ATTATCHMENT C – SETTLEMENT AGREEMENT

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.)
Bohannan	13 c.f.s 8.5 c.f.s	3/15 to 7/31 8/1 to 3/14	Lower Bohannan 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, Bohannan, 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

CARL ELLSWORTH

DATED: 7/14/22

SIGNATURE PAGE

LOWELL CERISE

DATED: 2/15/22

SIGNATURE PAGE

Carl Lufkin

CARL LUFKIN

DATED: 2-14-22

SIGNATURE PAGE

Kurt Bird Janet Bird

KURT AND JANET BIRD

DATED: 2-14-22

SIGNATURE PAGE

Steven Johnson Susan Johnson

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

Merrit 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 2 3 2022

SIGNATURE PAGE

ED SCHRIEVER, DIRECTOR
IDAHO DEPARTMENT OF FISH AND GAME

DATED: 2/16/2022

ATTACHMENT A

STIPULATION RE PERMIT 74-16187

This Stipulation is entered into by Kurt W. Bird and Janet E. Bird ("Bird"), the Idaho Water Resource Board ("IWRB"), and the Idaho Department of Fish and Game ("IDFG") (collectively, the "Parties"), to resolve litigation over Bird's application for a permit to appropriate the public waters of the State of Idaho, identification number 74-16187 ("Application"), and protests to the Application ("Protests") filed by IWRB and IDFG.

RECITALS

WHEREAS, the Application was filed with the Idaho Department of Water Resources ("IWDR") on or about October 12, 2018, and the Protests were filed on or about January 17, 2019; and

WHEREAS, IDWR held an administrative hearing on the Application and the Protests on August 28 and August 29, 2019; and

WHEREAS, the hearing officer issued a preliminary order approving the Application with certain conditions on January 9, 2020, and an amended preliminary order approving the Application with certain conditions on February 6, 2020; and

WHEREAS, the Director of IDWR issued a final order approving the Application with certain conditions on May 21, 2020; and

WHEREAS, IWRB and IDFG filed a petition for judicial review of the final order on June 22, 2020; and

WHEREAS, the judicial review proceeding was stayed at the Parties' request after briefs were submitted but before the hearing was held, while the Parties attempted to negotiate a settlement of the litigation; and

WHEREAS, the Parties have reached agreement regarding approval of the Application with certain conditions, dismissal of the judicial review proceeding, and certain related matters, and the Parties now desire to memorialize the terms of the agreement.

AGREEMENT

NOW, THEREFORE, the Parties stipulate and agree as follows:

I. The Application should be approved with the following elements and conditions:

Current Owner: Kurt W. Bird or Janet E. Bird
Priority Date: October 12, 2018
Source: Big Timber Creek tributary to Lemhi River
Beneficial Use: Irrigation

Season of Use: March 15 – July 31
Diversion Rate: 6.40 cfs
Point of Diversion: NWNW, Section 20, T15N, R26E (Home Ditch)
Place of Use: 320 acres
SWSE, SESE, Section 8, T15N, R26E
SW1/4, Section 9, T15N, R26E
NENE, NWNE, Section 17, T15N, R26E

Conditions of Approval:

1. Subject to all prior rights.

2. Proof of Application of water to beneficial use shall be submitted on or before the date established by the Director.

3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of approval, this water right is within State Water Districts 170 and 74W.

4. Prior to the diversion and use of water under this right, the right holder shall install and maintain acceptable measurement devices at the authorized point(s) of diversion and in accordance with Department specifications or shall obtain an approved variance from the Department to employ an alternative method to determine and record the amount of water diverted.

5. Prior to diversion of water under this right, the right holder shall install and maintain a locking controlling works, subject to the approval of the Department, in manner that will provide suitable control of the diversion.

6. When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.

7. This right does not grant any right-of-way or easement across the land of another.

8. This right is only available when flow at the Big Timber Gage 13304050, located at Latitude 44°41'19.65", Longitude 113°22'13.46", Lemhi County (BT Gage) is at least 18 cfs. Any flows present as a result of the Idaho Water Resource Board's

water transactions program will be included ("counted") in determining whether the 18 cfs flow requirement is satisfied.

9. The right holder shall cease diversion under this right if the flow of Big Timber Creek is less than 18 cfs at the BT Gage. Any flows present as a result of the Idaho Water Resource Board's water transactions program will be included ("counted") in determining whether the 18 cfs flow requirement is satisfied.

10. This right benefits from the subordination described in Paragraph 10(b)(6)(A)(ii) of water rights 75-13316 and 77-11941 and may only be diverted when the mean daily discharge at the Salmon River Shoup gage is greater than or equal to 1,280 cfs.

11. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.

12. Rights 74-32, 74-34, 74-7165, 74-15926, 74-15927, 74-15928, 74-15929, 74-15930, 74-15931 and 74-16187 when combined shall not exceed a total diversion rate of 52.77 cfs.

13. This right fully satisfies any and all claims of right or authorization to divert "high flow" water, as that term is defined in the Basin 74 "General Provisions" decreed in the Snake River Basin Adjudication, for use within the place of use for this right. This limitation applies to all acres within the place of use for this right, including any acres that are also covered by other water rights.

14. Bird will allow IDFG to install and maintain fish screens on Bird's diversions, including execution of an access agreement for such purposes, and will not protest IDFG applications for fish propagation water rights required for operation of the fish screens. Bird will cooperate with IDFG to consolidate Bird's diversions where feasible.

15. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

II. The Parties will jointly move the court presiding over the pending judicial review litigation for an order requesting that the case be remanded back to IDWR for consideration of the settlement set forth in this stipulation.

III. If the court grants the joint motion to remand the case back to IDWR, the Parties will jointly move the Director of IDWR to:

a. Approve the Application with the elements and conditions set forth above in paragraph I;

b. Issue instructions to the watermasters for Water Districts 170 and 74W regarding administration of the elements and conditions of the Application.

IV. After the Application has been approved and permit 74-16187 has been issued, Bird will file a transfer application with IDWR to remove from the place of use for permit 74-16187 the approximately 22.2 acres of lands covered by existing water rights. The IWRB and IDFG will not protest or oppose the transfer application.

V. IWRB and IDFG will not oppose a future application by Bird to appropriate "high flow" water he currently diverts from Big Timber Creek under the SRBA High Flow General Provisions for Basin 74, provided that a copy of this stipulation is filed with the application, and that the application:

a. Proposes a purpose of use of "stream flow maintenance," or a substantially similar purpose;

b. Proposes March 15 to November 15 as the season or period of use;

c. States that the proposed use of water is ancillary to existing uses authorized by water rights 74-32, 74-34, 74-1801, 74-7165, 74-15926, 74-15927, 74-15928, 74-15929, 74-15930, and 74-15931 ("Base Rights");

d. States that the proposed use of the water is limited to the authorized places of use for the Base Rights;

e. Seeks a diversion rate no greater than that necessary to fill the current (July 2021) physical capacity of the diversion works and ditches that convey water to the authorized places of use for the Base Rights;

f. States that the proposed use of water is in full satisfaction of, and supersedes, any existing or future claim by Bird of a right to divert "high flow" from Big Timber Creek under the Basin 74 High Flow General Provision decreed in the Snake River Basin Adjudication for use on the place of use of the Base Rights;

g. States that water may be diverted under the right only when the flow is 18 cfs or greater from March 15 to July 31, and 10 cfs or greater from August 1 to November 15 as measured at the BT Gage, and that any flows present as a result of the Idaho Water Resource Board's water transactions program will be included ("counted") in determining whether the 18 cfs and 10 cfs flow requirements are satisfied; and

h. States that water may not be diverted under this right for three (3) consecutive days in each of two (2) years during every five (5) year period ("bypass flow"). The five-year period will be "rolling" to provide adequate habitat for salmon and steelhead cohorts. In the event bypass flows are provided in two consecutive years, then there will not be a requirement to not divert in the following 3 years. The Idaho Department of Fish and Game and Bird will jointly determine the years in which this condition applies and the dates in those years during which diversions will not be allowed and will provide this information to the Water District 74W watermaster in joint written instructions. Weekly runoff forecasts will be monitored and used to select the dates for the bypass flow, which shall be timed to occur, as near as possible, to the peak of high flow between May 21st to July 6th. Notwithstanding the foregoing, any natural runoff occurrence that meets or exceeds 420 cfs for three consecutive days as measured at the McFarland Gage shall be counted towards satisfaction of the two in five -year condition. This condition may be adjusted at the time of licensing to conform to: any analogous condition required by a comprehensive settlement of "high flow" issues in the Lemhi Basin, if one has been reached; or any modifications to this condition to which the Idaho Department of Fish and Game and Bird have agreed.

i. States that water diverted under this right will not receive the benefit of Wild and Scenic subordination.

j. This right will be subordinated to other Big Timber stream flow maintenance water rights, except for those held by David Udy and Jerry Foster.

VI. If Bird files an application consistent with the requirements set forth above in paragraph V, IWRB and IDFG may file protests for the sole and exclusive purpose of monitoring the proceedings and ensuring that any permit or license issued pursuant to such an application conforms to the requirements of paragraph V. IWRB and IDFG will not oppose an application that conforms to the requirements of paragraph V, or seek any conditions in addition to those required by paragraph V. IWRB and IDFG retain their rights to protest and oppose any future application(s) by Bird to appropriate water from Big Timber Creek that do not conform to the requirements set forth above in paragraph V.

VII. Bird will not oppose an application by the IWRB under chapter 15, Title 42, of the Idaho Code to appropriate a minimum stream flow for Big Timber Creek, provided that a copy of this stipulation is filed with the application, and that the application:

a. Proposes a diversion rate of 18 cfs from March 15 to July 31, and 10 cfs from August 1 to March 14, as measured at the BT Gage.

b. Is either filed later in time than Bird's application for a streamflow maintenance water right, or is expressly subordinated to any future application by Bird for a stream flow maintenance water right that satisfies the requirements set forth above in paragraph V; and

c. States that any flows present as a result of the Idaho Water Resource Board's water transactions program will be included ("counted") in determining whether the 18 cfs and 10 cfs flow requirements are satisfied.

VIII. If the IWRB files an application consistent with the requirements set forth above in paragraph VII, Bird may file a protest for the sole and exclusive purpose of monitoring the proceedings and ensuring that any permit or license issued pursuant to such an application conforms to the requirements of paragraph VII.

Bird will not oppose an application that conforms to the requirements of paragraph VII, or seek any conditions in addition to those required by paragraph VII. Bird retains his right to protest and oppose any future application(s) for minimum stream flows on Big Timber Creek that do not conform to the requirements set forth above in paragraph VII.

IX. The Parties have entered into this stipulation to settle their disagreements regarding the Application and the Protests, and to resolve the pending litigation. This stipulation represents a compromise between the Parties regarding their disagreements over the issues and subjects addressed herein, and sets forth the entire agreement between the Parties related to these matters. Except as specifically provided in this stipulation, nothing in this stipulation waives the rights, positions, or arguments of the Parties as to any issue of fact or law. This stipulation may not be used or held against any of the Parties other than to show the terms of their agreement on the issues and subjects expressly addressed and resolved herein.

X. The parties agree that the terms and provisions of this Stipulation 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.

XI. The provisions of this Stipulation are not severable. If any provision of this Stipulation is found to be unlawful and of no effect and/or the Idaho Department of Water Resources fails to approve the stipulation, then the parties hereto shall resume negotiations to revise such unlawful provision.

XII. This Stipulation shall be voidable by any party if the Idaho Department of Water Resources fails to approve the Stipulation as submitted.

XIII. This Stipulation shall bind and inure to the benefit of the respective successors of the parties.

XIV. This Stipulation may be executed in counterparts, each of which shall be an original, but all of which, taken together, shall constitute one and the same agreement.

XV. Each of the undersigned represent that they are authority to execute this Stipulation.

XVI. This Stipulation shall become effective and binding on the Parties upon execution by all the signatories.

Dated: 1-21-22

Jeff Reybould
Chairman
Idaho Water Resource Board

Dated:

Ed Schriever
Director
Idaho Department of Fish and Game

XVI. This Stipulation shall become effective and binding on the Parties upon execution by all the signatories.

_____ Dated: _____

Jeff Reybould
Chairman
Idaho Water Resource Board

_____ Dated: 1/24/2022

Ed Schriever
Director
Idaho Department of Fish and Game

Kurt W. Bird

Dated: 1-13-2022

Kurt W. Bird

Dated: 1-13-2022

Janet E. Bird

ATTACHMENT B

STATEMENT OF PURPOSE
RS_____

In 2020, the Idaho Legislature adopted Senate Concurrent Resolution 137 (SCR 137). SCR 137 directed "the Idaho Water Resource Board, with technical support from the Idaho Department of Water Resources, to work expeditiously with local water users to develop a comprehensive settlement that resolves current tensions and conflict that are the result of competing water supply demands in the Lemhi River Basin and that the comprehensive settlement, 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. SCR 137 further directed the Idaho Water Resource Board to report to the First Regular Session of the Sixty-sixth Idaho Legislature on the implementation of this resolution.

In 2020, the Idaho Water Resource Board retained two mediators to facilitate discussions with the affected interests. On _____, 2022, the affected water users and state agencies entered into the Lemhi Basin Comprehensive Settlement Agreement. As part of the Settlement Agreement, the participating parties agreed to seek enactment of this proposed legislation to provide for the filing of Lemhi Basin stream flow maintenance applications and minimum stream flow applications on selected designated streams. The participating parties jointly request the Idaho Legislature approve this legislation.

FISCAL NOTE

The Idaho Water Resource Board will incur costs for the filing of the minimum stream flow water rights. Applicants for Lemhi Basin stream flow maintenance water rights will pay applications fees that will reimburse the Department of Water Resources for costs of advertising and processing the applications.

Contact:

Representative _____

SECTION 1

42-251 APPROPRIATION OF UNAPPROPRIATED FLOWS FOR LEMHI BASIN STREAM FLOW MAINTENANCE – LEGISLATIVE FINDINGS OF FACT CONCERNING HISTORIC USE OF HIGH FLOWS IN THE LEMHI RIVER BASIN AND NEED FOR PROTECTION AND EFFECTIVE MANAGEMENT OF SUCH USE.

(1) LEGISLATIVE FINDINGS: (a) In the absence of storage reservoirs in the Lemhi Basin, the diversion of "high water or flood water" onto irrigated land in the spring developed as a way of holding water underground within the basin, which would later contribute to the flows in the Lemhi River and its tributaries.

(b) The 1982 Lemhi Basin Decree recognized the practice of diverting "high water or flood water" onto irrigated lands. It defined "high water or flood water" as "natural flow of water over and above the amount required to fulfill (1) existing quantified rights as shown in the decree of water rights and (2) any future rights that may be established pursuant to statutory procedures of the State of Idaho." *Proposed Findings of Water Rights, In the Matter of the General Determination of the Rights to the Use of the Surface Waters and Tributaries from Whatever Source of the Lemhi River Drainage Basin, Civil No. 4948, Feb. 16, 1982,* at 3, paragraph n. The Lemhi Decree included a conclusion of law stating the practice "of diverting so called 'high waters or flood waters' in addition to the quantified rights as described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) [is] allowed provided: (a) the waters so diverted are applied to beneficial use. (b) the existing quantified rights (including future appropriations of water) are first satisfied."

(c) Based on the conclusions of law in the Lemhi Basin Decree, many Lemhi Basin irrigators filed claims in the Snake River Basin Adjudication (SRBA) seeking water rights for their historic "high water or flood water" practice.

(d) On January 3, 2012, the SRBA Court affirmed the *Special Master's Report and Recommendation* finding that "Idaho case law precludes the high flow claimants from seeking to establish high flow water rights in the SRBA as a matter of law." *Memorandum Decision and Order on Challenge* at 11, Subcase Nos. 74-15051, In re SRBA Case No. 39576. Although the SRBA Court disallowed the high flow claims, it reaffirmed the Lemhi Basin Decree conclusion of law regarding "high water or flood water" use through its Partial Decree pursuant to I.R.C.P. 54(b) of the Basin 74 High Flow General Provision (Basin 74 General Provision). Basin 74 General Provision provides: "The following general provision shall govern the use of 'High Flow' surface water for irrigation use within the Lemhi Basin: The practice of diverting high flows in the Lemhi Basin , in addition to diverting decreed and future water rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provide (a) the waters so diverted are applied to beneficial use. (b) existing decreed rights and future appropriations of water are first satisfied."

(e) Since the early 1990s Lemhi irrigators, with the assistance of state agencies, have led an effort to protect and enhance salmon runs in the Lemhi River Basin, including but not limited to providing passage flows for salmon, screening diversion works and implementing habitat improvement projects.

(f) The long-term goal of the Lemhi irrigators is 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.

(g) In 2001, the Idaho Legislature enacted Idaho Code § 42-1506 at the request of the

Lemhi Basin irrigators. This statute authorized the Idaho Water Resource Board to appropriate a minimum stream flow in the lower reach of the Lemhi River for the purpose of providing fish passage and for protection of Lemhi water users from enforcement actions under the Endangered Species Act.

(h) Use of high flows under the Basin 74 General Provision is not a protected property interest under Idaho law. Because of the SRBA Court's disallowal of the "high water or flood water" claims a conflict has developed between irrigators who rely on the use of high flows under the Basin 74 High Flow General Provision and persons desiring to appropriate high flow for new uses.

(h) The legislature finds 1) that the use of Lemhi River Basin high flow for holding water underground to augment the natural flow of the Lemhi River during the summer is a beneficial use of water; and 2) that it is in the public interest to protect through the appropriation process the entitlements to divert and use high flows under the Lemhi Basin 74 High Flow General Provision for efficient administration of such uses and to aid in the proper planning for future development of the water resources of the Lemhi River Basin.

(2) STREAM FLOW MAINTENANCE APPLICATIONS. Lemhi irrigators who hold irrigation water rights decreed in the SRBA, and claim authority to divert and use Lemhi Basin high flows for stream flow maintenance pursuant to the Basin 74 High Flow General Provision may file an application for permit with the department of water resources to convert such use into a protectable water right on or before July 1, 2024. The application shall be upon forms provided by the department. The department shall process the application as provided in section 42-203A, Idaho Code.

(3) Quantity of Right: The quantity of a stream flow maintenance water right shall be limited to the historic high flow use under the 74 High Flow General Provision ancillary to irrigation water rights decreed in the SRBA, or the ditch capacity of the Base Rights on August 25, 2014, whichever is less.

(4) PROOF OF BENEFICIAL USE. The department may consider as part of its beneficial use examination for licensing of an application under this section an applicant's past historic diversions of high flow under the Basin 74 General Provision.

(5) COMPREHENSIVE SETTLEMENT. All applications filed under this section shall be subject to the terms and conditions of the Lemhi Basin Comprehensive Settlement Agreement Between the Idaho Water Resources Board, Idaho Department of Fish and Game, Idaho Office of Species Conservation and Various Lemhi Water Users.

(6) NOTICE — HOW GIVEN — REQUIREMENTS. To ensure all persons claiming authority to divert or withdraw and use water under the Basin 74 General Provision are notified of the provisions of this section, the department of water resources is directed to give notice of the provisions of this section as follows:

(a) by regular mail upon all persons within IDWR Administrative Basin 74who currently own an irrigation water right decreed in the Snake River Basin Adjudication a notice in writing of the existence of this section;

(b) by publishing a notice in writing in a prominent and conspicuous place in at least one (1) newspaper of general circulation in Lemhi County, for at least one day a month for three (3) consecutive months;

(c) by posting a written notice, with the cooperation of the Lemhi County commission, in a prominent and conspicuous location in the Lemhi County courthouse;

(d) by providing sufficient number of copies of the notice and declaration to the Lemhi

County treasurer for enclosure with each mailing of one (1) or more statements of taxes due issued in 2023; and

(e) by such other means the director of the department in his discretion determines will carry out the purposes of this section.

SECTION 2

42-1506A. LEMHI RIVER — MCFARLAND CAMPGROUND MINIMUM STREAM FLOW APPROPRIATION. (1) The water resource board is hereby authorized and directed to appropriate and hold in trust for the people of the state of Idaho a minimum stream flow water right in a designated reach of the Lemhi River in accordance with the provisions of this section. The minimum stream flow appropriation shall be in the amount of 420 c.f.s at McFarland Campground located on the Lemhi River in the NWSE of Section 14, Township 17 North, Range 24 East, Boise Meridian. 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.

(2) This 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.

(3) The water resource board shall appropriate the minimum stream flow water right authorized under this section in accordance with the provisions of section 42-1503, Idaho Code. In acting upon the application for permit, the director of the department of water resources need not determine that the appropriation is capable of being maintained based upon records of existing stream flows because it is anticipated that the water right will be maintained through conditions on water rights acquired pursuant to 42-251, Idaho Code

(3) Upon the board's filing of an application for permit to appropriate water as directed by this section, the director of the department of water resources is authorized and directed, on an interim basis pending final action on the application for permit, to distribute water under the filing in accordance with the doctrine of prior appropriation using a priority date as of the filing of the application for permit.

SECTION 3.

42-1506B. BIG TIMBER, BOHANNAN, CANYON, AND HAYDEN — MINIMUM STREAM FLOW APPROPRIATIONS. (1) The water resource board is hereby authorized and directed to appropriate and hold in trust for the people of the state of Idaho minimum stream flow water rights for Big Timber, Bohannan, Canyon, and Hayden creeks in accordance with the provisions of this section.

(a) The minimum stream flow for Big Timber Creek shall be 18 c.f.s from March 15 to July 31 and 10 c.f.s from August 1 to March 14 from the headwaters of Big Timber Creek in Section 30, Township 14 North, Range 25 East, Boise Meridian to its confluence with the

Lemhi River in the southeast quarter of Section 20, Township 16 North, Range 26 East, Boise Meridian.

(b) The minimum stream flow appropriation for Bohannan Creek shall be 13 c.f.s from March 15 to July 31 and 8.5 c.f.s from August 1 to March 14 from the headwaters of Bohannan Creek in the northwest quarter of Section 19, Township 22 North, Range 24 East, Boise Meridian to its confluence with the Lemhi River in the northwest quarter of Section 33, Township 21 North, Range 23 East, Boise Meridian.

(c) The minimum stream flow for Canyon Creek shall be 16 c.f.s from March 15 to July 31 and 4 c.f.s from August 1 to March 14 from the headwaters of Canyon Creek in Government Lot 5, Section 18, Township 17 North, Range 27 East, Boise Meridian to its confluence with the Lemhi River in the northwest quarter of Section 28, Township 16 North, Range 26 East, Boise Meridian.

(d) The minimum stream flow for Hayden Creek shall be 60 c.f.s from March 15 to July 31 and 13 c.f.s from August 1 to March 14 from the headwaters of Hayden Creek in Section 14, Township 16 North, Range 22 East, Boise Meridian to its confluence with the Lemhi River in the southwest quarter, Section 21, Township 18 North, Range 24 East, Boise Meridian.

(2) In acting upon the applications for permit, the director of the department of water resources need not determine that the appropriation is capable of being maintained based upon records of existing stream flows because it is anticipated the water rights will be maintained through voluntary agreements between the IWRB and Basin 74 water users in accordance with Idaho law.

(3) The minimum stream flows provided for in this Section shall be junior to all previously decreed, licensed, or permitted water rights. The minimum stream flows shall also be junior to all water right applications with a priority date before the effective date of this section and all Lemhi Basin streamflow maintenance water rights perfected pursuant to 42-251, Idaho Code.

(4) Upon the board's filing of applications for permit to appropriate water as directed by this section, the director of the department of water resources is authorized and directed, on an interim basis pending final action on the applications for permit, to distribute water under the filings in accordance with the doctrine of prior appropriation using a priority date as of the filing of the application for permit.

(5) These minimum stream flow 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 water right applications with a priority date before the effective date of this section and on Lemhi Basin stream flow maintenance water rights filed pursuant to 42-251, Idaho Code on Big Timber, Bohannan, Canyon and Hayden Creeks.

ADDITIONAL SIGNATORY PARTY TO THE 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

INDIVIDUAL

I _____ am the owner of Lemhi Irrigation Water Right(s) no. _____, which was decreed in the Snake River Basin Adjudication, and I have reviewed the ***Lemhi 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") dated _____, and that I desire to become a party to the Agreement and by signing this form agree to be bound by all terms and conditions of the Agreement.

_____ Dated:_____

_____
Print Name

CORPORATION, PARTNERSHIP, TRUST OR OTHER LEGAL ENTITY

I _____ am the agent/officer of _____the owner of Lemhi Irrigation Water Right(s) no. _____, which was/were decreed in the Snake River Basin Adjudication. I represent that the owner has reviewed the ***Lemhi Basin Comprehensive Settlement Agreement between the Idaho Water Resource Board, Idaho Department of Fish and Game, Idaho Office of Species Conservation*** **and Various Water Users** ("Agreement") and _____desires to become a party to the Agreement and _____ has granted me the full right power, and authority to sign this form binding the owner to all terms and conditions of the Agreement on its behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this consent to be bound by the Agreement.

_____ Dated:_____
Officer/Agent

_____
Print Name and Title