

**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**

This 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 (“Agreement”) memorializes the undersigned 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.

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 Creek Applications**
 - a. **Permit 74-16187** (Kurt Bird) is subject to the terms and conditions set forth in Stipulation Re Permit 74-16187, attached hereto as Attachment A.
 - b. **Application 74-16205** (Merritt D. Udy) will be subject to the following conditions:

1. Right may be exercised only when the flow in Big Timber Creek is 18 c.f.s or greater at the Big Timber Creek Gage, 13304050, located at Latitude 44°41'19.65", Longitude 113°22'13.46", Lemhi County (BT Gage). All flow at the BT Gage, including Idaho Water Resource Board (IWRB) Water Transaction Flows, counts toward satisfaction of the 18 c.f.s. bypass flow.
2. Season of Use: 3/15 to 7/31.
3. If applicable, include Permissible Place of Use (PPU) and other flexibility options to the extent consistent with condition 4 below.
4. No right to divert water available under Big Timber or Little Timber Creek Basin stream flow maintenance right or the Snake River Basin Adjudication 74 High Flow General Provision (Basin 74 High Flow General Provision) for use on 74-16205 Place of Use (POU).
5. Right will benefit from the subordination described in Paragraph 10(b)(6)(A)(ii) of water rights 75-13316 and 77-11941 but may only be diverted when the mean daily discharge at the Salmon River Shoup gage is greater than or equal to 1,280 c.f.s.

c. Merritt D. Udy Little Timber Creek Lemhi Basin stream flow maintenance application will be subject to the following conditions:

1. Application will be based on the historic high flow use under the Basin 74 High Flow General Provision ancillary to irrigation water rights decreed in the Snake River Basin Adjudication ("Base Right(s)"), but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
2. Right will be limited to the place of use of the Base Right(s) and cannot be transferred to other places of use independent of the Base Right(s).
3. Season of Use: 3/15 to 11/15.
4. Right may be exercised only when the flow in Big Timber Creek is 18 c.f.s or greater from March 15th to July 31st and 10 c.f.s or greater from August 1st to November 15th at the BT Gage. All flow at the BT Gage, including IWRB Water Transaction Flows, counts toward satisfaction of the 18 c.f.s. bypass flow.
5. Right will be subject to the conditions described in Section III below.
6. Right, as well as the Big Timber and Little Timber Lemhi Basin stream flow maintenance water rights of Kurt Bird and Jerry Foster, shall have a priority date one day later than all other Big Timber and Little Timber stream flow maintenance

water rights.

7. Right will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
8. Right will be in full satisfaction of, and supersede, any existing or future claim of a right to divert water from Big Timber and Little Timber Creek under the Basin 74 High Flow General Provision for use on the place of use of the Base Right(s).
9. No right to divert water available under the Big Timber or Little Timber Basin stream flow maintenance right(s) 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. Right may be exercised only when the flow in Big Timber Creek is 18 c.f.s or greater at the BT Gage. All flow at the BT Gage, including IWRB Water Transaction Flows, counts toward satisfaction of the 18 c.f.s. bypass flow.
2. Season of Use: 3/15 to 7/31.
3. If applicable, include PPU and other flexibility options to the extent consistent with condition 4 below.
4. No right to divert water available under Big Timber Basin Lemhi stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16186 POU.
5. Right will benefit from the subordination described in Paragraph 10(b)(6)(A)(ii) of water rights 75-13316 and 77-11941 but may only be diverted when the mean daily discharge at the Salmon River Shoup gage is greater than or equal to 1,280 c.f.s.

e. **Jerry Foster Big Timber Creek Lemhi Basin stream flow maintenance application** will be subject to the following conditions:

1. Application will be based on the historic high flow use under Basin 74 High Flow General Provision ancillary to Base Right(s), but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
2. Right will be limited to the place of use of the Base Right(s) and cannot be transferred to other places of use independent of the Base Right(s).
3. Season of Use: 3/15 to 11/15.
4. Right may be exercised only when the flow in Big Timber Creek is 18 c.f.s or greater from March 15th to July 31st and 10 c.f.s or greater from August 1st to November 15th at the BT Gage. All flow at the BT Gage, including IWRB Water

Transaction Flows, counts toward satisfaction of the 18 c.f.s. bypass flow.

5. Right will be subject to the conditions described in Section III. below.
6. Right, as well as the Big Timber and Little Timber Lemhi Basin stream flow maintenance water rights of Merritt D. Udy and Kurt Bird, shall have a priority date one day later than all other Big Timber and Little Timber stream flow maintenance water rights.
7. Right will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
8. Right will be in full satisfaction of, and supersede, any existing or future claim of a right to divert water from Big Timber and Little Timber Creek under the Basin 74 High Flow General Provision for use on the place of use of the Base Right(s).
9. No right to divert water under Big Timber or Little Timber Creek Lemhi Basin stream flow maintenance right(s) or Basin 74 High Flow General Provision for use on 74-16186 POU.

f. Other Big Timber Creek 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 under Basin 74 High Flow General Provision ancillary to Base Right(s) but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
3. Rights will be limited to the place of use of the Base Right(s) and cannot be transferred to other places of use independent of the Base Right(s).
4. Season of Use: 3/15 to 11/15.
5. Rights may be exercised only when the flow in Big Timber Creek is 18 c.f.s or greater from March 15th to July 31st and 10 c.f.s or greater from August 1st to November 15th at the BT Gage. All flow at the BT Gage, including IWRB Water Transaction Flows, counts toward satisfaction of the 18 c.f.s bypass flow.
6. Rights will be subject to conditions described in Section III below.
7. Rights will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
8. Right will be in full satisfaction of, and supersede, any existing or future claims of a right to divert water from Big Timber and Little Timber Creeks under the Basin 74 High Flow General Provision for use on the place of use of the Base Rights.

3. **Big Eightmile Creek Applications**

- a. **Application 74-16196** (Steven and Susan Johnson) will be subject to the following conditions:
1. Right may be exercised only when the flow in Big Eightmile Creek is 5 c.f.s 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 (Big Eightmile Lower Gage). All flow at the Lee Creek Gage, including IWRB Water Transaction Flows count toward satisfaction of the 5 c.f.s. bypass flow.
 2. Season of Use: 3/15 to 07/31.
 3. If applicable, include PPU and other flexibility options to the extent consistent with condition 4 below.
 4. No right to divert water available under Big Eightmile Creek Lemhi Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16196 POU.
 5. Right will benefit from the subordination described in Paragraph 10(b)(6)(A)(ii) of water rights 75-13316 and 77-11941 but may only be diverted when the mean daily discharge at the Salmon River Shoup gage is greater than or equal to 1,280 c.f.s.
- b. **Steven and Susan Johnson Big Eightmile Lemhi Basin stream flow maintenance applications** will be subject to the following conditions:
1. Application will be based on the historic high flow use under Basin 74 High Flow General Provision ancillary to Base Right(s) but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
 2. Right will be limited to the place of use of the Base Right(s) and cannot be transferred to other places of use independent of the Base Right(s).
 3. Season of Use: 3/15 to 11/15.
 4. Right may be exercised only when the flow in Big Eightmile Creek is 5 c.f.s or greater as measured at Big Eightmile Lower Gage. All flow at the Big Eightmile Lower Gage, including IWRB water transaction flows, counts toward satisfaction of the 5 c.f.s. bypass flow.
 5. Right will be subject to conditions described in Section III below.
 6. Right will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.

7. Right, as well as the stream flow maintenance water right(s) of Kent and Lisa Bird, shall have a priority date one day later than all other Big Eightmile Creek Lemhi Basin stream flow maintenance rights.
 8. Right will be in full satisfaction of, and supersede, any existing or future claim of a right to divert water from Big Eightmile Creek under the Basin 74 High Flow General Provision for use on the place of use of Base Right(s).
 9. No right to divert water under Big Eightmile Creek Lemhi Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16196 POU.
- c. **Application 74-16204** (Kent and Lisa Bird) will be subject to the following conditions:
1. Right may be exercised only when the flow in Big Eightmile Creek is 5 c.f.s or greater flow measured at the Big Eightmile Lower Gage but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014. All flow at the Big Eightmile Lower Gage, including IWRB Water Transaction Flows, counts toward satisfaction of the 5 c.f.s. bypass flow.
 2. Season of Use: 3/15 to 7/31.
 3. If applicable, include PPU and other flexibility options to the extent consistent with condition 4 below.
 4. No right to divert water available under Big Eightmile Creek Lemhi Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16204 POU.
 6. Right will benefit from the subordination described in Paragraph 10(b)(6)(A)(ii) of water rights 75-13316 and 77-11941 but may only be diverted when the mean daily discharge at the Salmon River Shoup gage is greater than or equal to 1,280 c.f.s.
- d. **Kent and Lisa Bird Big Eightmile Lemhi Basin stream flow maintenance applications** will be subject to the following conditions:
1. Application will be based on the historic high flow use under Basin 74 High Flow General Provision ancillary to Base Right(s) but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
 2. Right will be limited to the place of use of the Base Right(s) and cannot be transferred to other places of use independent of the Base Right(s).
 3. Season of Use: 3/15 to 11/15.
 4. Right may be exercised only when the flow in Big Eightmile Creek is 5 c.f.s or greater as measured at the Big Eightmile Lower Gage. All flow at the Big Eightmile Lower Gage,

- including IWRB Water Transaction Flows, counts toward satisfaction of the 5 c.f.s. bypass flow.
5. Rights will be subject to the conditions described in Section III below.
 6. Right will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
 7. Right, as well as the Big Eightmile Lemhi Basin stream flow maintenance water right(s) of Steven and Susan Johnson, shall have a priority date one day later than other Big Eightmile Creek Lemhi Basin stream flow maintenance water rights.
 8. Right will be in full satisfaction of, and supersede, any existing or future claim of a right to divert water from Big Eightmile Creek under the Basin 74 High Flow General Provision for use on the place of use of the Base Right(s).
 9. No right to divert water under Big Eightmile Lemhi Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16204 POU.

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

1. Applications by other Big Eightmile water users will be based on the historic high flow use under Basin 74 High Flow General Provision ancillary to Base Right(s) but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
2. Rights 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: 3/15 to 11/15.
4. Rights may be exercised only when the flow in Big Eightmile Creek is 5 c.f.s or greater as measured at Big Eightmile Lower Gage. All flow at the Big Eightmile Lower Gage, including IWRB Water Transaction Flows, counts toward satisfaction of the 5 c.f.s. bypass flow.
5. Rights will be subject to the conditions described in Section III below.
6. Rights will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
7. Rights will be in full satisfaction of, and supersede, any existing or future claim of a right to divert water from Big Eightmile Creek under the Basin 74 High Flow General Provision for use on the place of use of the Base Rights.

4. **Mill Creek Applications**

- a. **Application 74-16194 (Steven and Susan Johnson)** will be subject to the following conditions:
 - 1. Application will be amended to remove 2.08 c.f.s. for Irrigation.
 - 2. Season of Use for recharge: 01/01 to 12/31.
 - 3. No right to divert water available under Mill Creek Lemhi Basin stream flow maintenance right or Basin 74 High Flow General Provision for use on 74-16194 POU.
 - 4. Right will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
- b. **Application 74-16195 (Steven and Susan Johnson)** will be withdrawn.
- c. **Steven and Susan Johnson Mill Creek Lemhi Basin stream flow maintenance application** will be subject to the following conditions:
 - 1. Application will be based on the historic high flow use under Basin 74 High Flow General Provision ancillary to Base Right(s) but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
 - 2. Right will be limited to the place of use of the Base Right(s) and cannot be transferred to other places of use independent of the Base Right(s).
 - 3. Season of Use: 3/15 to 11/15.
 - 4. Right will be subject to the conditions described in Section III below.
 - 5. Right will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
 - 6. Right will have a priority date one day later than other Mill Creek Lemhi Basin stream flow maintenance water rights.
 - 7. Right will be in full satisfaction of, and supersede, any existing or future claim of a right to divert water from Mill Creek under the Basin 74 High Flow General Provision for use on the place of use of the Base Right(s).
- d. **Other Mill Creek Lemhi Basin stream flow maintenance applications** will be subject to the following conditions:
 - 1. Applications by other Mill Creek water users will be based on the historic high flow use under Basin 74 High Flow General

- Provision ancillary to Base Right(s) but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.
2. Rights 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 Rights.
 3. Season of Use: 3/15 to 11/15.
 4. Rights will be subject to the conditions described in Section III below.
 5. Rights will not benefit from any of the subordination provisions described in Paragraph 10.b of water rights 75-13316 and 77-11941.
 6. Rights will be in full satisfaction of, and supersede, any existing or future claim of a right to divert water from Mill Creek under the Basin 74 High Flow General Provision for use on the place of use of the Base Right(s)
5. **Separate Streams Administration.** The above listed water rights that divert from streams listed in the Partial Decree Pursuant to I.R.C.P. 54(b) for General Provision in Basin 74 ("SRBA Basin 74 Separate Streams 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 the Lemhi Basin stream flow maintenance water rights as provided in Section III.
6. **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 Water Right 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 B that provides for the filing of Lemhi Basin stream flow maintenance water right 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 under Basin 74 High Flow General Provision ancillary to Base Right(s) but not to exceed the ditch capacity of the Base Right(s) on August 25, 2014.

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 Lemhi Basin stream flow maintenance water right held by the Lemhi Irrigation District shall establish a process for sharing water available under the Lemhi Basin stream flow maintenance water right.
3. **Owner of Lemhi Basin Stream Flow Maintenance Water Rights.** Lemhi Basin irrigators who hold irrigation water rights decreed in the SRBA, and who claim authority to divert and use Lemhi Basin high flows for streamflow maintenance pursuant to the Basin 74 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. 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 irrigators who hold irrigation water rights decreed in the SRBA.
4. **McFarland Campground Minimum Stream Flow Application.** Parties to this Agreement agree to support the legislation set forth in Attachment B authorizing the IWRB to appropriate a minimum stream flow at McFarland Campground located on the Lemhi River in the NWSE of Section 14, Township 17 North, Range 24 East, Boise Meridian in the amount of 420 c.f.s ("McFarland MSF"); 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 March 15th 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.
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 while the McFarland Campground minimum stream flow water right is being exercised.

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 to divert water under the Basin 74 High Flow General Provision.
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 applications provided for by this Agreement.
8. **Priority of Existing Rights.** The McFarland Campground MSF water right provided for in this Section shall be junior to all previously decreed, licensed, or permitted water rights. The McFarland Campground MSF shall also be junior to all water right applications with a priority date before the effective date of this Agreement.
9. **Agreement to Not Protest Applications.** Parties to this Agreement agree to not protest Lemhi Basin stream flow maintenance applications filed with IDWR pursuant to proposed section 42-251, Idaho Code provided the elements of the application are consistent with applicant's historic use under Basin 74 High Flow General Provision on the place of use of the base rights and the quantity claim does not exceed the ditch capacity of the base rights on August 25, 2014.
10. **Priority of McFarland Campground Minimum Stream Flow Water Right.** The McFarland Campground water right may not call against water rights with points of diversion from streams administered as separate streams pursuant to the Partial Decree pursuant to I.R.C.P. 54(b) of the Basin 74 High Flow General Provision approved by the SRBA District Court on January 2, 2006, except as to Lemhi Basin stream flow maintenance water rights appropriated pursuant to section 42-251, Idaho Code
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 Basin 74 High Flow General Provision, 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 to this Agreement agree to support the legislation set forth in Attachment B authorizing the IWRB to file applications for permit for minimum stream flow water rights ("MSF") on the

following creeks:

STREAM	QUANTITY	Period of Use	GAGE	CONDITIONS
Big Timber	18 c.f.s 10c.f.s	3/15 to 7/31 8/1 to 3/14	Big Timber Gage 13304050, located at Latitude 44°41'19.65", Longitude 113°22'13.46", Lemhi County.	IWRB Water Transaction flows count toward satisfaction of minimum flow. (Current amount is 7.2 c.f.s.)
Bohannon	13 c.f.s 8.5 c.f.s	3/15 to 7/31 8/1 to 3/14	Lower Bohannon Gage, 28 21N23E SENE	IWRB Water Transaction flows count toward satisfaction of minimum flow. (Current amount is 8.58 c.f.s.).
Canyon	16 c.f.s 4 c.f.s	3/15 to 7/31 8/1 to 3/14	Canyon Creek, 28 16N26E NWNE	IWRB Water Transaction flows count toward satisfaction of minimum flow. (Current amount is 4 c.f.s.)
Hayden	60 c.f.s 13 c.f.s	3/15 to 7/31 8/1 to 3/14	21 18N24E SWSW	

2. **Local Public Interest.** These MSF 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 MSF water rights provided for in this Section shall be junior to all previously decreed, licensed, or permitted water rights. The MSF shall also be junior to all water right applications with a priority date before the effective date of this Agreement and Lemhi Basin 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 obtaining access to lands for development of the pilot projects.
 - b. Any future water right applications for recharge shall be subject to the same conditions set forth in Section III, which apply to Lemhi Basin streamflow maintenance water rights set forth in this Agreement.
2. **Cloud Seeding and Surface Water Storage Feasibility Study.** The IWRB will commission a feasibility study to evaluate whether cloudseeding and surface water storage projects are potential long-term water management strategies in the Lemhi River Basin.

VI. **Miscellaneous Provisions**

1. **Fish Screens.** The Parties to this Agreement holding irrigation water rights on Big Timber Creek agree to grant access to IDFG to install and maintain fish screens on their irrigation diversions at no cost to landowners. IDFG may install fish screens on other diversions in the Lemhi Basin as determined by mutual agreement of the landowners and the Department. Parties to this Agreement 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 water right applications by the IDFG for nonconsumptive fish propagation flows required for operation of fish screens.
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 to this Agreement agree to 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 IDFG, one (1) representative of the Office of Species Conservation, and one (1) representative of the IWRB. The Basin 74 water master or an IDWR employee shall serve as an ex officio member of the Steering Committee. Water user representatives shall be parties to this Agreement.
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, 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. **Parties:** In addition to the Parties listed below, other persons may become parties to this Agreement by signing the form in Attachment C acknowledging they accept and agree to be bound by all terms and conditions set forth in this Agreement.
2. **Additional Applications.** Applications 74-16188, 74-16190, 74-16185, 74-16191, 74-16192, 74-16193, and 74-16189 may be added to Section I of this Agreement under the same terms and conditions as the other applications listed in Section I provided the holders of the applications agree to be bound by all other terms and conditions of this Agreement.
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 any 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.

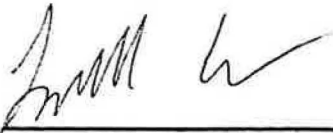
8. **Authority of Parties.** Each of the Parties represent to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power, and authority to enter and execute this Agreement on such Party's behalf and that no consent from any other person or entity is 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 a 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.
12. **Date of Agreement.** The date of this Agreement shall be the last date of the signatures below.
13. **Effective date.** This Agreement shall become effective after the Idaho Legislature enacts the legislation in Attachment B. In the event the Idaho Legislature fails to enact the legislation in Attachment A in substantially the same form as set forth therein, this Agreement shall be null, and void and the parties agree to meet and confer on an alternative settlement.

SIGNATURE PAGE


CARL ELLSWORTH

DATED: 7/14/22

SIGNATURE PAGE



LOWELL CERISE

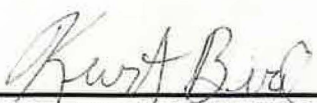
DATED: 2/15/22

SIGNATURE PAGE


CARL LUFKIN

DATED: 2-14-22



SIGNATURE PAGE


KURT AND JANET BIRD



DATED: 2-14-22

SIGNATURE PAGE

 
STEVEN AND SUSAN JOHNSON


DATED: 2-15-2022

SIGNATURE PAGE

Kent Bird and Lisa Bird
KENT AND LISA BIRD

DATED: 2-12-22

SIGNATURE PAGE


JERRY A. FOSTER

DATED: 2/14/22

SIGNATURE PAGE

Merritt D. Udy
MERRIT D. UDY

DATED: 2/15/22

SIGNATURE PAGE

Carl Ellsworth Chairman
LEMHI IRRIGATION DISTRICT

DATED: 2/14/22

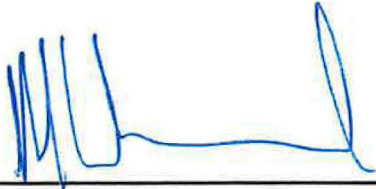
SIGNATURE PAGE



JEFF REYBOULD, CHAIRMAN
IDAHO WATER RESOURCE BOARD

DATED: 2-24-2022

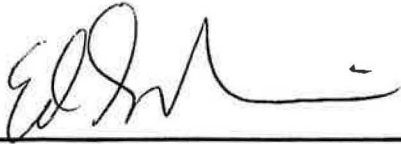
SIGNATURE PAGE



MICHAEL EDMONDSON, ADMINISTRATOR
OFFICE OF SPECIES CONSERVATION

DATED: FEB 23 2022

SIGNATURE PAGE



ED SCHRIEVER, DIRECTOR
IDAHO DEPARTMENT OF FISH AND GAME

DATED: 2/16/2022