

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE LEMHI RIVER BASIN

RESOLUTION FOR APPROVAL OF LEMHI
BASIN COMPREHENSIVE SETTLEMENT
AGREEMENT

1 WHEREAS, Lemhi irrigators historically diverted natural flow in the Lemhi River Basin in
2 excess of their decreed rights for their shared benefit when natural flow exceeded the amount
3 of water required to satisfy all existing water rights; and

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5 WHEREAS, the “high flow practice” serves to “hold or reservoir” the water in the soil to
6 augment and to sustain stream flows in the Lemhi River Basin; and

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8 WHEREAS, the practice of diverting high flow was recognized in the 1982 Lemhi Basin
9 Adjudication and reaffirmed in the Snake River Basin Adjudication; and

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11 WHEREAS, the Lemhi River and its tributaries are important habitat for the Snake
12 River’s fall-run Chinook salmon, Snake River Basin’s steelhead, and Columbia River’s bull
13 trout, as well as rainbow, redband, and westslope cutthroat trout; and

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15 WHEREAS, stream flows are essential to maintaining passage, spawning, and rearing
16 habitat for anadromous and resident fisheries in the Lemhi River Basin; and

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18 WHEREAS, irrigation diversions in the Lemhi Basin contributed to the decline of
19 anadromous fisheries in the Lemhi Basin; and

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21 WHEREAS, from the early 1990s Lemhi irrigators have been working collaboratively
22 with other stakeholders to develop a unified plan to preserve and protect the anadromous
23 fisheries while preserving and protecting the farming and ranching lifestyle of the basin;
24 and

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26 WHEREAS, the stakeholders developed biological and business goals for the Lemhi River
27 Basin that seek to conserve, restore, and enhance sufficient habitat to sustain viable fish
28 populations in the Lemhi River Basin while protecting private property rights and preserving and
29 enhancing the farming and ranching lifestyle and economy of the Lemhi River Basin; and

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31 WHEREAS, at the request of Lemhi irrigators, the 2001 Idaho Legislature enacted Section
32 42-1506, Idaho Code, which authorized the Idaho Water Resource Board (“Board”) to
33 appropriate a minimum stream flow in the lower reach of the Lemhi River to provide fish passage
34 and protect Lemhi water users from Endangered Species Act (“ESA”) Enforcement actions; and

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36 WHEREAS, the Board has been working collaboratively with Lemhi irrigators and other
37 stakeholders to implement additional passage and habitat projects in the Lemhi Basin consistent
38 with the Lemhi Basin biological and business goals; and

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WHEREAS, recent applications for permits to appropriate high flow were protested by Lemhi water users because of concerns about the impact of the appropriations on their existing high flow use, and by the Idaho Department of Fish and Game and the Board because of concerns regarding the impact of the appropriations on their efforts to improve fish passage and spawning and rearing habitat; and

WHEREAS, at the request of Lemhi irrigators, the 2020 Idaho Legislature adopted Senate Concurrent Resolution No. 137, a copy of which is attached hereto as **Attachment A**; and

WHEREAS, Senate Concurrent Resolution No. 137, directed the Board, with technical support from IDWR, to work expeditiously with local water users in the Lemhi River Basin to develop a comprehensive settlement that resolves current tensions and conflicts that are the result of competing water demands in the Lemhi River Basin and to report back to the First Regular Session of the Sixty-sixth Idaho Legislature on the implementation of the resolution; and

WHEREAS, the Board retained mediators to facilitate discussions between Lemhi irrigators and other stakeholders; and

WHEREAS, the Board reported back to the First Regular Session of the Sixty-sixth Idaho Legislature that the mediators conducted nine meetings and engaged in extensive shuttle diplomacy with the participating parties since June 2020; and

WHEREAS, the Board reported that significant progress had been made in the Lemhi River Basin settlement discussions, including the development of a framework for resolving the tensions over the use of Lemhi high flows consistent with past practices, future needs, and Idaho law, and in the resolution of one major contested case in the basin, consistent with the framework; and

WHEREAS, the First Regular Session of the Sixty-sixth Idaho Legislature adopted House Concurrent Resolution 21, a copy of which is attached hereto as **Attachment B**, which directed the Board to continue to work expeditiously with local water users to complete a comprehensive settlement that resolves current tensions and conflicts over the use of Lemhi Basin high flows that, 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; and

WHEREAS, the parties met seven times during 2021 to convert the settlement framework, with the assistance of the mediators, into the Lemhi River 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 (“Lemhi Comprehensive Settlement Agreement”), a copy of which is attached hereto as **Attachment C**; and

81 WHEREAS, the Board conducted three public meetings to present the Lemhi
82 Comprehensive Settlement Agreement; and

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84 WHEREAS, the Board mailed a notice of the public meeting to all holders of irrigation
85 water rights in the Lemhi Basin; and

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87 WHEREAS, the Lemhi Comprehensive Settlement Agreement creates a comprehensive
88 process for 1) resolving protests to pending applications for permits, 2) appropriating water rights
89 to establish protectable water rights for the existing high flow practice; and 3) appropriating
90 instream flow water rights on certain streams for fish passage, spawning and rearing; and

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92 WHEREAS, participation in the Lemhi Comprehensive Settlement Agreement is voluntary;
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95 WHEREAS, the Lemhi Comprehensive Settlement Agreement has been signed by the
96 Idaho Department of Fish and Game, the Office of Species Conservation, and various water users;
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99 WHEREAS, the Lemhi Comprehensive Settlement Agreement is consistent with Idaho law;
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102 WHEREAS, the Lemhi Comprehensive Settlement Agreement will not injure any existing
103 water rights; and

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105 WHEREAS, after reviewing the Lemhi Comprehensive Settlement Agreement, the Board
106 finds it is a reasonable and equitable resolution of the competing interests in the use of high
107 flows in the Lemhi River Basin and is consistent with Lemhi biological and business goals; and

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109 WHEREAS, the Board finds that the Lemhi Comprehensive Settlement Agreement
110 harmonizes the State of Idaho's competing duties to protect existing water rights, to safeguard
111 the provisions of the Forest Service Wild and Scenic Rivers Settlement, to allocate additional
112 water rights, to conserve, restore, and enhance sufficient habitat to sustain viable fish
113 populations, and to enhance the farming and ranching lifestyle and economy of the Lemhi River
114 Basin.

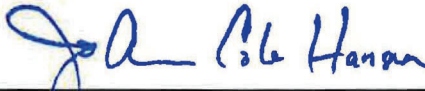
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116 NOW, THEREFORE BE IT RESOLVED that the Board approves the Lemhi Comprehensive
117 Settlement Agreement and authorizes its chairman to execute.

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119 NOW, BE IT FUTHER RESOLVED that the Board provide to the Second Regular Session of
120 the Idaho Legislature a copy of the Lemhi Comprehensive Settlement Agreement and request
121 enactment of the proposed legislation upon approval of the Agreement by the named parties.

DATED this 24th day of February 2022.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board



ATTEST

JO ANN COLE-HANSEN, Secretary