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

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

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

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

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

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

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

WHEREAS, the stakeholders developed biological and business goals for the Lemhi River Basin that seek 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; and

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

WHEREAS, the Board has been working collaboratively with Lemhi irrigators and other stakeholders to implement additional passage and habitat projects in the Lemhi Basin consistent with the Lemhi Basin biological and business goals; and
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
WHEREAS, the Board conducted three public meetings to present the Lemhi Comprehensive Settlement Agreement; and

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

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

WHEREAS, participation in the Lemhi Comprehensive Settlement Agreement is voluntary; and

WHEREAS, the Lemhi Comprehensive Settlement Agreement has been signed by the Idaho Department of Fish and Game, the Office of Species Conservation, and various water users; and

WHEREAS, the Lemhi Comprehensive Settlement Agreement is consistent with Idaho law; and

WHEREAS, the Lemhi Comprehensive Settlement Agreement will not injure any existing water rights; and

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

WHEREAS, the Board finds that the Lemhi Comprehensive Settlement Agreement harmonizes the State of Idaho’s competing duties to protect existing water rights, to safeguard the provisions of the Forest Service Wild and Scenic Rivers 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.

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

NOW, BE IT FURTHER RESOLVED that the Board provide to the Second Regular Session of the Idaho Legislature a copy of the Lemhi Comprehensive Settlement Agreement and request 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