

COPY

LAWRENCE G. WASDEN
Attorney General

STEVEN L. OLSEN
Deputy Attorney General
Chief, Civil Litigation Division

KARL T. KLEIN (ISB # 5156)
MICHAEL C. ORR (ISB # 6720)
SHASTA KILMINSTER-HADLEY (ISB #7889)
Deputy Attorneys General

700 West State Street, 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
(208) 334-2400
Attorneys for The State of Idaho

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Consolidated Subcase no. 00-92023
	)	(92-23)
Case No. 39576	)	
	)	AFFIDAVIT OF
	)	NORMAN C. YOUNG
	)	

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

NORMAN C. YOUNG, being first duly sworn upon oath, deposes and states as follows:

1. I was an employee of the Idaho Department of Water Resources ("the Department") from 1969 to 2003. In 1985 I held the position of Administrator of the Resources Administration Division and was responsible state-wide for the Department's

water-related regulatory programs. My normal duties and responsibilities in this capacity included conducting public information meetings regarding the Department's water-related regulatory programs. These meetings were typically tape recorded on audio cassette tapes.

2. In May of 1985, as part of and in the course of my normal duties and responsibilities as Administrator of the Resources Administration Division, I conducted several public information meetings to obtain public comment, input and suggestions for purposes of assisting the Department in drafting administrative rules and regulations for water appropriation. These meetings were typically recorded on audio cassette tapes.

3. In October 2008, I was contacted by the Idaho Office of the Attorney General and asked to review the documents attached hereto as **Exhibit A**, to inspect the audio cassette tapes shown in the photocopies attached hereto as **Exhibit B**, and to review the recordings on the audio cassette tapes. The Idaho Office of the Attorney General informed me that the documents in **Exhibit A** and the audio cassette tapes shown in the photocopies in **Exhibit B** had been obtained from the files of the Department.

4. I reviewed the documents attached hereto as **Exhibit A**, inspected the audio cassette tapes that are shown in the photocopies attached hereto as **Exhibit B**, reviewed all of the recordings on the audio cassette tapes labeled "Twin Falls-1" and "Twin Falls-2," and reviewed part of the recordings on the audio cassette tape labeled "Pocatello."

5. Based on my personal knowledge and memory of the public information meetings I conducted in May 1985, and my review and inspection of the documents and audio cassette tapes as described above in paragraph 4, I have concluded the following:

- a. that the handwriting on the labels for the audio cassette tapes that are shown in the photocopies attached hereto as **Exhibit B** is mine;
- b. that the audio cassette tapes labeled "Twin Falls - 1" and "Pocatello" shown in the photocopies attached hereto as **Exhibit B** contain recordings of public information meetings I conducted in May 1985 to obtain public comment, input and suggestions for purposes of assisting the Department in drafting administrative rules and regulations for water appropriation;
- c. that the audio cassette tape labeled "Twin Falls-1" shown in the photocopies attached hereto as **Exhibit B** contains a recording of the public information meeting held in Twin Falls, Idaho, on May 23, 1985.

6. I recognized several speakers' voices in the recording on the audio cassette tape labeled "Twin Falls-1," including my own. As I was listening to the "Twin Falls-1" recording, I wrote the names of the speakers I recognized in the corresponding locations of a draft transcript of the "Twin Falls-1" recording. At the top of the draft transcript for the "Twin Falls-1" recording I also wrote: "Public Information Meeting, Thursday, May 23, 1985, Twin Falls, Idaho." A true and correct copy of the draft transcript of the "Twin Falls-1" recording with my edits is attached hereto as **Exhibit C**.

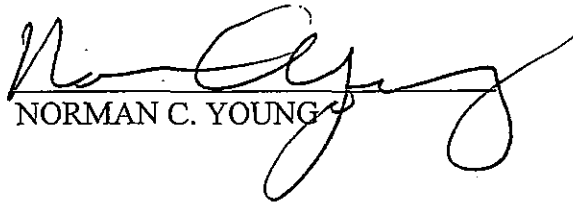
7. I also recognized my voice and the voices of several other speakers while reviewing the recording on the audio cassette tape labeled "Twin Falls-2." As I was listening to the "Twin Falls-2" recording, I wrote the names of the speakers I recognized in the corresponding location in a draft transcript of the "Twin Falls-2" recording. I cannot be sure of the date or purpose of proceedings recorded on the "Twin Falls-2" audio cassette tape, however. A true and correct copy of the draft transcript of the "Twin

Falls-2" recording with my edits is attached hereto as **Exhibit D**.

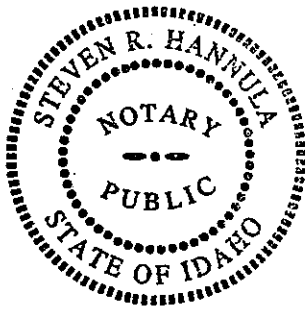
Further your affiant sayeth naught.

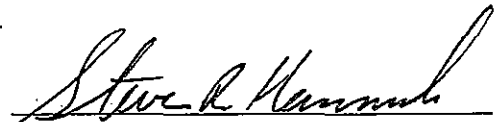
DATED this 10TH day of October, 2008.

I


NORMAN C. YOUNG

SUBSCRIBED AND SWORN to before me this 10th day of October, 2008.




Notary Public for Idaho
Residing at: Boise ID
My commission expires: 8-18-11

CERTIFICATE OF SERVICE

I certify that on this 17th day of October 2008, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF NORMAN C. YOUNG, INCLUDING EXHIBITS, to the following parties by the indicated methods:

Clerk of the SRBA Court
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 208-736-2121

Idaho Power Company
Represented by:
James C. Tucker
P.O. Box 70
1221 W. Idaho
Boise, ID 83707

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: jtucker2@idahopower.com

Idaho Power Company
Represented by:
James S. Lochhead
Adam T. DeVoe
Mark J. Mathews
Michael A. Gheleta
Michelle C. Kales
Brownstein Hyatt Farber Shreck
410 17th Street, Ste. 2200
Denver, CO 80202-4432

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: 303-223-0904
- ☒ E-mail: MGheleta@BHFS.com

Idaho Power Company
Represented by
John K. Simpson
Shelley M. Davis
1010 W. Jefferson, Suite 102
Boise, ID 83701-2139

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: jks@idahowaters.com

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83720-4449

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Not Applicable

United States Department of Justice
Environment & Natural Resources
Division
550 West Fort Street
MSC 033
Boise, ID 83724

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

Randall C. Budge
Candice M. McHugh
Racine Olson Nye Budge & Bailey,
Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: cmm@racinelaw.net

Josephine Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, Idaho 83702

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: jo.beeman@beemanlaw.com

Jerry R. Rigby
Rigby, Andrus & Moeller Chtd.
P.O. Box 250
Rexburg, ID 83440

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail

☐ Facsimile:

☒ E-mail: jrigby@rigby-thatcher.com

A handwritten signature in cursive script, reading "Michael C. Orr", positioned above a horizontal line.

MICHAEL C. ORR

Deputy Attorney General

Affidavit of Norman C. Young

Exhibit A



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

May 6, 1985

Dear Interested Party:

Enclosed is a copy of an announcement advising that the Director, Idaho Department of Water Resources intends to promulgate rules and regulations and requests input into the process.

Comments are requested by June 15, 1985 since much of the enabling legislation is effective July 1, 1985.

Additional copies of the announcement are available from any of the department's regional offices located in Boise, Idaho Falls, Twin Falls and Coeur d'Alene.

Sincerely,

DIRECTOR

Idaho Department of Water Resources

Enclosure

BRS024938

REQUEST FOR COMMENT AND NOTICE OF INTENT
TO WRITE AND ADOPT RULES AND REGULATIONS
FOR WATER APPROPRIATION

The director of the Idaho Department of Water Resources hereby announces his intention to write and adopt rules and regulations for the allocation of water resources in Idaho. The legislature enacted Section 42-1805(8), Idaho Code, which will be effective on July 1, 1985, imposing a duty on the director to adopt rules and regulations implementing and effectuating the powers and duties of the department. Also, effective on July 1, 1985 are the changes to the water allocation provisions, (Section 42-203, Idaho Code) enacted in Senate Bill 1008 which place in trust some waters previously appropriated for hydropower generation purposes and authorize reallocation of this trust water to consumptive purposes found to be in the public interest.

The director believes that rules and regulations are needed to provide a uniform and orderly procedure for processing pending and future applications for the trust water made available and for reprocessing existing undeveloped permits under the new public interest requirements. In addition, there is a need to describe more fully the criteria that will be used to decide whether an application or a permit subject to reprocessing will be granted.

All rules and regulations will be adopted in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, which provides for full public participation. The director has determined that public comment is needed to provide a basis for developing the draft rules and regulations and requests public input and suggestions. The director specially requests input on the following issues:

1. What criteria should be used to determine the order of processing the backlog of pending applications and for reprocessing existing undeveloped permits?

In December 1982 the department ceased processing applications to use water for consumptive purposes from the Snake River drainage upstream from Swan Falls Dam. Over 1,000 applications, nearly all for irrigation purposes, are now being held. Additionally, an estimated 1,700 permits, nearly all for irrigation purposes, remain undeveloped in this area. The Snake River Water Rights Agreement as authorized by Section 42-203B, Idaho Code, allows development that is in the public interest to reduce the flow of Snake River near Murphy gauge but not below a flow of 3900 cubic feet per second (cfs) in the summer or 5600 cfs in the winter. This reduction has been estimated at 600 cfs below the existing low summer flow on a dry year. One hundred fifty (150) cfs of this flow is reserved for domestic, commercial, municipal and industrial (DCMI) uses. Existing applications and undeveloped permits exceed the firm water supply.

available.

Should applications and permits for reallocation of trust water be processed in order of priority or should the order of processing be determined by other criteria which may be administratively more efficient, produce more immediate development, optimize the location and type of development, or distribute development? Should preference be given to new applications filed for development that took place after the mandatory filing dates (May 20, 1971 for surface water and March 25, 1963 for ground water) and before the November 19, 1982 Supreme Court Decision?

2. What should be the requirements for the timing and scope of information to be submitted by the applicant?

The statement of legislative intent for S.B. 1008 indicates that the burden of proof for the public interest criteria of Section 42-203C is to be on the protestant. The applicant must, however, submit sufficient information to allow the protestant to respond to the proposed project.

Should the applicant be required to supply a detailed plan of development including operational details? Should applicants for smaller projects, unprotested applications, or projects proposing uses such as DCMI be exempted from this requirement? If so, what size or type of project should be

exempt?

3. What factors are appropriate in the consideration of "local public interest"?

All applications to appropriate water must comply with the local public interest criteria of Section 42-203A, Idaho Code. The statutes define local public interest as the "affairs of the people in the area directly effected by the proposed use". Should local public interest be restricted to effects directly associated with water diversion and use such as instream values, and water quality or should it be broadly interpreted to include general land use concerns such as property value declines due to a reduced streamflow? Should downstream effects on anadromous fish and hydropower production be considered?

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

Section 42-203C, Idaho Code, requires that if an application to appropriate trust water will significantly reduce water available to a hydroelectric facility, the applications must be evaluated using public interest criteria.

What parameters should be used to evaluate a significant reduction? Should cumulative impacts be evaluated considering depletion of all trust waters down to the minimum flow or only

the increment predicted to be depleted during some planning period?

Should applications proposing small diversions, or certain uses such as DCMI and those that are not protested be exempted? If so, what size and types of projects?

5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

Section 42-203C, Idaho Code, requires the director to consider five criteria to evaluate the public interest of reallocating trust water. Should rules and regulations be adopted providing detailed guidelines for evaluating the positive and negative impacts of proposed projects on the state and local economy, on utility rates, on the family farming tradition, and on the full use of Idaho's water resources? How can remote indirect impacts be adequately evaluated? Should the value of potential future uses, which are foregone if the application is approved, be considered?

6. What rating scale should be used to balance the five public interest criteria?

Section 42-203C, Idaho Code, states that no single public interest criteria is entitled to greater weight than any other criteria. Does this require a simple check off that the

proposed project complies with the criteria and that a project complying with a majority of the criteria is to be approved, or should a rating system be adopted which recognizes the degree to which a project meets a proposed criteria with each criteria having the same potential maximum value?

7. Should permits issued for new consumptive uses from ground water require maintenance of the capability to mitigate flow reductions in the rivers as necessary to maintain the adopted minimum flows?

The lag time between starting and stopping pumping of a well and the corresponding change in the discharge rate of springs flowing from the aquifer makes curtailment of pumping of junior priority ground water rights ineffective for managing short-term stream flow fluctuations. Holders of permits issued for ground water development could be required to have a source of water for release to insure that the adopted minimum stream flows can be maintained. As an alternative, should the state assess permit holders to purchase storage water or other resources for insuring that minimum flows are met?

The public welfare requires that any rules and regulations necessary to implement the changes to Idaho water statutes be effective July 1, 1985. It may be necessary to initially adopt the rules on an emergency basis in order to meet this public welfare requirement.

All comments and suggestions provided will be reviewed and considered by the director in the process of implementing the new and amended legislation relative to the Swan Falls agreement.

Public information meetings will be scheduled and held by the department as follows:

Tuesday, May 21, 1985 - Bonneville County Courthouse, Room 101, 605 N. Capital, Idaho Falls, Idaho, at 7:00 p.m.,

Wednesday, May 22, 1985 - Pocatello Municipal Airport, Conference Room, Pocatello, Idaho, at 7:00 p.m.,

Thursday, May 23, 1985 - College of Southern Idaho, Room 101, Vo-Tech Building, 315 Falls Avenue, Twin Falls, Idaho at 7:00 p.m. and

Friday, May 24, 1985 - Hall of Mirrors, East Conference Room, 700 W. State St., Boise, Idaho at 1:00 p.m.

Comments should be mailed to Director, Idaho Department of Water Resources, Statehouse, Boise, Idaho 83720 to be received prior to June 15, 1985.

Copies of this notice may be obtained from the regional offices located at the following addresses:

Western Region, 450 W. State St., Boise, Idaho 83720,

Eastern Region, 150 Shoup, Idaho Falls, Idaho 83401,

Northern Region, No. 5, Box 4055 Government Way, Coeur d'Alene, Idaho 83814 and

RECEIVED MAY 5 1985

Southern Region, 1041 Blue Lakes Blvd. North, Twin
Falls, Idaho 83301.



May 8, 1985

FOR IMMEDIATE RELEASE

State of Idaho, Statehouse, Boise, Idaho 83720

Phone: (208) 334-4440

NEWS RELEASE

BOISE---The Idaho Department of Water Resources (IDWR) will conduct four public information meetings this month to get citizen comments on suggested content of rules and regulations to be drafted dealing with allocation of water resources in Idaho.

According to A. Kenneth Dunn, IDWR director, these rules and regulations are needed to guide department action in the reprocessing of existing water right permits, administration of the public interest criteria and in the allocation of trust water made available through the Swan Falls settlement negotiations.

Meetings have been slated in:

Idaho Falls, Bonneville County Courthouse, Room 101, 605 N. Capitol,
7 p.m., May 21,

Pocatello, Municipal Airport, Conference Room, 7 p.m., May 22,

Twin Falls, College of Southern Idaho, Room 101, Vo-Tech Building,
315 Falls Ave., 7 p.m., May 23, and

Boise, Hall of Mirrors (State Office Building), East Conference Room,
700 W. State St., 1 p.m., May 24.

Those wishing to submit written comments should mail them to the Director,
Idaho Department of Water Resources, Statehouse, Boise, ID 83720 before June
17, 1985.

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The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 4th day of January 09
Cheryl Packman

SCANNED
JAN 04 2007

IDWR rules

add 1-1-1-1-1-1-

A brief description of subject matter to be addressed in the proposed rules and regulations is available upon request from any of the IDWR offices in Boise, Idaho Falls, Twin Falls or Coeur d'Alene.

-30-

Kay Weaver

Information Specialist

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources

Signed this 24th day of January 2008
Greg Spackman



This foregoing is a true and certified copy
the document on file at the department
Water Resources.

Signed this 4th day of January, 200

State of Idaho, Statehouse, Boise, Idaho 83720

Phone: (208) 334-4440

NEWS RELEASE

FOR IMMEDIATE RELEASE

May 17, 1985

Idaho Department of Water Resources to conduct meeting for water users

BOISE -- Water users near Idaho Falls are reminded of the public information meeting slated by the Idaho Department of Water Resources on May 21, 1985, at the Bonneville County Courthouse, Room 101, 605 North Capital, Idaho Falls at 7 p.m. According to A. Kenneth Dunn, IDWR director, the agency wishes to get a clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. Written comments may be sent to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720 and must be received by June 17.

Dunn seeks public input on seven issues in particular. These questions are:

1. What criteria should be used to determine the order of processing the backlog of pending applications and for reprocessing existing, undeveloped rights?
2. What should be the requirements for the timing and scope of information to be submitted by the applicant?
3. What factors are appropriate in the consideration of "local public interest?"
4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

SCANNED
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(More)

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5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

6. What rating scale should be used to balance the five public interest criteria?

7. Should permits issued for new consumptive uses from groundwater require maintenance of the capability to mitigate river flow reductions if necessary to maintain the adopted minimum stream flows?

Other information meetings are slated in Pocatello, Twin Falls and Boise. Copies of the notice to draft rules and regulations may be obtained from any IDWR regional office in Coeur d'Alene, Idaho Falls, Twin Falls or Boise.

After the information meetings have been completed, agency staff will draft the rules and regulations, incorporating comments obtained either at these meetings or from written testimony. Once the rules and regulations have been written, the public will have an opportunity, probably in July, to review them and make comments on the drafts, as required by the Administrative Procedures Act. Final drafts, which may be adopted this fall, will be submitted to the Idaho Legislature for review by the lawmakers.

(30)

Kay Weaver
Information Specialist

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources

Signed this 4th day of January 20 08
Cheryl Paulman



FOR IMMEDIATE RELEASE

May 17, 1985

State of Idaho, Statehouse, Boise, Idaho 83720

Phone: (208) 334 4440

NEWS RELEASE

BOISE- Water users near Pocatello are reminded of the public information meeting slated by the Idaho Department of Water Resources on May 22, at the airport conference room, Pocatello, at 7 p.m. According to A. Kenneth Dunn, IDWR director, the agency wishes to get clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. Written comments may be sent to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720, and must be received by June 17.

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3. What factors are appropriate in the consideration of "local public interest?"
4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

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The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 4th day of January, 2008

Barry Spackman

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SCANNED
JAN 04 2007

IDWR meeting

page 2

5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

6. What rating scale should be used to balance the five public interest criteria?

7. Should permits issued for new consumptive uses from groundwater require maintenance of the capability to mitigate river flow reductions if necessary to maintain the adopted minimum stream flows?

Other information meetings are slated for Twin Falls and Boise, and one has already been conducted in Idaho Falls. Copies of the notice to draft rules and regulations may be obtained from any IDWR regional office in Twin Falls, Idaho Falls, Boise or Coeur d'Alene.

After the information meetings have been conducted, agency staff will draft the rules and regulations, incorporating comments obtained either at the meetings or from written testimony. Once the rules and regulations have been written, the public will have an opportunity, probably in July, to review them and make comments on the drafts, as required by the Administrative Procedures Act. Final drafts, which may be adopted in the fall, will be submitted to the Idaho Legislature for review.

-30-

The foregoing is a true and certified copy of the document on file at the department of Water Resources

Signed this 4th day of January, 2000
[Signature]

Kay Weaver

Information Specialist



FOR IMMEDIATE RELEASE

May 22, 1985

State of Idaho, Statehouse, Boise, Idaho 83720

Phone: (208) 334-4440

NEWS RELEASE

Water users in southwestern Idaho are reminded of the public information meeting slated by the Idaho Department of Water Resources (IDWR) on May 24, Hall of Mirrors, East Conference Room, 700 W. State St., Boise, at 1 p.m.

According to A. Kenneth Dunn, IDWR director, the agency wishes to get clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. However, written comments may be sent to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720, and must be received by June 17.

Dunn seeks public input on seven issues in particular. These are:

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3. What factors are appropriate in the consideration of "local public interest?"
4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

more

This foregoing is a true and certified copy of
the document on file at the department of
water resources.

Witness my hand and seal this 4th day of January 1985.
Greg S. McKinnon

SCANNED

JAN 04 2007

IDWR meeting

page 2

5. What guidelines are needed to evaluate the "public interest" criteria?
6. What rating scale should be used to balance the five public interest criteria?
7. Should permits issued for new consumptive uses from groundwater require maintenance of the capability to mitigate river flow reductions if necessary to maintain the adopted minimum stream flows?

After the information meetings are over, agency staff will draft rules and regulations, incorporating comments garnered either at the meetings or from written testimony. Once the rules and regulations have been written, the public will have an opportunity to review them, probably in July, and make comments, as required by the Administrative Procedures Act. Final drafts, which may be adopted this fall, will be submitted to the Idaho Legislature for review.

Kay Weaver

Information Specialist

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources

Signed this 4th day of January 1983
Craig Spickman

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources

Signed this 4th day of January 1985
Ray Spelman

RECEIVED

MAY 31 1985

Department of Water Resources
**REQUEST FOR COMMENT AND NOTICE OF INTENT
TO WRITE AND ADOPT RULES AND REGULATIONS
FOR WATER APPROPRIATION**

The director of the Idaho Department of Water Resources hereby announces his intention to write and adopt rules and regulations for the allocation of water resources in Idaho. The legislature enacted Section 42-1805(8), Idaho Code, which will be effective on July 1, 1985, imposing a duty on the director to adopt rules and regulations implementing and effectuating the powers and duties of the department. Also, effective on July 1, 1985 are the changes to the water allocation provisions, (Section 42-203, Idaho Code) enacted in Senate Bill 1008 which place in trust some waters previously appropriated for hydropower generation purposes and authorize reallocation of this trust water to consumptive purposes found to be in the public interest.

The director believes that rules and regulations are needed to provide a uniform and orderly procedure for processing pending and future applications for the trust water made available and for reprocessing existing undeveloped permits under the new public interest requirements. In addition, there is a need to describe more fully the criteria that will be used to decide whether an application or a permit subject to reprocessing will be granted.

SCANNED

JAN 04 2007

All rules and regulations will be adopted in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, which provides for full public participation. The director has determined that public comment is needed to provide a basis for developing the draft rules and regulations and requests public input and suggestions. The director specially requests input on the following issues:

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available.

Should applications and permits for reallocation of trust water be processed in order of priority or should the order of processing be determined by other criteria which may be administratively more efficient, produce more immediate development, optimize the location and type of development, or distribute development? Should preference be given to new applications filed for development that took place after the mandatory filing dates (May 20, 1971 for surface water and March 25, 1963 for ground water) and before the November 19, 1982 Supreme Court Decision?

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The statement of legislative intent for S.B. 1008 indicates that the burden of proof for the public interest criteria of Section 42-203C is to be on the protestant. The applicant must, however, submit sufficient information to allow the protestant to respond to the proposed project.

Should the applicant be required to supply a detailed plan of development including operational details? Should applicants for smaller projects, unprotested applications, or projects proposing uses such as DCMi be exempted from this requirement? If so, what size or type of project should be

exempt?

3. What factors are appropriate in the consideration of "local public interest"?

All applications to appropriate water must comply with the local public interest criteria of Section 42-203A, Idaho Code. The statutes define local public interest as the "affairs of the people in the area directly effected by the proposed use". Should local public interest be restricted to effects directly associated with water diversion and use such as instream values, and water quality or should it be broadly interpreted to include general land use concerns such as property value declines due to a reduced streamflow? Should downstream effects on anadromous fish and hydropower production be considered?

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

Section 42-203C, Idaho Code, requires that if an application to appropriate trust water will significantly reduce water available to a hydroelectric facility, the applications must be evaluated using public interest criteria.

What parameters should be used to evaluate a significant reduction? Should cumulative impacts be evaluated considering depletion of all trust waters down to the minimum flow or only

the increment predicted to be depleted during some planning period?

Should applications proposing small diversions, or certain uses such as DCMI and those that are not protested be exempted? If so, what size and types of projects?

5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

Section 42-203C, Idaho Code, requires the director to consider five criteria to evaluate the public interest of reallocating trust water. Should rules and regulations be adopted providing detailed guidelines for evaluating the positive and negative impacts of proposed projects on the state and local economy, on utility rates, on the family farming tradition, and on the full use of Idaho's water resources? How can remote indirect impacts be adequately evaluated? Should the value of potential future uses, which are foregone if the application is approved, be considered?

6. What rating scale should be used to balance the five public interest criteria?

Section 42-203C, Idaho Code, states that no single public interest criteria is entitled to greater weight than any other criteria. Does this require a simple check off that the

proposed project complies with the criteria and that a project complying with a majority of the criteria is to be approved, or should a rating system be adopted which recognizes the degree to which a project meets a proposed criteria with each criteria having the same potential maximum value?

7. Should permits issued for new consumptive uses from ground water require maintenance of the capability to mitigate flow reductions in the rivers as necessary to maintain the adopted minimum flows?

The lag time between starting and stopping pumping of a well and the corresponding change in the discharge rate of springs flowing from the aquifer makes curtailment of pumping of junior priority ground water rights ineffective for managing short-term stream flow fluctuations. Holders of permits issued for ground water development could be required to have a source of water for release to insure that the adopted minimum stream flows can be maintained. As an alternative, should the state assess permit holders to purchase storage water or other resources for insuring that minimum flows are met?

The public welfare requires that any rules and regulations necessary to implement the changes to Idaho water statutes be effective July 1, 1985. It may be necessary to initially adopt the rules on an emergency basis in order to meet this public welfare requirement.

All comments and suggestions provided will be reviewed and considered by the director in the process of implementing the new and amended legislation relative to the Swan Falls agreement.

Public information meetings will be scheduled and held by the department as follows:

Tuesday, May 21, 1985 - Bonneville County Courthouse, Room 101, 605 N. Capital, Idaho Falls, Idaho, at 7:00 p.m.,

Wednesday, May 22, 1985 - Pocatello Municipal Airport, Conference Room, Pocatello, Idaho, at 7:00 p.m.,

Thursday, May 23, 1985 - College of Southern Idaho, Room 101, Vo-Tech Building, 315 Falls Avenue, Twin Falls, Idaho at 7:00 p.m. and

Friday, May 24, 1985 - Hall of Mirrors, East Conference Room, 700 W. State St., Boise, Idaho at 1:00 p.m.

Comments should be mailed to Director, Idaho Department of Water Resources, Statehouse, Boise, Idaho 83720 to be received prior to June 15, 1985.

Copies of this notice may be obtained from the regional offices located at the following addresses:

Western Region, 450 W. State St., Boise, Idaho 83720,

Eastern Region, 150 Shoup, Idaho Falls, Idaho 83401,

Northern Region, No. 5, Box 4055 Government Way, Coeur d'Alene, Idaho 83814 and

Southern Region, 1041 Blue Lakes Blvd. North, Twin
Falls, Idaho 83301.

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources

Signed this 4th day of January 2009
Don Spackman

PUBLIC INFORMATION MEETING

Thursday, May 23, 1985, 7:00 p.m.

Twin Falls, Idaho

R O S T E R O F A T T E N D A N C E

Please Print

Name	Address	Representing
Jerry Patterson	Rt 2 Box 340 A	
Dale M. Wright	891 Briarwood Dr Twin Falls	
Terry & Elaine Martin	Rt 4 Box 4634 Jerome	83338
Joe McCollum	Box 112, Twin Falls, Ida	83333
Ann G. Lanting	Rt. 1, Box 4575 T. F.	83301
Cheryl G. Gorman	Rt #1 Tulew Idaho	83328
Charles A. Baues	834 Falls Ave Twin Falls	83335
Tom Nelson	Box 1906 Twin Falls	83303-1906
Carl Hansen	Rt 3 Box 387 Buhl, Id	83316
Linda Noh	Rt 2 Box 65, Kimberly	83341
Colleen J. Martin	1315 Laramie Dr. Twin Falls	Id 83333
Henry Buchanan	156 Haven Twin Falls Ida	83301

SCANNED

JAN 04 2007

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources

Signed this 10th day of October, 2008

Gay Spickman

PUBLIC INFORMATION MEETING

Thursday, May 23, 1985, 7:00 p.m.

Twin Falls, Idaho

ROSTER OF ATTENDANCE

Please Print

Name	Address	Representing
Les E. Racy	RT 3 Box 234 Buhl Id.	83316 Fish Board
Garr Waymont	Rt 2 Box 2472	Bahley Ida. 83318-
Jim Williams	Rt 2 Box 2470	" " "
John K. Courtney	RT 1 Box 4659, Twin Falls, Id.	8330
Thomas E. Hansen	R2 Buhl	8331
Kenneth F. Elkins	Rt 3 Buhl	Ida. 83316
Wayne D. Marshall	Box 743, Castelford, Id.	83321
Billy Taylor	353 7th Ave. E. Twin Falls, Id.	83301
Jake F. Prudek	RT #1 Box 104 Buhl Idaho	

PUBLIC INFORMATION MEETING

Thursday, May 23, 1985, 7:00 p.m.

Twin Falls, Idaho

ROSTER OF ATTENDANCE

Please Print

Name	Address	Representing
Frank L. Orth	RR Box 292 Wendell Idaho 83353	
Earl M. Copless	1359 Hansen Ave	U.S. Bureau of Reclamation
Robert W. Schuer	Box 223 RT Buhl	TFCC Director
C. Lee Lemmon	Box 218 Hagerman	36-A
Therrell Butcher	3859 Park Ave	Burley, Idaho 83318
Phil Wheeler	Star Rt Box 77 Teton, Idaho	83323 Self
Allen Lytle	Star Rt Box 55 Pocatello Idaho	83323 Self
Kenneth Belkin	RT 3 Buhl Idaho	83316 Self
Chris E. Hansen	RT 2 Buhl Idaho	83316
S. G. Cawletton	Hagerman, Idaho	Citizen Albert
JILL JOSEPH	RR#1 Box 254 HAGERMAN	83332 Self

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 10th day of October, 20 08
Gary Palmer

TWIN FALLS

Alan
Robertson

NELSON: One thing, Norm, on this gentleman's example. I don't think that surface water diversions for recharge above Milner are part of the trust waters. To be part of the trust waters, the water has to be made available by reason of subordination condition and there is no water right at Milner, that's at zero flow in the State Water Plan. So, surface water diversions above Milner would not be subject to those criteria. Now, EPA may have something to say about it, but I don't think they can (file for a grievance.) (file under their agreement.)

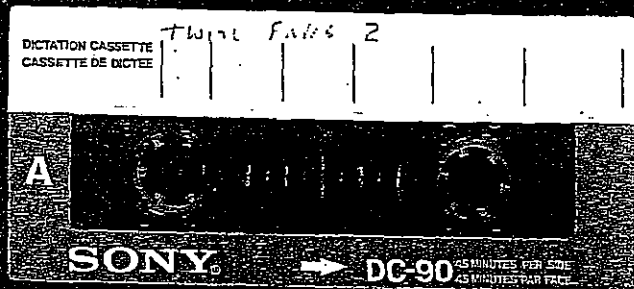
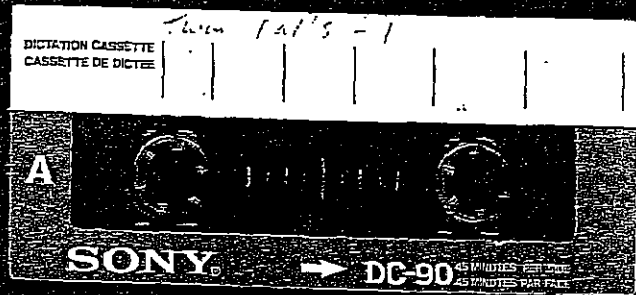
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Water Resources

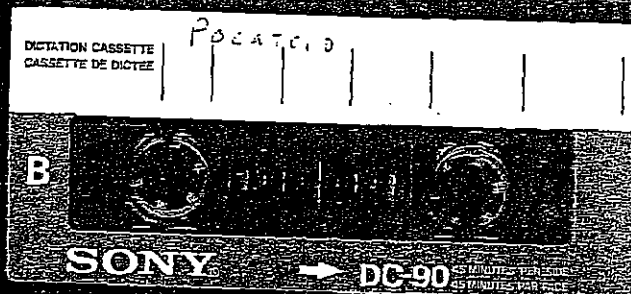
Signed this 10th day of October, 2008

Ray Spickman

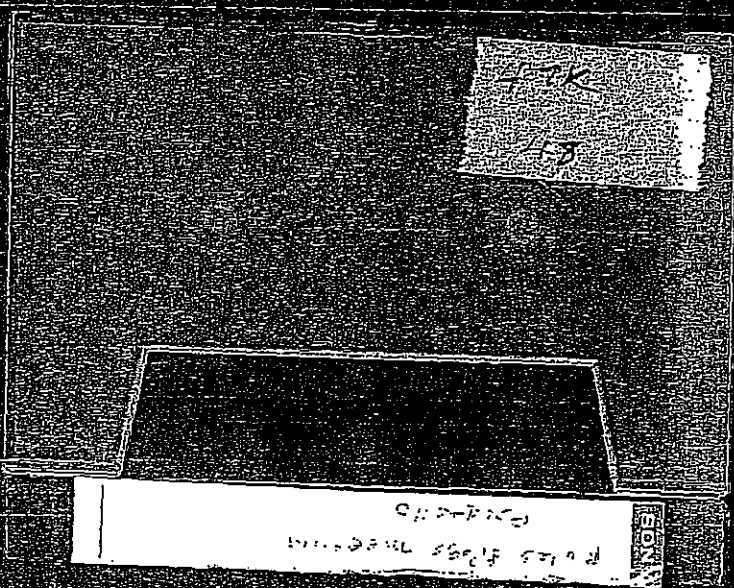
Affidavit of Norman C. Young

Exhibit B





PUBLIC INPUT 5/22/85 TAPE 2
 DICTATION CASSETTE
 CASSETTE DE DICTEE pocotello



Affidavit of Norman C. Young

Exhibit C

1
2 RECORDING ENTITLED
3 "TWIN FALLS-1"

4 *Public Information Meeting*
5 *Thursday, May 23, 1985*
6 *TWIN FALLS, IDAHO*
7 * * * * *

8
9
10 TRANSCRIPT OF PROCEEDINGS

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15 * * * * *

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17
18
19
20
21 *NCY = Norman C. Young*
22

23 Transcribed by
Dianne E. Cromwell
24 CSR No. 21
25

2
1 MALE SPEAKER: Viewing global public
2 interest of the board of directors of the
3 corporation felt should be whatever this be, I'll
4 read it to you.
5 *NCY* MODERATOR: Good. And will you submit us a
6 copy of it too?

7 MALE SPEAKER: Yes.

8 *NCY* MODERATOR: Very good.

9 MALE SPEAKER: I'm here now representing the
10 Hagerman Valley Citizens work. Our group might
11 well be defined as a citizenship group whose main
12 concern is the public interest.

13 We are usually, if not always,
14 supporting positions that will benefit the public
15 at large. As a group we are mainly concerned with
16 maintaining the healthful and attractive community
17 in which to live.

18 Our own articles of incorporation, our
19 purpose is stated: To secure and enhance the city
20 from social welfare, the residents and visitors of
21 Hagerman Valley.

22 Our purpose on being here tonight is to
23 state our position regarding the definition of
24 local public interest. The word "public" is
25 defined in Websters as that remaining to and

1 offering all the people – pardon me, and
2 affecting all the people.

3 We have such expressions as public
4 good, public welfare, public health, public trust,
5 all of which referred to the public at large. The
6 concept of the public interest stands in contrast
7 to private interest for particular individual's
8 benefit from some action or policy.

9 Ideally, all actions of the policy
10 could serve both the public interest and the
11 private interest. There should be an equitable
12 balance between the two. However, when we come
13 into conflict, public interest should prevail,
14 consistent to that document's greatest good to the
15 greatest number of people.

16 The concept of public interest is very
17 old and can be traced back to English common law
18 and even to Roman law. It certainly goes back to
19 our own Constitution. In the Preamble of the
20 Constitution appears the phrase "To promote the
21 general welfare," and this is interpreted to mean
22 promote the welfare of the public at large.

23 The term "public good" appears in the
24 Declaration of Independence. The term "public
25 trust" appears also in the Constitution. So the

1 idea of government being concerned with protecting
2 the public's interest is well established in our
3 history and traditions.

4 The concept of public welfare and
5 public interest is based on the government's
6 relationship with its citizens. One of the
7 principal duties of the government is to look out
8 for the interest of all its citizens. We think
9 that it is in the public interest to protect and
10 preserve our habitat, the places we live and the
11 places our children and grandchildren will live.

12 We believe that it is in the public
13 interest to take the long view and the broad view
14 when it comes to taking care of our natural
15 resources.

16 We have no problem in defining local
17 public interest for Hagerman Valley. We are
18 concerned with the quality of the water coming
19 from the springs, flowing in our rivers, and the
20 natural beauty it surrounds. We certainly hope
21 that the Department of Water Resources will take
22 such concern into consideration when writing new
23 rules for issuing water permits.

24 Thank you.

25 *Not* MODERATOR: Thank you. The department's

1 philosophy is to issue those initial decisions on
 2 the local public interest. Your question is very
 3 timely. That is I think the next slide.

4 Those are the five -- and again, I'm
 5 paraphrasing, let's make them short, and you've
 6 got the exact language on the last page of the
 7 bill that was handed out to you, the legislation.

8 If the project that you suggested meets
 9 all of the first five criteria, the historic five
 10 criteria, and could be approved under those five
 11 criteria, including the local public interest, and
 12 then you look at it and you find that it, along
 13 with other water uses, is going to reduce the flow
 14 to the hydro power right significantly, then you
 15 have ask -- the director has to ask himself these
 16 five questions, and let's just go through those in
 17 exact language of the statute.

18 If the answer, the director considers,
 19 and I say this carefully, this is one of the
 20 questions also.

21 A VOICE: Where are we at?

22 ~~NO~~ MODERATOR: The very last page of the bill
 23 under Item 2 under 42-203C, there are five
 24 criteria. This is the public infrastructure,
 25 really the heart of the rules that will be, to be

1 adopted, the director is asked to consider.

2 And on the first five criteria, the
 3 historic one, he is asking the cause and
 4 determination, "shall find and determine." On
 5 these he is asked to consider, is there a
 6 different level of consideration between the five
 7 criteria? That may be a legal question.

8 But he must consider whether the
 9 project would, as it affects the existing hydro
 10 power right when you're taking the water away,
 11 would be potential benefits both direct and
 12 indirect; that the proposed use would provide the
 13 state and local economy.

14 Second one is, the economic impact the
 15 proposed use would have on electric utility rates
 16 in the State of Idaho and the availability,
 17 foreseeability, and cost of alternative energy
 18 sources to ameliorate such impact.

19 Three, the promotion of the family farm
 20 tradition.

21 Four, the promotion of full economic
 22 and multiple use development of water resources in
 23 the State of Idaho.

24 And five, in the Snake River Basin
 25 above the Murphy Gauge, whether the proposed

1 development informs through a staged development
2 policy of up to 20,000 acres per year, or 80,000
3 acres in any four-year period.

4 So those are the five public interest
5 criteria and will be affecting the
6 (unintelligible).

7 We're asking for your suggestions as we
8 draft the rules on how details should be defined.
9 If we follow the lead of the federal government,
10 as they've gone through project studies, we
11 perhaps would have to have an environmental impact
12 study, principles of standard level
13 (unintelligible) as you look at the economics and
14 sociologic impacts and come up with very detailed
15 guidelines as to what is acceptable or not. If
16 that is what is being proposed here, then we
17 should draw from this? Or is this a cursory
18 review of where (unintelligible) --

19 ^{BARBARA}
^{WAYMENT} MALE SPEAKER: Those are regulations
20 designed to solve all development, to make
21 criteria so high that you cannot meet it?

22 ^{MCY} MODERATOR: I think that's what we have to
23 be so careful about here. As the rules and
24 regulations are adopted, that they make a
25 reasonable requirement. So as the information is

1 available and the director is able to make a
2 decent judgment, they're not to simply make a
3 project infeasible because you can't afford to
4 make a study for necessary approval.

5 Yes, sir?

6 MALE SPEAKER: Does this include ground
7 water also under the same provisions, all this?

8 ^{MCY} MODERATOR: Yes. We're talking here about
9 in the Snake River Basin, above Swan Falls and
10 Murphy Gauge for sure, the water is the makeup of
11 the Snake River. And our belief is that the river
12 is made up of all the sources. Statutorily and
13 case law, that is true. And the spring being the
14 expression of groundwater, yes.

15 MALE SPEAKER: Then in other words, the
16 groundwater would be included in the trust water.
17 In other words, it would be classified as trust
18 water indirectly.

19 ^{MCY} MODERATOR: That's right.

20 MALE SPEAKER: What about in the event of
21 percolations of the groundwater, since we all just
22 maintain so it takes a thousand years for ten
23 miles in the some areas, et cetera, are you still
24 going to hold that this study with a theory that
25 it's all part of the trust water of the rivers?

1 *Nay* MODERATOR: That goes back to this question,
 2 the point about the delay between when you pump
 3 the water and when the spring flow reduces. First
 4 it would have -- that would be information you
 5 would need to have in order to decide whether you
 6 had a significant reduction on hydro power rights.
 7 So you need that data for that decision.

8 I suspect you would need it in order to
 9 determine the impact on the availability and price
 10 of electric energy, the question of promotion of
 11 full economic and multiple use of the water.

12 I suspect I ought to put these in terms
 13 of questions but that's not the -- so as part of
 14 the Swan Falls agreement [unintelligible], there
 15 is additional hydrologic data being gathered so
 16 that models of the aquifer can -- computer models
 17 of the aquifer may be defined to help us and to
 18 help the applicants feel to answer that question.

19 MALE SPEAKER: Do they take and consider the
 20 aquifer recharge, then?

21 MODERATOR: The return to the aquifer --

22 MALE SPEAKER: On the recharge, like the
 23 winter recharge to an aquifer.

24 MODERATOR: The models do, yes.

25 MALE SPEAKER: What I mean, though, will

1 that still be classified as trust? In other
 2 words, the winter flow and the summer flow are
 3 different, and et cetera, and the stream flow is
 4 different in the winter. I mean, in other words,
 5 all water applications, no matter for what or
 6 where will be classified as one, in other words;
 7 that bill against the trust availability, in other
 8 words.

9 MODERATOR: For all practical purposes, that
 10 is correct. Now, for example, some of the
 11 existing storage projects, specifically at Teton,
 12 I think we need to look at that as to whether that
 13 would be trust water or not.

14 Yes. As we reprocess those undeveloped
 15 permits and new applications, basically we're
 16 talking about having to go through these types
 17 [unintelligible] if there's a significant
 18 reduction.

19 Do you have a question about it?

20 MALE SPEAKER: Apparently on this
 21 groundwater you are recognizing in effect that the
 22 factual exchange type thing, how is that going to
 23 affect prior exchange type rights that the state
 24 has not recognized in the past? In the city of
 25 Pocatello, Palisades being a case in point,

1 Michaud Flats irrigation is another.

2 MODERATOR: Well, I'm not sure I understand
3 the question well enough to respond to it. One of
4 the issues is raised, and we'll talk about is
5 Issue No. 7. And this question: Permit condition
6 in mitigation.

7 I think what you're referring to is the
8 department's approval that interim permits, while
9 this is being developed and rules and regulations
10 are being developed, require an exchange of
11 historic [unintelligible].

12 I'll take it from there on how your
13 question --

14 *Earl* MALE SPEAKER: Well, I'm wondering if you're
Corless
15 going to go back in the past. The city of
16 Pocatello has a case in point, the state has not
17 recognized that as a valid consideration,
18 exchanging storage water for groundwater
19 withdrawal. And I'm wondering --

20 MODERATOR: You're actually moving
21 retroactive?

22 MALE SPEAKER: Yeah. Are you going to go
23 back and look into those -- and there are several
24 of those exchange-type agreements on the
25 Teton Basin and other places in the state.

1 MODERATOR: I'm glad you're not expecting an
2 answer to that. [Unintelligible] that is a policy
3 question.

4 *GALL* Yes, sir?

5 *Wayne* MALE SPEAKER: Seems to me that that second
6 criteria there could effectively delay any further
7 development for years to come if Idaho Power or
8 somebody else wanted to say, well, we don't have
9 the studies back on the impact of availability of
10 water to supply electricity or to generate
11 electricity and that could in effect stall any
12 development for years conceivably.

13 How long is it going to take to get the
14 study back to the aquifer ten miles south of
15 Burley and three miles east or somewhere else?
16 How are we going to know and when? There's a lot
17 of ground to cover.

18 MODERATOR: There really is. The additional
19 data, having put in the data being gathered this
20 year, every year we get will help us confine it.
21 But I think the decisions will just have to be
22 made on perhaps an interim basis subject to
23 revision as the data improves.

24 I don't know that we can wait 20 years
25 until we get all the data necessary to prove the

1 point one way or the other, and that's a good
2 question. When I give my idea, I'll ask you.

3 MALE SPEAKER: So in effect we don't know.
4 We don't know.

5 *NCH* MODERATOR: When do we have sufficient data
6 to make those kind of decisions.

7 *Tom Nelson* MALE SPEAKER: The point that might be made
8 there would be that part of the statute placing
9 the burden in that instance on the protestant. So
10 whoever wants to protest a particular new use has
11 the burden to produce the information necessary to
12 make the protest stick. So if he has got a
13 20-year study, he is not going to be ready for the
14 protest and he'll lose.

15 MALE SPEAKER: If the applicant doesn't
16 have -- the burden of proof is upon the
17 protestant. So if it takes him 20 years to prove
18 it, he can pay it out in ten and so be it. So
19 what. Is that what you're saying?

20 *Tom Nelson* MALE SPEAKER: I'm saying if the protestant
21 isn't ready, the applicant is going to win.

22 MALE SPEAKER: I see. Okay. Or they can
23 just hold it up until they do decide.

24 (Simultaneous talking.)

25 *NCH* MODERATOR: The burden of proof, which again

1 is a legal term, it simply says, who has to
2 provide the greater evidence, the greater proof on
3 the issue, is switched for these five criteria
4 than what has historically been considered on the
5 first five criteria. It usually said the
6 applicant has the responsibility to prove that his
7 project met the first five criteria.

8 Here the statute specifically says the
9 protestant has that responsibility. That
10 particular statement of legislative intent
11 describes that the idea was not to force the
12 applicant to have to come forward with all of the
13 information.

14 But as you think through that a little
15 bit, the applicant probably has to describe his
16 project with sufficient detail so that the
17 protestant knows how to respond. So what
18 constitutes sufficient information, what level of
19 information is needed on various types and sizes
20 of projects, to be fair to the protestant?

21 Historically, you can fill out a
22 department application, an essentially two-page
23 document; a minimal amount of information is
24 required. Is that all that is required? In a
25 recent district court case, the district court

1 said the applicant had the responsibility of
 2 providing plans and specifications in sufficient
 3 detail that the project can be built, describe the
 4 operation of that, at the time of the protest
 5 here.

6 In other words, before the department
 7 had made a decision, you must have the project
 8 described with sufficient detail to be built and
 9 operating. Is that what we're asking for? In
 10 that particular case, it required the engineer's
 11 plans and specifications.

12 Is that what we need to have as a
 13 portion of our application? It might be very
 14 reasonable to just turn around ideas again on a
 15 very large project. But should we take a ten-acre
 16 irrigation project to an engineer?

17 The 1700 permits that I believe are
 18 being re-massaged and fail to file the proof by
 19 July 1, I've already got an application. When
 20 should they be required and how much time should
 21 they be given to submit whatever additional
 22 information you need so the protestant will know
 23 how to respond? You have some thoughts on that
 24 issue?

25 MALE SPEAKER: Are you saying, though, that

1 have already have used prior to that date in
 2 198 -- when is it, October of '84, July of '84 --
 3 are you saying that there is going to be
 4 opportunity for protest upon that, or does that
 5 letter not state that all water used before that
 6 point would be automatically granted?

7 *NO*, MODERATOR: The way the statute reads, that
 8 to the extent that the project hasn't been
 9 developed.

10 MALE SPEAKER: Has not been developed.

11 *NO*, MODERATOR: Has not been developed. Looking
 12 here at 42-203D, that it would be subject to a
 13 reprocessing under these criteria.

14 MALE SPEAKER: But if it has been
 15 developed --

16 MODERATOR: Then it would not be --

17 MALE SPEAKER: Subject to the second set of
 18 criteria, but the first set of criteria is still
 19 subject it.

20 MODERATOR: It's already been through those.

21 MALE SPEAKER: But it has not been filed
 22 yet.

23 *NO*, MODERATOR: Okay. If it has not been filed
 24 on a new application, subject to those first five
 25 criteria, yes, that's right.

Lee

17

1 RAY MALE SPEAKER: In these plans that have to
2 be submitted, for an established industry, you
3 would submit detailed plans for a new use trial
4 merit [unintelligible], and I don't care what you
5 submit at the start of it, you not going to get
6 nothing for that.

7 Now, if you were going out to build a
8 trout farm, nothing around, detailed plans would
9 be submitted. Most of them are drawn up after the
10 farm has been built [unintelligible]. But if you
11 are going out to raise sturgeon, which there's a
12 lot of interest in California and will be here in
13 Idaho, there's not a commercially-established
14 farm, and the best system is not developed yet.
15 You're going to build one pond, and the next year
16 you're going to build another, and you've got to
17 change it. By the time you add on, it's going to
18 be something different.

19 And it's not going to be going out and
20 building the thing, drawing up a set of plans in
21 detail and building it to those plans. It's going
22 to be built in one pond, and changing the thing
23 the next year and adding to it, and changing it
24 again the next year. The project will be
25 successful. [Unintelligible] leads to flexibility

18

1 [unintelligible].

2 NEW MODERATOR: It's a good comment. Many times
3 people are reluctant to fully design the project
4 and spend the money necessary in order to get some
5 indication that they're going to have a dual
6 permit. Pretty tough to put that much money up
7 front.

8 So to ask that there may be some kind
9 of a balance in here, we're certainly entertaining
10 your ideas on what balance needs to be struck and
11 by type and size. And I skipped over this slide.
12 The next line after the five criteria, the last
13 stage of the legislation says: No single factor
14 enumerated above shall be entitled to greater
15 weight by the director providing this
16 determination.

17 How does the director use that "no
18 greater weight" idea as he looks at those five
19 criteria? It's been suggested that it's simply a
20 checkoff. He looks at the proposed project. He
21 says yes, it has benefits. He gives a check.

22 Yes, it will reduce electricity,
23 availability, and raise power rates. So no, it
24 doesn't get a check for that. But it is in the
25 family farm tradition, et cetera. And if you get

1 three checks out of five, does that mean you prove
2 it? If it gets one [unintelligible] check, does
3 that mean you don't prove it?

4 Is there perhaps a rating scale that
5 ought to be applied? If it fully complies with
6 the criteria, giving perhaps a ten, under each of
7 these criteria, a full compliance would eight to
8 ten, a full noncompliance would give a minus ten,
9 and algebraically sum up the rating that the
10 director gives based upon the information
11 submitted.

12 And if it comes up to zero or above,
13 it's an approval. Is that what happens? Or is it
14 some other ideas of how that should be applied?

15 Again, how that is determined will have
16 a major impact on what the projects are through
17 [unintelligible]. So my comments on that
18 particular -- we talked about that.

19 The final issue is this question of
20 mitigation and, perhaps you could say, permit
21 approval conditions in general.

22 You have an Issue No. 7, is it, in your
23 issue paper? Yes. It addresses one idea of
24 mitigation. The State Water Board, in revising
25 the Snake River Policy 32 of the water plan, which

1 was amended in March, in accord with the
2 Snake River Agreement, and the legislature
3 ratified it, it was in place, calls for mitigation
4 of lost hydro power for high level -- for pumping
5 projects taking water out of the main stem of the
6 Snake River between Milner Dam and Murphy.

7 If it takes the water in the
8 nonirrigation season through off-season storage,
9 that particular kind of project is singled out and
10 mitigation is asked for. Well, what level of
11 mitigation should we incorporate in our rules?
12 Could that be a replacement power?

13 Yes, ma'am.

14 FEMALE SPEAKER: Norm, define mitigation.
15 What is mitigation?

16 MODERATOR: Well, I could give you my
17 definition, but that's really the purpose of why
18 we're here. Give us your idea of what constitutes
19 mitigation. Is it a full replacement, or is it
20 just making --

21 FEMALE SPEAKER: Is it money?

22 MODERATOR: Is it?

23 FEMALE SPEAKER: Is it just public interest,
24 or what is it?

25 MODERATOR: Replacing the hydro power? One

1 thing we have talked about is perhaps if a project
 2 of that type were offstream storage and were
 3 approved, that would be written in as a condition
 4 of the permit, that on low flow periods in cold
 5 weather, if the power company really needs the
 6 hydro generation, the diversion would be
 7 suspended. Is that sufficient?

8 They're talking here about not just
 9 having to mitigate for the 30 to 40 minimum flow
 10 impact, if you took the flow at the Murphy Gauge
 11 below 3900 or 5600, I should say. We're talking
 12 here about making up for the impact for taking
 13 trust water. So this is unique.

14 MALE SPEAKER: How does this affect any
 15 proposed offstream artificial recharge of the
 16 aquifer. It appears to me that that would be a
 17 conflict. Does that affect it? We have a project
 18 over here, the north of here, doing that now; in
 19 fact, putting water into the aquifer. How is that
 20 going to work?

21 MODERATOR: Well, again, would there be a
 22 recharge project proposing to take water out of
 23 the main stem of the Snake River below Milner --

24 MALE SPEAKER: Oh, below Milner.

25 MODERATOR: And above Swan Falls. If you

1 did and it was going to pump through or take it
 2 out during the nonirrigation season, I think it
 3 would probably apply in that case. But when
 4 you're above Milner, you're probably taking trust
 5 water, you're probably going to have to look at
 6 the five criteria, whether the trust criteria
 7 empty significantly reduce the flow of the hydro
 8 power line, but you wouldn't be subject to this
 9 mitigation.

10 MALE SPEAKER: But then you're coming right
 11 again in conflict. It seems to me that they're
 12 after the groundwater pumpers, and it appears that
 13 that type of project would enhance that rather
 14 than diminish it if their criteria for pumping it
 15 out is correct.

16 MODERATOR: And if you went back to the five
 17 public interest criteria, if it indeed was in the
 18 public interest to take the water away from hydro
 19 generation during that winter period and put it
 20 into the groundwater for recharge, then it should
 21 be approved [unintelligible] -- public interest
 22 criteria.

23 Elaine?

24 ^{ELANE}_{MARTIN} FEMALE SPEAKER: Just maybe for interest of
 25 those people that were thinking about doing some

1 of this [unintelligible], one of the gentlemen at
 2 last night's meeting felt that this mitigation was
 3 just not far enough or wide enough and suggested
 4 that the law changed so that the fish could be
 5 mitigated in the April or May/June flows also.

6 And so you're going to have to put in
 7 your suggestions for the mitigation if you want to
 8 balance out some of it because they really are
 9 suggesting very, very strongly that the mitigation
 10 hearings is much too narrow and needs to be spread
 11 to fish flows in June also.

12 MODERATOR: The Northwest Power Planning
 13 Council's fish watch, which probably would occur
 14 on dry years in the April to June period. And the
 15 suggestion would be made as to projects, in order
 16 to be in the public interest, might have to be
 17 envisioned to make up water for that fish watch.
 18 That was how broad that person viewed the public
 19 interest criteria.

20 Again, that's what we're asking for.
 21 Tom?

22 ^{Tom} MALE SPEAKER: One thing, Norm, on this
 23 ^{Nelson} gentleman's example. I don't think that the
 24 surface water diversions for recharge above Milner
 25 are part of the trust waters. To be part of the

1 trust waters, the water has to be made available
 2 by reason of the subordination provision, and
 3 there's no water right at Milner. That's a zero
 4 flow under the state water plan. So the surface
 5 water diversion above Milner would not be subject
 6 to those criteria.

7 Now, the EPA may have something to say
 8 about it, but I don't think this is the problem
 9 under the agreement.

10 ^{NM} MODERATOR: Good. I'm glad it's on tape.
 11 That makes it easy.

12 ^{ELaine} FEMALE SPEAKER: Norm, we had one lawyer in
 13 ^{Martin} the audience last night. We've got another one
 14 tonight. Could we ask him how he would use the
 15 first-come, first-serve doctrine?

16 MODERATOR: Will you yield?

17 MALE SPEAKER: Sure.

18 ^{ELaine} FEMALE SPEAKER: It has really helped. A
 19 ^{Martin} lot of us would like to say, there are some small
 20 projects [unintelligible] that are in the
 21 emergency situation, that we're talking of 10, 20,
 22 30 acres, that really need to be processed. But
 23 that if a larger project earlier says, well,
 24 that's all right, go ahead and process them first,
 25 then they're speculative. And they lose their

1 water right because they allowed the later guy to
2 go first.

3 Is there some way that we can get
4 around the first-come, first-serve doctrine in
5 order to process the emergency cases and the
6 smaller cases, or are we bound by law to go
7 first-come, first-serve no matter what?

8 ^{Tom Nelson} MALE SPEAKER: Well, I don't think that the
9 priority doctrine operates strictly on trust

10 waters. My view is, everything else being equal,
11 the older of two projects, one of which can
12 develop and one of which can't, should develop.

13 But if you look at full economic
14 development and benefit to the state and local
15 economy and all the criteria, it seems to me that
16 what you want to end up with is probably the best
17 project out of the whole gamut.

18 I don't know how you can make that
19 decision ahead of getting a record made. In other
20 words, I don't know what creates an emergency for
21 30 acres of development. But until you have some
22 kind of a record on which you can base a better,
23 best, and terrible analysis, I think you'll just
24 have to wait until you get started.

25 ^{Elaine} FEMALE SPEAKER: Well, I think we kind of

1 agree that the best projects should be the one
2 that hits the ground, period. But how do we get
3 around all the lawsuits that the guy earlier can
4 have if he doesn't get his chance to prove he was
5 best and fight for it?

6 ^{Tom Nelson} MALE SPEAKER: Well, my feeling is that age
7 has to be one of the criteria that you use to sort
8 the first cut. I think distance from the river
9 would be another. And we may have to give the
10 older projects a shot at proving they are the best
11 or you're going to run into that very problem.
12 But to me, the ultimate cutting edge is the best,
13 not the earliest.

14 ^{Elaine Martin} FEMALE SPEAKER: And you think we can stay
15 out of court if we give them some guidelines
16 [unintelligible].

17 ^{Tom Nelson} MALE SPEAKER: We won't stay out of court.
18 We just might have a better chance of making it
19 stick if that's the way you work it.

20 MODERATOR: Very well put.

21 Now, the mitigation that you were
22 describing for the pumping to offstream storage
23 that is talked about in Policy 32I of the amended
24 water plan is not the mitigation that is addressed
25 in your Issue 7.

1 That one is -- the question being, one,
 2 if you now issue permits with the understanding
 3 that our data shows 600 cfs of firm trust water,
 4 and we issue permits for ground water pumping on
 5 the aquifer, if that 600 cfs was not properly
 6 calculated or if there's a worst year, or a
 7 sequence of years in terms of dryer than we
 8 expected in that analysis, and we indeed with
 9 these new filings that are issued, that were
 10 issued with the 600 cfs trust water, filed alone
 11 at 3900 cfs or the 5600 cfs [unintelligible]
 12 forward, how is the state going to then augment
 13 the river flow so we don't violate that?

14 And it could be as an attorney told us
 15 last night, the state could have some financial
 16 liability if that happened. Do we look to the
 17 applicants, the permit holders, and we issue the
 18 permits to provide some mechanism for augmenting
 19 the flow in case that happens?

20 As your issue paper says, it may be a
 21 number of months or a number of years before the
 22 effect of shutting off a well is felt in the
 23 river. So just shutting off the junior user when
 24 the river starts below the minimum flow doesn't
 25 help. You've got to have a way of augmenting.

1 The [unintelligible] conditions will
 2 require that, force people as a condition of the
 3 permit to provide water to the water bank, to buy
 4 the money for approval, for seeking funds to be
 5 available to buy water rights; pay for the
 6 damages. How do you respond?

7 *George Lemmon* MALE SPEAKER: I would like to speak to this
 8 recharge situation and the flow of the
 9 Snake River, if I may. Our water is dropping off
 10 this year down below what it was last year. In
 11 other words, we're approaching an all-time low in
 12 our aquifer discharge.

13 Now, when A and B Irrigation, isn't it,
 14 that is planning on a large increase in pump
 15 water, or is it some other irrigation district up
 16 here in the central, over the aquifer?

17 *Earl Corless* MALE SPEAKER: There is a plan to develop
 18 12,000 acres within the boundaries of A and B,
 19 yes.

20 *N.C.H.* MODERATOR: Yes, the application has been
 21 made.

22 *George Lemmon* MALE SPEAKER: That is basically
 23 appropriated water as far as Hagerman Valley is
 24 concerned, that they'll be interrupting. We had a
 25 higher flow last year than we had the year before,

1 but it looked like we were about to approach the
2 low flow that we've had for the last 20 years.

3 Now, if they're allowed to take that
4 water out of our water, we feel that they should
5 join the aquifer -- lower Snake River aquifer
6 recharge and put the same amount of water back
7 into the aquifer that they removed from it.

8 There's several advantages to recharging that
9 aquifer and maintaining an even flow for hydro
10 power generation provisions for fish movements and
11 another things.

12 *NY* MODERATOR: Now, the water rights you're
13 saying would be impacted and not the hydro
14 rights of Idaho Power.

15 *George Lemmon* MALE SPEAKER: I'm saying our water rights
16 will be affected.

17 *NY* MODERATOR: Your irrigation and fish
18 propagation from the springs themselves.

19 MALE SPEAKER: Yes.

20 MODERATOR: And so under the law that's in
21 effect today and will remain in effect in July,
22 from the old original criteria said will the
23 project impact an existing right? So we'll
24 need -- the judgement will need to be made by the
25 director as to whether it will indeed impact that

1 right, and if so, then it could not be approved

2 without conditions --

3 *George Lemmon* MALE SPEAKER: In the past, we have not been

4 able to prove that this well affects this stream

5 and have not been in court been able to protect

6 our water rights. So we have got to have some

7 protection from somewhere, and we don't want to

8 stop development. That isn't our trying at all.

9 But this excess water that is going

10 down the Snake River over Milner Dam should be put

11 back into the aquifer to bring that water flow

12 back up to maintain an even flow on the river.

13 Now, here is a peculiar thing that has

14 been happening that most people don't understand.

15 Every time a sprinkler system goes in over that

16 aquifer, it evaporates a larger percentage of the

17 water that they use, whether it comes from well

18 water or whether it comes from canal water.

19 And that water goes in the air, and it

20 is transported back up to the mountains in the

21 Southeast Idaho where it falls back on the ground,

22 comes back down to the river instead of coming

23 down the aquifer.

24 In other words, every time a sprinkler

25 is put in, it transfers water from the aquifer to

1 the Snake River, which holds in the runoff from
 2 the spring and is not put back into the aquifer.
 3 And we need to get some method of getting that
 4 water back in to even the flow of the Snake River,
 5 because the springs maintain that water flow for
 6 the power production in the summertime and make it
 7 even flow so that their power plants can utilize
 8 that water that is going down there instead of it
 9 going past as overflow.

10 ^{Nya/} MALE SPEAKER: There is another situation
 11 ^{Hoffman (S)} because the people who are losing their water
 12 rights there in Hagerman Valley are taxing
 13 themselves and spending that money to recharge the
 14 aquifer so that the guys up on top can pump it
 15 back out free and use it again.

16 The people who are depleting the
 17 aquifer are not willing to participate in the
 18 recharge program, the majority saying that some of
 19 these projects developed up there and pumped that
 20 water out should have an obligation to participate
 21 in that recharge, if the guy that is losing his
 22 water rights already participated in it.

23 MODERATOR: So I hear suggested that perhaps
 24 as permits are issued, there ought to be
 25 conditions required of participation of the

1 recharge.

2 ^{Nya/} MALE SPEAKER: Yes. I would say it would be
 3 ^{Hoffman (S)} vigilant to have a fee on these new water rights.
 4 or recharge. And this project has been before the
 5 state for years; very feasible, just haven't had
 6 the money to do it, had a good source of money to
 7 do it. And it's people who is going to be using
 8 it, pay for it.

9 MODERATOR: It's probably a good legal
 10 question, whether that's something that can be
 11 done without additional statutory authority.
 12 There is a proposed water marketing bill that was
 13 printed last legislative session, House Bill 233,
 14 that was not approved. But there's an interim
 15 study committee from the legislature that is
 16 looking at water marketing, and this idea of
 17 augmentation is a part of that bill.

18 So it may take additional legislation.
 19 But to the extent that you can see how these rules
 20 could be used to resolve that kind of problem, we
 21 would like your suggestion.

22 I've been through the legislation with
 23 you. I think I've pretty well touched everything
 24 that is in the issue paper with you this evening.
 25 With the target date, trying to put together a

1 draft to come back to you with for adoption in the
2 Administrative Procedures Act is June 15. That's
3 a Saturday, so June 17.

4 If you've got ideas that you haven't
5 shared with us, to the extent you have shared with
6 us tonight, you've got the record on the tape,
7 we'll use those ideas and consider them as we form
8 this draft. If you've got other ideas, mail them
9 to us. If you get them here by the 17th, they'll
10 for sure be considered. If you get them in after
11 that date, we'll consider them if we're not too
12 far along.

13 The legislation is effective July 1.
14 The issue paper talks about emergency rules, and
15 there is a provision under the Administrative
16 Provisions Act or Administrative Procedures Act to
17 adopt emergency rules. An agency would be
18 stepping into a meat grinder to adopt emergency
19 provisions, rules if it wasn't very clear-cut of
20 what those rules needed to say. So we won't do
21 that unless [unintelligible].

22 Even if we did, we would have to
23 immediately start to form a process under the
24 Administrative Procedures Act and have it
25 completed in 120 days. So they're only good for

1 120 days. I don't expect to see them adopted

2 [unintelligible]. It is mentioned.

3 ^{ELAIN} FEMALE SPEAKER: Norm, there are signup
4 ^{Hoffman} sheets, so everybody can get a copy.

5 MODERATOR: We can stop right here.

6 (Proceedings concluded.)

7 -oo0oo-

REPORTER'S CERTIFICATE

I, Dianne E. Cromwell, Official Court
Reporter, County of Ada, State of Idaho, hereby
certify:

That I am the reporter who transcribed
the proceedings had in the above-entitled action
in machine shorthand and thereafter the same was
reduced into typewriting under my direct
supervision; and

That the foregoing transcript contains a
full, true, and accurate record of the proceedings
had in the above and foregoing cause, which was
heard at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set
my hand October 6, 2008.

Dianne E. Cromwell, Official Court Reporter
CSR No. 21

84 [2] - 16:3	addressed [1] - 26:24 addresses [1] - 19:24 Administrative [1] - 33:3, 33:16, 33:17, 33:25 adopt [2] - 33:18, 33:19 adopted [1] - 6:3, 8:2, 34:2 adoption [1] - 33:2 advantages [1] - 29:8 advising [1] - 19:25 affect [2] - 10:25, 21:16, 21:19 affected [1] - 28:16 affecting [2] - 3:5, 7:8 effects [2] - 6:12, 30:4 afford [1] - 8:6 age [1] - 28:6 agency [1] - 33:10 agree [1] - 26:1 Agreement [1] - 20:3 agreement [2] - 9:17, 24:9 agreements [1] - 12:1 ahead [2] - 24:24, 25:19 air [1] - 30:20 algebraically [1] - 19:10 all-time [1] - 28:11 allowed [2] - 25:1, 29:3 alone [1] - 27:10 alternative [1] - 6:20 ameliorate [1] - 6:21 amended [2] - 20:2, 26:23 amount [2] - 14:25, 29:5 analysis [2] - 25:23, 27:8 answer [2] - 5:21, 9:21, 12:4 applicant [2] - 13:17, 13:23, 14:8, 14:14, 14:17, 15:3 applicants [2] - 9:21, 27:17 application [2] - 14:24, 15:15, 15:21, 16:25, 28:20 applications [2] - 10:7, 10:17 applied [2] - 19:8, 19:15 approach [1] - 29:1 approaching [1] - 28:11 appropriate [1] - 28:22 approval [2] - 8:7, 11:10, 19:14, 19:22, 28:4 approved [2] - 5:13, 21:5, 22:23, 30:1, 32:15 April [2] - 23:5, 23:14 aquifer [2] - 9:19, 9:20, 9:23, 9:24, 9:25, 12:16, 21:21, 27:5, 28:12, 28:16, 29:5, 29:7, 29:8, 30:12, 30:17, 30:24, 31:1, 31:3, 31:15, 31:18 areas [1] - 9:1 articles [1] - 2:21 artificial [1] - 21:17 assistant [1] - 3:17 attorney [1] - 27:14	attractive [1] - 2:19 audience [1] - 24:13 augment [1] - 27:12 augmentation [1] - 32:17 augmenting [2] - 27:18, 27:25 authority [1] - 32:12 automatically [1] - 16:7 availability [2] - 6:19, 9:12, 10:9, 12:11, 18:24 available [2] - 8:4, 24:2, 28:5	B balance [2] - 3:15, 18:10, 18:11, 23:8 bank [1] - 28:3 base [1] - 25:27 based [2] - 4:8, 19:11 Basin [2] - 7:2, 8:12, 12:2 basis [1] - 12:24 beauty [1] - 4:23 belief [1] - 8:14 below [2] - 21:13, 21:25, 27:24, 28:10 benefit [2] - 2:17, 3:11, 25:14 benefits [2] - 6:14, 18:22 best [1] - 17:15 best [2] - 25:16, 25:23, 26:1, 26:5, 28:10, 28:12 better [2] - 26:22, 28:18 between [2] - 3:15, 6:9, 9:5, 20:7 bill [2] - 5:10, 5:25, 10:9, 32:13, 32:18 Bill [1] - 32:14 bill [2] - 14:17 board [1] - 2:5 Board [1] - 19:25 Boise [1] - 35:16 bound [1] - 25:6 boundaries [1] - 28:18 bring [1] - 30:12 broad [2] - 4:16, 23:18 build [2] - 17:8, 17:16, 17:17 building [2] - 17:21, 17:22 built [1] - 15:5, 15:10, 17:11, 17:23 burden [2] - 13:11, 13:13, 13:18, 14:2 Burley [1] - 12:17 buy [2] - 22:18, 28:3, 28:5	19:1 cfs [2] - 27:3, 27:5, 27:9, 27:10, 27:11 Chairman [1] - 1:13 chance [2] - 26:4, 28:18 change [1] - 17:16 changed [1] - 23:4 changing [2] - 17:23, 17:24 check [2] - 18:22, 18:25 checkoff [1] - 18:21 checks [2] - 19:2, 19:3 children [1] - 4:14 Citizens [1] - 2:13 citizens [2] - 4:9, 4:11 citizenship [1] - 2:14 city [2] - 2:22, 11:1, 11:17 classified [2] - 8:20, 10:3, 10:8 clear [1] - 33:20 clear-out [1] - 33:20 cold [1] - 21:6 coming [2] - 4:21, 20:5, 22:12, 30:23 comment [1] - 18:3 comments [1] - 19:18 commercially [1] - 17:14 commercially-established [1] - 17:14 common [1] - 3:20 community [1] - 2:19 company [1] - 21:7 completed [1] - 34:1 compliance [1] - 19:8 complies [1] - 19:6 computer [1] - 9:19 conceivably [1] - 12:14 concept [2] - 3:9, 3:19, 4:7 concern [2] - 2:15, 4:25 concerned [2] - 2:18, 4:4, 4:21, 28:23 concluded [1] - 34:7 condition [2] - 11:7, 21:5, 28:2 conditions [2] - 19:22, 28:1, 30:2, 32:1 confine [1] - 12:22 conflict [2] - 3:16, 21:19, 22:13 consider [2] - 6:4, 6:8, 6:11, 9:22, 33:8, 33:12 consideration [2] - 4:25, 6:9, 11:19 considered [2] - 14:6, 33:11 considers [1] - 5:21 constitutes [2] - 14:20, 20:20 Constitution [2] - 3:22, 3:23, 4:3 contains [1] - 35:13 contrast [1] - 3:9 copy [2] - 2:9, 34:5 corporation [1] - 2:6 correct [2] - 10:12, 22:17 cost [1] - 6:20 Council's [1] - 23:13 County [1] - 35:8 court [2] - 15:2, 28:15, 26:17, 30:5 Court [2] - 35:5, 35:22	cover [1] - 12:19 creates [1] - 25:20 trust [1] - 8:16, 8:20, 9:3, 10:3, 10:15, 21:14, 22:4, 22:8, 23:25, 24:1, 26:9, 27:3, 27:10 Crest [1] - 2:3 criteria [2] - 5:12, 5:13, 5:14, 6:2, 6:5, 6:10, 7:8, 7:24, 12:8, 14:5, 14:7, 14:9, 16:14, 16:19, 17:1, 18:13, 18:20, 19:7, 19:8, 22:8, 22:16, 22:19, 23:19, 24:6, 25:15, 26:7, 28:22 Cromwell [1] - 1:22, 35:5, 35:22 CSR [2] - 1:23, 35:23 curious [1] - 7:20 cut [2] - 28:5, 33:20 cutting [1] - 26:12	D Dam [2] - 20:7, 30:11 damages [1] - 28:6 date [2] - 9:10, 9:18, 12:21, 12:25, 13:2, 13:7, 27:3 date [2] - 16:2, 33:1, 33:12 days [2] - 34:1, 34:2 dabit [1] - 21:17 decent [1] - 8:5 decide [2] - 9:8, 13:25 decision [2] - 9:10, 15:9, 25:19 decisions [2] - 5:4, 12:23, 13:8 Declaration [1] - 4:2 define [1] - 20:16 defined [2] - 2:14, 3:3, 7:11, 9:20 defining [1] - 4:19 definition [2] - 3:1, 20:19 delay [2] - 9:5, 12:8 department [2] - 14:24, 15:8 Department [1] - 4:24 department's [2] - 5:3, 11:10 depleting [1] - 31:17 describe [2] - 14:17, 15:5 described [1] - 15:10 describes [1] - 14:13 describing [1] - 28:22 design [1] - 18:4 designed [1] - 7:23 detail [2] - 14:16, 15:5, 15:10, 17:22 detailed [1] - 7:17, 17:4, 17:9 details [1] - 7:11 determination [2] - 6:7, 18:17 determine [2] - 6:7, 9:12 determined [1] - 19:16 develop [2] - 25:12, 28:17 developed [2] - 11:11, 11:12, 16:10, 18:11, 18:12, 18:18, 17:15, 31:20 development [2] - 6:25, 7:4, 7:23, 12:9, 12:14, 25:14, 25:21,
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30:8 Dianne [j] - 1:22, 35:5, 35:22 different [j] - 6:9, 10:5, 10:6, 17:19, diminish [j] - 22:16 direct [z] - 6:14, 35:11 director [j] - 5:18, 5:21, 5:4, 8:4, 18:16, 18:18, 19:11 directors [j] - 2:5, 28:25 discharge [j] - 28:12 distance [j] - 28:8 district [j] - 15:2, 28:15 diversion [z] - 21:8, 24:5 diversions [j] - 23:24 divide [j] - 6:15 doctrine [j] - 24:15, 25:4, 25:9 document [j] - 14:25 documents [j] - 3:17 done [j] - 32:12 down [j] - 28:10, 30:11, 30:23, 30:24, 31:9 draft [j] - 7:11, 33:2, 33:9 draw [j] - 7:19 drawing [j] - 17:21 drawn [j] - 17:10 dropping [j] - 28:9 dry [j] - 23:14 dryer [j] - 27:7 dual [j] - 18:8 during [z] - 22:4, 22:21 dullies [j] - 4:10	7:14 envisioned [j] - 23:17 EPA [j] - 24:7 equal [j] - 25:10 equitable [j] - 3:14 essentially [j] - 14:24 established [j] - 4:5, 17:3, 17:14 et [j] - 9:1, 10:5, 19:1 evaporates [j] - 30:17 evening [j] - 32:25 event [j] - 8:23 evidence [j] - 14:4 exact [z] - 5:9, 5:20 example [z] - 10:12, 23:23 excess [j] - 30:10 exchange [j] - 10:24, 10:25, 11:12, 12:1 exchange-type [j] - 12:1 exchanging [j] - 11:20 existing [j] - 6:12, 10:13, 29:23 expect [j] - 34:2 expected [j] - 27:7 expecting [j] - 12:3 expression [j] - 8:17 expressions [j] - 3:6 extent [j] - 16:9, 32:20, 33:6	5:13, 5:19, 6:1, 6:5, 6:9, 7:2, 7:7, 14:5, 14:7, 14:9, 16:25, 18:13, 18:19, 19:2, 22:7 Flats [j] - 11:3 flexibility [j] - 18:1 flow [z] - 5:17, 9:6, 10:4, 10:5, 21:6, 21:11, 21:12, 22:9, 24:4, 27:12, 27:19, 27:24, 28:8, 28:24, 29:1, 29:9, 30:12, 30:13, 31:5, 31:6, 31:8 flows [z] - 23:5, 23:11 fly [j] - 22:5 follow [j] - 7:12 force [z] - 14:13, 28:2 forgetting [j] - 35:13, 35:15 foreseeability [j] - 6:20 form [z] - 33:8, 33:24 forward [z] - 14:14, 27:11 Four [j] - 6:24 four [j] - 7:6 four-year [j] - 7:6 free [j] - 31:16 front [j] - 18:8 full [j] - 6:24, 9:14, 19:8, 18:9, 20:21, 25:13, 35:14 fully [z] - 18:4, 19:6 funds [j] - 28:4	Hagerman [j] - 2:13, 2:24, 4:20, 28:23, 31:13 hand [j] - 35:18 handed [j] - 5:10 health [j] - 3:7 healthful [j] - 2:19 hear [j] - 31:24 heard [j] - 35:18 hearings [j] - 23:10 heart [j] - 6:3 help [j] - 9:20, 9:21, 12:22, 27:24 helped [j] - 24:18 hereby [j] - 35:6 hereunto [j] - 35:17 high [j] - 7:24 higher [j] - 28:24 himself [j] - 5:19 historio [j] - 6:12, 6:6, 11:13 historically [j] - 14:6 Historically [j] - 14:23 history [j] - 4:6 hits [j] - 26:2 hold [z] - 9:2, 13:25 holds [j] - 31:2 hope [j] - 4:23 House [j] - 32:14 hydro [j] - 5:17, 6:12, 9:9, 20:6, 21:2, 21:8, 22:3, 22:20, 29:9, 29:13 hydrologic [j] - 9:18	Initial [j] - 5:4 Instance [j] - 13:11 Instead [z] - 30:23, 31:9 intent [j] - 14:12 Interest [z] - 2:5, 2:15, 3:2, 3:3, 3:10, 3:13, 3:14, 3:16, 3:19, 4:5, 4:8, 4:11, 4:12, 4:16, 4:20, 5:5, 7:7, 17:13, 20:25, 22:19, 22:20, 22:24, 23:16, 23:19 Interim [j] - 11:10, 12:24, 32:15 Interpreted [j] - 3:24 Interrupting [j] - 28:24 Irrigation [j] - 11:3, 15:18, 28:15, 28:17 Irrigation [j] - 28:13 Issue [j] - 11:7, 19:23, 28:25 Issue [j] - 5:4, 14:5, 15:25, 19:20, 19:24, 27:2, 27:4, 27:17, 27:20, 32:25, 33:15 Issued [j] - 27:9, 31:25 Issues [j] - 11:6 Item [j] - 6:1			
E	earliest [j] - 26:13 east [j] - 12:17 easy [j] - 24:11 economic [j] - 6:17, 6:24, 9:14, 25:13 economics [j] - 7:16 economy [z] - 6:16, 25:15 edge [j] - 26:12 effect [j] - 10:23, 12:13, 13:5, 27:22, 29:21 effective [j] - 33:14 effectively [j] - 12:8 eight [j] - 18:8 electric [j] - 6:18, 9:13 electricity [j] - 12:12, 12:13, 18:23 emergency [z] - 24:21, 25:5, 25:20, 33:15, 33:18, 33:19 empty [j] - 22:8 end [j] - 25:16 energy [z] - 6:20, 9:13 engineer [j] - 15:18 engineers [j] - 15:12 English [j] - 3:20 enhance [z] - 2:22, 22:15 entertaining [j] - 18:10 ENTITLED [j] - 1:1 entitled [z] - 18:15, 35:9 enumerated [j] - 18:15 environmental [j] -	F	fact [j] - 21:21 factor [j] - 18:14 factual [j] - 10:24 fall [j] - 15:20 fair [j] - 14:22 Falkemashot [j] - 11:3 FALLS [j] - 1:2, 2:1 falls [j] - 30:22 Falls [j] - 8:12, 9:17, 22:2 family [z] - 6:22, 18:1 far [j] - 23:3, 28:23, 33:13 farm [j] - 6:22, 17:9, 17:11, 17:15, 19:1 feasible [j] - 32:6 federal [j] - 7:12 fee [z] - 32:4, 32:16 felt [j] - 2:5, 23:2, 27:22 FEMALE [j] - 20:16, 20:23, 20:25, 22:24, 24:12, 24:18, 25:25, 26:14, 34:4 fight [z] - 25:1, 26:5 file [j] - 15:20 filed [j] - 16:22, 16:24, 27:10 filings [j] - 27:8 fill [j] - 14:23 final [j] - 19:20 financial [j] - 27:15 firm [j] - 27:3 Firm [j] - 9:6 first [j] - 5:12, 6:5, 14:7, 14:9, 16:19, 16:25, 24:15, 24:24, 25:2, 25:4, 25:7, 26:8 first-come [j] - 24:15, 25:4, 26:7 first-curve [j] - 24:15, 25:4, 25:7 fish [j] - 23:4, 23:11, 23:13, 23:17, 23:17 five [j] - 5:7, 6:12	G	gamut [j] - 25:17 gathered [z] - 9:18, 12:21 Gauge [j] - 7:3, 8:13, 21:12 general [z] - 3:24, 19:22 generate [j] - 12:12 generation [j] - 21:8, 22:21, 29:10 gentlemen's [j] - 23:23 gentlemen [j] - 23:1 given [j] - 15:23 glad [z] - 12:3, 24:10 global [j] - 2:4 government [j] - 4:4, 4:10, 7:12 government's [j] - 4:8 grandchildren [j] - 4:14 granted [j] - 18:7 greater [z] - 14:4, 18:15, 18:19 greatest [z] - 3:17, 3:18 grinder [j] - 33:19 ground [j] - 8:9, 12:19, 26:2, 27:4, 30:22 groundwater [j] - 8:17, 8:19, 8:24, 10:23, 11:20, 22:14, 22:22 group [z] - 2:13, 2:18 guidelines [z] - 7:17, 26:15 guy [j] - 25:1, 26:3, 31:22 guys [j] - 31:15	Idaho [j] - 1:14, 6:19, 7:1, 12:9, 17:14, 29:14, 30:22, 35:6, 35:16 IDAHO [j] - 2:1 idea [j] - 4:4, 13:4, 14:13, 18:19, 19:24, 20:20, 32:17 Ideally [j] - 3:12 Ideas [j] - 15:16, 18:11, 19:15, 33:5, 33:8, 33:9 Immediately [j] - 33:24 Impact [j] - 6:17, 6:21, 7:14, 9:12, 12:11, 19:17, 21:12, 21:14, 29:23, 29:25 Impacted [j] - 29:13 Impacts [j] - 7:16 Improves [j] - 12:25 IN [j] - 35:17 Include [j] - 8:9 Included [j] - 8:19 Including [j] - 5:14 Incorporate [j] - 20:13 Incorporation [j] - 2:21 Increase [j] - 28:14 Indeed [j] - 22:19, 27:8, 29:25 Independence [j] - 4:2 Indication [j] - 18:6 Indirect [j] - 6:15 Indirectly [j] - 8:21 Individual's [j] - 3:10 Industry [j] - 17:3 Infeasible [j] - 8:6 Information [j] - 8:3, 9:7, 13:13, 14:15, 14:20, 14:21, 14:25, 15:24, 19:11 Informs [j] - 7:4 Infrastructure [j] - 6:2	Initial [j] - 5:4 Instance [j] - 13:11 Instead [z] - 30:23, 31:9 intent [j] - 14:12 Interest [z] - 2:5, 2:15, 3:2, 3:3, 3:10, 3:13, 3:14, 3:16, 3:19, 4:5, 4:8, 4:11, 4:12, 4:16, 4:20, 5:5, 7:7, 17:13, 20:25, 22:19, 22:20, 22:24, 23:16, 23:19 Interim [j] - 11:10, 12:24, 32:15 Interpreted [j] - 3:24 Interrupting [j] - 28:24 Irrigation [j] - 11:3, 15:18, 28:15, 28:17 Irrigation [j] - 28:13 Issue [j] - 11:7, 19:23, 28:25 Issue [j] - 5:4, 14:5, 15:25, 19:20, 19:24, 27:2, 27:4, 27:17, 27:20, 32:25, 33:15 Issued [j] - 27:9, 31:25 Issues [j] - 11:6 Item [j] - 6:1
J	Join [j] - 28:5 Judgement [j] - 29:24 Judgment [j] - 8:5 July [j] - 15:21, 16:3, 29:21, 33:14 June [j] - 23:11, 23:14, 33:3, 33:4	K	kind [j] - 13:8, 18:9, 20:10, 25:22, 25:25, 32:21 knows [j] - 14:19	L	language [z] - 5:9, 5:20 large [j] - 2:18, 3:8, 3:25, 15:17, 28:14 larger [z] - 24:23, 30:17 last [j] - 5:9, 5:25, 18:13, 23:2, 24:13, 27:16, 28:10, 28:25, 29:2, 32:14 law [j] - 3:20, 3:21, 6:16, 25:6, 29:20 lawsuits [j] - 26:3 lawyer [j] - 24:12 leads [j] - 16:1 legal [j] - 6:10, 14:3, 32:10 legislation [j] - 5:10, 18:14, 32:19, 32:23, 33:14 legislative [z] - 14:12, 32:14 legislature [z] - 20:3, 32:16 letter [j] - 16:6 level [j] - 6:9, 7:15, 14:20, 20:12 liability [j] - 27:16 line [z] - 18:13, 22:10 litigated [j] - 23:5 litigation [j] - 22:11 live [z] - 2:20, 4:13, 4:14 lobby [j] - 23:4		

local (j) - 3:2, 4:19, 5:5, 5:14, 6:16, 25:14 look (j) - 4:10, 5:15, 7:16, 10:14, 11:25, 22:7, 25:13, 27:16 looked (j) - 29:1 Looking (j) - 16:12 looking (j) - 32:16 looks (j) - 18:19, 18:21 loose (j) - 5:1 loss (j) - 13:16, 24:25 losing (j) - 31:12, 31:22 lost (j) - 20:5 low (j) - 21:6, 28:11, 29:1 lower (j) - 29:5 lucky (j) - 18:4	models (j) - 9:19, 10:1 money (j) - 18:5, 18:7, 20:23, 28:4, 31:14, 32:7 months (j) - 27:21 Most (j) - 17:10 mostly (j) - 30:15 mountains (j) - 30:21 movements (j) - 29:10 moving (j) - 11:22 MR (j) - 2:8, 2:11, 5:3, 5:25, 7:25, 8:11, 8:22, 9:4, 10:1, 10:11, 11:4, 11:22, 12:3, 12:20, 13:7, 13:9, 13:17, 13:22, 13:24, 14:2, 16:8, 16:12, 16:17, 16:21, 16:24, 18:3, 20:18, 20:24, 21:2, 21:23, 22:2, 22:16, 23:12, 23:22, 24:10, 24:16, 24:17, 25:8, 26:6, 26:17, 26:20, 28:20, 29:12, 29:17, 29:20, 31:24, 32:10, 34:6 multiple (j) - 6:25, 9:14 Murphy (j) - 7:3, 8:13, 20:7, 21:12 must (j) - 6:11, 15:9	offering (j) - 3:4 Official (j) - 35:5, 35:22 offstream (j) - 21:4, 21:17, 25:22 old (j) - 3:20, 29:22 older (j) - 25:11, 28:10 One (j) - 4:9, 11:8, 21:2, 23:22 one (j) - 5:22, 6:6, 6:17, 10:8, 13:3, 17:16, 17:23, 19:3, 19:24, 22:21, 23:1, 24:12, 24:13, 25:11, 25:12, 26:1, 26:7, 27:1 operate (j) - 34:8 operates (j) - 25:9 operating (j) - 15:11 operation (j) - 15:6 opportunity (j) - 16:5 order (j) - 9:8, 9:11, 18:5, 23:15, 25:5 original (j) - 28:22 ought (j) - 9:15, 19:6, 31:25 overflow (j) - 31:10 own (j) - 2:21, 3:22	plan (j) - 20:1, 24:4, 25:24, 28:17 planning (j) - 28:14 Planning (j) - 23:12 plans (j) - 15:4, 15:13, 17:2, 17:4, 17:9, 17:21, 17:22 plants (j) - 31:8 Pocatello (j) - 11:2, 11:18 point (j) - 9:5, 11:2, 11:18, 13:3, 13:9, 16:7 Policy (j) - 20:1, 26:23 policy (j) - 3:11, 3:12, 7:5, 12:4 pond (j) - 17:16, 17:23 portion (j) - 15:15 position (j) - 3:1 positions (j) - 2:17 potential (j) - 6:14 Power (j) - 1:14, 12:9, 23:12, 29:14 power (j) - 5:17, 6:13, 9:9, 18:24, 20:5, 20:14, 21:2, 21:7, 22:9, 29:10, 31:7, 31:8 practical (j) - 10:11 Preamble (j) - 3:22 preserve (j) - 4:13 pretty (j) - 32:24 Pretty (j) - 18:7 prevail (j) - 3:16 price (j) - 9:12 principal (j) - 4:10 principles (j) - 7:15 printed (j) - 32:14 priority (j) - 25:9 private (j) - 3:10, 3:14 problem (j) - 4:19, 24:8, 26:11, 32:21 Procedures (j) - 33:3, 33:17, 33:25 PROCEEDINGS (j) - 1:8 Proceedings (j) - 34:7 proceedings (j) - 35:9, 35:14 process (j) - 24:24, 25:6, 33:24 processed (j) - 24:22 produce (j) - 13:13 production (j) - 31:7 program (j) - 31:19 project (j) - 6:11, 6:12, 7:13, 8:8, 14:9, 14:18, 15:5, 16:9, 15:17, 15:18, 16:9, 17:25, 18:4, 18:21, 20:11, 21:3, 21:20, 21:24, 22:15, 24:23, 25:17, 29:23, 32:5, 14:22, 19:17, 20:5, 23:15, 24:20, 26:11, 28:1, 28:10, 31:20 promote (j) - 3:23, 3:25 promotion (j) - 6:22, 6:24, 9:13 proof (j) - 13:16, 14:2, 14:4, 15:20 propagation (j) - 29:19 properly (j) - 27:5 proposed (j) - 6:15, 6:18, 7:3, 7:19, 18:21, 21:17, 32:13 proposing (j) - 21:24	protect (j) - 4:12, 38:30:5 protecting (j) - 4:4 protection (j) - 30:7 protest (j) - 13:12, 13:14, 13:16, 15:9, 16:5 protestant (j) - 13:11, 13:18, 13:22, 14:11, 14:19, 14:22, 15:24 prove (j) - 13:2, 13:18, 14:8, 19:2, 19:4, 26:4, 30:4 provide (j) - 14:4, 27:18, 28:3 providing (j) - 15:4, 18:16 proving (j) - 28:10 provision (j) - 24:3, 33:16 provisions (j) - 8:10, 28:10, 33:20 Provisions (j) - 33:17 public (j) - 2:4, 2:15, 2:17, 3:2, 3:6, 3:7, 3:8, 3:9, 3:13, 3:16, 3:19, 3:25, 4:1, 4:2, 4:7, 4:8, 4:12, 4:15, 4:20, 5:5, 6:2, 7:7, 20:25, 22:19, 22:20, 23:16, 23:18 public's (j) - 4:5 pump (j) - 9:5, 22:3, 28:14, 31:15 pumped (j) - 31:20 pumpers (j) - 22:14 pumping (j) - 22:16, 26:22, 27:4 purpose (j) - 2:22, 2:25, 20:19 purposes (j) - 10:11 put (j) - 9:15, 12:21, 16:7, 22:21, 23:6, 26:20, 29:6, 30:11, 31:1, 31:3, 33:1 putting (j) - 21:21
ma'am (j) - 20:15 machine (j) - 35:10 mail (j) - 33:9 main (j) - 2:16, 20:6, 21:25 maintain (j) - 8:25, 30:13 maintaining (j) - 2:19, 29:9 maintains (j) - 31:6 major (j) - 19:17 majority (j) - 31:19 makeup (j) - 8:13 MAL (j) - 2:4, 2:10, 2:12, 7:22, 8:9, 8:18, 8:23, 9:22, 10:2, 10:22, 11:16, 11:24, 12:7, 13:5, 16:1, 16:11, 16:15, 16:18, 16:22, 17:2, 21:16, 22:1, 22:12, 28:7, 28:17, 28:22, 29:15, 29:19, 30:3, 31:11, 32:3 March (j) - 20:2 marketing (j) - 32:13, 32:17 massaged (j) - 15:20 matter (j) - 10:7, 25:7 May/June (j) - 23:5 mean (j) - 3:24, 10:2, 10:6, 19:2, 19:3 meat (j) - 33:19 mechanism (j) - 27:16 meet (j) - 7:24 meeting (j) - 23:2 meets (j) - 5:11 mentioned (j) - 34:3 merit (j) - 17:5 met (j) - 14:9 method (j) - 31:4 might (j) - 2:13, 13:9, 15:15, 23:16, 28:18 miles (j) - 9:1, 12:16, 12:17 million (j) - 19:3 Milner (j) - 20:7, 23:24, 24:3, 30:11 minimal (j) - 14:25 minimum (j) - 21:11, 27:24 minus (j) - 19:9 mitigate (j) - 21:11 mitigation (j) - 11:8, 19:21, 19:25, 20:4, 20:11, 20:12, 20:16, 20:17, 20:21, 23:2, 23:7, 23:9, 26:21, 26:24	M narrow (j) - 23:10 natural (j) - 4:17, 4:23 necessary (j) - 8:7, 13:2, 13:13, 18:5 need (j) - 9:8, 9:10, 9:11, 10:14, 15:14, 15:24, 24:22, 29:24, 31:4 needed (j) - 14:21, 33:21 needs (j) - 18:11, 21:7, 23:10 Nelson (j) - 1:14 NELSON (j) - 13:9, 13:22, 23:22, 24:17, 25:8, 26:6, 26:17 new (j) - 4:25, 10:17, 13:12, 15:25, 17:4, 27:8, 32:4 next (j) - 5:8, 17:16, 17:24, 17:25, 18:13 night (j) - 24:13, 27:16 night's (j) - 23:2 noncompliance (j) - 19:9 nonirrigation (j) - 20:9, 22:4 Norm (j) - 20:16, 23:22, 24:12 normal (j) - 22:5 Norman (j) - 1:13 north (j) - 21:20 Northwest (j) - 23:12 nothing (j) - 17:7, 17:9 number (j) - 3:16, 24:5, 27:21	N page (j) - 5:9, 5:25, 14:24 Pallades (j) - 1:12 paper (j) - 10:24, 27:20, 32:25, 33:15 paraphrasing (j) - 5:8 pardon (j) - 3:4 part (j) - 13:3, 9:16, 13:10, 23:25, 32:16 participate (j) - 31:18, 31:21 participated (j) - 31:23 participation (j) - 32:1 particular (j) - 3:10, 13:12, 14:12, 15:12, 19:19, 20:10 past (j) - 11:1, 11:17, 30:3, 31:10 pay (j) - 13:19, 28:5, 32:9 peculiar (j) - 30:14 people (j) - 3:4, 3:5, 3:18, 18:4, 22:25, 28:2, 30:15, 31:12, 31:17, 32:8 per (j) - 7:5 percentage (j) - 30:17 percolations (j) - 6:24 perhaps (j) - 7:13, 12:24, 19:5, 19:7, 19:21, 21:3, 31:24 period (j) - 7:6, 22:21, 23:14, 26:2 periods (j) - 21:8 permil (j) - 18:7, 19:21, 21:8, 28:3 Permit (j) - 11:7 permits (j) - 6:1, 10:17, 11:10, 15:19, 27:2, 27:4, 27:18, 31:25 person (j) - 23:18 philosophy (j) - 5:4 phrase (j) - 3:23 place (j) - 20:4 places (j) - 4:13, 4:14, 12:2 placing (j) - 13:10	plan (j) - 20:1, 24:4, 25:24, 28:17 planning (j) - 28:14 Planning (j) - 23:12 plans (j) - 15:4, 15:13, 17:2, 17:4, 17:9, 17:21, 17:22 plants (j) - 31:8 Pocatello (j) - 11:2, 11:18 point (j) - 9:5, 11:2, 11:18, 13:3, 13:9, 16:7 Policy (j) - 20:1, 26:23 policy (j) - 3:11, 3:12, 7:5, 12:4 pond (j) - 17:16, 17:23 portion (j) - 15:15 position (j) - 3:1 positions (j) - 2:17 potential (j) - 6:14 Power (j) - 1:14, 12:9, 23:12, 29:14 power (j) - 5:17, 6:13, 9:9, 18:24, 20:5, 20:14, 21:2, 21:7, 22:9, 29:10, 31:7, 31:8 practical (j) - 10:11 Preamble (j) - 3:22 preserve (j) - 4:13 pretty (j) - 32:24 Pretty (j) - 18:7 prevail (j) - 3:16 price (j) - 9:12 principal (j) - 4:10 principles (j) - 7:15 printed (j) - 32:14 priority (j) - 25:9 private (j) - 3:10, 3:14 problem (j) - 4:19, 24:8, 26:11, 32:21 Procedures (j) - 33:3, 33:17, 33:25 PROCEEDINGS (j) - 1:8 Proceedings (j) - 34:7 proceedings (j) - 35:9, 35:14 process (j) - 24:24, 25:6, 33:24 processed (j) - 24:22 produce (j) - 13:13 production (j) - 31:7 program (j) - 31:19 project (j) - 6:11, 6:12, 7:13, 8:8, 14:9, 14:18, 15:5, 16:9, 15:17, 15:18, 16:9, 17:25, 18:4, 18:21, 20:11, 21:3, 21:20, 21:24, 22:15, 24:23, 25:17, 29:23, 32:5, 14:22, 19:17, 20:5, 23:15, 24:20, 26:11, 28:1, 28:10, 31:20 promote (j) - 3:23, 3:25 promotion (j) - 6:22, 6:24, 9:13 proof (j) - 13:16, 14:2, 14:4, 15:20 propagation (j) - 29:19 properly (j) - 27:5 proposed (j) - 6:15, 6:18, 7:3, 7:19, 18:21, 21:17, 32:13 proposing (j) - 21:24	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	Q	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
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quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16
quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	R	quality (j) - 4:21 questions (j) - 5:19, 5:23, 9:16	quality (j) - 4:21 questions (	

recharging (v) - 28:8 recognized (v) - 11:1, 11:19 recognizing (v) - 10:23 record (v) - 26:19, 26:22, 33:7, 33:14 RECORDING (v) - 1:1 reduce (v) - 6:16, 18:23, 22:9 reduced (v) - 35:11 reduces (v) - 9:8 reduction (v) - 9:8, 10:20 referred (v) - 3:8 referring (v) - 14:9 regarding (v) - 3:1 regulations (v) - 7:22, 8:2, 11:11 relationship (v) - 4:9 remain (v) - 29:21 remaining (v) - 3:3 removed (v) - 29:7 replacement (v) - 20:14, 20:21 Replacing (v) - 21:2 Reporter (v) - 35:6, 35:22 reporter (v) - 35:8 representing (v) - 2:12 reprocess (v) - 10:16 reprocessing (v) - 16:14 require (v) - 11:12, 28:2 required (v) - 15:1, 15:12, 15:22, 32:1 requirement (v) - 8:3 residents (v) - 2:23 resolve (v) - 32:21 resources (v) - 4:18, 6:25 Resources (v) - 4:24 respond (v) - 11:5, 14:19, 15:25, 28:6 responsibility (v) - 14:8, 14:11, 15:3 retroactive (v) - 11:23 return (v) - 9:23 review (v) - 7:20 revision (v) - 12:25 rights (v) - 9:9, 10:25, 28:6, 29:12, 29:14, 29:16, 30:6, 31:13, 31:23, 32:4 River (v) - 7:2, 8:12, 8:14, 20:1, 20:3, 20:6, 21:25, 28:9, 29:5, 30:11, 31:2, 31:5 river (v) - 8:14, 26:8, 27:12, 27:23, 27:24, 30:13, 30:23 rivers (v) - 4:22, 9:3 Roman (v) - 3:21 rules (v) - 5:1, 6:3, 7:11, 8:1, 11:11, 20:13, 32:20, 33:15, 33:18, 33:20, 33:21 run (v) - 26:11 runoff (v) - 31:2 S Saturday (v) - 33:4 scale (v) - 19:5 season (v) - 20:9, 22:4 Second (v) - 6:17 second (v) - 12:7, 16:18 secure (v) - 2:22 see (v) - 13:24, 32:20, 34:2	seeking (v) - 28:4 sequence (v) - 27:6 serve (v) - 3:13, 24:15, 25:4, 25:7 session (v) - 32:14 set (v) - 16:18, 18:19, 17:21, 35:17 setting (v) - 32:16 several (v) - 11:25, 28:8 shall (v) - 6:7, 18:16 shared (v) - 33:6 sheets (v) - 34:4 shift (v) - 2:14 short (v) - 5:8 shorthand (v) - 35:10 shot (v) - 26:10 shows (v) - 27:3 shutting (v) - 27:22, 27:23 significant (v) - 9:9, 10:19 significantly (v) - 5:17, 22:9 signup (v) - 34:4 simply (v) - 8:5, 14:3, 16:20 Simultaneous (v) - 14:1 single (v) - 18:14 singled (v) - 20:11 situation (v) - 24:21, 28:8, 31:11 size (v) - 18:12 sizes (v) - 14:21 skipped (v) - 18:12 slide (v) - 5:6, 18:12 small (v) - 24:19 smaller (v) - 25:8 Snake (v) - 7:2, 8:12, 8:14, 20:1, 20:3, 20:6, 21:25, 28:3, 29:5, 30:11, 31:2, 31:5 social (v) - 2:23 sociologic (v) - 7:16 solve (v) - 7:23 somewhere (v) - 12:17, 30:7 sort (v) - 28:7 sorts (v) - 20:10 source (v) - 32:7 sources (v) - 6:21, 8:15 south (v) - 12:16 Southeast (v) - 30:22 SPEAKER (v) - 2:4, 2:10, 2:12, 7:22, 8:9, 8:18, 8:23, 9:22, 10:2, 10:22, 11:16, 11:24, 12:7, 13:5, 16:1, 16:11, 16:15, 16:18, 16:22, 17:2, 20:16, 20:23, 20:25, 21:16, 22:1, 22:12, 22:24, 24:1, 24:18, 25:25, 26:14, 28:7, 28:17, 28:22, 29:15, 29:19, 30:3, 31:11, 32:3, 34:4 specifically (v) - 10:13, 14:10 specifications (v) - 15:4, 15:13 speculative (v) - 24:25 spend (v) - 18:5 spending (v) - 31:14 spread (v) - 23:10 spring (v) - 8:16, 9:6, 31:3, 31:6 springs (v) - 4:22, 29:18 sprinkler (v) - 30:16,	30:26 stage (v) - 18:14 staged (v) - 7:4 stall (v) - 12:13 standard (v) - 7:15 stands (v) - 3:9 start (v) - 17:8, 33:24 started (v) - 26:24 starts (v) - 27:24 State (v) - 6:19, 7:1, 18:25, 36:6 state (v) - 3:1, 6:16, 10:25, 11:18, 12:2, 16:6, 24:4, 25:14, 27:11, 27:16, 32:6 statement (v) - 14:12 statute (v) - 8:20, 13:10, 14:10, 16:8 Statutorily (v) - 8:15 statutory (v) - 32:12 stay (v) - 26:14, 28:17 stem (v) - 20:6, 21:25 stepping (v) - 33:19 stick (v) - 13:14, 26:18 still (v) - 9:1, 10:3, 16:19 stop (v) - 30:8, 34:8 storage (v) - 10:13, 11:20, 21:4, 26:22 stream (v) - 10:5, 30:4 strictly (v) - 25:9 strongly (v) - 23:9 struck (v) - 18:11 studies (v) - 7:13, 12:11 study (v) - 7:14, 8:7, 9:2, 12:18, 13:15 surgeon (v) - 17:12 subject (v) - 12:24, 16:13, 16:20, 16:25, 22:10, 24:6 Subject (v) - 16:18 submit (v) - 2:8, 15:23, 17:4, 17:6 submitted (v) - 17:3, 17:10, 18:12 subordination (v) - 24:2 successful (v) - 18:1 sufficient (v) - 13:7, 14:18, 14:20, 15:4, 16:10 suggested (v) - 5:11, 18:20, 23:3, 31:24 suggesting (v) - 23:9 suggestion (v) - 23:15, 32:22 suggestions (v) - 7:10, 23:7 sum (v) - 19:10 summer (v) - 10:4 summertime (v) - 31:7 supervision (v) - 35:12 supply (v) - 12:12 supporting (v) - 2:17 surface (v) - 23:24, 24:5 surrounds (v) - 4:23 suspect (v) - 8:11, 9:16 suspended (v) - 21:8 Swan (v) - 8:12, 9:17, 22:2 switched (v) - 14:5 system (v) - 17:15, 30:16 T talks (v) - 33:15	tape (v) - 24:10, 33:7 target (v) - 33:1 taxing (v) - 31:13 ten (v) - 8:25, 12:16, 13:20, 15:17, 19:7, 19:9 ten-acre (v) - 15:17 term (v) - 4:1, 4:2, 14:3 terms (v) - 9:15, 27:7 terrible (v) - 25:23 Teton (v) - 10:13, 12:2 themselves (v) - 29:18, 31:14 theory (v) - 9:2 thereafter (v) - 35:10 they've (v) - 12:12 thinking (v) - 22:25 Thomas (v) - 1:14 thoughts (v) - 16:25 thousand (v) - 8:25 three (v) - 12:17, 19:2 Three (v) - 6:22 timely (v) - 5:6 today (v) - 29:21 together (v) - 33:1 Tom (v) - 23:21 tonight (v) - 2:25, 24:14, 43:7 took (v) - 21:12 top (v) - 31:15 touched (v) - 32:24 tough (v) - 18:7 traced (v) - 3:20 tradition (v) - 6:23, 19:1 traditionally (v) - 5:1 traditions (v) - 4:6 transcribed (v) - 35:8 Transcribed (v) - 1:21 transcript (v) - 35:13 TRANSCRIPT (v) - 1:8 transfers (v) - 31:1 transported (v) - 30:21 trial (v) - 17:4 trout (v) - 17:9 true (v) - 8:16, 35:14 trust (v) - 2:3, 3:7, 4:3, 10:9, 10:15 trying (v) - 33:1 turn (v) - 15:16 TWIN (v) - 1:2, 2:1 two (v) - 3:15, 14:24, 25:11 two-page (v) - 14:24 type (v) - 10:24, 10:25, 12:1, 18:12, 21:4, 22:16 types (v) - 10:18, 14:21 typewriting (v) - 35:11 U ultimate (v) - 26:12 under (v) - 5:13, 6:1, 8:10, 16:14, 19:7, 24:4, 28:20, 33:16, 33:24, 35:11 undeveloped (v) - 10:16 unintelligible (v) - 5:14, 7:15, 7:21, 9:17, 10:19, 17:5, 20:8, 20:10, 22:8, 22:22, 22:23, 23:1, 24:20, 27:11, 27:17, 28:1, 30:8 Unintelligible (v) -	12:4, 18:1, 21:15, 29:15 unintelligible (v) - 7:9 unintelligible (v) - 11:13, 17:11, 18:2, 19:18, 21:9, 21:16, 26:9, 28:16, 28:19, 33:22, 34:3 Unintelligible (v) - 22:1 unless (v) - 33:22 up (v) - 7:5, 7:17, 8:15, 13:25, 17:10, 17:21, 18:7, 19:10, 19:13, 21:14, 23:17, 25:16, 28:15, 30:13, 30:21, 31:15, 31:20 user (v) - 27:23 uses (v) - 5:16 utility (v) - 6:18 utilize (v) - 31:8 V valid (v) - 11:19 Valley (v) - 2:13, 2:24, 4:20, 28:23, 31:13 various (v) - 14:21 view (v) - 4:16, 25:10 viewed (v) - 23:18 Viewing (v) - 2:4 vigilant (v) - 32:4 violate (v) - 27:13 visitors (v) - 2:23 VOICE (v) - 5:24 VV vault (v) - 13:1, 25:24 wants (v) - 13:12 watch (v) - 23:13, 23:17 Water (v) - 4:24, 10:15, 19:25 water (v) - 2:3, 4:21, 5:1, 5:16, 8:13, 6:25, 8:10, 8:13, 8:19, 8:21, 9:3, 9:6, 9:14, 10:7, 11:20, 12:12, 16:6, 20:1, 20:6, 20:8, 21:15, 21:21, 21:24, 22:6, 22:20, 23:17, 23:24, 24:1, 24:3, 24:4, 24:5, 25:1, 26:24, 27:3, 27:4, 27:10, 28:3, 28:5, 28:9, 28:15, 28:23, 29:4, 29:6, 29:12, 30:6, 30:10, 30:12, 30:18, 30:19, 30:20, 31:1, 31:5, 31:8, 31:9, 31:12, 31:21, 31:23, 32:4, 32:13, 32:17 waters (v) - 23:25, 24:1, 25:10, 28:15 weather (v) - 21:7 Websters (v) - 3:3 weight (v) - 18:16, 18:19 welfare (v) - 2:23, 3:7, 3:24, 3:25, 4:7 WHEREOF (v) - 36:17 whole (v) - 25:17 wide (v) - 23:3 willing (v) - 31:18 win (v) - 13:23 winter (v) - 9:24, 10:4, 10:6 withdrawal (v) - 11:21 WITNESS (v) - 35:17 wondering (v) - 11:16, 11:21
---	---	--	--	---

word [ɪ] - 3:2
 words [tɜː] - 8:18,
 8:20, 10:4, 10:6, 10:8,
 10:10, 15:8, 25:20,
 28:11, 30:25
 worst [ɜː] - 27:8
 writing [ɪ] - 4:25
 written [ɪ] - 21:5

Y

year [ɪ] - 7:5, 7:6,
 12:22, 17:16, 17:24,
 17:25, 27:6, 28:10,
 28:25
 years [ɪ] - 8:25,
 12:9, 12:14, 13:1,
 13:19, 23:14, 27:7,
 27:21, 29:2, 32:6
 yield [ɪ] - 24:16
 Young [j] - 1:13
 YOUNG [j] - 2:8,
 2:11, 5:3, 5:25, 7:25,
 8:11, 8:22, 9:4, 10:1,
 10:11, 11:4, 11:22,
 12:3, 12:20, 13:7,
 13:17, 13:24, 14:2,
 16:8, 16:12, 16:17,
 16:21, 16:24, 18:3,
 20:18, 20:24, 21:2,
 21:23, 22:2, 22:18,
 23:12, 24:10, 24:16,
 26:20, 26:20, 29:12,
 29:17, 29:20, 31:24,
 32:10, 34:6

Z

zero [z] - 19:13, 24:4

Affidavit of Norman C. Young

Exhibit D

RECORDING ENTITLED
"TWIN FALLS-2"

* * * * *

TRANSCRIPT OF PROCEEDINGS

* * * * *

NEY = Norman C. Young

Transcribed by
Dianne E. Cromwell
CSR No. 21

MR. MODERATOR: Cfs at Swan Falls, yes. In the winter that's the minimum flow.

MODERATOR: Is there or has there been historically water available for recharge above that 5600?

NEY MR. MODERATOR: The 5600 is the minimum flow that we anticipate if the summer flow would develop under one set of conditions down to 3900 on a dry year. So on other years, besides the very dry year, yes, there is water that could be looked at under the trust water provision if necessary. As long as you're above Milner, you'll have to look at that. I still want to discuss that with Tom, and see.

I believe that yes, there is water above that most years. It's just the extreme year that there wouldn't be.

Yes, sir?

MALE SPEAKER: I have a question about the trust water. Now, is the trust water up to Idaho Power's 8400 second-feet, that anything above that, is that still trust water clear to 25,000, or does that end at their water right?

MR. MODERATOR: It ends at their water right.

1 MALE SPEAKER: 8400 second feet.

2 MR. MODERATOR: If you're looking at Swan
3 Falls, it's apparently 8400 cfs. If you're
4 looking at Bliss --

5 MALE SPEAKER: 15,000 or 17,000.

6 MALE SPEAKER: That's the springs
7 [unintelligible].

8 MALE SPEAKER: Do we still have to supply
9 anything back on this here deal with the
10 Idaho Power if you have your permits and
11 everything in order before 8400? Do we have to
12 answer anything legally?

13 MR. MODERATOR: Okay. Let's use yours as a
14 specific. Give me the details. You have a
15 project that was developed --

16 MALE SPEAKER: We had seven different
17 permits, that they were all approved. Say, the
18 last one is a permit, it's not adjudicated.

19 MR. MODERATOR: It's a permit that is
20 issued, applied for --

21 MALE SPEAKER: Probably in '75.

22 MR. MODERATOR: Okay. Before November 19,
23 1982. When was the development?

24 MALE SPEAKER: Probably about that same
25 time.

1 MR. MODERATOR: Okay. The contract, the
2 Swan Falls contract, not the agreement, the
3 contract, says that Idaho Power recognizes and
4 subordinates to those projects that were applied
5 for before November 19, 1982 and were developed,
6 water was actually diverted or there was
7 substantial investment before that date,
8 November 19, 1982.

9 So you should be eligible for release,
10 and it may have already been released in the
11 lawsuit. The thing that triggered that is if you
12 had filed the proof of beneficial use document --
13 this is where we came in -- the proof of
14 beneficial use document before November 19, 1982.
15 You should have been automatically released in the
16 first release.

17 If you hadn't filed it, you should have
18 received from Tom Nelson's office a letter saying
19 file a Form A or a Form B. If you withdrew your
20 [unintelligible] by November 19, 1982, file Form A
21 and you will be.

22 MALE SPEAKER: Then any that have not been
23 proven up as of now, where do they stand? They've
24 been applied for, but they've not been proven up
25 on.

1 MR. MODERATOR: Any undeveloped permit that
2 is going to rely on trust water is to be
3 reprocessed to the extent it has not been
4 developed under the public interest criteria.

5 MALE SPEAKER: This has been applied for
6 before 1982. It was not through the --

7 MR. MODERATOR: The indicator that the
8 department has indicated we will use to determine
9 whether it has to go under this new criteria or
10 not, is have you filed the proof of beneficial use
11 document on that permit by June 30 of this year.

12 If you haven't, then we're going to
13 assume that you have to be re -- processed. Maybe
14 it will come in [unintelligible], maybe develop
15 and get out of it. But we're going to assume that
16 without that, yes, you will be re-processed

17 MALE SPEAKER: You have to reapply?

18 MR. MODERATOR: No. You won't have to
19 reapply, but that is one of the issues that we
20 raised, is, what information should you have to
21 [unintelligible].

22 MALE SPEAKER: How about water that has been
23 adjudicated and will never enter into this thing?
24 It was adjudicated through the courts.

25 MR. MODERATOR: Really not an issue here

1 this evening at all.

2 MALE SPEAKER: But you don't have to do
3 nothing with --

4 MR. MODERATOR: You shouldn't have probably
5 been named in the lawsuit.

6 MALE SPEAKER: It wasn't. And that's why I
7 was wondering if there was any --

8 MR. MODERATOR: Just not an issue here or
9 not, we could get over into the question of the
10 adjudication, then you'll need to file --

11 MALE SPEAKER: I'm not talking about -- I'm
12 talking about decree.

13 ^{1/2} ~~1/2~~ FEMALE SPEAKER: The Form A's and B's do
14 have to be in by June 30. Right?

15 ^{Tom} ~~1/2~~ MALE SPEAKER: That's per the department's
16 personnel. I don't care when I get them.

17 FEMALE SPEAKER: Okay.

18 MR. MODERATOR: We just need some kind of a
19 date that says, hey, you have to file by this
20 date, and we're going to see if you need to be
21 reprocessed. And not that you can't get out of
22 it, but you're going to have to provide some
23 indication, proof that you did have
24 [unintelligible].

25 FEMALE SPEAKER: What happens to the

1 "Trout Co." Draw? That thing has been in limbo
 2 for the seven years. that's before the Supreme
 3 Court now. Will they have to go back through this
 4 reprocessing?

5 MR. MODERATOR: Well, the Trout Co. water
 6 is, and correct me if I'm wrong, fish propagation
 7 and hydropower.

8 FEMALE SPEAKER: Yes.

9 MR. MODERATOR: They need to go through
 10 those first five criteria [unintelligible] in the
 11 first place. If they get through those, then they
 12 look to see, will that cause a significant
 13 reduction in hydropower rights downstream, and if
 14 it is a nonconsumptive use, the answer will be no,
 15 does not significantly reduce, so you don't have
 16 to go through the five criteria.

17 FEMALE SPEAKER: Would that apply also to
 18 fish propagation filings that are in the process
 19 now under with the five-year period, all fish
 20 propagation? Because it is a non-consumptive use.

21 MR. MODERATOR: That's correct.

22 FEMALE SPEAKER: So you would not have to go
 23 through --

24 MR. MODERATOR: Non consumptive uses should
 25 get -- filter out of having to go through the

1 entire, the new public interest criteria, as they
 2 should not cause a significant impact on
 3 hydropower.

4 They'll have to be looked at because
 5 some of them are fine. You could have a
 6 nonconsumptive use [unintelligible] around,
 7 hydropower. Not even sure you subordinate that
 8 particular one.

9 Another question? Yes, sir.

10 MALE SPEAKER: On the geothermal wells, this
 11 is geologic water, been locked in for centuries,
 12 has not been contributing to hydropower in the
 13 river system. Does it fall under the same
 14 classification as the aquifer over here that does
 15 contribute to power generation, or should it be
 16 excluded from wells in the geothermal aquifer?

17 MR. MODERATOR: I guess that comes down to
 18 the question of showing that indeed the
 19 relationship doesn't exist. Now, where you show
 20 that, under the first five criteria under the
 21 significant reduction, public interest -- new
 22 public interest criteria is probably something
 23 that needs to be scoped out in the rules and
 24 regulations. But to the extent that they do not
 25 affect hydropower, they should be not subject to

1 the new criteria.

2 MALE SPEAKER: And then if it was
3 nonconsumptive use on that, then that it would not
4 be subject --

5 MODERATOR: As long as it didn't affect
6 downstream hydro, a significant reduction.

7 The address to send your comments to
8 are on the screen. If you have further comments,
9 suggestions, I would be happy to sit here and
10 listen to them. After quite a while
11 [unintelligible]. So I appreciate your comments
12 you have made. I hope that your understanding of
13 where we're trying to go with these rules and
14 regulations is such that you'll be able to give us
15 a new direction. We appreciate that.

16 Thank you.

17 (Proceedings concluded.)

18 -oo0oo-

1 REPORTER'S CERTIFICATE

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3
4
5 I, Dianne E. Cromwell, Official Court
6 Reporter, County of Ada, State of Idaho, hereby
7 certify:

8 That I am the reporter who transcribed
9 the proceedings had in the above-entitled action
10 in machine shorthand and thereafter the same was
11 reduced into typewriting under my direct
12 supervision; and

13 That the foregoing transcript contains a
14 full, true, and accurate record of the proceedings
15 had in the above and foregoing cause, which was
16 heard at Boise, Idaho.

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand October 6, 2008.

19
20
21
22
23 Dianne E. Cromwell, Official Court Reporter
24 CSR No. 21
25