

**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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40 WHEREAS, recent applications for permits to appropriate high flow were protested by  
41 Lemhi water users because of concerns about the impact of the appropriations on their existing  
42 high flow use, and by the Idaho Department of Fish and Game and the Board because of concerns  
43 regarding the impact of the appropriations on their efforts to improve fish passage and spawning  
44 and rearing habitat; and  
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46 WHEREAS, at the request of Lemhi irrigators, the 2020 Idaho Legislature adopted Senate  
47 Concurrent Resolution No. 137, a copy of which is attached hereto as **Attachment A**; and  
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49 WHEREAS, Senate Concurrent Resolution No. 137, directed the Board, with technical  
50 support from IDWR, to work expeditiously with local water users in the Lemhi River Basin to  
51 develop a comprehensive settlement that resolves current tensions and conflicts that are the  
52 result of competing water demands in the Lemhi River Basin and to report back to the First  
53 Regular Session of the Sixty-sixth Idaho Legislature on the implementation of the resolution; and  
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55 WHEREAS, the Board retained mediators to facilitate discussions between Lemhi  
56 irrigators and other stakeholders; and  
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58 WHEREAS, the Board reported back to the First Regular Session of the Sixty-sixth Idaho  
59 Legislature that the mediators conducted nine meetings and engaged in extensive shuttle  
60 diplomacy with the participating parties since June 2020; and  
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62 WHEREAS, the Board reported that significant progress had been made in the Lemhi River  
63 Basin settlement discussions, including the development of a framework for resolving the  
64 tensions over the use of Lemhi high flows consistent with past practices, future needs, and Idaho  
65 law, and in the resolution of one major contested case in the basin, consistent with the  
66 framework; and  
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68 WHEREAS, the First Regular Session of the Sixty-sixth Idaho Legislature adopted House  
69 Concurrent Resolution 21, a copy of which is attached hereto as **Attachment B**, which directed  
70 the Board to continue to work expeditiously with local water users to complete a comprehensive  
71 settlement that resolves current tensions and conflicts over the use of Lemhi Basin high flows  
72 that, to the best of the abilities of the participating parties and in the spirit of compromise and  
73 resolution, is consistent with past practices, future needs, and Idaho law; and  
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75 WHEREAS, the parties met seven times during 2021 to convert the settlement framework,  
76 with the assistance of the mediators, into the Lemhi River Comprehensive Settlement Agreement  
77 Between the Idaho Water Resource Board, Idaho Department of Fish and Game, Idaho Office of  
78 Species Conservation, and Various Lemhi Basin Water Users ("Lemhi Comprehensive Settlement  
79 Agreement"), a copy of which is attached hereto as **Attachment C**; and  
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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.

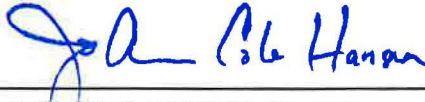
115  
116 NOW, THEREFORE BE IT RESOLVED that the Board approves the Lemhi Comprehensive  
117 Settlement Agreement and authorizes its chairman to execute.

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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