and will be the responsibility of the IWRB.
71 The Federal share of the total construction costs is 11.05% and will be paid by
72 Reclamation appropriations.
- 73 • The estimated cost of "Non-Contract Post-Authorization" activities, which generally
74 include final design, completion of environmental compliance studies, land acquisitions,
75 permitting and compliance, and other actions to be completed prior to award of
76 construction contracts, is \$9.4M. The Non-Federal share is approximately \$8.4M.
77

78 WHEREAS, additional analysis to be performed under the Contract early in the final design process
79 will clarify potential impacts to existing Anderson Ranch Reservoir spaceholders, and mitigation options
80 and associated costs for loss of existing spaceholder storage water during construction.
81

82 NOW THEREFORE BE IT RESOLVED, that the IWRB authorizes its chairman to execute the Contract
83 provided in Attachment A.
84

85 NOW THEREFORE BE IT FURTHER RESOLVED, that the IWRB authorizes expenditure of up to the
86 \$8.4M from the Water Management Account to cover Non-Contract Post-Authorization Costs as defined
87 in the Final Feasibility Report. Expenditure of additional project funding shall require IWRB approval.

88 NOW THEREFORE BE IT FURTHER RESOLVED, that upon completion of the analysis of impact to
89 existing Anderson Ranch Reservoir spaceholder's storage accounts during construction, the IWRB shall be
90 notified of the mitigation plan and associated costs.

DATED this 19th day of November 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary

ATTACHMENT A

Contract for The Raise of Anderson Ranch Dam

Between

the United States of America and

the Idaho Water Resource Board

(Contract No. 21WN102130)



United States Department of the Interior

BUREAU OF RECLAMATION
1150 North Curtis Road
Boise, ID 83706-1234



IN REPLY REFER TO:

CPN-6300
2.2.4.23

Mr. Jeff Raybould
Chairman, Idaho Water Resource Board
P.O. Box 83720
Boise, ID 83720

Subject: Copies for Signature, Contract for the Raise of Anderson Ranch Dam, Contract No. 21WN102130 with the Idaho Water Resource Board (IWRB), Boise Project, Idaho

Dear Mr. Raybould:

Enclosed for approval and signature by the IWRB are two copies of the proposed subject contract. If the contract is acceptable, please have IWRB prepare and adopt a resolution approving the contract. Please have both copies of the contract signed and notarized in the spaces provided. Following that, please return both signed copies of the contract and a copy of the authorizing board resolution to the above letterhead address, Attention: CPN-6300. Upon receipt by this office of the items described, the amendment can be executed on behalf of the United States and the date of execution entered on page one. One fully executed original will be returned for IWRB's records.

If you have any questions concerning this contract that need to be addressed prior to approval and signature by IWRB, please contact Melanie Paquin at (208) 383-2246 or mpaquin@usbr.gov.

Sincerely,

Roland K. Springer
Acting Regional Director

Enclosure – 2 copies

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOISE PROJECT, IDAHO

CONTRACT FOR THE RAISE OF ANDERSON RANCH DAM
BETWEEN
THE UNITED STATES OF AMERICA
AND THE IDAHO WATER RESOURCE BOARD

THIS CONTRACT is made this ____ day of _____, 2021, pursuant to section 4007(b) of the Water Infrastructure Improvements for the Nation Act the, P.L. 114-322 (WIIN Act), the Reclamation Act of June 17, 1902 and acts supplementary and amendatory, and the Sundry Civil Expenses Appropriations Act for 1922, (43 USC 395) commonly known as the Contributed Funds Act, all of which are known as Federal Reclamation Law, between the **UNITED STATES OF AMERICA**, acting through the Department of the Interior, Bureau of Reclamation (“Reclamation”), acting through the Regional Director, Columbia-Pacific Northwest Region (“the Contracting Officer”) and the **STATE OF IDAHO** acting through the **IDAHO WATER RESOURCE BOARD** (the “Board”), an agency created by Article XV, Section 7 of the Idaho Constitution and Idaho Code §§ 42-1732 to 42-1734.

1. EXPLANATORY RECITALS

1.1 Existing Boise Project

The United States has constructed the existing Anderson Ranch Dam of the Boise Project pursuant to the Federal Reclamation Laws primarily for the furnishing of water for irrigation purposes and for flood control purposes. The Arrowrock Division of Reclamation’s Boise Project includes Anderson Ranch and Arrowrock reservoirs and an off-stream reservoir, Lake Lowell. The three reservoirs are operated together in coordination with Lucky Peak Reservoir, a United States Army Corps of Engineers reservoir, for all of which Reclamation holds the legal title to the water rights and issues and administers spaceholder contracts. The active storage space of the reservoir system is approximately 1 million acre-ft, operated primarily for irrigation and flood control.

1.2 Feasibility Report and Finding of Feasibility

At the request of the Board, Reclamation cost-shared with the Board pursuant to Memorandum of Agreement No. R18MR11171 as amended (2018 MOA), under authority of the WIIN Act, to perform an

investigation of the feasibility of raising Anderson Ranch Dam six feet. Reclamation issued the resulting Feasibility Report in November 2020. A determination of a finding of feasibility by the Secretary is evidenced by a December 9, 2020, letter from the Commissioner to the Chair of the Subcommittee on Energy and Water Development of the Senate Committee on Appropriations.

1.3 Mitigation to Existing Spaceholders for Lost Water During Construction

The Feasibility Report recognized that there may be a drawdown of Anderson Ranch reservoir during construction of the proposed project, which could impact the existing spaceholders' storage accounts during construction. The Feasibility Report estimated the cost of mitigating this impact and generally envisioned the method of mitigation would be a combination of leasing water through the Water District 63 rental pool and entering into financial agreements. Reclamation has developed a conceptual plan to use the existing Idaho Water Supply Bank storage rental pools. However, the degree to which mitigation is required and the resulting costs depend on the degree of reservoir restriction as determined based on the dam raise design.

1.4 Additional Planning-Level Design Work

In response to findings and recommendations from the Independent Design, Estimating, and Construction (DEC) Review of the Feasibility Report, Reclamation's design team will evaluate design of a modification to the existing spillway crest structure in lieu of removal and replacement. If this alternative is selected, the design team will adjust the spillway modification construction description accordingly. This Planning-level Design and initial stages of Final Design will inform the required reservoir restriction during construction and associated mitigation for lost storage water of the existing spaceholders.

1.5 Environmental Compliance

A draft environmental impact statement (Draft EIS) has been completed for the Feasibility Report, which evaluated the proposed action of raising Anderson Ranch Dam six feet. The specific method for mitigation for lost storage water of the existing spaceholders was not detailed in the Draft EIS. An EIS cannot be finalized, nor a record of decision (ROD) issued, until additional design work is performed that will inform the analysis of impacts associated with the construction activities and inform the extent of mitigation required to offset those impacts. Completion of environmental compliance has been paused pending additional design work, mitigation development and resulting cost estimate refinement. Planning level design, environmental compliance, development, and cost estimating will be completed under the 2018 MOA. A ROD will not be issued until environmental compliance is completed.

1.6 WIIN Act Deadline and Objective of This Contract

Section 4013 of the WIIN Act requires the project be under construction, by December 16, 2021, in order to maintain its authorization under the WIIN Act. Section 4011(f)(2) of the WIIN Act defines construction to mean "designing, materials engineering and testing, surveying, and building of water storage" (Construction As Defined By The WIIN Act). Section 4007(b)(3)(B) requires an agreement be secured providing upfront funding as is necessary to pay the non-Federal share of the capital costs, before

construction commences. The parties desire to enter into this contract and to begin design beyond feasibility level (Final Design) before the December 16, 2021 deadline. The objectives of this contract are to: (1) provide for the cost share for (a) Final Design and (b) construction of the Dam Raise in the event a ROD is issued selecting the 6-ft Dam Raise, and (2) to allocate obligations and entitlements that will accrue to the parties after the Dam Raise.

1.7 Other Potential Partners

The Draft EIS indicated potential spaceholders of the New Space may be existing Reclamation contractors and the Board, which could, in turn, contract water to existing Water District 63 water users and/or may offer water through the Idaho Water Supply Bank Water District 63 rental pool. Some irrigation entities who have current contracts with Reclamation for existing storage space in the Boise Project have expressed interest in contracting directly with Reclamation for a portion of the New Space from the Dam Raise, instead of through the Board. The Board, through Resolution Nos. 19-2020 and 14-2021, has indicated its interest in being the sole contracting partner with Reclamation.

1.8 Federal Appropriations

The Consolidated Appropriations Act, 2021, P.L. 116-260 Title II, provided Reclamation \$10 million for its cost-share portion of the Anderson Ranch Dam Raise Project construction and associated activities, including securing upfront funding agreements, executing water contracts, performing final design, environmental permitting and mitigation, contract solicitation, construction implementation, and general project administration.

1.9 Water Right

The Board has applied for a water right (no. 63-34753) with the Idaho Department of Water Resources (IDWR) for the Anderson Ranch Dam Raise Project.

NOW, THEREFORE, in consideration of the foregoing recitals, and the terms, conditions, covenants, and agreements set forth herein, the parties agree as follows:

2. TERMS APPLICABLE TO ENTIRE CONTRACT

2.1 General

Provisions of this Article 2 shall apply to the entire contract. The Standard Articles in Article 6 also apply to the entire contract.

2.2 Definitions

For purposes of this contract, the following definitions apply:

“Anderson Ranch Dam Raise Project” means the project described in the Feasibility Report, including but not limited to the Dam Raise and Rim Projects. The proposed project entails a 6-foot raise of Anderson Ranch Dam, raising the reservoir elevation from 4196 feet to 4202 feet, which will create an additional 29,145 acre-ft of active capacity for storage of water. Major components of the plan include

using compacted zoned fill and compacted soil cement on the downstream face and construction of a reinforced concrete parapet wall along the upstream crest; replacement of the spillway ogee crest structure, bridge, center pier, spillway floor slabs and chute walls, and approach structure; and removal, refurbishment, and reinstallation of existing spillway radial gates as described in the Feasibility Report (pg. ES-21). As described in Chapter 6 of the Feasibility Report, certain facilities located near the perimeter, or rim, of Anderson Ranch Reservoir will be affected by the increased water level of the reservoir.

“Board” means Idaho Water Resource Board (IWRB).

“Construction As Defined By The WIIN Act” means the same as in WIIN Act section 4011(f)(2), which defines construction as designing, materials engineering and testing, surveying, and building of water storage.

“Contracted Space” means the ninety percent (90%) of New Space that will be allocated to the Board.

“Cost-Share Ratio” means the cost share of the Anderson Ranch Dam Raise Project between Reclamation and the Board. The Feasibility Report estimated total construction cost of the Project to be \$83.3 million, not including applicable interest during construction. Estimated total construction costs consist of: (1) the joint construction costs benefitting both Federal and Non-Federal purposes, and (2) certain specific costs associated with the construction of culverts solely benefitting the Federal fish and wildlife purpose. The Non-Federal share of joint construction costs is 89.80% and will be the responsibility of the Board, while the Federal share of joint construction costs is 10.20% and will be paid by Reclamation appropriations. The specific costs of construction of culverts benefitting fish and wildlife will be borne 100% by the United States. Any other specific costs identified during development of the Anderson Ranch Dam Raise Project will be borne solely by the benefitting purpose and party responsible for funding its cost of construction. Taking into account the Feasibility Level estimate of combined joint and specific project construction costs, the resulting cost-share ratio for total project construction costs is 88.95% to Non-Federal purposes, to be the responsibility of the Board, and 11.05% of the total costs to Federal purposes, to be the responsibility of the United States. The percentages are rounded for purposes in this paragraph; however, decimal precision will be used when apportioning actual costs.

“Dam Raise” means raising Anderson Ranch Dam an additional 6-ft, pursuant to the Feasibility Report and ROD that would be issued pursuant to NEPA.

“EIS” means Environmental Impact Statement pursuant to NEPA.

“ESA” means the Endangered Species Act, 16 USC 1531, *et seq.*

“Existing Spaceholders” means entities who hold contracts with Reclamation for space in Anderson Ranch Reservoir as of the effective date of this contract.

“Feasibility Level Design” means design to a degree that allows a determination of whether construction of a facility or a project is feasible.

“Feasibility Report” means the Boise River Basin Feasibility Study Final Feasibility Report issued by Reclamation in November 2020.

“Final Design” means design of a facility or project beyond Feasibility Level Design.

“Irrigation use” means the use of contract water to: 1) irrigate land primarily for the production of commercial agricultural crops or livestock and 2) domestic and other uses that are incidental thereto.

“Municipal and Industrial Use” means the use of contract water for municipal, industrial, and

miscellaneous other purposes, not falling under the definition of “irrigation” use above, or within another category of water use under an applicable Federal authority.

“**NEPA**” means National Environmental Policy Act of 1969 (P.L. 91-190, as amended and supplemented).

“**New Space**” means the storage space created by the 6-ft raise of Anderson Ranch Dam. 29,145 acre-feet is the approximate volume but may be refined further.

“**OM&R**” means operation, maintenance, and replacement.

“**Parties**” means the Bureau of Reclamation and the Idaho Water Resource Board.

“**Rim Projects**” means projects that will be undertaken to ensure existing facilities that will be impacted by the enlarged reservoir are made whole as described generally in Feasibility Report.

“**ROD**” means Record of Decision pursuant to NEPA.

“**Secretary**” means the Secretary of the United States Department of the Interior.

“**Substantial Completion**” means the determination by Reclamation that the Anderson Ranch Dam Raise Project is sufficiently completed to be used for its intended purpose and costs are known for purposes of performing the Final Cost Allocation.

“**Reclamation Space**” means the ten percent (10%) of New Space that will be used by Reclamation.

“**Water users**” means organizations and individuals whom the Board will agree to make water available from its portion of the New Space.

“**WIIN Act**” means the Water Infrastructure Improvements for the Nation Act, P.L. 114-322.

2.3 Term and Termination of Contract

Subject to the terms, conditions, and provisions set forth herein, this contract shall become effective on the date first written above, which shall be the date the contract is signed by the Contracting Officer. This contract shall remain in effect until terminated by mutual written agreement of the parties or as set forth below.

- (a) At any time before Reclamation issues its solicitation of the construction contract, the Board may terminate this contract. If the ROD does not select the 6-ft Dam Raise and does not provide for contracting solely with the Board for the New Space, either party may terminate this Contract. In the event of termination, neither party shall be entitled to reimbursement of costs incurred up to the effective date of termination; however, adjustment of costs will be made to ensure the Cost-Share Ratio is met. Parties may agree to renegotiate a subsequent contract.
- (b) After the stage covered by subsection (a) above, and prior to Substantial Completion of the Anderson Ranch Dam Raise Project, this contract may be terminated by:
 - (i) The Board sending notice of termination to Reclamation.

- (ii) Reclamation, if adequate funding is not forthcoming during construction of the Anderson Ranch Dam Raise Project. Reclamation shall provide the Board written notice of intent to terminate and allow the Board sixty days to pay all amounts due. If the Board does not pay all amounts due within the sixty-day period, termination of this contract is effective. Upon such termination, the Board is liable for all costs associated with necessary remediation actions. Payment for remediation will be negotiated before solicitation of the construction contract in conjunction with section 4.2(b).

2.4 Project Development Actions

- a) General. Reclamation and the Board will coordinate and cooperate in undertaking actions associated with the successful development of the Anderson Ranch Dam Raise Project and allocation of associated benefits, including acquiring the water right(s) to fill the New Space, and undertaking all other reasonably related actions, which include actions more specifically delineated in Exhibit A. The Board will undertake actions assigned to it under Article 2.4, Project Development Actions. The Board agrees that Exhibit A may be updated from time to time by Reclamation with the concurrence of the Board without amending this contract.
- b) Costs and Cost-Share. The total design and construction costs of the project are estimated at a Feasibility Level to be \$83.3 million, not including applicable interest during construction. Costs for the work described in Article 2.4 will be shared between the Board and Reclamation at the Cost-Share Ratio. Part of the Board's cost share may be provided as in-kind services. In-kind services may include, but not be limited to, services by Board personnel and contracting costs related to the management and execution of the project. Valuation of in-kind services shall be in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87).
- c) Payment. Payment from the Board for costs will be pursuant to Article 2.5.

2.5 Board Advancement of Funds

- a) General. The Board will provide funds to cover Reclamation's actions in advance at a rate that at least meets the Board's Cost-Share Ratio. Reclamation will bill the Board periodically to keep expenses for the year at the Cost-Share Ratio. If it is determined that additional funds are necessary for Reclamation's continued performance of the initially scheduled tasks, additional funds must be approved, in writing, by the parties, and received by Reclamation prior to Reclamation incurring additional costs. In the event that additional funds are not received, the Board acknowledges that Reclamation will cease work and cannot resume working on these tasks until Reclamation holds sufficient funds in its account(s). Reclamation shall deposit funds advanced by the Board into a Reclamation account for use on the Anderson Ranch Dam Raise Project. Reclamation shall hold the Board funds separate from all other funds and shall not

commingle those funds with any other funds. Reclamation shall return all unexpended funds within 60 days after termination of this contract or completion of construction.

b) Method of making payment. The Board shall make all advanced payments payable to the Bureau of Reclamation upon receipt of the billing invoice, by remitting payments electronically or to Reclamation's lock box at:

Bureau of Reclamation
Region: Columbia-Pacific Northwest (CPN)
P.O. Box 301501
Los Angeles, CA 90030-1501

The Board shall notify Reclamation prior to each deposit of payment by sending an electronic notification via email address that Reclamation will provide. Reclamation uses the Automated Clearinghouse Vendor Express payment system for electronic funds transfer (EFT) between the government and the Board's financial institution along with explanatory information regarding the payment. The form required to implement the Vendor Express system is the SF-3881, ACH Vendor/Miscellaneous Payment Enrollment Form. As needed, Reclamation shall send the SF-3881 to the person listed above to gather the financial institution and bank account information. Unexpended funds will be returned to the Board by EFT unless the Board qualifies for exemption from this payment method.

2.6 Adjustment of Costs to Ensure Cost-Share Ratio is Maintained

At least annually, and upon termination, there shall be an adjustment of costs. If Reclamation has paid more than its share of the Cost-Share Ratio, the Board will make payment necessary to ensure Reclamation has not paid more than its cost share portion.

2.7 Reimbursement of Costs to Board if Reclamation Contracts With Others.

In the event Reclamation contracts with other individuals or entities for New Space associated with the Dam Raise, Reclamation agrees that such contract(s) will require a prorated reimbursement to the Board of costs incurred by the Board up to the effective date of such contract(s). The costs incurred by the Board will include the Board's costs under the 2018 MOA subject to the greater of 3.5% interest or the Board's current interest rate, calculated from effective date of the 2018 MOA.

2.8 Assignment or Partial Assignment of Contract

No assignment or partial assignment of this contract or any right or interest therein, except for agreements entered into by the Board pursuant to Article 5.6, shall be valid unless approved in writing by the Contracting Officer.

2.9 Savings Clause

If any provision of this contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of this contract and the application of such provision to other persons or circumstances, shall not be affected thereby and shall be enforced unless doing so would result in such a material change as to cause a loss of fundamental benefits otherwise afforded to either

party.

2.10 Contract Provisions Subject to Issuance of ROD

It is understood by the Parties that terms of this contract, other than those related to Article 3, will be subject to and contingent upon Reclamation's issuance of a final decision to allow construction to proceed after issuance of a Final EIS and ROD. Further, it is the understanding of the parties that the provisions of this contract may be modified by mutual agreement to ensure consistency with the ROD, following issuance of a ROD, if the Anderson Ranch Dam Raise Project is approved.

3. COMPLETION OF PLANNING PHASE

3.1 Planning-Level Design Work, Final EIS and ROD

Reclamation will proceed diligently to complete: (1) design work required to determine the extent of mitigation necessary to offset impacts to Existing Spaceholders, and (2) preparation and issuance of a Final EIS and ROD, which will include, among other things, determination of appropriate mitigation consisting of replacement water so as not to impact Existing Spaceholders. Allocation and payment of costs associated with Planning Level Design and environmental compliance work through issuance of a ROD is covered by the 2018 MOA.

3.2 Commencement of Construction As Defined by the WIIN Act

Reclamation will commence Construction As Defined By The WIIN Act on or before December 16, 2021, which will include initiating Final Design of the Dam Raise or preparatory work on the Rim Projects. Work for the Rim Projects will consist of relocating or replacing assets to the extent authorized by law. Costs for the work described in this paragraph will be shared between the Board and Reclamation in accordance with the Cost-Share Ratio defined in Art 2.2. The commencement of construction under this Article 3.2 will satisfy the requirements of Section 4011(f)(2) of the WIIN Act.

4. CONSTRUCTION PHASE

4.1 Water Right

Prior to Reclamation's solicitation of a construction contract, permit(s) for the diversion and storage of water for the Anderson Ranch Dam Raise Project shall be obtained from the IDWR. The Board and Reclamation agree to cooperate in taking all reasonably necessary actions to obtain permit(s) from IDWR. The Board further agrees that, following issuance of the ROD, it will take the necessary steps to ensure Reclamation owns the portion of the water right application or permit, as the case may be, attributable to the ten percent (10%) of the New Space to be held by Reclamation. The parties agree to negotiate the ownership of the water right between the United States and the Board for the remaining 90% of the New Space.

4.2 Payment of Advance Funds

a) For the design phase of the contract Reclamation will bill the Board at 6-month intervals in advance for costs that Reclamation will incur during the following 6 months.

b) Prior to soliciting the construction contract, the Board shall tender payment or provide such other security, as agreed to by the parties, to: (1) ensure adequate funding available for Reclamation to solicit and enter into a construction contract for final construction of the Anderson Ranch Dam Raise Project; and (2) ensure adequate funding is available in the event the contract is terminated prior to Substantial Completion and the Board is required to remediate the site to conditions acceptable to the Contracting Officer.

4.3 Construction Completion

Reclamation will complete final construction of the Anderson Ranch Dam Raise Project in compliance with the Project Management Plan and Final Design.

4.4 Mitigation of Impacts to Existing Spaceholders

As set forth in the ROD, as applicable, Reclamation will take such actions, including execution of agreements and rentals of water through the Idaho Water Supply Bank, as needed, to ensure Existing Spaceholders are mitigated for any shortage of water during construction of the Anderson Ranch Dam Raise Project.

4.5 Final Cost Allocation and Adjustment of Construction Costs

Pursuant to Reclamation Manual Policy, Directives and Standards, after construction is substantially complete, Reclamation will conduct a final cost allocation using the same allocation methodology as the initial cost allocation. If there is a change in the cost allocation distribution between Federal and non-Federal purposes, an adjustment of relevant costs will occur. The pool of costs potentially subject to the adjustment will include all costs covered by this contract. If the adjustment results in a greater Federal cost assignment, the United States will not pay more than the \$10,000,000 that Congress has appropriated as of the effective date of this contract, unless Congress appropriates additional funds for this purpose by specifically increasing the appropriations by name in an Appropriations Act consistent with WIIN Act §4007(g)(2). The Board reserves the right to seek additional appropriations for the Federal portion of the cost share. If appropriations are not forthcoming, the parties agree to discuss the issue and if agreeable to both parties at that time, the parties may renegotiate the volume of space the United States will receive from the project.

4.6 Title to Remain with United States and Treated as Reserved Works

Title to Anderson Ranch Dam including any physical structure of the Anderson Ranch Dam Raise Project will remain with the United States and will be treated as reserved works operated and maintained by the United States.

5. WATER SUPPLY AND OPERATIONS

5.1 General

The terms in Article 5 will take effect after Substantial Completion of the Anderson Ranch Dam Raise.

5.1 Reservoir Space

Contracted Space: The Contracting Officer will make available to the Board stored water accruing to ninety percent (90%) of the New Space, subject to the following provisions:

a) Following Substantial Completion of construction of the Dam Raise, the New Space will be added to the existing active capacity of Anderson Ranch Reservoir, which as of the effective date of this contract, is treated as 413,074 acre-feet at elevation 4196 feet. When the New Space is added to existing active capacity, the new active capacity of Anderson Ranch Reservoir will be 442,219 acre-feet at elevation 4202 feet. The New Space will be 6.59 percent of new active capacity of Anderson Ranch Reservoir and will be treated as 29,145 acre-feet.

b) While the Board's storage rights are defined in terms of active capacity in Anderson Ranch Reservoir, the Contracting Officer shall have the right, without change in the Board's obligations with respect to those storage rights, to store water accrued to those rights in any storage capacity available to it or to supply a like amount of water from other sources, by exchange or otherwise, so long as delivery for the Board of all stored water to which it is entitled under this Contract is not in any way impaired.

c) The New Space will not be added to existing Boise Reservoir System flood control space requirements.

d) The space made available to the Board, under this contract will be equivalent to 5.93 percent ($26230/442219 = 5.93\%$) of the new active capacity of Anderson Ranch Reservoir and will be treated as 26,230.5 acre-feet ($29145 \times 0.9 = 26230.5$); provided, however, the active capacity available to the Board under this contract may be adjusted from time to time by the Contracting Officer whenever there are determinations as a result of standard procedures (sedimentation study, *etc.*) that the new active capacity is other than as stated above.

5.2 Water Supply

a) Natural flow in the South Fork of the Boise River at Anderson Ranch Dam will accrue to the New Space pursuant to water right(s) issued by IDWR.

b) Stored water accruing to the New Space will fill with a like priority and be allocated proportionately among the New Space. In determining the amount of stored water available, losses incidental to storage will be prorated equally over all inactive and active space in Anderson Ranch Reservoir; provided, however, the New Space will not be subject to losses resulting from flood control operations.

c) The allocation of storage, including carryover storage, to the Board shall be determined by the Contracting Officer pursuant to this contract and Federal Reclamation Law. The Contracting Officer will, subject to operational constraints, operate the reservoir system so as to store under applicable storage rights all available water, and the Contracting Officer will make available to the Board, the Board's

proportionate share of the stored water that accrues in each year to the New Space, together with any stored water that may have been held over by the Board pursuant to paragraph 5.4.

d) The Board agrees not to bring any claims against the United States resulting from the diversion into storage, storage, regulation and release of water by the United States for the account of the Board. The Board will also include the following language into its lease agreements: “The Water User hereby releases the United States, the State of Idaho and the Board and agrees to hold the United States, the State of Idaho and the Board free and harmless from all damage claims that might result from the diversion into storage, storage, regulation and release of water by the United States for the account of the Board.”

e) The United States temporarily may reduce water storage, as may be necessary, for the purpose of investigation, inspection, maintenance, repair, or replacement of any of the facilities of Anderson Ranch Dam and Reservoir. So far as it is feasible, however, the Contracting Officer will give the Board reasonable notice in advance of such temporary reduction except in cases of emergency, when notice need not be given.

5.3 Delivery

a) Reclamation will operate Anderson Ranch Reservoir so as to deliver all the water to which the Board is entitled under this Contract within the capacity limits of the Reservoir and having regard for other existing rights which must be supplied therefrom. Deliveries of stored water shall be limited at any time to the amount which can be delivered by means of the Board’s proportionate share of the outlet capacity needed for delivery downstream, taking into account the requirement of passing through the Reservoir water belonging to prior rights and the physical limitation of the existing outlet works. The Board shall conform its diversions to the control of the stream as established by the Watermaster.

b) In determining the amount of stored water delivered downstream of Lucky Peak Dam, the point of measurement shall be the outlet works of Lucky Peak Dam. In determining the amount of stored water delivered to a point of delivery directly out of the Boise Reservoir System, the point of measurement shall be at that particular point of diversion.

c) The United States shall not be liable or responsible for the carriage, distribution, or diversion of water after its release from the point of measurement, or for any loss or damage of any type or description arising therefrom.

d) The distribution of the water below the point of measurement is the responsibility of the Watermaster or other designated official of the State. The costs of distribution by the Watermaster shall be the responsibility of the Board pursuant to state law.

5.4 Holdover

a) The Board may hold over in Anderson Ranch Reservoir water from prior water years only to the extent that the total amount of stored water held to the credit of the Board for any season shall not exceed the amount which can be stored in the Board’s proportionate share of the New Space.

b) The Contracting Officer may itself exercise such holdover rights in any uncontracted portion of

the New Space.

- c) Water held over in the New Space shall not be reduced as a result of flood control operations.

5.5 Constraints on the Availability of Water and No Liability for Shortages

In operation of the Boise Reservoir System, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Board pursuant to this contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Board of said determination as soon as practicable; provided, however, notwithstanding any other provision of the contract, no liability shall accrue against the United States or any of its officers, agents, or employees for damage, direct or indirect, arising by reason of shortages in the quantity of water available to the Board under this contract or interruptions in water deliveries to facilities of the Board resulting from drought or other physical or natural causes, inaccuracy in distribution or runoff forecasting or similar operation, hostile diversion, prior or superior claims, maintenance of, accident to or failure of facilities of the United States, whether or not attributable to negligence of officers, agents, or employees of the United States, or actions taken by the Contracting Officer to meet current or future legal obligations, or other causes of whatsoever kind.

5.6 Lease of Stored Water

The Board may enter into lease agreements for water stored in the Board's space under such terms and conditions, including the setting of rates, determined by the Board without further approval of the Contracting Officer; provided however, that such lease agreements shall be in substantial compliance with the Feasibility Report and ROD; and provided further, that any such lease agreement for the lease of water shall not create a third-party beneficiary to this contract.

5.7 Annual OM&R charges

a) Reclamation will bill the Board annually for its proportionate share of the costs of OM&R of Anderson Ranch Dam, which the Feasibility Report established for the New Space as 3.33% of the total OM&R cost of Anderson Ranch Dam, based on an estimate of 29,000 acre-ft of New Space. This translated to 3.35% for the refined volume of 29,145 acre-ft of New Space. The 3.35% of Anderson Ranch OM&R costs would be further allocated between Reclamation and the Board based on the Alternative Justified Expenditure (AJE) methodology. Any future approved change in either OM&R rate formula or the AJE methodology would be correspondingly reflected in proportionate and across-the-board changes to the New Space to maintain consistency to all reservoir storage. Notice of OM&R costs due will be sent by Reclamation before April 1 of the calendar year covered by the Notice. OM&R costs are due by May 1 of each year. The Date for OM&R costs to be paid may be changed by documented agreement of the parties.

b) Whenever, in the opinion of the Contracting Officer, funds so advanced will be inadequate to operate and maintain the Project, the Contracting Officer may give a written supplemental OM&R charge notice stating therein the amount of the Board's share, based upon its percentage of active capacity, of

additional funds required as determined by the Contracting Officer, and the Board shall advance that additional amount on or before the date specified in the supplemental notice. Provided, however, except for an emergency situation as defined in the Standard Operating Procedures for the Project, the payment date specified in the supplemental notice shall be at least 90 days from the date of delivery of the notice to the Board. If funds advanced by the Board under this article exceed the Board's share of the actual cost of the OM&R of the Project for the year for which advanced, the surplus shall be credited on the OM&R charges to become due for succeeding years. Upon written request from the Board, the Contracting Officer shall provide a written accounting each year to the Board of the costs to be paid by the Board.

c) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The Contracting Officer shall not make water available to the Board through Project facilities during any period in which the Board is in arrears in the advance payment of any OM&R charges due the United States.

d) Notwithstanding any other provision of this contract, the Board shall be in breach at any time it is more than twelve (12) months in arrears in the payment of OM&R costs. In the event of such breach, the Contracting Officer shall meet and confer with the Board to determine an appropriate remedy. If the Contracting Officer and the Board cannot reach agreement on an appropriate remedy within twenty-four months of the initial conference date, the Contracting Officer may exercise against the Board any and all rights and remedies for breach of contract.

5.8 Charges for Delinquent Payments

(a) The Board shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Board shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Board shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Board shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due, at the rate of 6 percent per year. The Board shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

5.9 Safety of Dams

Upon Substantial Completion of the Anderson Ranch Dam Raise Project, in the event of a Safety of Dams Project for Anderson Ranch Dam pursuant to the Safety of Dams Act of 1978 as amended, 43 U.S.C. et seq. (SOD Act), the Board would be considered a project beneficiary, along with the Existing Spaceholders, under the SOD Act regarding repayment of reimbursable costs incurred by the United States.

6. STANDARD ARTICLES

6.1 Notices

Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Board, when mailed, postage prepaid, or delivered to:

Regional Director, Columbia-Pacific Northwest Region
Bureau of Reclamation
1150 N. Curtis Road, Suite 100
Boise ID 83706

on behalf of the United States, when mailed, postage prepaid to:

Chairman, Idaho Water Resources Board
P.O. Box 83720
Boise, ID 83720-0098

or delivered to:

322 E. Front St., Suite 648
Boise, ID 83702

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

6.2 Contingent on Appropriation or Allotment of Funds

The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of Federal appropriation or allotment of funds shall not relieve the Board from any obligations under this contract.

No liability shall accrue to the United States in case funds are not appropriated or allotted.

Reclamation agrees that all obligations of the Board, including the continuance of payments under Section 5 of this Contract, are contingent upon the availability and continued appropriation of funds.

6.3 Officials Not to Benefit

No Member of or Delegate to the Congress, Resident Commissioner, or official of the Board shall benefit from this contract other than as a water user or landowner in the same manner as other water users or

landowners.

6.4 Books, Records, and Reports

The Board shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Board's financial transactions related to this contract; water delivery data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract. All materials are subject to state and federal public disclosure laws.

6.5 Water Conservation

Prior to the delivery of water provided from or conveyed through federally constructed facilities pursuant to this contract, the Board or water users shall develop water conservation plan(s) consistent with that required by subsection 210(b) of the Reclamation Reform Act of 1982, except water users who deliver water under this contract 1) to less than 2,000 acres of land, 2) only for M&I use and to fewer than 3,300 people, or 3) at a total average annual rate of less than 2,000 acre-feet. Water users who have existing water conservation plans described above are not required to develop new water conservation plans under this contract.

6.6 Protection of Water and Air Quality

(a) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Board and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Board.

(b) The Board will comply with all applicable water and air pollution laws and regulations of the United States and the State of Idaho and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Board; and will be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Board facilities or project water provided by the Board.

(c) This article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

6.7 Equal Employment Opportunity

During the performance of this contract, the Board agrees as follows:

(a) The Board will not discriminate against any employee or applicant for employment because

of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Board will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Board agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Board will, in all solicitations or advancements for employees placed by or on behalf of the Board, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The Board will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Board's legal duty to furnish information.

(d) The Board will send to each labor union or representative of workers with which the Board has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Board's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The Board will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The Board will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Board's books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the Board's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Board may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The Board will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Board will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Board becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Board may request the United States to enter into such litigation to protect the interests of the United States.

6.8 Compliance with Civil Rights Laws and Regulations

(a) The Board shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.)] [Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.)], and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, the Board agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Board makes this contract in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Board by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Board recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the Board shall be investigated by the Contracting Officer's Office of Civil Rights.

6.9 Certification of Nonsegregated Facilities

The Board hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Board agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The Board further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

6.10 Medium for Transmitting Payments

(a) All payments from the Board to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) Upon execution of the contract, the Board shall furnish the Contracting Officer with the Board's taxpayer's identification number (TIN). The purpose for requiring the Board's TIN is for collecting and reporting any delinquent amounts arising out of the Board's relationship with the United States.

6.11 Confirmation of Contract

Promptly after the execution of this contract, the Board will provide evidence to the Contracting Officer that, pursuant to the laws of the State of Idaho the Board is a legally constituted entity and the contract is lawful, valid, and binding on the Board. This contract will not be binding on the United States until the Board provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the Board may provide or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the State of Idaho, confirming the proceedings on the part of the Board for the authorization of the execution of this contract.

6.12 Rules, Regulations, and Determinations

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with its expressed and implied provisions, the laws of the United States and the State of Idaho, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Board.

6.13 Relocation Assistance and Real Property Acquisition

When acquiring land or an interest in land and relocating persons or personal property in connection with the construction, operation, and maintenance of project facilities, the Board shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. § 4601, et seq.) and Department of Transportation regulations at 49 C.F.R. part 24.

6.14 Dispute Resolution

The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to this contract promptly, equitably, and in good faith.

6.15 Limitation of Liability

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Nothing herein shall be deemed to increase the Party's liability beyond the limitations of the current Idaho Tort Claims Act (Idaho Code § 6-901-929), to the extent that the Act is applicable. Nothing herein shall be deemed to increase the liability of the United States beyond the provisions of the Federal Tort Claims Act (28 U.S.C. § 1346(b), 2671 et seq.) or other applicable law.

6.16 No Third-Party Beneficiaries

This Agreement is not intended, nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this Agreement.

6.17 Governing Law

This contract shall be interpreted, governed by, and construed under applicable Federal law and any applicable provision of Idaho state law. In case of a conflict between Federal law and Idaho state law, Federal law controls. To the extent permissible under Federal Rules of Civil Procedure and other applicable Federal authority, the venue for adjudication of any disputes under this contract shall be in appropriate Federal court.

6.18 Contract Drafting Considerations

This contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this contract pertains. Articles 1 through 5 and 6.4, 6.5, 6.13-6.17 of this contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

IDAHO WATER RESOURCES BOARD

By: _____
Chair
Idaho Water Resource Board
322 E Front Street
Boise, ID 83702

UNITED STATES OF AMERICA

By: _____
Acting Regional Director
U.S. Bureau of Reclamation
Columbia-Pacific Northwest Region
1150 N. Curtis Road
Boise, ID 83706

STATE OF IDAHO

COUNTY OF _____

On this ____ day of _____, 2021, personally appeared before me _____, known to me to be the official of the **Idaho Water Resource Board** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the **Idaho Water Resource Board**, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

(SEAL)

Notary Public in and for the
State of Idaho
Residing at: _____
My commission expires: _____

STATE OF IDAHO

COUNTY OF _____

On this ____ day of _____, 2021, personally appeared before me _____, known to me to be the official of the **UNITED STATES OF AMERICA** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said **UNITED STATES OF AMERICA**, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

(SEAL)

Notary Public in and for the
State of Idaho
Residing at: _____
My commission expires: _____

EXHIBIT A

ACTIONS FOR ANDERSON RANCH DAM RAISE PROJECT

Activity	In-Kind Services Eligible
Project management and miscellaneous support	X
Leadership Oversight	X
Management Oversight	X
General project administration	X
Securing Water Rights Permit	X
If necessary, establish agreements with key project partners regarding planning, design, and construction activities	X
Reservoir Rim Projects	Eligible only upon prior approval of the Contracting Officer of this Contract (No. 21WN102130)
Complete all Federal permitting and mitigation	
If necessary, acquire lands, easements, and rights-of-way	
Complete additional surveys and geotechnical investigations for final designs	
Risk Analysis	
Value Engineering Study	
Final Design (including 30%, 60%, 90%, 100% design packages)	
Prepare solicitation packages	
Contract Solicitation	
Perform construction management and construction contract administration	
Construct the new project facilities, including mitigation	
Prepare a final cost allocation	

Memorandum

To: Idaho Water Resource Board (IWRB)
From: Brian Patton, Planning & Projects Bureau
Date: November 10, 2021
Re: Administrative Rules Update



ACTION: A resolution will be presented to the board requesting action.

Deputy Director Mat Weaver will have materials for the board related to the latest in Administrative Rules.

Memo

To: Idaho Water Resource Board

From: Mat Weaver 

Date: November 11, 2021

Re: **Administrative Rulemaking Update**

Requested Action Item

Adopt and authorize the publication of the following Idaho Water Resource Board (“IWRB”) proposed rules as pending rules in two upcoming December Idaho Administrative Bulletins. Two resolutions to this effect are attached.

Resolution 1 addresses:

- IDAPA 37.01.01 Rules of Procedure, Docket No. 37-0101-2101 (New Chapter, Fee Rule)
- IDAPA 37.03.07 Stream Channel Alteration Rules, Docket No. 37-0307-2101 (New Chapter, Fee Rule)

Resolution 2 addresses:

- Omnibus Pending Non-Fee Rules, Docket No. 37-0000-2100
- Omnibus Pending Fee Rules, Docket No. 37-0000-2100F

Background

The IWRB is the executive branch entity with statutory oversight and authority over 11 chapters of Administrative Rules in IDAPA 37, including:

- IDAPA 37.01.01 Rules of Procedure of the IDWR (Fee Rule)
- IDAPA 37.02.01 Comprehensive State Water Plan Rules (Non-Fee Rule)
- IDAPA 27.02.03 Water Supply Bank Rules (Fee Rule)
- IDAPA 37.02.04 Shoshone Bannock Tribal Water Supply Bank Rules (Non-Fee Rule)
- IDAPA 37.03.03 Rules and Minimum Standards for the Construction and Use of Injection Wells (Fee Rule)
- IDAPA 37.03.04 Drilling for Geothermal Resources Rules (Fee Rule)
- IDAPA 37.03.05 Mines Tailing Impoundment Structures Rules (Fee Rule)
- IDAPA 37.03.06 Safety of Dams Rules (Fee Rule)
- IDAPA 37.03.07 Stream Channel Alteration Rules (Fee Rule)
- IDAPA 37.03.09 Well Construction Standards and Rules (Fee Rule)
- IDAPA 37.03.10 Well Driller Licensing Rules (Fee Rule)

Several other chapters of rules related to water right processes and administration are under the authority of the Director of the Idaho Department of Water Resources (“IDWR”).

In 2021, the IWRB has undertaken two general rulemaking efforts: (1) the IWRB has negotiated rules consistent with the Governor's Zero-Base Regulation ("ZBR") initiative, and (2) in response to the Legislature's failure to reauthorize all administrative rules, earlier this year, the IWRB adopted all its rules as temporary rules and is promulgating those temporary rules as permanent rules under two omnibus rulemakings.

ZBR IDAPA 37.01.01 Rules of Procedure Rulemaking (Docket No. 37-0101-2101)

At the beginning of 2021, IDWR staff initiated negotiated rulemaking for IDWR's *Rules of Procedure* (IDAPA 37.01.01), which govern contested case procedures before IDWR and the IWRB.

The rulemaking team carried out this negotiated rulemaking as part of the Governor's [Executive Order 2020-01](#) ZBR initiative. The negotiated rulemaking culminated with the publication of a proposed rule on October 6, 2021, in [Idaho Administrative Bulletin Vol. 21-10](#). Following the publication, no one submitted written comments or requests for a public hearing. Since no comments were received, the rulemaking team recommends the IWRB publish its proposed rules of procedure as pending rules of procedure without change. I have prepared a pending rule notice of publication for Docket No. 37-0101-2101, which DFM will publish with the pending rule in Idaho Administrative Bulletin Vol. 21-12 on December 1, 2021. **The draft pending rules of procedure publication notice is included with this memo.**

Should the IWRB concur with rulemaking team's recommendation, I have prepared a new resolution (Resolution 1), **included with this briefing memo**, for the IWRB's consideration. The resolution authorizes the publication of the IWRB's proposed rules of procedure as pending rules in Idaho Administrative Bulletin Vol. 21-12 on December 1, 2021.

ZBR IDAPA 37.03.07 Stream Channel Alteration Rules (Docket No. 37-0307-2101)

At the beginning of 2021, IDWR staff also initiated ZBR negotiated rulemaking for Rule 61 *Suction Dredges and Non-Powered Sluice Equipment* of the IWRB's IDAPA 37.03.07 Stream Channel Alteration Rules ("SCA Rule"). The negotiated rulemaking culminated with the publication of a proposed rule on September 1, 2021, in Idaho [Administrative Bulletin Vol. 21-9](#).

In response to the proposed SCA rule publication, the IWRB received one comment. The comment was submitted by the Idaho Conservation League ("ICL"). **ICL's comment are included with this memo.** In its comments, ICL ultimately "opposes the proposed rule change..." ICL's proposed rule comments are largely a restatement of its concerns and comments submitted during rulemaking negotiations. The SCA Rule rulemaking team spent significant time analyzing and responding to ICL's comments during negotiations, and it drafted a proposed SCA Rule that addressed some ICL concerns. However, ICL's suggestion that the IWRB should make no changes to SCA Rule is inconsistent with most comments received during negotiations supporting changes to the rule. Because of the overwhelming support for the changes made to the rule by most stakeholders during negotiations, the SCA Rule rulemaking team recommends that the IWRB publish its proposed SCA Rules as a pending SCA Rules without change. **The draft pending SCA Rule publication notice is included with this memo.**

Should the IWRB concur with the SCA Rule rulemaking team's recommendation, I have prepared a new resolution (Resolution 1), **included with this briefing memo**, for the IWRB's consideration. The resolution authorizes the publication of the IWRB's proposed SCA Rules as pending rules in Idaho Administrative Bulletin Vol. 21-12 on December 1, 2021.

Omnibus Non-Fee & Fee Rulemaking (Dockets Nos. 37-0000-2100 & 37-0000-2100F)

Recall that on May 12, 2021, the Idaho Senate adjourned *sine die* and the House recessed subject to the call of the Speaker, no later than December 31, 2021. This left the approval or reauthorization of Idaho's administrative rules with an uncertain future. As a result, and in response to the Governor's direction, the IWRB adopted its non-fee rules and fee rules as temporary rules on May 21, 2021, (Resolution No. 20-2021) and June 15, 2021, (Resolution No. 21-2021) respectively. The IWRB's omnibus temporary non-fee and fee rules were published on July 21, 2021, in [Idaho Administrative Bulletin Vol. 21-7SE](#). The IWRB received no comments from the public regarding its temporary rule publications.

On August 24, 2021, the Division of Financial Management ("DFM") directed the IWRB and IDWR to "take necessary rules (both fee and non-fee) proposed, and later pending, and submit them for 2022 legislative review as an omnibus rulemaking." In response, the IWRB published its temporary non-fee and fee rules as proposed rules in [Idaho Administrative Bulletin Vol. 21-10SE](#) on October 20, 2021. The IWRB received no comments in response to its omnibus proposed rule publications.

On October 25, 2021, DFM issued guidance to all agencies regarding omnibus pending rules procedures. DFM's email guidance had the heading "2021 Omnibus Pending Rulemaking Guidance." **DFM's October 25 guidance is included with this memo.** Consistent with DFM's October 25 guidance, the IWRB must publish its omnibus non-fee and fee rules as pending rules in a special edition of the Idaho Administrative Bulletin on December 22, 2021. Because no public comments were received in response to the IWRB's omnibus proposed rule publications, I recommend that the IWRB publish its omnibus proposed rules as pending rules without change.

Should the IWRB concur with my recommendation, I have prepared a new resolution (Resolution 2), **included with this briefing memo**, for the IWRB's consideration. The resolution authorizes the publication of the IWRB's omnibus non-fee and fee rules as pending rules in a special edition of the Idaho Administrative Bulletin on December 22, 2021.

Next Steps

All of the IWRB's pending rules will be published in December 2021. The Idaho Legislature should consider the pending rules during its 2022 Legislative Session. The next step for the IWRB and staff is to present the pending rules to the legislature and fully engage in the Legislature's review process. DFM will likely issue subsequent guidance regarding the legislative presentation process.

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE IDAHO WATER
RESOURCE BOARD'S ZERO-BASED
REGULATION NEGOTIATED RULEMAKING OF
IDAPA 37.03.07 STREAM CHANNEL
ALTERATION RULES AND 37.01.01 RULES OF
PROCEDURE

RESOLUTION TO ADOPT AND PUBLISH
PENDING ZBR RULES IN THE DECEMBER 1,
2021, IDAHO ADMINISTRATIVE BULLETIN
VOL. 21-12

1 WHEREAS, the Idaho Water Resource Board ("IWRB") is the executive branch entity with
2 statutory oversight and authority over 12 chapters of Administrative Rules in IDAPA 37, including:
3 IDAPA 37.01.01 Rules of Procedure of the IDWR; IDAPA 37.02.01 Comprehensive State Water
4 Plan Rules; IDAPA 27.02.03 Water Supply Bank Rules; IDAPA 37.02.04 Shoshone Bannock Tribal
5 Water Supply Bank Rules; IDAPA 37.03.03 Rules and Minimum Standards for the Construction
6 and Use of Injection Wells; IDAPA 37.03.04 Drilling for Geothermal Resources Rules; IDAPA
7 37.03.05 Mines Tailing Impoundment Structures Rules; IDAPA 37.03.06 Safety of Dams Rules;
8 IDAPA 37.03.07 Stream Channel Alteration Rules; IDAPA 37.03.09 Well Construction Standards
9 and Rules; and IDAPA 37.03.10 Well Driller Licensing Rules; and

10 WHEREAS, Governor Little's [Executive Order 2020-01](#) Zero Based Regulation ("Executive
11 Order") directs each agency to comprehensively review all rules under its authority and "if
12 applicable" to promulgate new rules to take their place where necessary, and to conduct this
13 zero-based review ("ZBR") over a five year period from 2021 to 2025; and

14 WHEREAS, the IWRB adopted a five-year ZBR rulemaking schedule that identifies the
15 review of IDAPA 37.01.01 Rules of Procedure and 37.03.07 Stream Channel Alteration Rules in
16 2021; and

17 WHEREAS, the Executive Order directs any "agency wishing to renew a rule chapter
18 beyond [its ZBR] review date" to promulgate a new rule chapter after conducting a "retrospective
19 analysis" of the rule; and

20 WHEREAS, the IWRB has conducted retrospective analysis of its Rules of Procedure and
21 Stream Channel Alteration rules and concluded that both rules are needed to carry out the
22 IWRB's statutory duties and responsibilities fairly, efficiently, and consistently; and

23 WHEREAS, the Executive Order directs agencies to "start the new rulemaking from a zero-
24 base, and not seek to simply reauthorize their existing rule chapter without a critical and
25 comprehensive review"; and

26 WHEREAS, the IWRB's April 7 notice of intent to promulgate rules clearly stated its intent
27 to "repeal and promulgate rules" "consistent with the [Executive Order]" and where the IWRB
28 has conformed to all ZBR processes and requirements throughout the rulemaking process; and
Resolution No. _____

29 WHEREAS, the Executive Order directs agencies to “publish a notice of intent to
30 promulgate rules and hold, at a minimum, two public hearings that are designed to maximize
31 public participation in the rulemaking process”; and

32 WHEREAS, the IWRB held two public hearings as part of its negotiated rulemaking of the
33 Stream Channel Alteration rules on April 27, 2021, and June 2, 2021, and held two public hearings
34 as part of its negotiated rulemaking of the Rules of Procedure on May 12, 2021, and June 23,
35 2021; and

36 WHEREAS, following negotiations and after taking due consideration of all comments
37 received during negotiations, the IWRB adopted and authorized for publication IDAPA 37.01.01
38 Rules of Procedure and IDAPA 37.03.07 Stream Channel Alteration Rules as proposed rules in its
39 Resolution No. 29-2021 on August 27, 2021; and

40 WHEREAS, DFM published IDAPA 37.03.07 Stream Channel Alteration Rules (Docket No.
41 37-0307-2101) as proposed rules, on September 1, 2021, in [Idaho Administrative Bulletin Vol. 21-](#)
42 [9](#) (pages 108-132); and

43 WHEREAS, the period for the public to submit written comment or oral comment
44 regarding rulemaking Docket No. 37-0307-2101 tolled on September 22, 2021, with one
45 comment received; and

46 WHEREAS; the single comment received opposed all changes to IDAPA 37.03.07 Stream
47 Channel Alteration Rules contained in the proposed rule and was contrary to the support and
48 approval for the changes expressed by most of the stakeholders that participated and
49 commented in the rulemaking negotiations; and

50 WHEREAS, DFM published IDAPA 37.01.01 Rules of Procedure (Docket No. 37-0101-2101)
51 as proposed rules, on October 6, 2021, in [Idaho Administrative Bulletin Vol. 21-10](#) (pages 86-105);
52 and

53 WHEREAS, the period for the public to submit written comment or oral comment
54 regarding rulemaking Docket No. 37-0101-2101 tolled on October 27, 2021, with no comments
55 received; and

56 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts and authorizes the notice and
57 publication of the proposed IDAPA 37.03.07 Stream Channel Alteration Rules (Docket No. 37-
58 0307-2101) as pending rules and directs their adoption as published on September 1, 2021, in
59 Idaho Administrative Bulletin Vol. 21-9.

60 NOW, THEREFORE BE IT FURTHER RESOLVED that the IWRB adopts and authorizes the
61 notice and publication of the proposed IDAPA 37.01.01 Rules of Procedure (Docket No. 37-0101-
62 2101) as pending rules and directs their adoption as published on October 6, 2021, in Idaho
63 Administrative Bulletin Vol. 21-10.

64
65 DATED this 19th day of November 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary
Idaho Water Resource Board

66

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE IDAHO WATER
RESOURCE BOARD'S OMNIBUS
RULEMAKING

RESOLUTION TO ADOPT AND PUBLISH
PENDING OMNIBUS FEE AND NON-FEE
RULES

1 WHEREAS, the Idaho Water Resource Board ("IWRB") is the executive branch entity with
2 either sole or shared statutory oversight and authority over ten chapters of Administrative Non-
3 Fee and Fee Rules in IDAPA 37, including: IDAPA 37.01.01 Rules of Procedure of the IDWR; IDAPA
4 37.02.01 Comprehensive State Water Plan Rules; IDAPA 37.02.03 Water Supply Bank Rules;
5 IDAPA 37.02.04 Shoshone Bannock Tribal Water Supply Bank; IDAPA 37.03.03 Rules and
6 Minimum Standards for the Construction and Use of Injection Wells; IDAPA 37.03.04 Drilling for
7 Geothermal Resources Rules; IDAPA 37.03.05 Mine Tailings Impoundment Structures Rules;
8 IDAPA 37.03.06 Safety of Dams Rules; IDAPA 37.03.07 Stream Channel Alteration Rules; IDAPA
9 37.03.09 Well Construction Standards Rules; and IDAPA 37.03.10 Well Driller Licensing Rules; and

10 WHEREAS, at the direction of the Division of Financial Management ("DFM") the IWRB
11 adopted its non-fee rules as temporary rules, effective July 1, 2021, in its Resolution No. 20-2021
12 on May 21, 2021; and

13 WHEREAS, also at the direction of DFM the IWRB adopted its fee rules as temporary fee
14 rules, effective July 1, 2021, in its Resolution No. 21-2021 on June 15, 2021; and

15 WHEREAS, DFM published the IWRB's temporary non-fee rules as Docket No. 37-0000-
16 2100 and its fee rules as Docket No. 37-0000-2100F, on July 21, 2021, in the [Idaho Administrative](#)
17 [Bulletin Vol. 21-7SE](#) (pages 4808-5039); and

18 WHEREAS, on August 24, 2021, DFM directed all state executive agencies to adopt and
19 publish their temporary rules (both fee and non-fee) as proposed rules, and later pending rules,
20 and submit them for 2022 legislative review as an omnibus rulemaking; and

21 WHEREAS, the IWRB adopted and authorized the publication of its omnibus temporary
22 fee and non-fee rules as proposed rules in its resolution 33-2021 on September 30, 2021; and

23 WHEREAS, DFM published the IWRB's temporary non-fee rules as proposed omnibus non-
24 fee rules (Docket No. 37-0000-2100) and its temporary fee rules as proposed omnibus fee rules
25 (Docket No. 37-0000-2100F), on October 20, 2021, in the [Idaho Administrative Bulletin Vol. 21-](#)
26 [10SE](#) (pages 4523-4702); and

27 WHEREAS, on October 25, 2021, DFM directed all state executive agencies to adopt and
28 publish their omnibus proposed rules (both fee and non-fee) as pending rules in a special edition
29 of the Idaho Administrative Bulletin on December 22, 2021; and

WHEREAS, the period for the public to submit written comment or oral comment regarding the IWRB's October 20, 2021, published proposed omnibus non-fee and fee rules tolled on November 10, 2021, with no comments submitted; and

WHEREAS, the IWRB's rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws; and

WHEREAS, the expiration of the IWRB's rules without due consideration and process would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by the rules; and

WHEREAS, the Governor has found that the fee(s) or charge(s) imposed or increased in the fee rules are justified and necessary to avoid immediate danger to the budget of the Idaho Department of Water Resources, to the state budget, to necessary state functions, and services, and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that the state annually balance its budget.

NOW, THEREFORE BE IT RESOLVED that the IWRB adopts and authorizes the notice and publication of the following proposed fee rules as pending rules and directs their adoption as published on October 20, 2021, in the Idaho Administrative Bulletin Vol. 21-10SE:

- 37.01.01, *(Rules of Procedure of the Idaho Department of Water Resources)*;
- 37.02.03, *(Water Supply Bank Rules)*;
- 37.03.03, *(Rules and Minimum Standards for the Construction and Use of Injection Wells)*;
- 37.03.04, *(Drilling for Geothermal Resources Rules)*;
- 37.03.05, *(Mine Tailings Impoundment Structures Rules)*;
- 37.03.06, *(Safety of Dams Rules)*;
- 37.03.07, *(Stream Channel Alteration Rules)*;
- 37.03.09, *(Well Construction Standards Rules)*; and
- 37.03.10, *(Well Driller Licensing Rules)*.

NOW, THEREFORE BE IT FURTHER RESOLVED that the IWRB adopts and authorizes the notice and publication of the following proposed non-fee rules as pending fee rules and directs their adoption as published on October 20, 2021, in the Idaho Administrative Bulletin Vol. 21-10SE:

- 37.02.01, *Comprehensive State Water Plan Rules*
- 37.02.04, *Shoshone Bannock Tribal Water Supply Bank*.

DATED this 19th day of November 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary
Idaho Water Resource Board

Resolution No. _____

Page 3

Weaver, Mathew

From: Colby Cameron
Sent: Monday, October 25, 2021 2:16 PM
To: Colby Cameron
Subject: 2021 Omnibus Pending Rulemaking Guidance
Attachments: 10.21.2021 Omnibus Pending Non-Fee Notice SE.docx; 10.21.2021 Omnibus Pending Fee Notice SE.docx

Importance: High

Guidance for 2021 Omnibus Pending Rulemaking in a December 22nd Special Edition Bulletin

On October, 2021, a special edition of the Idaho Administrative Bulletin published the existing temporary omnibus rule chapters as proposed. Those proposed rules must be adopted as pending rules by the agency rulemaking authority (i.e. Board, Commission, or Director with vested rulemaking authority) prior to the 2021 legislative session. DFM intends to release a special edition of the Idaho Administrative Bulletin to publish pending omnibus rules on **December 22nd, 2021**. This guidance outlines the process for agencies to finalize their pending omnibus rules.

DFM will continue the process of reauthorizing the rules by IDAPA agency and chapter number, using the current proposed rules. It is important to know that all omnibus rules are in effect as temporary rules and will continue to have the full force and effect of law. Your agency should continue use the current temporary omnibus rules and make them available on your website.

Adoption of Pending Rule

Two action steps are necessary to publish in the December 2021 Special Bulletin:

1. Agencies must submit a completed *Notice/Notices of Omnibus Rulemaking - Adoption of Pending Rule* form(s) to DFM no later than **5PM Mountain Time, Wednesday November 24th, 2021**.
 - A. A template for the pending Non-Fee Notice and the pending Fee Notice is attached.
You only submit both Notice templates if you have both Non-Fee and Fee Rule Chapters. If you only have Non-Fee Chapters, then submit only the Non-Fee Template. If you only have Fee Chapters, then submit only the Fee Template.
 - B. Please submit completed Notices to adminrules@dfm.idaho.gov.
 - C. If rulemaking authority is vested in a board or commission – not agency staff – the board or commission must convene to properly authorize the Pending Notice. This is required by law. Please work closely with your attorney to ensure the Notice is properly authorized.
 - D. No ARRF will be required.
 - E. Prior to the adoption of the pending rule, the agency shall consider fully all written and oral submissions respecting the proposed rule, per § 67-5224.
2. The pending rules should be adopted **no sooner than November 11th, 2021, and by December 10th, 2021**. If there are issues with Board/Commission meeting timing, reach out to Colby Cameron right away.

DFM is always willing to accept documents before the November 24th deadline.

- It is crucial that each agency carefully and thoroughly complete each Notice and closely follow the requirements of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code.
- Questions regarding the Notice and the process should be directed to Colby Cameron (colby.cameron@dfm.idaho.gov; 208-854-3052).

- All rules re-authorized through this process will be subject to legislative review during the 2022 Idaho Legislature, as is the case each year.
- Each agency must keep all records of this rulemaking process for at least two (2) years after the rule is final and effective pursuant to Idaho Code § 67-5225. Please ensure the record is thorough and complete.
- You will receive a proof of your Notice of Adoption of Pending Fee Rule from DFM before the comprehensive bulletin is published. **You will only receive a proof of actual chapter rule text if there are changes between the proposed and pending rule text.** The proofs will be sent to the agency's RRO for review and approval in early November.
- If an agency has changes to the rule text in the pending rule, the DFM Proof will show *plain red italicized rule text* for additions, and text that is to be removed will simply be deleted, not the standard strike/underscore blue and red legislative format. The omnibus rules are new chapters; they were not codified previously as final rules.
- DFM has limited capacity to make edits at the proof stage, if they are minor and technical in nature.

For Omnibus Chapters that have changes at the pending stage due to comments received or ongoing Negotiated Rulemaking

- An agency may modify the proposed rules, if in compliance with the requirements of the Administrative Procedures Act, including §§ 67-5227 and 67-5224. Please vet any substantive changes by your Governor's office contact.
- If you have pending changes related to Negotiated Rulemaking or ZBR Rulemaking Review please reach out to Colby Cameron (colby.cameron@dfm.idaho.gov; 208-854-3052) right away. Timeframes for processing and publishing are very tight. We want to identify any rule chapters that will have pending text changes.
- Agencies must provide a highlighted, marked-up version of the rule text *clearly* showing all desired edits in Microsoft Word format by **November 24th, 2021**. Do not use track change formatting as it can be difficult for us to utilize; rather, agencies must highlight only the pending changes and use strikethroughs and underlines to identify amendments.

Thank you for your ongoing efforts to proactively ensure Idaho's administrative rules are in effect! The next step after pending is to look forward to the 2022 Legislative Review of the rules.

Please don't hesitate to reach out with any questions.

Colby Cameron

Bureau Chief for Regulatory and Legislative Affairs | Division of Financial Management

Phone: 208-854-3052

Email: colby.cameron@dfm.idaho.gov

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES AND IDAHO WATER RESOURCE BOARD

DOCKET NO. 37-0101-2101 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 42-1701A(1), 42-1734(19), 42-1805(8), and 67-5206(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This chapter sets forth procedural requirements for contested case proceedings before the Idaho Department of Water Resources and Idaho Water Resource Board.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete description and text of the proposed rule was published in the October 6, 2021, Idaho Administrative Bulletin, [Vol. 21-10, pages 86–105](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Fees relevant to the proposed rule are set forth at Idaho Code § 42-221. This rulemaking does not impose new fees or increase any already-established statutory fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this day of November 2021.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES
IDAHO WATER RESOURCE BOARD**

37.03.07 – STREAM CHANNEL ALTERATION RULES

DOCKET NO. 37-0307-2101 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 42-1734(19), 42-1805(8), and 42-3803, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for change.

This chapter sets forth procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete description and text of the proposed rule was published in the September 1, 2021, Idaho Administrative Bulletin, [Vol. 21-9, pages 108 – 132](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Idaho Code § 42-3803(a) authorizes the Idaho Water Resource Board to collect “statutory filing fees” in association with stream channel alteration activities. This rulemaking does not change current application filing fee amounts.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this day of November 2021.

*Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800*

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES
AND IDAHO WATER RESOURCE BOARD**

DOCKET NO. 37-0000-2100F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 42-238(12), 42-603, 42-1414, 42-1701A(1), 42-1714, 42-1709, 42-1721, 42-1734(19), 42-1762, 42-1414, 42-1805(8), 42-3913, 42-3914, 42-3915, 42-4001, 42-4010, 67-2356, and 67-5206(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 37, rules of the Idaho Department of Water Resources and Idaho Water Resource Board:

IDAPA 37

- 37.02.03, *Water Supply Bank Rules*;
- 37.03.01, *Adjudication Rules*;
- 37.03.02, *Beneficial Use Examination Rules*;
- 37.03.03, *Rules and Minimum Standards for the Construction and Use of Injection Wells*;
- 37.03.04, *Drilling for Geothermal Resources Rules*;
- 37.03.05, *Mine Tailings Impoundment Structures Rules*;
- 37.03.06, *Safety of Dams Rules*;
- 37.03.08, *Water Appropriation Rules*;
- 37.03.09, *Well Construction Standards and Rules*; and
- 37.03.10, *Well Driller Licensing Rules*.

There are no changes to the pending fee rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 20, 2021, Idaho Administrative Bulletin, [Vol. 21-10SE, pages 4547–4702](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA 37.02.03 governs IWRB's operation and management of its statutorily authorized water supply bank. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. This Rule establishes lease and rental fees that are used to carry out the program which are credited to IWRB's revolving development and water management accounts. This chapter was adopted under the legal authority of Section 42-1762, Idaho Code.

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho has active adjudications in the Palouse Basin and the Clark Fork-Pend Oreille River Basin. Idaho has also recently commenced adjudication in the Bear River Basin. This Rule is integral to the processing of these general adjudications. This chapter was adopted under the legal authority of Sections 42-1414, and 42-1805(8), Idaho Code.

IDAPA 37.03.02 governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit. The Rule also establishes that field examinations can be conducted by certified water right examiners appointed by the Director. Finally, the Rule governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use. This chapter was adopted under the legal authority of Section 42-1805(8), Idaho Code.

IDAPA 37.03.03 governs injection wells in Idaho. The Rule requires all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09), which protect groundwater resources from quality impairment. It is also necessary for the IWRB to maintain this Rule to maintain compliance with federal law, under which authority Idaho regulates the permitting, construction, and operation of certain injection wells within the state. Finally, the Rule governs inventory and permit fees which are used to partially fund the operation of the Underground Injection Control program in Idaho. This chapter was adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code.

IDAPA 37.03.04 governs the regulation of geothermal resource exploration and development to ensure such activities occur in the public interest. This Rule ensures Idaho's geothermal policy, "to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization" is met. This Rule also requires fees for geothermal exploratory wells, production wells, injection wells, and amendments to permits, as set forth in Idaho Code, Sections 42-4003 and 42-4011.

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR's design and technical review of mine tailing and water impoundment structures. This Rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The Rule applies to all new dams, and to the enlargement, alteration, repair, or maintenance of certain existing dams, as specifically provided in the Rule. This Rule also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

IDAPA 37.03.08 governs appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes, and groundwater. This Rule also applies to the reallocation of hydropower water rights (i.e., Swan Falls Trust Water) held in trust by the state of Idaho. This Rule also implements the application, re-advertisement, and mailing fees set forth in Sections 42-221F and 42-203(A)3, Idaho Code.

IDAPA 37.03.09 governs IDWR's statutory responsibility for the statewide administration of the rules governing well construction. This Rule establishes minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. This Rule protects Idaho's groundwater resources against waste and contamination. This Rule also implements drilling permit fees. This Rule was adopted pursuant to Section 42-235, Idaho Code.

IDAPA 37.03.10 establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. This Rule also establishes the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. This Rule applies to all individuals and companies drilling or contracting to drill wells. This Rule also implements the application licensing fees set forth in Section 42-238, Idaho Code.

In summary, the fee categories described in the Rule include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select regulated dams; (8) stream channel alteration statutory filing fees; (9) water right application, re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers. The Rule was adopted pursuant to Section 42-238, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Dated this 22nd day of December 2021.

*Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800*

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES AND IDAHO WATER RESOURCE BOARD

DOCKET NO. 37-0000-2100

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and in full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 42-603, 42-1734D, 42-1762, and 42-1805(8), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 37, rules of the Idaho Department of Water Resources and the Idaho Water Resource Board:

IDAPA 37

- 37.02.01, *Comprehensive State Water Plan Rules*;
- 37.02.04, *Shoshone-Bannock Tribal Water Supply Bank Rules*;
- 37.03.11, *Rules for Conjunctive Management of Surface and Ground Water Resources*; and
- 37.03.12, *Idaho Department of Water Resources Water Distribution Rules – Water District 34*.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mathew Weaver, Deputy Director at (208) 287-4800.

Dated this 22nd day of December 2021.

*Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800*

Memorandum



To: Idaho Water Resource Board (IWRB)
From: Neeley Miller, Planning & Projects Bureau
Date: November 9, 2021
Re: Priest Lake Water Management Project Update

ACTION: No action is requested at this time

Background

As a result of limited water supply and drought conditions in northern Idaho in 2015 and 2016 (and 2019 and 2021) it has been difficult to maintain required lake pool levels and downstream flow in the Priest River during the recreational season.

The Priest Lake Water Management Study was completed in February 2018. The study included the following recommendations:

- Temporarily raising the surface level of Priest Lake up to 6 inches during the recreational season for dry years
- Outlet dam structural and operational improvements
- Replacing the current existing porous breakwater with an impervious breakwater structure and dredging a portion of the Thorofare channel

Construction

The IWRB authorized the expenditure of funds not to exceed \$5 million from the Revolving Development Account for the construction of the Outlet dam portion and Thorofare portion of the Priest Lake Water Management Project as well as for the construction management and for other costs associated with the project.

In February 2021 Strider indicated it had encountered conditions not anticipated below the outlet dam and indicated that it may take more than one season to complete the construction. As a result, the IWRB passed a resolution on February 18, 2021, authorizing an extension to second season to complete the outlet dam.

Meanwhile work was completed on the newly improved the breakwater on-schedule and on-budget in April 2021.

Over the summer and fall of 2021 MM, Strider, and IWRB staff negotiated items related to Strider's requested additional season one and season two costs above the original contract amount. There were cost items of agreement and disagreement.

In October 2021 the IWRB authorized additional funds to the project budget not to exceed \$450,000 from the Revolving Development Account for this project. Additionally, the IWRB also provided authorization for a

change order not to exceed \$364K (these are the items of agreement). The remaining \$85K will be used as a contingency going forward this season.

For those costs items of disagreement, staff will be participating in the dispute resolution process on behalf of the IWRB. Once the dispute resolution process is complete staff will provide an update to the IWRB.

Remaining Schedule

- November 2021 – Work resumed at the outlet dam.
- Spring 2022 - Contract with MM to develop an Asset Management and O&M Plan for the Outlet Dam.
- Spring/Summer 2022 - Develop an Outlet Dam Operations Plan.

Elmore County Update Regarding SF Boise River and Snake River Projects

IDAHO WATER RESOURCE BOARD

NOVEMBER 18, 2021

TERRY SCANLAN, P.E., P.G.
SPF WATER ENGINEERING, LLC

DYLAN LAWRENCE
VARIN WARDWELL LLC

BUD CORBUS
ELMORE COUNTY COMMISSIONER

Purpose of Presentation

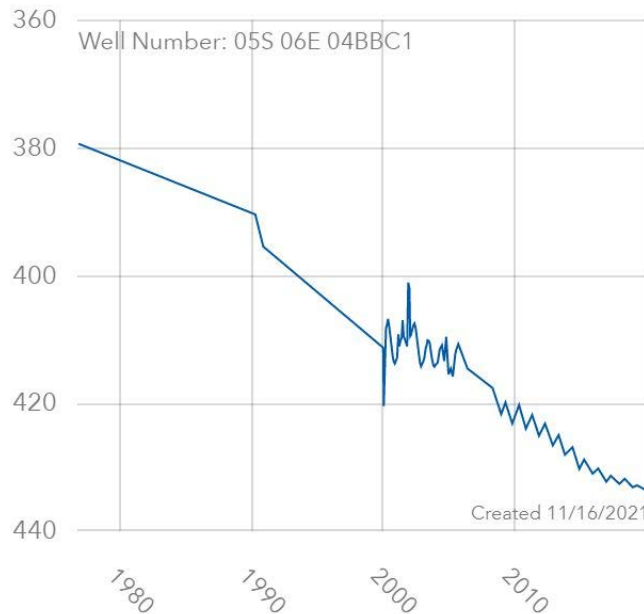
Elmore County has been dedicating its limited resources to its SF Boise River project and wants to explain its reasoning and seek input from the IWRB.

Background

- Last presentation to the IWRB took place May 2021
- Included discussion of the SF Boise River and Snake River projects
- Subsequent comments from IWRB members emphasized Snake River project
- Elmore County has evaluated both projects; believes should focus on SF Boise River project at this time

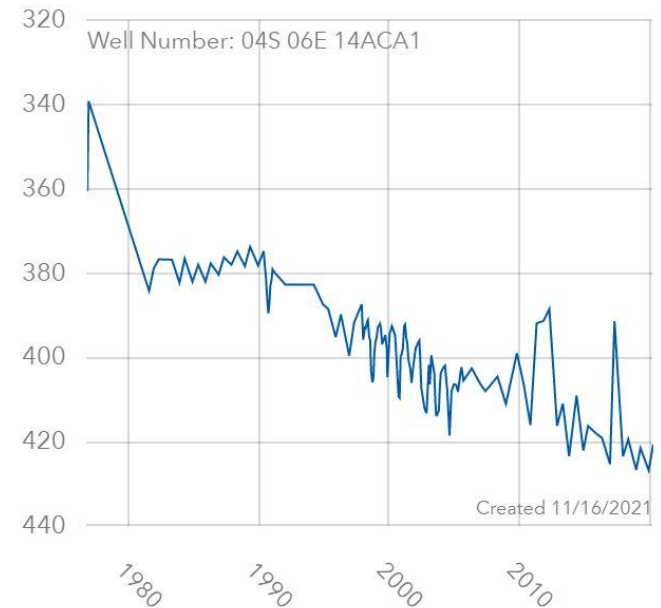
Elmore County Water Projects Seek to Stop Regional Aquifer Water Level Declines and Allow Economic Development

Depth to Groundwater



4 miles east of Mountain Home AFB

Depth to Groundwater

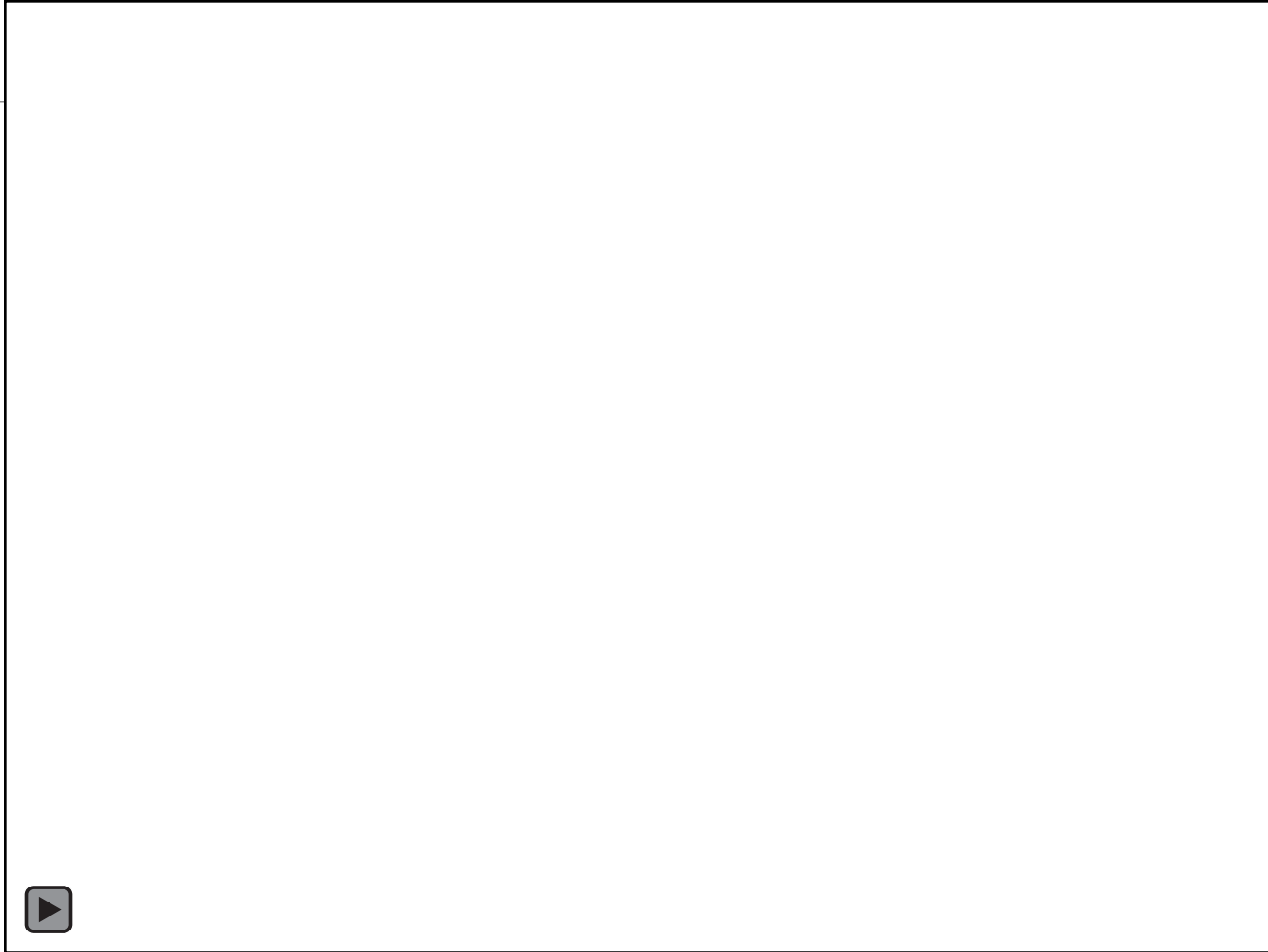


2 miles south of Mountain Home

Water Development Activities by IWRB in Elmore County

- 2/3 funding of 2017 Water Supply Alternatives Study
- Majority funding of Canyon Creek Recharge Improvements in 2018
- Anderson Ranch Dam Raise (Elmore County is seeking 10,000 af) – Ongoing
- MHAFB Snake River Pump Station and Pipeline – Ongoing
- Support for Treasure Valley Model Expansion – Ongoing

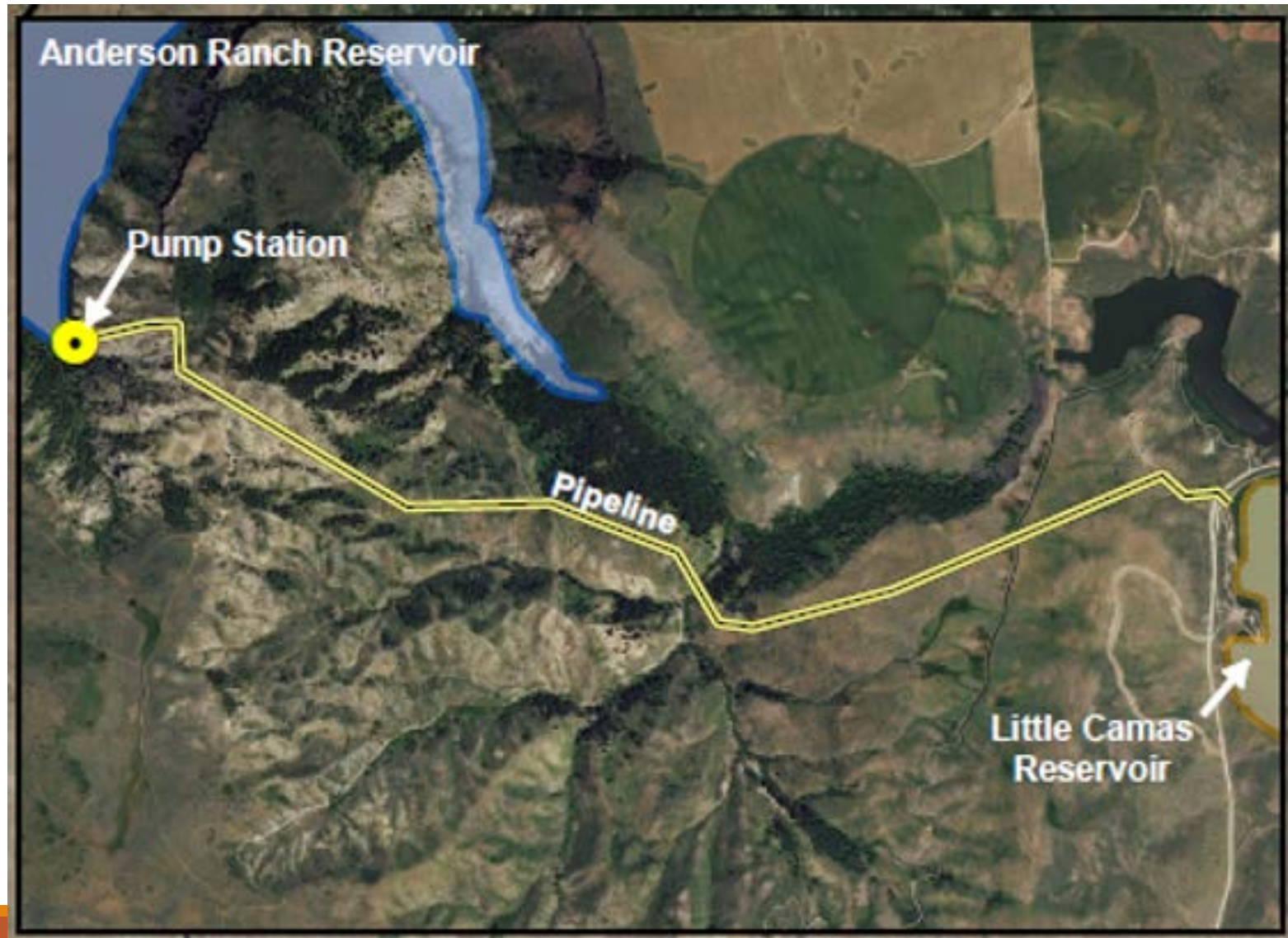
Summer 2021 Recharge



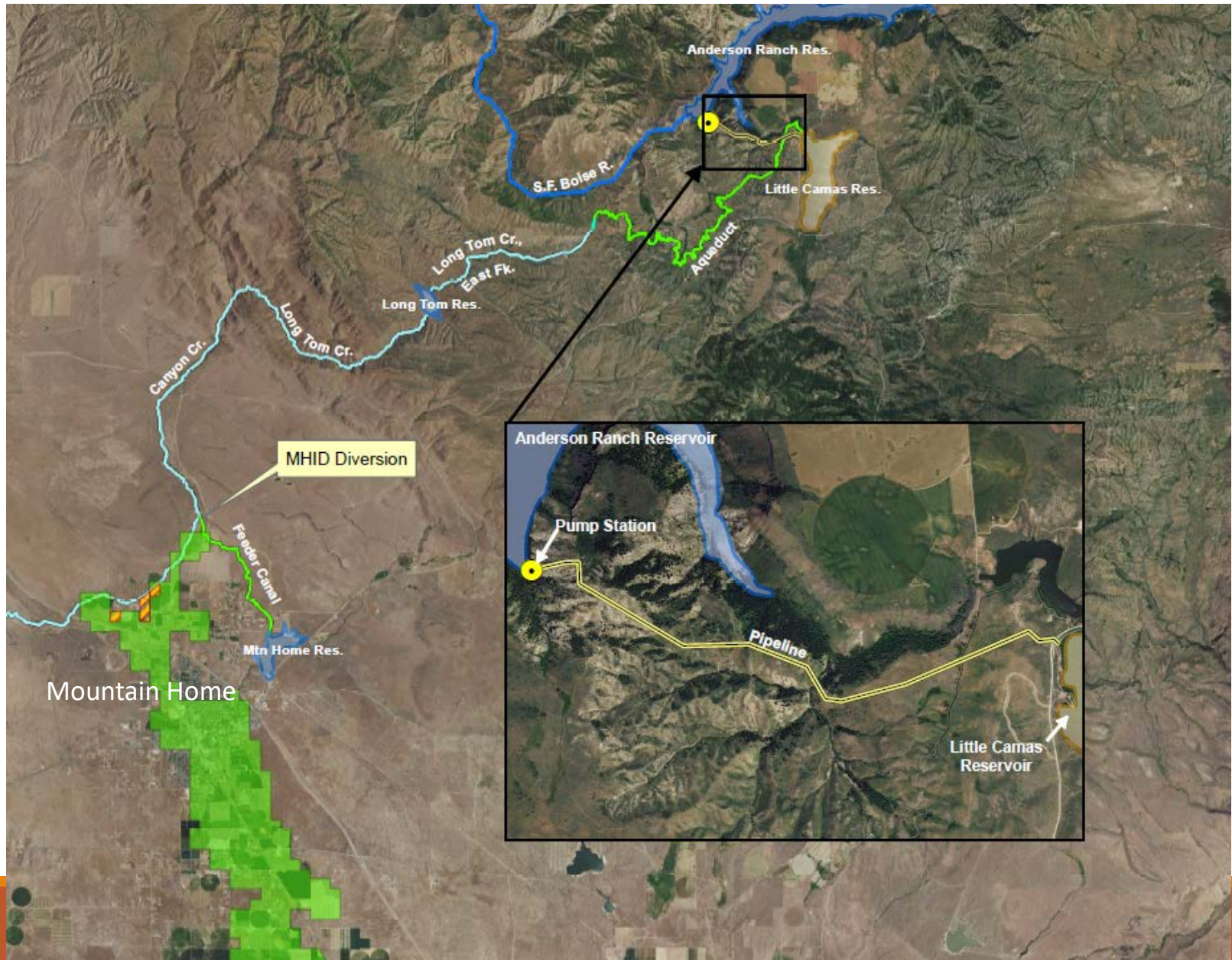
Recap of South Fork Boise Project

- 200 cfs water right permit
 - groundwater recharge northwest of Mountain Home
 - supplemental irrigation within Mountain Home Irrigation District
- Pump from Anderson Ranch Reservoir to Little Camas Reservoir
- Convey by gravity through Mountain Home Irrigation District system to Mountain Home.

South Fork Boise River Water Diversion Project



South Fork Boise River Water Diversion Project



Impact of Anderson Dam Raise

- Anderson water can be diverted to SF Boise River project
- Allows for much smaller system for same volume of water – perhaps 60 cfs vs. 200 cfs
- Smaller pump station and pipeline = reduced capital costs

Hydropower Potential

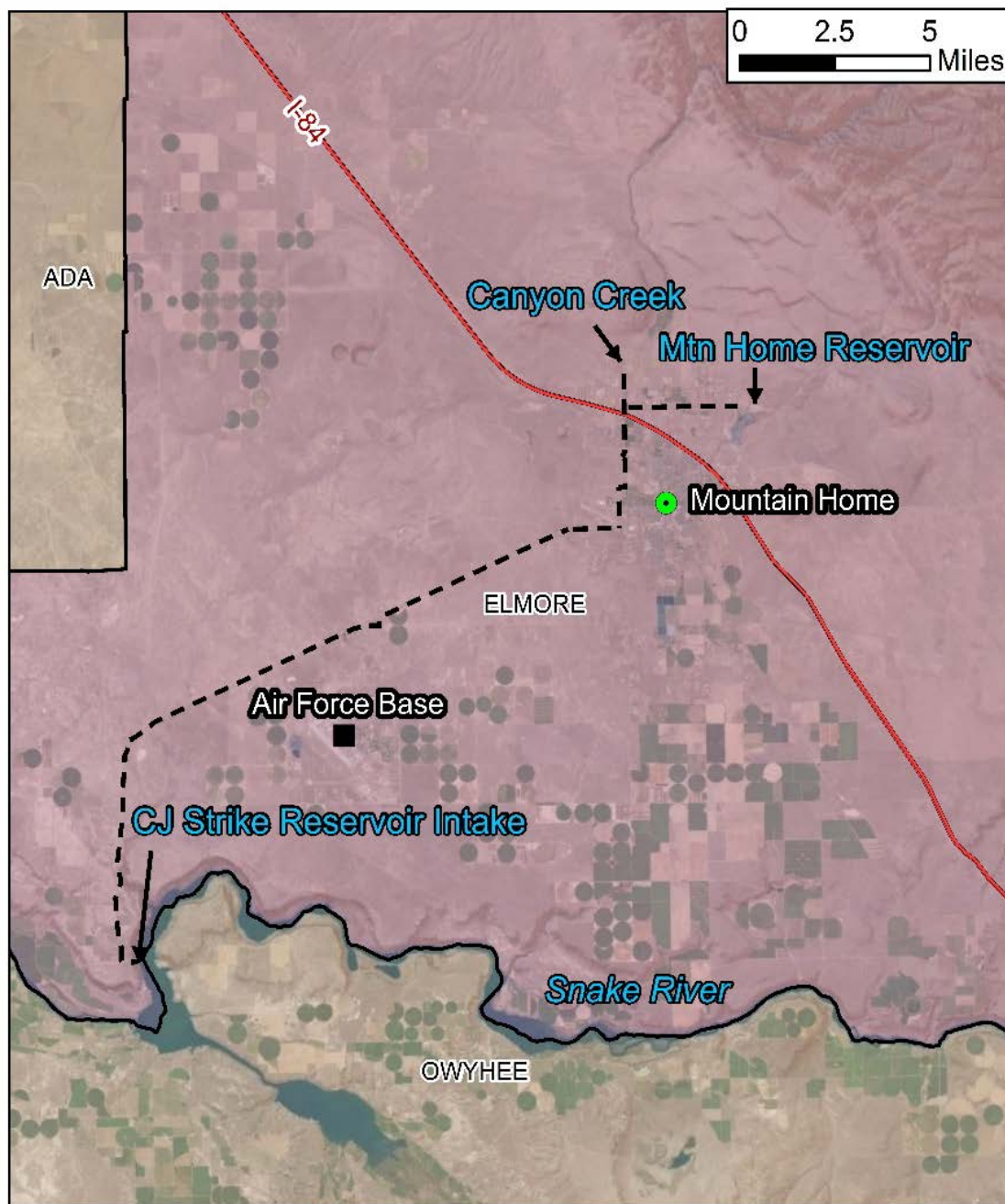
- Lift from Anderson up to high point: 1,000 feet
- High point down to Mountain Home Reservoir: 2,000 feet
- Hydro revenue would offset pumping costs – improves feasibility
- Have retained Brockway Engineering to evaluate further

Recap of Snake River Project

- 20 cfs pump station and pipeline
 - Year-round operation will produce 14,000 af
 - Municipal, Groundwater Recharge, Supplemental Irrigation
- Parallel to IWRB pipeline to MHAFB
- Extend Elmore County pipeline past MHAFB to City of Mountain Home.

Snake River Water Diversion Project





Water Right Permitting Status: Snake River Project

- Six protests resolved, some conditionally
- No permit issued; application still pending
- Diversion of “trust water” = detailed project information and public interest evaluation:
 - Effects on Idaho Power hydro rights
 - Effects on state and local economy
 - Effects on electric utility rates
 - Effects on family farming
 - Promotion of full economic use/development of water resources

Water Right Permitting Status: SF Boise River Project

- IDWR issued water permit August 13, 2019, after involved contested hearing
- Proof of beneficial use due April 1, 2024
- Extensions possible

Right of Way Status: Snake River Project

- IWRB right-of-way permit from BLM:
 - The “Holder...receives a right to construct, operate, use, maintain, and terminate a water pump station and intake structure, associated access roads, and a 20 to 24 inch water pipeline (A Sustainable Water Supply System for Mountain Home Air Force Base)”
- Second pipeline in IWRB right-of-way = new/amended ROW
- Additional right-of-way permitting required for County
- County right-of-way application pending

Funding and Status

- County FY2022 budgeting for SF Boise River project
 - Deposit to initiate Idaho Power design work
 - Completion of survey for pipeline and pump station
 - USFS permit for geotechnical investigation
 - Initiation of NEPA with Panorama Environmental, Inc.
 - Reconnaissance-level hydropower evaluation
- ARPA
 - Elmore County funds
 - Commented on Treasury rule
- DEQ – public water systems

Summary

- Availability of storage water from Anderson Reservoir could significantly reduce capital costs for SF Boise River Project.
- The SF Boise River Project has the potential to offset annual pumping costs through hydropower generation.
- Elmore County has a permit for the SF Boise River Project; application still pending for Snake River Project.
- Use of IWRB's right-of-way for Snake River project requires additional permitting by both IWRB and Elmore County.

Questions?

Memorandum



To: Idaho Water Resource Board
From: Kala Golden
Date: November 1, 2021
Re: Finance Committee recommendations on loan requests

REQUESTED ACTIONS: Approve new loan of \$1,500,000 to King Hill Irrigation District and loan increase of \$10,000 for Point Springs Grazing Association

On October 19, 2021, The Idaho Water Resource Board (Board) Finance Committee (Committee) was presented with a new loan request from King Hill Irrigation District, and loan modification request for an existing loan to Point Springs Grazing Association. The Committee has made a recommendation to the Board for approval of both requests; a summary of each request is provided below.

King Hill Irrigation District | \$1,500,000

Project: Install new pipelines and replace aging canal system infrastructure
Total Project Costs: \$2,950,000
Other funding: NRCS grant \$1, 978,654
Prior Board loans: 2011 for a project to replace a siphon, \$175,000; paid timely and in full
Loan term requested: 15 years
Securities: Water rights and district assessments
Reserve funding: \$600,000

King Hill Irrigation District (District) is requesting a new loan of \$1,500,000 for a project to install new pipelines and replace aging canal system infrastructure. The District currently provides water to 681 users for approximately 11,573 acres of irrigated land across portions of Elmore and Twin Falls County. The District's conveyance system was originally installed in 1904, with some updates done in 1979. Sections of the aging canal system pose a liability risk to the District, as they run adjacent to Interstate 84 and the Union Pacific Railroad. The proposed project will cover a portion of the District's service area near Hammett, Idaho, and is the first of several projects planned throughout the District boundary.

The Project will address necessary system improvements, eliminate risk to surrounding transportation infrastructure, and provide a reliable, long-term water supply for the users within the District's service area. It will help to protect valuable agricultural lands within the State of Idaho and provide an estimated 25% water savings by reducing conveyance losses. King Hill Irrigation District is a qualified applicant, and the project for which the District has proposed is consistent with the goals of the Board as identified within the Idaho State Water Plan.

The Finance Committee recommended the full Board consider approval of the loan request.

Point Springs Grazing Association | Loan increase of \$10,000

Project: Drill new stock water well

In May of 2021, the Idaho Water Resource Board (Board) approved a new loan to Point Springs Grazing Association (Association) which included a carryover balance of \$17,335.53 from an existing Board loan and \$20,000 in new project funds for a total loan amount of \$37,335.53. The new loan was issued with a 3.5% interest rate for a 10-year term and was intended to cover expenses for construction of a new well on the Association's grazing allotment. This is the Association's third loan with the Board. Previous loan funding was used to drill new wells and install pipeline for stock water in another location on the Association's grazing allotment.

The Association's current well drilling project was implemented in August of 2021. Final project costs were significantly higher than expected as the well had to be drilled much deeper than anticipated, and costs for the steel casing were double the original estimate due to recent fluctuations in materials costs. In consideration of the increased project costs, the Association is requesting the Board approve an increase of \$10,000 to the existing loan for a total loan amount of \$47,335.53. The Association is a qualified applicant with exceptional payment history on previous loans with the Board.

The Finance Committee recommended the full Board consider approval of the increase.

Attachments

1. Draft Resolution to approve loan for King Hill Irrigation District
2. Draft Resolution to approve loan increase for Point Springs Grazing Association

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF POINT SPRINGS GRAZING
ASSOCIATION FUNDING REQUEST

RESOLUTION TO AUTHORIZE INCREASED
FUNDING FOR WELL DRILLING PROJECT

1 WHEREAS, Point Springs Grazing Association (Association) submitted a loan application to the
2 Idaho Water Resource Board (IWRB) in the amount of \$20,000.00 to drill a new stock water well
3 (Project). The Association also requested approval to combine the new loan with the remaining balance
4 of an existing loan in the amount of \$17,335.53, for a combined loan amount of \$37,335.53; and
5

6 WHEREAS, on May 21, 2021, the IWRB approved the Association's request for a new loan
7 totaling \$37,335.53; and
8

9 WHEREAS, Project construction costs have increased since the time of the original loan approval
10 from \$20,000 to an estimated \$30,000; and
11

12 WHEREAS, the Association has requested an increase to its existing loan in the amount of
13 \$10,000 to cover increased construction cost. The increase will change the total loan amount to
14 \$47,335.53; and
15

16 WHEREAS, the Association is a qualified applicant and the proposed Project qualifies for a loan
17 from the IWRB'S Revolving Development Account; and
18

19 WHEREAS, the proposed Project is in the public interest and is in compliance with the State
20 Water Plan.
21

22 WHEREAS, on October 19, 2021, the IWRB's Finance Committee recommended the full IWRB
23 consider approval of the loan modification request.
24

25 NOW THEREFORE BE IT RESOLVED that the IWRB approves an increase in the existing loan of
26 \$37,335.53 to an amount not to exceed \$47,335.53 from the Revolving Development Account at 3.5%
27 interest with a 10-year repayment term.
28

29 NOW THEREFORE BE IT RESOLVED that the IWRB provides authority to the Chairman of the
30 Idaho Water Resource Board, or his designee, to modify existing contracts with the Association on
31 behalf of the IWRB. The 10-year term of the loan will remain effective as of May 2021.
32

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

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

38 2) Prior to the disbursement of any funds, the Association will provide acceptable security for
39 the loan to the IWRB.

DATED this 19th day of November, 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary

Memorandum



To: Idaho Water Resource Board

From: Kala Golden

Date: November 1, 2021

Re: Loan Program Interest Rates and Contract Conditions

REQUESTED ACTION: Consider Finance Committee's recommended modification of the Loan Program's interest rate and addition of standard conditions to loan contract.

On April 3, 2020, the Idaho Water Resource Board (Board) approved, through resolution, a modification of the Loan Program (Program) interest rate from 4.5% to 3.5% percent. Through the resolution, the Board also committed to performing an annual review of the Program's interest rate to determine if the set rate is appropriate relative to current economic conditions and program demand. A presentation was given at the Board's July 7th Finance Committee (Committee) Meeting to review interest rate options, at which time the Committee asked staff to gather more information. In October 2021, the Committee reconvened and recommended the Board consider modifications to the Program's interest rate, incentives for projects that address aging infrastructure, and general loan contract conditions. The following is a general summary of the recommendations for review and discussion at the November regular Board meeting. A draft resolution to adopt the Committee's recommendations is also provided for review (attached).

Aging Water Infrastructure |

- The Finance Committee discussed the need to support projects that address aging water infrastructure needs statewide as an investment in the Idaho economy and the stability of water management.
- For the purposes of the Loan Program, an "Aging Water Infrastructure Project" is defined broadly as a project intended to address repair, maintenance, replacement, or improvements to existing infrastructure that supports water delivery, treatment, and application of water. Projects that support water administration mitigation proposals or settlement actions, or new water development projects may not meet this definition.

Program Interest Rate |

- Federal Prime Rate: The Committee suggested the Program Interest Rate be set in accordance with a commonly used market rating index to account for economic fluctuations and ensure rates remain competitive.
 - The Committee recommended use of the Federal Prime Rate, currently set at 3.25% as of November 1, 2021.
 - The Program Interest Rate will be set quarterly based on the Federal Prime Rate as of the first day of the quarter.
- Reduced Interest Rate Incentive:
 - The Committee recommended providing an interest rate incentive for shorter-term loans and projects intended to address aging infrastructure needs throughout the State.

- An interest rate of 80% of the Program Interest Rate at the time the loan application is received shall be applied to loans with a term of 15 years or less that also qualify as an “Aging Water Infrastructure Project.” For loans that meet these two conditions, the interest rate shall be 80% of the Program’s interest rate at the time the application is received.
- General Considerations:
 - An “existing loan” is defined as a loan that has been approved by the Board through resolution.
 - A “new loan” is defined as a loan request that has not yet been approved by the Board through resolution, and for which funds will be used for a project or portion of a project that has not previously received funding under an existing loan.
 - Interest rates for all loans shall be set based on the date the loan application is received.
 - Interest rate adjustments on existing loans are not authorized unless the existing loan is combined with a new loan, in which case the existing loan will be rolled into the new loan with the rate set at the Program’s current interest rate as of the date the new application is received.
 - Interest rate adjustments shall not be authorized for existing loans that are increased or otherwise modified.

Loan Contract Conditions |

All borrowers that do not hold statutory assessment authority are required to maintain a reserve fund equal to one annual loan payment.

Attachment(s)

1. Draft Resolution to approve Loan Program Interest Rate and Contract Conditions

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE IDAHO WATER
RESOURCE BOARD LOAN PROGRAM INTEREST
RATES AND CONDITIONS

RESOLUTION TO AUTHORIZE ADJUSTMENT
TO LOAN INTEREST RATES AND CONDITIONS

1 WHEREAS, the Idaho Water Resource Board (IWRB) is authorized to make loans from its
2 Revolving Development Account, and from the Secondary Aquifer Planning, Management, and
3 Implementation Fund for aquifer management projects which are in the public interest and which
4 further implement the State Water Plan; and
5

6 WHEREAS, on April 3, 2020, the IWRB recommended the IWRB's Loan Program (Program)
7 interest rate be adjusted from the current loan interest rate of 4.5% to 3.5%; and
8

9 WHEREAS, on October 19, 2021, the IWRB Finance Committee (Committee) developed
10 recommendations to modify the Program interest rates and loan contract conditions; and
11

12 WHEREAS, to account for economic fluctuations and ensure interest rates remain competitive,
13 the Committee recommended the Program's interest rate be set according to a commonly used market
14 index; and
15

16 WHEREAS, the IWRB has identified a need to support projects that address aging water
17 infrastructure needs as an investment in the Idaho economy and to ensure long-term reliable water
18 service and management; and
19

20 WHEREAS, the Committee recommended providing an interest rate incentive for shorter-term loans
21 and projects intended to address aging infrastructure needs throughout the State.
22

23 NOW THEREFORE BE IT RESOLVED that the following defined terms apply to the Program:
24

- 25 1) *Aging Water Infrastructure Project* shall be defined broadly as a project intended to address
26 repair, maintenance, replacement, or improvements to existing infrastructure that supports
27 water delivery, treatment, and application of water;
28 2) An *existing loan* shall be defined as any loan that has been approved by the IWRB through
29 resolution;
30 3) A *new loan* shall be defined as any loan request for a project, or portion of a project, that has
31 not previously received funding under an existing loan and that has not been approved by the
32 IWRB through resolution.
33

34 NOW THEREFORE BE IT FURTHER RESOLVED that the Program interest rate shall reflect the
35 Federal Prime Rate on the first day of each quarter.
36

37 NOW THEREFORE BE IT FURTHER RESOLVED that the interest rate for an approved loan will be
38 set to the Program interest rate as of the date the completed application is received.

39
40 NOW THEREFORE BE IT FURTHER RESOLVED that loans for an Aging Water Infrastructure Project
41 and with a term of 15 years or less, shall receive a reduced interest rate incentive of 80% of the Program
42 interest rate.

43
44 NOW THEREFORE BE IT FURTHER RESOLVED that interest rate modifications shall not be
45 authorized for existing loans.

46
47 NOW THEREFORE BE IT FURTHER RESOLVED that an existing loan may be combined with a new
48 loan by approval of the IWRB, and the interest rate shall be changed to reflect the Program interest rate
49 as of the date new completed application is received.

50
51 NOW THEREFORE BE IT FURTHER RESOLVED that loans to entities that do not hold statutory
52 assessment authority shall be required to maintain a reserve fund equal to one annual loan payment until the
53 loan has been paid in full.

DATED this 19th day of November 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE KING HILL IRRIGATION
DISTRICT LOAN REQUEST

RESOLUTION TO AUTHORIZE LOAN FUNDING
FOR COSTS RELATED TO REPLACEMENT OF
DELIVERY SYSTEM INFRASTRUCTURE

1 WHEREAS, King Hill Irrigation (District) submitted a loan application to the Idaho Water
2 Resource Board (IWRB) in the amount of \$1,500,000.00 to cover costs associated with a project to install
3 new pipelines and replace the aging infrastructure of its delivery systems (Project); and
4

5 WHEREAS, the District delivers water for approximately 11,573 acres of irrigated lands in Elmore
6 and Twin Falls counties; and
7

8 WHEREAS, the District's delivery system was originally installed in 1904, with some
9 improvements made in 1979; and
10

11 WHEREAS, to avoid interruption of water delivery and potential liability risk, the District needs
12 to make considerable improvements to its aging infrastructure; and
13

14 WHEREAS, the total estimated cost for the Project is approximately \$2,950,000, and the District
15 has secured grant funding from NRCS in the amount of \$1,978,654; and
16

17 WHEREAS, the District is a qualified applicant, and the proposed Project is eligible for a loan
18 from the IWRB's Revolving Development Account; and
19

20 WHEREAS, the proposed Project is in the public interest and is in compliance with the State
21 Water Plan.
22

23 WHEREAS, on October 19, 2021, the IWRB's Finance Committee recommended the full IWRB
24 consider approval of the loan application.
25

26 NOW THEREFORE BE IT RESOLVED that the IWRB approves a loan not to exceed \$1,500,000
27 from the Revolving Development Account at 2.6 % interest with a 15-year repayment term.
28

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

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

- 35 1) The District shall comply with all applicable rules and regulations that apply to the proposed
36 Project.

- 37 2) Prior to the disbursement of any funds, the District shall comply with all statutory
38 requirements for incurring debt.
39 3) Prior to the disbursement of any funds, the District will provide acceptable security for the
40 loan to the IWRB, including but not limited to its water rights and assessment income which
41 the District collects from its members.

DATED this 19th day of November 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary

MEMO



To: Idaho Water Resource Board Finance Committee

From: Kala Golden

Date: November 5, 2021

Subject: Blaine County Canal Company– New Water Project Loan Application

REQUESTED ACTION: Approve loan request of \$250,000

1.0 INTRODUCTION

Blaine County Canal Company (Company) is requesting a new loan in the amount of \$250,000 from the Idaho Water Resource Board (Board) for a project to replace its diversion structure and convert a section of its open canals to closed pipe (Project).

2.0 BACKGROUND

Located in Butte County near Howe, Idaho, the Company was first established in 1910, and currently provides irrigation water to 18 shareholders for a total of approximately 4,880 acres of agricultural land. The Company's delivery system is comprised of a series of open canal channels and concrete flumes, with little improvements done since it was originally constructed. Water is diverted from the Little Lost River, and then conveyed across land owned by the Bureau of Land Management (BLM) and other public and private entities, before being delivered to users in the valley.

Current seepage rates in the canals are near 100% towards the end points of the Company's conveyance system. When surface water is not available, ground water pumping is used to supplement supplies. The proposed Project will pipe a section of the delivery system where losses are currently estimated to be approximately 13%. The Company intends to undertake a multi-phased approach over the next several years to convert most of its open channel canals to closed pipe and install a pressurized system.

3.0 PRIOR LOANS

The Company has not previously held a loan with the Board.

4.0 PROPOSED PROJECT

Presently, the Company's point of diversion is located on the east side of the Little Lost River (river), where water is then conveyed through open canals down to an old concrete flume where it crosses the river connecting to canals on the opposite side. The Project proposes to move the point of diversion to the west side of the river, install a new diversion structure designed to prevent fish entrapment, remove the old concrete flume, and install closed pipe. The Project will eliminate approximately 1,700 feet of conveyance by moving

the point of diversion and relocating the conveyance line to the opposite side of the river. Engineering and technical support for the project are being provided by the United States Department of Agriculture's Natural Resource Conservation Service (NRCS).

5.0 BENEFITS

The Project will provide for a number of efficiencies that will reduce energy consumption by an estimated 1.5 million kWh upon completion of all phases, reduce fish entrainment, and eliminate water losses due to seepage. Water savings by piping the canals will provide more surface water, benefitting the surrounding aquifer by reducing the need to pump supplemental groundwater.

6.0 FINANCIAL ANALYSIS

The total project costs are estimated to be approximately \$1,500,000. The Company has been awarded grant funding in the amount of \$900,000 from NRCS, and \$100,000 from Trout Unlimited, and will additionally receive a savings incentive from Rocky Mountain Power Company for approximately \$240,000. The Company is requesting a Board loan in the amount of \$250,000 to cover the remaining portion of the Project costs.

The District is requesting a 15-year term on the loan, currently holds a reserve fund of approximately \$13,000, and has no other outstanding debt.

The following analysis reflects the Board's current interest rate of 3.5%. The Company's assessments are charged by share, with a total of 4,880 shares.

Payment Analysis

Term (Years)	Estimated Annual Payment- Revolving Account Loan	Current Assessments Cost/Acre/Year	New Assessments Cost/Acre/Year
15	\$21,706.27	\$6.50	\$10.95

6.0 WATER RIGHTS

WATER RIGHT	SOURCE	Diversion Rate (CFS)	PRIORITY DATE
33-3	Dry Creek	61.000	07/01/1912
33-4	Little Lost River	12.000	01/23/1905
33-5	Little Lost River	145.000	01/14/1908
33-68	Little Lost River	4.280	06/1/1891
33-75	Little Lost River	3.430	07/15/1884
33-77	Sawmill Creek	1.430	05/25/1891
33-98	Dry Creek	5.150	04/15/1891
33-10086	Sawmill Creek	5.300	03/05/1908

7.0 SECURITY

As collateral for the loan, the Board is authorized to hold lien against the District's membership assessments, water rights, and all Project infrastructure.

8.0 ALTERNATIVE CONSIDERATIONS

The Company considered two alternative options to the proposed Project:

- 1) No Action: this option was unacceptable as the current diversion structure is significantly aged and in need of repair. If failures were to occur, the Company would be unable to deliver water to its users. The current system is also extremely inefficient due to significant water losses.
- 2) Lining the canal system: this option was also considered unacceptable as evaporative losses would still occur and it would not provide any significant energy savings.

9.0 CONCLUSION AND RECOMMENDATION

This loan will be used to replace the Company's deteriorated diversion structure and pipe a section of its canals. Blaine County Canal Company is a qualified applicant, and the proposed project is consistent with the goals of the Board as identified within the Idaho State Water Plan. Staff recommends approval of the loan request, for the total amount of \$250,000.

Attachments: BCCC Loan Application, BCCC District Map, BCCC Project Map

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE BLAINE COUNTY CANAL
LOAN REQUEST

RESOLUTION TO AUTHORIZE LOAN FUNDING
FOR COSTS RELATED TO INSTALLTION OF A
DIVERSION STRUCTURE AND PIPING OF
CANALS

1 WHEREAS, Blaine County Canal Company (Company) submitted a loan application to the Idaho
2 Water Resource Board (IWRB) in the amount of \$250,000.00 to cover costs associated with a project to
3 move its point of diversion, install a new diversion structure, and pipe open canals (Project); and
4

5 WHEREAS, the Company delivers water for approximately 4,880 acres of irrigated lands in Butte
6 County near Howe, Idaho; and
7

8 WHEREAS, the Company's delivery system was originally constructed in the early 1900s, with
9 few improvements made since the system it was developed; and
10

11 WHEREAS, considerable systemwide improvements are required to ensure long-term reliable
12 water delivery and reduce water loss due to seepage; and
13

14 WHEREAS, the total estimated cost for the Project is approximately \$1,500,000; and
15

16 WHEREAS the Company has secured grant funding in the amount of \$900,000 from the Natural
17 Resource Conservation Service, \$100,000 from Trout Unlimited, and an energy savings incentive of
18 \$240,000 from Rocky Mountain Power Company; and
19

20 WHEREAS, the Company is a qualified applicant, and the proposed Project is eligible for a loan
21 from the IWRB's Revolving Development Account; and
22

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

26 NOW THEREFORE BE IT RESOLVED that the IWRB approves a loan not to exceed \$250,000 from
27 the Revolving Development Account at 2.6 % interest with a 15-year repayment term.
28

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

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

- 36 1) The Company shall comply with all applicable rules and regulations that apply to the
37 proposed Project.
38 2) Prior to the disbursement of any funds, the Company will provide acceptable security for the
39 loan to the IWRB, including but not limited to its water rights, membership assessment
40 income, and the Project infrastructure.
41 3) The Company shall maintain a reserve fund equal to one annual loan payment until the loan
42 has been satisfied.

DATED this 19th day of November 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary

MEMO



To: Idaho Water Resource Board Finance Committee

From: Kala Golden

Date: November 2, 2021

Subject: Lakeview Estates Subdivision Homeowners Association– New Water Project Loan Application

Action Item: Approve loan request of \$65,000

1.0 INTRODUCTION

Lakeview Estates Subdivision Homeowners Association (Association) is requesting a new loan in the amount of \$65,000 from the Idaho Water Resource Board (Board) for a project to develop a new Water Master Plan for its water supply system (Project).

2.0 BACKGROUND

Located east of Orofino, Idaho in Clearwater County, the Association operates a water supply system (system) that provides domestic water for 35 five-acre parcels. There are 19 year-around households within the Association's service area, and seasonal peak demands are currently exceeding the system's capacity. The system is comprised of three ground water wells, and two 15,000-gallon concrete reservoirs; two of the wells run continuously, and a third well is turned on manually when the system's reservoir levels get low.

The Association has had two previous wells pump dry. Recharge rates for the existing wells that are run continuously are 0.38 and 0.59 gallons per minute (GPM), and 1.46 GPM for the third well. To ensure a sustainable water supply for its growing service area, the Association will need to address its declining water supply. To analyze the system and identify a possible solution, the Association proposes to contract with TD&H Engineering for the development of a Water Master Plan.

3.0 PRIOR LOANS

In 2001, the Association held a Board loan in the amount of \$49,361.19 for a project to drill new wells for its water supply system. The loan was paid timely, and in full.

4.0 PROPOSED PROJECT

The Project will provide costs for engineering and administration services to be provided by TD&H Engineering for the development of a Water Master Plan. The estimated time to complete the Water Master Plan is 12 months.

5.0 BENEFITS

The Project will provide means for the Association to determine a solution to its declining water supply, so that it may provide a reliable, long-term water supply for the users within its service area.

6.0 FINANCIAL ANALYSIS

The Association is requesting a loan for \$65,000 for the total estimated costs to develop the Water Master plan. The Association is requesting a 15-year term on the loan, currently holds a reserve fund of about \$13,000, and has no other outstanding debt.

The following analysis reflects the Board's current interest rate of 3.5%.

Payment Analysis

Term (Years)	Estimated Annual Payment- Revolving Account Loan	Current Assessments Cost/Lot/Month	New Assessments Cost/Lot/Month
15	\$5,643.63	\$73.80	\$91.89

6.0 WATER RIGHTS

WATER RIGHT	SOURCE	Diversion Rate (CFS)	PRIORITY DATE
83-7118	Ground Water	0.06	06/25/1994
83-7136	Ground Water	0.08	03/09/2000
83-11931	Ground Water	0.07	07/15/2001

7.0 SECURITY

As collateral for the loan, the Board is authorized to hold lien against the Association's water rights, member assessments, and water supply system.

8.0 CONCLUSION AND RECOMMENDATION

This loan will be used to develop a Water Master Plan for purposes of addressing a declining water supply. Lakeview Estates Water users Association is a qualified applicant, and the project for which the Association has proposed is consistent with the goals of the Board as identified within the Idaho State Water Plan. Staff recommend approval of the loan request, for the total amount of \$65,000.

Attachments:

1. Lakeview Estates Subdivision Homeowner's Association- Loan Application
2. Draft loan approval resolution

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF LAKEVIEW ESTATES
SUBDIVISION HOMEOWNER'S ASSOCIATION
REQUEST

RESOLUTION TO AUTHORIZE FUNDING FOR
WATER MASTER PLAN

1 WHEREAS, Lakeview Estates Subdivision Homeowners Association (Association) submitted a
2 loan application to the Idaho Water Resource Board (IWRB) in the amount of \$65,000.00 for costs
3 associated with the development of a Water Master Plan (Project)
4

5 WHEREAS, the Association, located in Clearwater County, provides domestic water for
6 approximately 35 parcels within its service area; and
7

8 WHEREAS, the Association's water delivery system is supplied by three wells that are not able to
9 meet peak demand due to an ongoing drop in the water table; and
10

11 WHEREAS, the Association intends to develop a Water Master Plan (Plan) to identify system
12 improvements to provide for a long-term, reliable water supply for its service area; and
13

14 WHEREAS, the total estimated cost for the Project is approximately \$65,000; and
15

16 WHEREAS, the Association is a qualified applicant and the proposed Project qualifies for a loan
17 from the IWRB's Revolving Development Account; and
18

19 WHEREAS, the proposed Project is in the public interest and is in compliance with the State
20 Water Plan.
21

22 NOW THEREFORE BE IT RESOLVED that the IWRB approves a loan not to exceed \$65,000 from
23 the Revolving Development Account at 3.25% interest with a 15-year repayment term
24

25 NOW THEREFORE BE IT RESOLVED that the IWRB and provides authority to the Chairman of the
26 Idaho Water Resource Board, or his designee, to enter into contracts with the Association on behalf of
27 the IWRB.
28

29 NOW THEREFORE BE IT FURTHER RESOLVED that this resolution and the approval of the loan are
30 subject to the following conditions:
31

- 32 1) The Association shall comply with all applicable rules and regulations that apply to the
33 proposed Project.
34 2) The Association shall provide acceptable security for the loan to the IWRB including, but not
35 limited to, the Association's water rights, membership assessments, all facilities and
36 equipment associated with its water supply system.

37 3) The Association shall maintain a reserve fund equal to one annual loan payment, until the
38 loan has been satisfied.

DATED this 19th day of November 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary

Memorandum



To: Idaho Water Resource Board
From: Kala Golden
Date: November 3, 2021
Re: Cloud Seeding Program Funding

REQUESTED ACTION: Determine the distribution of one-time funds for program shortages. Consider resolution to authorize funding for the Cloud Seeding Program.

Operations & Maintenance Costs |

Board Share:

The Idaho Water Resource Board (Board) authorized a total of \$950,000 for one-third of the total operations and maintenance (O&M) costs for the Collaborative Cloud Seeding Program (Collaborative Program) in the Fiscal Year 2022 Secondary Aquifer Planning, Management, and Implementation Fund budget (FY22 Secondary Fund Budget). The Collaborative Program includes cloud seeding in the Boise, Wood River and Upper Snake River basins. The amount budgeted for the 2021-2022 cloud seeding season was based on estimated costs provided by Idaho Power Company (IPC) at the time budget was approved in May 2021. Costs have since been refined and include costs associated with administration of the High-Performance Computer (HPC) which were previously included under model development activities rather than O&M expenses.

Staff recommends increasing the authorized O&M budget for the Collaborative Program \$70,000, for a total of \$1.02M to cover anticipated O&M costs for the 2021-2022 season. A draft resolution is attached for the Board's consideration.

Water User Share:

In FY21, the Board authorized expenditure of \$417,000 as a one-time contribution towards program shortages for costs associated with the operations and maintenance of the Collaborative Program. The Board agreed to pay an additional 16% of O&M costs per basin to offset the shortage in the water user's contribution. This percentage was based on historic water user payments and applied as an offset according to the basin with the lowest percentage contribution. In its FY22 Secondary Fund Budget, the Board authorized expenditure of up to \$500,000 for the same purpose. Due to the increase in O&M costs, the percent contributed by the Board will increase to 18% if the water user contributions remain the same, increasing the Board commitment to \$533,000 (see table below). If the Board limits the shortage contribution to \$500,000, the water user payments from each basin may need to increase.

A draft resolution is provided authorizing additional funding of \$33,000 for the Board's consideration and discussion.

Basin	Total Program O&M Cost	Water User Cost Share (Approx 15%)	IPC Share	IWRB Share	One-Time IWRB Contribution (Approx 18%)
Boise River	\$ 832,000	\$ 125,000	\$ 278,000	\$ 278,000	\$ 151,000
Wood River	\$ 610,000	\$ 92,000	\$ 204,000	\$ 204,000	\$ 110,000
Upper Snake River	\$ 1,491,000	\$ 225,000	\$ 497,000	\$ 497,000	\$ 272,000
SubTotal	\$ 2,933,000	\$ 442,000	\$ 979,000	\$ 979,000	\$ 533,000
HPC Administration	\$ 80,000		\$ 40,000	\$ 40,000	
Program Shortages				\$ 533,000	
Total	\$ 3,013,000	\$ 442,000	\$ 1,018,000	\$ 1,553,000	

Research & Development |

The Board budgeted \$35,000 in the FY22 Secondary Fund Budget to partially fund development of new weather instrumentation devices to collect snowpack and snow water equivalent data in areas not captured by existing SNOTEL sites. The devices, called SWEdars, are being developed by Boise State University's Dr. HP Marshall and will effectively serve as a scaled down SNOTEL site, having a comparatively small footprint and significantly lower cost. The SWEdars can also be upgraded to include soil moisture meters and are intended to provide a cost effective, low impact option for collecting data in a broad range of areas. Organizations such as the NRCS and Henry's Fork Foundation have also expressed interest in the devices.

To date, IPC has invested approximately \$375,000 for the development of the SWEdars and has budgeted for capital costs to begin purchasing devices for its cloud seeding operations beginning in calendar year 2023. IPC intends to co-locate the SWEdars with existing remote ground generator sites and will use the data collected to refine its estimates of the distribution of snowpack in seeded areas and to further validate the Weather Research and Forecasting (WRF) model. Capital costs for each device are estimated to be approximately \$7,000. IPC plans to deploy about 5 SWEdar units per year, over a five-year period.

Monitoring and data collection are integral to existing cloud seeding operations and will be an important consideration for expansion of cloud seeding activities in other basins. Weather instrumentation and other data collection devices will be a component of design and build-out of new programs, and SWEdars may be a cost-effective option that can be used to support broader data needs.

Cloud Seeding Program Update |

A presentation on program wide updates will be given at the Board's November meeting.

Attachment(s): Draft resolution to approve cloud seeding budget

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF AQUIFER STABILIZATION
AND THE COLLABORATIVE CLOUD SEEDING
PROGRAM

RESOLUTION TO APPROVE FUNDS FOR THE
CLOUD SEEDING PROGRAM

1 WHEREAS, House Bill 547, passed and approved by the 2014 legislature, allocates \$5,000,000
2 annually from the Cigarette Tax to the Idaho Water Resource Board (IWRB) for statewide aquifer
3 stabilization, with the funds to be deposited into the Secondary Aquifer Planning, Management, and
4 Implementation Fund; and

5
6 WHEREAS, cloud seeding was identified as a strategy in the Eastern Snake Plain Aquifer
7 Comprehensive Management Plan (ESPA CAMP) for which stabilization and recovery of the ESPA is a
8 principal goal, and was identified as a strategy in the draft Treasure Valley Comprehensive Management
9 Plan; and

10
11 WHEREAS, a well-managed cloud seeding program can increase winter snowpack as much as 10%
12 or more, and thereby increase surface water runoff, resulting in more surface water for all uses, including
13 aquifer management projects, and less supplemental ground water pumping; and

14
15 WHEREAS, the Idaho Power Company (IPC) established a remote-operated "Pilot Program" and
16 brought its operational experience gained from its Payette River Basin program to the Upper Snake River
17 Basin as a result of the ESPA CAMP; and

18
19 WHEREAS, discussions between the IWRB, IPC, and other water users resulted in the creation of
20 a Collaborative Cloud Seeding Program (Program) to expand IPC's cloud seeding operations in the Upper
21 Snake River Basin and establish IPC run programs in the Boise River Basin, and Wood River Basin with
22 support from the IWRB and water users; and

23
24 WHEREAS, the IWRB has paid one third of the total Program O&M costs since the 2017-2018
25 winter cloud seeding season; and

26
27 WHEREAS water users in the Boise, Wood, and Upper Snake River basins have historically
28 contributed different percentages of the cost for annual cloud seeding O&M activities per basin; and

29
30 WHEREAS, for the 2020-2021 winter cloud seeding season, the IWRB made a one-time
31 contribution of funding to help offset anticipated O&M funding shortages from the water users in each
32 basin and to equalize the percentages being paid by the water users in each basin; and

33
34 WHEREAS, the IWRB, through its fiscal year 2022 budget resolution (FY22 Resolution), authorized
35 \$950,000 for an estimated one-third of the O&M costs for the 2021-2022 cloud seeding season, and an
36 additional \$500,000 in one-time funding for the offset of O&M funding shortages for the Collaborative
37 Cloud Seeding Program; and

WHEREAS, O&M costs have been refined since the passing of the FY22 Resolution and IPC estimates the total cost for O&M for the 2021-2022 season will be \$2,933,000, one-third of which is estimated to be \$980,000; and

WHEREAS, in July of 2019, the IWRB authorized \$700,000 for fifty percent of the capital costs associated with the purchase of a new High Performance Computing system (HPC) to house the weather research forecasting model (WRF model) that supports IPC's operations and analysis; and

WHEREAS the total annual administrative costs to operate and maintain the HPC, to be split equally between the IWRB and IPC, are approximately \$80,000 and IPC; and

WHEREAS there is a need to support weather instrumentation and the collection of data for the design, operations, and analysis of the Board's Cloud Seeding Program; and

WHEREAS Boise State University (BSU), with funding support from IPC, has developed a SWEdar device designed to act as a micro-SNOTEL site and can be used to support the needs of the Cloud Seeding Program; and

WHEREAS BSU has requested \$35,000 from the IWRB to support the final year of development of the SWEdar devices.

NOW, THEREFORE BE IT RESOLVED that, the IWRB authorizes expenditures not to exceed \$33,000 from the Secondary Aquifer Planning, Management, and Implementation Fund for the 2020-2021 cloud seeding season in addition to funding for O&M program shortages already approved in the 2022 Fiscal Year Budget Resolution.

BE IT FURTHER RESOLVED that, the IWRB authorizes expenditures not to exceed \$30,000 from the Secondary Aquifer Planning, Management, and Implementation Fund for the 2020-2021 cloud seeding season in addition to the funding for one-third of O&M funding already approved in the 2022 Fiscal Year Budget Resolution.

BE IT FURTHER RESOLVED that, one-time authorized expenditures per basin shall not exceed the following and are contingent upon anticipated water user contributions as identified in the budget table below:

Basin	Total Program O&M Cost	Water User Cost Share (Approx 15%)	IPC Share	IWRB Share	One-Time IWRB Contribution (Approx 18%)
Boise River	\$ 832,000	\$ 125,000	\$ 278,000	\$ 278,000	\$ 151,000
Wood River	\$ 610,000	\$ 92,000	\$ 204,000	\$ 204,000	\$ 110,000
Upper Snake River	\$ 1,491,000	\$ 225,000	\$ 497,000	\$ 497,000	\$ 272,000
SubTotal	\$ 2,933,000	\$ 442,000	\$ 979,000	\$ 979,000	\$ 533,000
HPC Administration	\$ 80,000		\$ 40,000	\$ 40,000	
Program Shortages				\$ 533,000	
Total	\$ 3,013,000	\$ 442,000	\$ 1,018,000	\$ 1,553,000	

76 BE IT FURTHER RESOLVED that, the IWRB authorizes expenditures not to exceed \$35,000 from the
77 Secondary Aquifer Planning, Management, and Implementation Fund for the final year development of
78 SWEadar devices.
79

80 BE IT FURTHER RESOLVED that the IWRB authorizes its chairman or designee, Brian Patton,
81 Executive Officer to the IWRB, to execute the necessary agreements or contracts.

DATED this 19th day of November 2021.

Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST _____
Jo Ann Cole-Hansen, Secretary