

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE LEMHI RIVER AT
MCFARLAND CAMPGROUND MINIMUM
STREAM FLOW WATER RIGHT

RESOLUTION FOR APPROVAL OF THE
PROTOCOL FOR EXERCISE OF THE LEMHI
RIVER AT MCFARLAND CAMPGROUND
MINIMUM STREAM FLOW WATER RIGHT

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 River's
12 fall-run Chinook salmon, Snake River Basin's steelhead, and Columbia River's bull trout, as well
13 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, however, from the early 1990s, Lemhi irrigators have
20 been working collaboratively with other stakeholders to develop a unified plan to preserve and
21 protect the anadromous fisheries while preserving and protecting the farming and ranching
22 lifestyle of the basin; and
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24 WHEREAS, the stakeholders developed biological and business goals for the Lemhi River
25 Basin that seek to conserve, restore, and enhance sufficient habitat to sustain viable fish
26 populations in the Lemhi River Basin while protecting private property rights and preserving and
27 enhancing the farming and ranching lifestyle and economy of the Lemhi River Basin; and
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29 WHEREAS, at the request of Lemhi irrigators, the 2001 Idaho Legislature enacted Section
30 42-1506, Idaho Code, which authorized the Idaho Water Resource Board ("Board") to appropriate
31 a minimum stream flow in the lower reach of the Lemhi River to provide fish passage and protect
32 Lemhi water users from Endangered Species Act ("ESA") Enforcement actions; and
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34 WHEREAS, the Board has been working collaboratively with Lemhi irrigators and other
35 stakeholders to implement additional passage and habitat projects in the Lemhi Basin consistent
36 with the Lemhi Basin biological and business goals; and

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

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44 WHEREAS, at the request of Lemhi irrigators, the 2020 Idaho Legislature adopted Senate
45 Concurrent Resolution No. 137, which directed the Board, with technical support from IDWR, to
46 work expeditiously with local water users in the Lemhi River Basin to develop a comprehensive
47 settlement that resolves current tensions and conflicts that are the result of competing water
48 demands in the Lemhi River Basin; and

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50 WHEREAS, the 2021 Idaho Legislature adopted House Concurrent Resolution 21, which
51 directed the Board to continue to work expeditiously with local water users to complete a
52 comprehensive settlement that resolves current tensions and conflicts over the use of Lemhi
53 Basin high flows; and

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55 WHEREAS, the parties met seven times during 2021 to convert the settlement framework,
56 with the assistance of the mediators, into the Lemhi River Comprehensive Settlement Agreement
57 between the Idaho Water Resource Board, Idaho Department of Fish and Game, Idaho Office of
58 Species Conservation, and Various Lemhi Basin Water Users (Agreement); and

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60 WHEREAS, the Agreement creates a comprehensive process for 1) resolving protests to
61 pending applications for permits, 2) appropriating water rights to establish protectable water
62 rights for the existing high flow practice, and 3) appropriating instream flow water rights on
63 certain streams for fish passage, spawning, and rearing; and

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65 WHEREAS, participation in the Agreement is voluntary; and

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67 WHEREAS, the Agreement was signed by the Idaho Department of Fish and Game, the
68 Office of Species Conservation, and various water users; and

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70 WHEREAS, on February 24, 2022, the Board approved the Agreement by resolution, a
71 copy of which is attached hereto as Attachment A; and

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73 WHEREAS, as part of the Agreement, the 2022 Idaho Legislature enacted 42-1506A, Idaho
74 Code, which authorized the Board to appropriate a minimum stream flow water right on the
75 Lemhi River at the McFarland Campground in the amount of 420 cfs (McFarland MSF); and

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WHEREAS, the IWRB filed a water right application on July 1, 2022, to appropriate the McFarland MSF in accordance with Idaho Code § 42-1503; and

WHEREAS, the McFarland MSF permit, a copy of which is attached hereto as Attachment B, may be exercised only two out of every five years, and the exercise of the right shall be limited to a duration of three days (72 hours) between March 15th to July 6th; and

WHEREAS, the McFarland MSF aims to 1) flush the overlying fine sediment of the armored Lemhi River streambed and 2) mobilize streambed materials to restore and enhance fish habitat; and

WHEREAS, using historic precipitation data from the Natural Resources Conservation Service Snow Telemetry (SNOTEL) sites in the Lemhi River Basin, a flow protocol was developed and contains criteria and indicators for exercising the McFarland MSF; and


WHEREAS, the criteria and indicators are contained in a flow chart and table and are collectively known as the Protocol for Exercise of the Lemhi River at McFarland Campground Minimum Stream Flow (McFarland MSF Protocol), a copy of which is attached hereto as Attachment C; and

WHEREAS, the McFarland MSF Protocol will be used by the Board to determine when to exercise the McFarland MSF; and

WHEREAS, decision-making authority for the exercise of the McFarland MSF remains with the Board, and if necessary, the McFarland MSF Protocol may be amended through future resolutions; and

NOW, THEREFORE BE IT RESOLVED that the Board approves the Protocol for Exercise of the Lemhi River at McFarland Campground Minimum Stream Flow water right subject to approval under Idaho Code § 42-1503.

DATED this 31st day of March 2023.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 

DEAN STEVENSON, Secretary