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DEPARTMENT OF  
WATER RESOURCES

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Exhibit 12

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DEPT. OF WATER RESOURCES

Transcript of Idaho Water Resource Board  
public information meeting  
on Swan Falls settlement  
(Nov. 1, 1984)

**ORR AFFIDAVIT  
EXHIBIT 46**

Transcript –  
11/1/84

**EXHIBIT 46**

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MAIL 94835

IDAHO WATER RESOURCES BOARD

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Public Information Meeting on  
the Swan Falls Agreement  
Boise, Idaho

TRANSCRIPT OF PROCEEDINGS

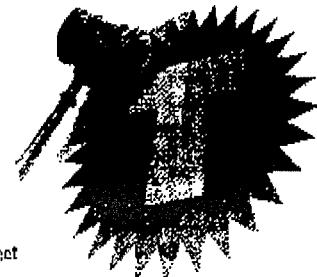
Held on November 1, 1984  
before Don Kramer, Chairman

\* \* \* \* \*

Transcribed by  
Heidi Blodgett  
and Dianne E. Cromwell, CSR No. 21

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ORIGINAL

A P P E A R A N C E S

Present:

Tom Nelson, Idaho Power Company  
Pat Kole, Counsel for Attorney General  
Pat Costello, Counsel for the Governor  
Frank Sherman, Department of Water  
Ken Dunn, Director of Idaho Department of Water Resources  
Charles Jones, District 11, Water Users Association  
Gene Gray  
Bob Hammeth  
Mr. Young  
Bill Ringert, Senator  
Gail Bray, Senator  
Harold C. Miles, Golden Eagle Audobon Society  
Marjorie Hayes, Idaho Consumer Affairs  
Sheryl Chapman, Idaho Water Users Association  
Al Fothergill  
Pat Ford

\* \* \* \* \*

## IDAHO WATER RESOURCES BOARD

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Public Information Meeting on  
the Swan Falls Agreement  
Boise, Idaho

## TRANSCRIPT OF PROCEEDINGS

Held on November 1, 1984

before Don Kramer, Chairman

\*\*\*\*\*

Transcribed by  
Heidi Blodgett  
and Dianne E. Crownwell, CSR No. 21

BOISE, IDAHO

November 1, 1984

MR. COSTELLO: Chairman Kramer, Members of  
the Board, legislators, and members of the public.

The governor did ask the Board to put  
on these meetings around the state and is very  
appreciative of the Board providing this  
opportunity to explain to you the details of the  
agreement that we have reached with Idaho Power  
Company.

To give you the governor's perspective  
on this agreement, as I think almost all of you  
are aware, the governor for two years sought an  
enactment by the legislature of a subordination  
bill which would have by law imposed a  
subordination condition at Swan Falls. We weren't  
successful with that.

The governor never intended by pursuing  
subordination to create a climate where we could  
take the river down to zero or down to the minimum  
flow or anything else. But he did feel very  
strongly, as he said repeatedly, that the state  
should be in control of making the decisions as to  
the allocation of a very precious and ever more

## APPEARANCES

Present:

Tuan Nelson, Idaho Power Company  
Pat Kule, Counsel for Attorney General  
Pat Costello, Counsel for the Governor  
Frank Sherman, Department of Water  
Ken Dunn, Director of Idaho Department of Water Resources  
Charles Jones, District 11, Water Users Association  
Gene Gray  
Bob Hammeth  
Mr. Young  
Bill Ringert, Senator  
Gail Bray, Senator  
Harold C. Miles, Golden Eagle Audubon Society  
Marjorie Hayes, Idaho Consumer Affairs  
Sheri Chapman, Idaho Water Users Association  
Al Fothergill  
Pat Ford

\*\*\*\*\*

scarce natural resource. And that was his  
motivation in seeking subordination legislation.

But with the help of Senator Noh and  
Senator Ringert and others who are here, despite  
that help I should say, we weren't successful in  
getting that done.

And after the 1984 session, Idaho Power  
Company approached the governor again with an  
offer to enter into a partial settlement of the  
Swan Falls litigation, under the authority of  
legislation passed in the '83 session, called  
Senate Bill 1180.

The governor responded with an  
invitation to enter into negotiations to settle  
all of the litigation rather than just a partial  
settlement. And Idaho Power Company accepted that  
offer in July, and we commenced negotiations.

There were at least eight meetings  
among the three principals: Attorney General  
Jones, Mr. Bruce from the power company, and the  
governor. And in the meantime, the three of us  
met on virtually a daily basis trying to come to  
some meaning of the minds as to how we could best  
approximate what should be the balance between two  
competing uses: the need to produce hydroelectric

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1 power and the need to make water available for  
2 agricultural development. And what we came up  
3 with was the approach that Frank has outlined for  
4 you.

5 The governor, after reflecting on where  
6 we ended up with this agreement, feels that what  
7 we have done is come very close to where we would  
8 have ended up even if the legislation had been  
9 allowed to pursue its course. Had either side won  
10 a total victory in court, the political will would  
11 have been there on -- in support of either side  
12 that lost to bring the pendulum back to the middle  
13 and to strike some kind of balance.

14 And just as I think the agricultural  
15 community wouldn't have sat still for recognizing  
16 that the power company had a right to virtually  
17 all the water in the river, neither would the  
18 ratepayers have sat still for the kind of  
19 no-strings-attached development that could have  
20 taken place had the state won the lawsuit.

21 So either way the legislature probably  
22 would have answered this at some point down the  
23 road with something like what we've done here,  
24 which is to try to take a middle ground between  
25 the two competing interests.

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1 If you accept that thesis, then the  
2 question becomes, isn't it better to try to come  
3 to some approximation of a balance through  
4 negotiation and compromise, or should we go  
5 through the process of taking several years and  
6 several million dollars to reach the same --  
7 approximately the same position after years of  
8 litigation and further efforts in the political  
9 arena?

10 The governor feels very satisfied with  
11 where we did end up. He does think that it  
12 reflects a very reasonable balance between the two  
13 uses.

14 And he would ask that you look at it in  
15 that light and form your own conclusions on that  
16 point. But he does think that it's important for  
17 both groups to stop thinking in terms of achieving  
18 some kind of total victory either in the  
19 legislature or in the courts and begin to focus on  
20 what mechanisms we can put in place to make sure  
21 that while we leave open the opportunity for  
22 further development of our agricultural interests  
23 on the Snake River, that we do so in a way that  
24 does take into account the effect that that  
25 development has on all of us ratepayers.

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1 And with that, I'd be happy to respond  
2 to questions after my two colleagues have had  
3 their chance.

4 CHAIRMAN KRAMER: Thank you, Pat Costello,  
5 Pat Kole from the Attorney General's  
6 Office.

7 MR. KOLE: Thank you, Mr. Chairman. I'll be  
8 brief because I think you've all been sitting down  
9 quite some time and probably want to ask some  
10 questions.

11 The negotiation process that we went  
12 through we hope has brought Idaho water law into a  
13 new phase, and that negotiation process quite  
14 simply is to bring Idaho water law into the 21st  
15 century. Our water law in the past has served us  
16 well, but it needs to be updated and brought into  
17 some sort of fine-tuning to last us into the next  
18 century.

19 What we have tried to do with the  
20 agreement that you have before you is to come up  
21 with a proposal that will equitably balance the  
22 competing interests for a very vital natural  
23 resource. Within that context, we tried to focus  
24 on certain absolute musts that we felt were  
25 necessary.

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1 The first one was is that a public  
2 resource such as water has to be controlled by the  
3 people of the state of Idaho. And the decisions  
4 affecting that water have to be made in the public  
5 forum as opposed to a private corporate boardroom.  
6 Now, we were very pleased to find that Idaho Power  
7 shared our concern in that regard and felt that  
8 they did not want to be the water master for the  
9 Snake River. So the agreement contemplates and is  
10 predicated upon state control through the public  
11 input process of our water resources.

12 Secondly, we wanted to focus on  
13 protecting all of the individuals who are  
14 currently using water. I think the agreement that  
15 you have in front of you protects everybody who is  
16 currently using water.

17 Third, we wanted to make sure that good  
18 water users who have development projects that  
19 benefit the state economically, and that includes  
20 both agricultural, municipal, industrial, and  
21 domestic uses, would be able to go forward. And I  
22 think the agreement that you have assures that  
23 good water users will be able to go forward into  
24 the future.

25 Finally, we wanted to make sure that

2 (Pages 5 to 8)

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1 the state would be in a position to take  
2 responsible management actions in the future. And  
3 so what we have set forth here is a basis upon  
4 which further studies, both of economic factors  
5 and of hydrologic factors, can take place so that  
6 we will be able to wisely manage the water  
7 resource that we have been blessed with.

8 In conclusion, I think it's fair to say  
9 that litigation has benefits for everybody. It  
10 also has detriments. And one of the major  
11 detriments is that you spend a lot of money on it.

12 What we've tried to do here is to  
13 change the focus away from spending money in an  
14 adversarial situation and spend that money in a  
15 positive setting towards responsible management of  
16 a vital resource.

17 Thank you, Mr. Chairman.

18 CHAIRMAN KRAMER: Thank you, Pat Kole.  
19 Representing Idaho Power is Tom Nelson.

20 MR. NELSON: Thank you, Mr. Chairman.

21 I will say that when the governor  
22 responded to our offer to re-open the 1180  
23 negotiations, that the company was glad to accept  
24 his interest in trying to settle the whole case.

25 The power company actually, as a matter

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1 of fact, as a matter of practice, as a matter of  
2 legality, was never a water master; certainly had  
3 no interest in being one. But if the perception  
4 persisted that that was what happened, it had to  
5 be addressed, and I think that the agreement  
6 addresses that.

7 When you read the agreement, I wish you  
8 would keep in mind that there's a lot more to that  
9 agreement than just a couple of minimum flows at  
10 Murphy. The major part of that agreement in my  
11 mind and in the mind of the management of the  
12 company that's equally important with the minimum  
13 flow is the concept of a public interest review of  
14 all new water uses. Without that, I don't think  
15 the company would have been agreeable to entering  
16 into this particular agreement.

17 You have mitigation for certain kinds  
18 of new water uses that's required. You have an  
19 adjudication. You have studies that have to be  
20 performed. But basically what all that does is  
21 really shifts the focus and the direction of the  
22 state of Idaho water policy from one of  
23 development by he who gets there quickest to a  
24 question of what development should proceed and  
25 under what conditions. And that's a radical

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1 change of a hundred year history. That I think is  
2 really in summary what the public interests and  
3 other parts of that document do.

4 The state wants the policies replaced.  
5 We'll be in a position not only through the  
6 statutes to manage the resource, but hopefully  
7 we'll have the knowledge to make the resource meet  
8 the objectives that are planned for it.

9 But also when you read the agreement,  
10 it looks a little like a camel being defined I  
11 guess as a horse designed by a committee. But it  
12 makes a lot more sense if you remember what we  
13 were trying to do, that we're trying to settle  
14 some litigation.

15 And so in that regard, it looks a  
16 little different than it might if you were sitting  
17 down to devise a whole new water right system for  
18 a brand new state. Hopefully, that would look a  
19 little different than what we had to work with,  
20 which was an existing constitutional and statutory  
21 framework within which we had to settle this  
22 litigation.

23 When you look at it in that regard,  
24 then remember that the attempt was to settle all  
25 of the issues in the litigation and to settle them

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1 as a whole. So the agreement was approached on  
2 that basis. So it doesn't lend itself very well  
3 to picking at little pieces of it. You have look  
4 at it as a whole. If makes sense as a whole,  
5 that's the way it should be accepted. If it  
6 doesn't make sense a whole, then it should be  
7 rejected.

8 And that I think is the last point I  
9 want to make, is that this agreement can't be  
10 implemented by the governor, the attorney general,  
11 and the Idaho Power Company. It takes a lot of  
12 work by the real policy makers of the state of  
13 Idaho, being the Water Resource Board, the  
14 legislature, and some federal involvement also.

15 So it's not a take-it-or-leave it  
16 proposition, obviously, because we're not in a  
17 position to say that. But I can say that any  
18 changes in this agreement, since it was done as a  
19 whole, as an entirety, will open either the  
20 possibility that the agreement is never  
21 implemented in any form or that the agreement will  
22 have to be renegotiated.

23 So that's why I asked when you review  
24 it, that you look at it as a whole. And to me,  
25 when you do that, what comes out to me is what's

3 (Pages 9 to 12)

1 left is a lot more important than what could be  
2 perceived as having been lost. But in any event,  
3 I'd be willing to answer questions when we get  
4 there.

5 Thank you.

6 CHAIRMAN KRAMER: Thank you, Tom Nelson.

7 We're gonna take about a 3-minute  
8 break, 4-minute break. Before we break, I'd like  
9 to recognize Senator Gail Bray. Glad to have you  
10 with us this evening.

11 Let me mention to you, this is the  
12 sixth informational meeting that we have put on in  
13 the last week or so. We've talked to  
14 approximately 300 people, so it's been quite  
15 enlightening to all of us who have traveled  
16 through the way. So let's have about a 5-minute  
17 break, and we'll be back.

18 (Recess.)

19 CHAIRMAN KRAMER: Questions and answers. We  
20 hope that you ask the questions, and we have a  
21 team up here that can answer. When I look at this  
22 whole group, I'm sure you should get some answers.  
23 Before we start I'd like to ask, any of the Water  
24 Resource Board members have questions? Mr. Gray?

25 MR. GRAY: I do, Mr. Chairman. I have about

1 a subcommittee appointed by the governor is just  
2 come up with a starting point.

3 And this is a starting point.

4 Obviously, the legislature will have their own  
5 ideas. They're much more experienced in this area  
6 than we are, and we'll defer to their judgement,  
7 obviously.

8 CHAIRMAN KRAMER: You know, it's really fun  
9 that attorneys have disclaimers, and those of us  
10 that are not attorneys just say we don't know.

11 (Laughter.)

12 MR. KOLE: That's the sixth time you've used  
13 that joke.

14 CHAIRMAN KRAMER: First time.

15 MR. NELSON: If that's really what you say,  
16 Gene, you wouldn't say much but that.

17 MR. GRAY: Exhibit 3. \$200,000 are to be  
18 appropriated to the general account for a  
19 technical advisory committee which the governor  
20 shall over-see.

21 Is the \$200,000 just the first year's  
22 shot, or is this going to be an ongoing study-type  
23 thing? How do you perceive that?

24 MR. NELSON: The technical committee  
25 estimated it would take a minimum of three years

1 five of them. Well, after six meetings they  
2 accumulate, and we'll save the best for last.

3 Now, gentlemen, on your exhibit number  
4 2, we're talking about adjudication and the fees  
5 that will be charged. It will fall under 42-14,  
6 14B-5. And it's the additional variable water use  
7 fee for each claim filed public, \$100 per cfs.  
8 What entities fall into this public category?  
9 (Inaudible.)

10 MR. KOLE: Yeah. Well, actually I'll take a  
11 quick stab at that. That's all the various public  
12 uses that our water is put to; for example,  
13 recreation, fish and wildlife, hunting, outdoor  
14 activities. That's meant to pick up all of those  
15 fees or all of those uses and have an appropriate  
16 contribution made by the state in the adjudication  
17 formula.

18 MR. GRAY: But how are you going to charge  
19 that 100 cfs?

20 MR. KOLE: It will be paid for out of the  
21 general fund or theoretically out of the general  
22 fund. I want to issue one disclaimer on this fee  
23 schedule. This fee schedule is obviously  
24 something that the legislature is going to have to  
25 take a look at, and what we've tried to do through

1 to accomplish those studies, so that would be the  
2 first fiscal year's appropriation.

3 MR. GRAY: Okay. How will this tie in with  
4 the legislative committee, the study, the  
5 legislature committee thing that we've got going  
6 on? Will that tie in at all? Will this be  
7 separate?

8 MR. COSTELLO: This group would pick up on  
9 the recommendations of the legislative technical  
10 advisory committee as to the things they said  
11 deserved further study. Primarily, it's to put  
12 the department in a position where they can adopt  
13 meaningful public interest criteria, for which  
14 they need more detailed information on the  
15 economic benefits to different uses, as well as  
16 the different hydrological implications of uses at  
17 a particular location and of a particular type.

18 MR. GRAY: Okay. I notice in the -- that  
19 through the whole agreement there's an absence of  
20 mentioning of this program. Is this kind of study  
21 not needed in continuing this program after it's  
22 all put together? I mean, where do we tie with  
23 this thing?

24 MR. NELSON: You mean, the technical study,  
25 Gene?

1 MR. GRAY: Yeah.  
 2 MR. NELSON: Basically, the technical  
 3 advisory committee to the legislative council  
 4 committee identified some immediate and pressing  
 5 deficiencies in technical information. As they  
 6 saw it, you should fund on-going studies.  
 7 But in order to ask the "what if"  
 8 questions that fall out of this program, what if  
 9 you develop land here versus what if you develop  
 10 it here, and so on, you had to spend that kind of  
 11 money to get yourself in a position to really  
 12 answer those questions. But hopefully the studies  
 13 go on afterward to make sure that what you think  
 14 you know is really true.  
 15 MR. GRAY: You know, Mr. Chairman, all week  
 16 we've heard Mr. Kole talk about the bang for the  
 17 buck or the buck for the bang, whatever it is  
 18 we're going to get. But it would appear to me  
 19 that if monies were going to be appropriated for  
 20 studies, that they would possibly be appropriated  
 21 to the Department of Water Resources in lieu of a  
 22 technical advisory committee, because already it  
 23 would seem like we have a jump on the process.  
 24 So is there a reason that you're  
 25 filtering this through a technical committee in

1 lieu of taking the \$200,000 and giving it to the  
 2 Department of Water Resources?  
 3 MR. COSTELLO: Well, I don't think there's  
 4 any -- I'm sure that whatever we do would be in  
 5 consultation and cooperation with the department.  
 6 But by housing this advisory committee in the  
 7 governor's office, it was felt that it would give  
 8 it a higher level of visibility and also the  
 9 tendency if it were included into the department's  
 10 budget, when it goes through the legislative  
 11 process, that kind of runs the risk of if you put  
 12 in a new 200 for that, that you might take out 200  
 13 somewhere else and the net wouldn't be there. And  
 14 we wanted this specifically earmarked to go for  
 15 these studies to put into place these new public  
 16 interest criteria.  
 17 MR. GRAY: Thank you.  
 18 Mr. Chairman.  
 19 CHAIRMAN KRAMER: Mr. Gray did this. He  
 20 knew it was his last chance to get the last word.  
 21 Do the Board members have any other  
 22 questions? Mr. Williams.  
 23 MR. WILLIAMS: Sure, I have one question.  
 24 This is the first time I've had an opportunity of  
 25 looking at Exhibit 7B, which is one of the

1 extensive exhibits that are attached to the  
 2 agreement.  
 3 As I read this, this appears that this  
 4 not only applies to the Snake River, but any other  
 5 river in the state. Is that true? And could one  
 6 of you just briefly review each of the sections  
 7 for the folks to explain what it is.  
 8 MR. COSTELLO: It would be easier to do it  
 9 at the blackboard in graph form. But it does  
 10 apply anywhere in the state where there is a --  
 11 either an unsubordinated hydro right or a hydro  
 12 right that it's not clear whether or not it's  
 13 subordinated.  
 14 And basically what we're saying here is  
 15 that the approach that we arrived at in settling  
 16 this lawsuit makes good public policy sense and is  
 17 -- can provide a comprehensive framework for the  
 18 legislature to regulate hydropower rights under  
 19 the authority of a 1928 constitutional amendment,  
 20 which said they could regulate hydropower rights  
 21 and that they would be treated consistently  
 22 throughout the state.  
 23 In other words, you would use the  
 24 minimum stream flow concept as the primary  
 25 mechanism for protecting in-stream uses, and that

1 any hydropower rights that exist in excess of that  
 2 minimum stream flow would be held in trust by the  
 3 state, legal title to that water right in excess  
 4 of a minimum flow being in the state, for the  
 5 benefit of the power right holder and also for the  
 6 benefit of the people to allocate it to up-stream  
 7 uses only which meet the public interest criteria.  
 8 In doing that you are using the  
 9 hydropower right to say that the river has, in  
 10 essence, been fully appropriated, because that  
 11 right exists, and it's the right to --  
 12 basically all the flow that gets down there.  
 13 And, therefore, the state is in a  
 14 position to impose rigorous public interest  
 15 criteria that it might not otherwise be able to do  
 16 on an unappropriated stream.  
 17 MR. WILLIAMS: Okay.  
 18 CHAIRMAN KRAMER: Any other board members?  
 19 UNKNOWN SPEAKER: Mr. Chairman.  
 20 CHAIRMAN KRAMER: First, I'd like to  
 21 recognize Mr. Bob Hammeth. He kind of got in here  
 22 without me seeing him. He's from St. Mary, and  
 23 he's also a board member. Mr. Hammeth.  
 24 MR. HAMMETH: I have a question about  
 25 Washington Water Power's rights in Coeur D'Alene.

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1 Is there any subordination at all?  
 2 MR. KOLE: Well, those water rights at the  
 3 present time are unsubordinated. It's our intent,  
 4 in looking at Exhibit 7B, to provide a voluntary  
 5 mechanism by which Washington Water Power will  
 6 come in and negotiate with the state, much the  
 7 same as Idaho Power has, and enter into a similar  
 8 arrangement so that they would get the benefit of  
 9 this format. And at the same time, the state  
 10 would be able to protect people who are currently  
 11 using water.  
 12 As you might know, that facility on the  
 13 Spokane River really is very analogous to the  
 14 Swan Falls situation, and because if they were to  
 15 assert their water right, current water users  
 16 would have to shut their water use off.  
 17 MR. HAMMETH: How about their rights on Pend  
 18 Oreille?  
 19 MR. KOLE: I don't think that's quite the  
 20 same situation at the present time, though I think  
 21 Norm Young from the department will probably have  
 22 to answer that.  
 23 CHAIRMAN KRAMER: Mr. Young.  
 24 MR. YOUNG: Well, I believe there is a  
 25 facility on the Pend Oreille River, the Kootenai

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1 that as he understood the agreement, it  
 2 subordinated a block of 600 cubic feet per second  
 3 of water. I heard Senator Peavey say the same  
 4 thing on television the other night on a report.  
 5 Is that true? How had much water does  
 6 this agreement subordinate?  
 7 MR. NELSON: Well, let me have a cut at it.  
 8 As Pat said, if we had a blackboard, it would be  
 9 easier to show. But the amount of water up to the  
 10 minimum stream flow is unsubordinated. Okay. The  
 11 amount of water representing current uses is  
 12 subordinated.  
 13 Now, in theory, when you squeeze those  
 14 together, you come to a block not addressed of 600  
 15 cfs. That's the difference between 4500 cfs  
 16 current flow that Frank talked about and 3900, the  
 17 new minimum flow. And if you look at that 600  
 18 cfs, that 600 is not immediately subordinated. It  
 19 is subject to subordination by state action as new  
 20 uses are approved.  
 21 So you have, as I say, kind of a  
 22 three-level approach: some absolutely  
 23 unsubordinated, some absolutely subordinated, and  
 24 some subject to subordination as a result of state  
 25 approval of new uses.

## Page 22

1 River, it would be Pend Oreille that is using most  
 2 of the water.  
 3 UNKNOWN SPEAKER: Speak a little louder.  
 4 I'm looking at you, and I can hardly hear you.  
 5 MR. YOUNG: I've got a frog in my throat,  
 6 Frank, and I'm having a little trouble with it.  
 7 There is a facility on the lower end of the  
 8 Pend Oreille, that during extreme low-flow  
 9 periods, can use all of the water and then some.  
 10 So it has somewhat the same situation.  
 11 CHAIRMAN KRAMER: Thank you.  
 12 Any other questions from the board  
 13 members? Any questions from the department?  
 14 Ladies and gentlemen, it's your turn.  
 15 Sir.  
 16 MR. FORD: Yes, sir. My name is Pat Ford.  
 17 I want to ask a question -- maybe it stems from my  
 18 own lack of knowledge, I'm not sure, but I'm not  
 19 clear how much water this agreement is going to  
 20 subordinate. I think my confusion comes from the  
 21 use of the average daily flow, as it's a number as  
 22 opposed to another measurement that had been more  
 23 generally used.  
 24 When I talked to Wayne Hoss on the  
 25 phone, I think it was last (inaudible), he told me

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1 MR. HAMMETH: I guess my confusion comes  
 2 from I had -- most of the previous discussions, I  
 3 think, had been in terms of an average monthly  
 4 flow as opposed to daily flow.  
 5 MR. NELSON: No. The state water plan  
 6 minimum at, I think, all the gauging stations  
 7 where they have one on the Snake has always been  
 8 an average daily.  
 9 MR. HAMMETH: Is the 3300 an average  
 10 daily --  
 11 MR. NELSON: Yes. We left it that way for  
 12 several reasons. One, of course, is that people  
 13 are used to it. And second, if you're looking at  
 14 protecting in-stream uses that an average of a  
 15 period longer than a day, a monthly average, for  
 16 example, will give you a higher number at the  
 17 Murphy Gauge. But the problem is zero for 15 days  
 18 and 10,000 for 15 days is a 5,000 cfs average, but  
 19 it's not a very good way to run a river.  
 20 So you need a narrower time period when  
 21 you're looking at an absolute minimum. If you're  
 22 looking at planning, probably the best data you  
 23 have is on a monthly basis. And that may be where  
 24 you're picking up your monthly information, is  
 25 that the planning numbers are usually expressed in

1 a monthly denominator. 52, 53. 5400 cfs might be  
2 a monthly number at Murphy to correspond to the  
3 4500 daily.

4 MR. KOLE: And the problem you have with the  
5 monthly flow is that the environmental concerns  
6 that you have just aren't capable of being met.  
7 As Tom pointed out, zero for 15 days and then  
8 10,000 for 15 days, you've got a dry river for 15  
9 days, and you have a lot of fish and wildlife  
10 destruction. So it struck us that staying with an  
11 average daily flow made a lot more sense than  
12 going with the monthly flow.

13 MR. HAMMETH: So I guess I'm still not  
14 certain -- so this is happening in three stages.  
15 I guess what I'm trying to get at is, given the  
16 existing flow in the Snake River at Murphy and  
17 Swan Falls, in some measurement, what is this  
18 agreement?

19 MR. COSTELLO: Maybe if Frank can bring us  
20 that --

21 UNKNOWN SPEAKER: Gene, in that box in the  
22 corner are some marking pens.

23 MR. NELSON: While they're putting that up,  
24 there's one thing you might remember is, this is a  
25 critical year look. And in every year but the

1 Now, when we get to sometime in the  
2 future, at whatever level the minimum flow is,  
3 everything above the minimum flow will be  
4 subordinated and everything below the minimum flow  
5 is unsubordinated. And the way this block of  
6 water gets transformed in -- from an  
7 unsubordinated right to a subordinated right is  
8 through public interest review of each new water  
9 use application.

10 And the purpose of doing it this way is  
11 so that we can impose very strenuous public  
12 interest review that people who are adversely  
13 affected by it might think deprives them of their  
14 constitutional right to appropriate the  
15 unappropriated waters of the state.

16 But by leaving this hydropower right in  
17 place up to this level of 4500, they run into not  
18 only the statutory public interest criteria, but  
19 also, even if they could get around that, into an  
20 unsubordinated hydropower.

21 MR. HAMMETH: Okay. I know that these  
22 numbers are not exact, but then the -- you're  
23 defining, you're saying that the 4500 average  
24 daily flow is a measurement of the existing flow.

25 MR. COSTELLO: That's the best

1 critical year, you'll have more flows than this.  
2 So you shouldn't be misled by thinking every year  
3 you're gonna be there, because you're just not  
4 there. But maybe Pat can show you graphically  
5 what happens. And maybe he can't too.

6 MR. COSTELLO: Under this agreement,  
7 everything above 4500 is now subordinated, because  
8 that's the level to which current uses have  
9 brought the minimum flow down to.

10 In other words, current development  
11 results in a potential low flow of 4500. If you  
12 were to say what is the minimum flow today, that's  
13 the best answer we can come up with. Below the  
14 minimum flow, not only on the Snake River but on  
15 other rivers similarly situated, the hydro rights  
16 would be unsubordinated.

17 The implications of that are, not only  
18 do you have the force of law of the state water  
19 plan and its minimum flow with whatever priority  
20 date it has, you also have a private hydropower  
21 right with a priority date quite senior to shore  
22 up this minimum flow and make it much more  
23 protectable. This area in here between the 3900,  
24 5600, and where we are today is unsubordinated  
25 today. Okay?

1 approximation we could come up with. That was the  
2 first question we asked and asked the department  
3 and outside hydrologist was, "Where are we today?"  
4 You know, "What is the minimum flow today?"

5 And that's the best number they had.

6 CHAIRMAN KRAMER: Mr. Dunn.

7 MR. DUNN: Yeah. What we do is we take the  
8 historic record flows. And through the use of  
9 computers, we then superimpose on that today's  
10 development, 1984 development, and say, okay, now,  
11 with those historic flows and all of the  
12 development on top, what would be the lowest flow  
13 in the lowest day of the lowest year.

14 And that's where we come up with the  
15 4500. And say, okay, that's as low as the river  
16 can get under present conditions. So now we're  
17 saying, all right, if we approve some permits, we  
18 would protect that so it could -- it wouldn't go  
19 below 3900.

20 UNKNOWN SPEAKER: Okay.

21 MR. DUNN: And that's the reason for some of  
22 these studies, so we can further refine that to  
23 make sure we're right. And let's assume we go  
24 with a couple of years, or three years, some  
25 period of time, and do some studies when you find

1 out that where that flow is, the lowest flow is  
2 really 4400 instead of 45. We're still staying  
3 with 3900. So it means that much less water can  
4 be developed.

5 UNKNOWN SPEAKER: So you've got a block of  
6 600 cfs that you're -- that will be, under the new  
7 proposed criteria, granted in permits that satisfy  
8 those criteria. Once that occurs, you will  
9 continue to grant water rights but they will be  
10 subject to the limitation that in some years they  
11 might not be there. Right?

12 MR. DUNN: That's right. If there was any  
13 kind of a -- not necessarily. We wouldn't grant  
14 them if there was no way to be able to stop their  
15 interfering with the 3900.

16 For instance, if you're pumping in the  
17 Snake Plain, and that's a new permit, and we say,  
18 okay, we'll issue the permit and then when we get  
19 to that low flow period, we'll cut it off.

20 Well, that physically wouldn't allow  
21 the water to get there, so we'd say, no, you can't  
22 appropriate any water. Because there's no way to  
23 be able to go back and shut a groundwater permit  
24 off and have it affect the river until a couple  
25 years later.

1 CHAIRMAN KRAMER: Harold. State your name,  
2 please.

3 MR. MILES: My name is Harold Miles. I'm  
4 representing the Idaho Wildlife Federation, Idaho  
5 Consumer Affairs. And I suppose this question  
6 should go to Mr. Nelson.

7 We have a certain core of the  
8 United States' decree dated -- it was effective  
9 April the 2nd, 1907. And this -- well, item 2 on  
10 page 2, the plaintiff is also the owner of a legal  
11 and valid appropriation of 10,000 cubic feet per  
12 second, the water at Swan Falls.

13 And they have a water right, license  
14 number 14362 for 4000 cubic feet a second dated  
15 July the 29th, 1919. Now, these are two valid  
16 water rights, and I was wondering how they --  
17 Swan Falls got reduced to 8400 cfs.

18 MR. NELSON: Mr. Miles, somewhere in the dim  
19 dark recesses of the past, the power company  
20 acquired water rights that exceeded the physical  
21 hydraulic capacity of the Swan Falls power plant.  
22 You cannot run that much water through it and  
23 never could. I don't quite know how that  
24 happened.

25 MR. MILES: Was this reduced by the -- as a

1 followup, Mr. Chairman, was this reduced to 8400,  
2 then, by the Supreme Court decision or --

3 MR. NELSON: No. We stipulated in the  
4 district court that that was the physical capacity  
5 of the works. In other words, we could have had a  
6 paper water right for 50,000 cfs at that site, but  
7 your water rights are only what you can use. And  
8 8400 was always the physical capacity of the  
9 plant. So how that happened, I don't know.

10 MR. MILES: Will this water right carry  
11 forward if you were able to raise the Swan Falls  
12 dam or improve the Swan Falls dam, according to  
13 your FERC license?

14 MR. NELSON: No. There's a new application  
15 dated I think sometime in March of '83 or April of  
16 '83 for additional water against the possibility  
17 that that plant is enlarged. Then there's a new  
18 filing for the additional water.

19 MR. MILES: Has that been granted by the --

20 MR. NELSON: No.

21 MR. MILES: Thanks.

22 MS. BRAY: Gail Bray from Boise,  
23 District 19.

24 Who does the review for that  
25 unsubordinated 600 to 900 cfs?

1 MR. KOLE: That review is accomplished by  
2 the director of the Department of Water Resources  
3 through an administrative hearing. And the  
4 process, as we contemplate it, the public interest  
5 criteria are attached as Exhibit 2 to the  
6 agreement here.

7 That review would be of course  
8 protected by all the administrative rights that  
9 anybody in the proceeding would have, including  
10 the right to have a district court judge review it  
11 to make sure that the director exercised his  
12 discretion appropriately.

13 CHAIRMAN KRAMER: Does that answer you?

14 MS. BRAY: A follow up on that. And I  
15 apologize, I might be asking some questions that  
16 were answered in the presentation, but I wasn't  
17 able to get here.

18 In that review, it's weighing these  
19 public interest criteria against each other, and  
20 it's just determining which has priority  
21 (inaudible). Is there any compensation in that  
22 for any of those interests which are denied?

23 MR. KOLE: No. The water -- if the water  
24 right is approved, there is no compensation to  
25 anybody, either to the power company or to any

1 other person.  
 2 MR. COSTELLO: There would be no  
 3 compensation that would be due to anybody.  
 4 CHAIRMAN KRAMER: Mr. Director?  
 5 DIRECTOR: One of the other things that  
 6 happens with the public interest criteria adopted  
 7 on the back of the last sheet, in fact, if there's  
 8 a provision allowing the department to adopt rules  
 9 and regulations. And that's there so that we can  
 10 adopt some rules and regulations, implementing the  
 11 public interest criteria, and they then will be  
 12 reviewed by the legislature. So it sets some  
 13 standards by which I'll be looking at the public  
 14 interest criteria to determine whether I approve  
 15 it from there.  
 16 CHAIRMAN KRAMER: Mr. Jones.  
 17 MR. JONES: I think I'm going to ask this of  
 18 the director: Is there any reasons why some of  
 19 these additional uses that might be made of the  
 20 water above the minimum flow could be for a term  
 21 and duration rather than perpetuity?  
 22 DIRECTOR: Well, that's one of the  
 23 unanswered questions. Hydro filings that I now  
 24 issue, I issue them for a fixed period of time. I  
 25 think in the future we might look at other uses,

1 irrigation or any other use, and issue it for a  
 2 period of time subject to the public interest  
 3 criteria at that time.  
 4 You know, if we issue a permit for 30  
 5 years or 20 years, 20 years from now we might wish  
 6 we had done something else with it. If they were  
 7 all subject to that review, and as long as they  
 8 met it, you would continue them, I think that's  
 9 where we could go. And that's probably where we  
 10 will be, an appropriation doctrine, at least  
 11 sometime in the future.  
 12 CHAIRMAN KRAMER: Ma'am?  
 13 MS. HAYES: I'd like to ask Mr. Tom Nelson,  
 14 how much is this going to cost the consumers?  
 15 CHAIRMAN KRAMER: Could you give us your  
 16 name, please?  
 17 MS. HAYES: I'm Marjorie Hayes for Idaho  
 18 Consumer Affairs.  
 19 MR. NELSON: Well, Mrs. Hayes, the plan  
 20 doesn't cost anything. If there is --  
 21 MS. HAYES: I mean, the implementation of  
 22 the plan.  
 23 MR. NELSON: Oh, even the implementation  
 24 doesn't. The only time you get any cost is if you  
 25 get some substantial development, and the plan as

1 presented does not require it. It permits  
 2 development to proceed that meets the standards.  
 3 So my problem with your question is, and we have  
 4 wrestled with it, is to try to come to some  
 5 estimate of the cost. The problem is that the  
 6 cost goes from zero to heaven knows what depending  
 7 on your assumptions.  
 8 But the two University of Idaho  
 9 professors did a study for the legislature, which  
 10 came to a particular number. I've seen that one  
 11 tripled as an estimate of the cost of this thing.  
 12 And that is basically fairly absurd, because the  
 13 assumptions under which the University of Idaho  
 14 economists proceeded I think may well go out the  
 15 window under this particular plan. So I really  
 16 can't give you an answer.  
 17 My personal belief is that that  
 18 particular study is very much the outside  
 19 possibility, and that the actual cost will prove  
 20 to be less than that within the time period that  
 21 they looked at. But until we get some handle on  
 22 what would be a reasonable assumption for the  
 23 quantity and timing of development, I really don't  
 24 know that anybody can give you a meaningful  
 25 estimate of cost.

1 MS. HAYES: I'd like to pursue this further.  
 2 Say there's a ban on hydro, and I've been to the  
 3 PUC to listen to them debate this question back  
 4 and forth. This is something that Mr. Swisher  
 5 said is the most valuable (inaudible).  
 6 Now, assuming that you're planning to  
 7 bring on a great deal more agricultural  
 8 development, which we did all through this  
 9 legislature, (inaudible) the hydro flow that we  
 10 requires new generation. Mr. Dunn told me this  
 11 when we first discussed it, that it would require  
 12 new generation. How can you not put an economic  
 13 value (break in recording) the procedure.  
 14 MR. NELSON: Well, I think you can put --  
 15 you can obviously put a value on any generating  
 16 source. That's not the problem. It's estimating  
 17 the impact on generation that's the problem.  
 18 Because if you don't have a viable assumption as  
 19 to what type of development takes place, then  
 20 while you can estimate how much an acre foot of  
 21 water will generate in terms of kilowatt hours,  
 22 you don't know how many acre feet are going to be  
 23 gone or when. And the timing of those depletions  
 24 is critical to an economic analysis.  
 25 It's not enough to say how much water

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1 is out of the river. The question is, when is it  
2 out of the river. And I haven't yet seen anything  
3 more than a wild guess as to how that development  
4 will take place.

5 MS. HAYES: But you are, assuming that  
6 you're going to need, bring on, what is it,  
7 20,000 --

8 MR. NELSON: No. We're not assuming that.  
9 That is the outside limit permitted as we had  
10 proposed it. We're not assuming that will take  
11 place.

12 MS. HAYES: But in your plan, you are  
13 speaking to this, are you not?

14 MR. NELSON: Well, we're speaking to it.  
15 That's a long way from assuming it's going to  
16 happen.

17 MS. HAYES: So what do we buy, then, as a  
18 consumer on this plan?

19 MR. COSTELLO: What you buy is a universe of  
20 developable land that the state can choose to  
21 allow to develop as it chooses.

22 MS. HAYES: Or not.

23 MR. COSTELLO: Or not, depending on what the  
24 political will of the state is.

25 MR. NELSON: We also buy, I think, a higher

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1 floor on the state's discretion. Right now the  
2 state can run the river to 3300 cfs. What this  
3 does is limit the state's discretion indefinitely  
4 into the future to 3900.

5 Now, whether they choose to allow it to  
6 go to that is a question of state policy, but  
7 that's as far as they can go. So you're also  
8 buying the comfort that you have 600 cfs left in  
9 the river that may not have been there had the  
10 state won the lawsuit.

11 MS. HAYES: But everyone assumes that when  
12 this was settled, that this was inadequate. I am  
13 wondering how this affects the anadromous fish  
14 flow, and this sort of thing, that's been mandated  
15 by a congressional act.

16 MR. NELSON: Well, all I can tell you is  
17 that with my experience of anadromous fish  
18 proceedings, and I've had considerable, 3900 cfs  
19 is a lot better than 33.

20 MR. KOLE: Ms. Hayes, I think --

21 MS. HAYES: That may not be enough, is it  
22 not?

23 MR. NELSON: It may not be enough, but it's  
24 better. And we can't address that particular  
25 problem in settling these lawsuits.

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1 MR. KOLE: The problem I think that you have  
2 is you can look at the glass as half-full or  
3 half-empty. Now, what we were confronted with is  
4 there is a real possibility that that river could  
5 be depleted down to 3300, maybe even below that.  
6 And in exchange for looking at this thing and  
7 trying to compromise in the middle, we have ended  
8 up at a position where the river is protected to a  
9 higher degree but that the state can permit future  
10 development.

11 And not just agricultural development.  
12 We're talking about development of cities and  
13 development of the domestic supplies, development  
14 of new industry. Those are the types of interests  
15 that we were trying to protect.

16 And if you look at it from a very  
17 narrow perspective, you're going to say, this is  
18 not necessarily good. But if you look at the  
19 agreement totally, it's a very good agreement.

20 MS. HAYES: Of course, when you're thinking  
21 of agricultural development over the other  
22 development that you mentioned, why, that's rather  
23 negligible, the water that --

24 MR. KOLE: It depends upon which studies you  
25 look at, what statistics you use. Right now

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1 agriculture uses the bulk of the water. If you  
2 look at the new industrial development that, for  
3 example, Colorado has, they've gone from 1 percent  
4 to about 8 percent in a very short period of time,  
5 consumptive use of water for the new types of  
6 industries that people want to have come to this  
7 valley. Now, you've got to look at the thing into  
8 the future, because you can't just look at it as  
9 it is right now.

10 MS. HAYES: Well, I think this is what we're  
11 trying to do, see, and this is where we're having  
12 problems with your plan, is that hydro development  
13 is something that -- if you travel other places  
14 where they don't have it, they would give their  
15 eye teeth for it, you know, they're really envious  
16 about hydro, and they will purchase it.

17 So in order to go ahead and develop new  
18 agriculture, or wherever we plan to do, we maybe  
19 depleting the sources that's worth a great deal of  
20 money to Idaho.

21 But you see what has happened with the  
22 Lucky Peak Project. California -- we were over to  
23 an energy conference in Washington where  
24 California was offering to pay anywhere from five  
25 to nine cents a kilowatt hour for firm energy,

10 (Pages 37 to 40)

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1 firm hydro energy. They didn't want our nuclear.  
2 They wanted hydro.  
3 So this is a resource that is very  
4 valuable. It's like having a diamond farm. And  
5 what are we going use it with, just throw it away  
6 or --  
7 CHAIRMAN KRAMER: One of the things you can  
8 do, if it's as valuable a resource as we say it  
9 is, you can build more dams and you can create  
10 more hydro energy. I don't think we necessarily  
11 want to do that either.  
12 MS. HAYES: Well, you have to protect other  
13 resources. I'm not advocating --  
14 CHAIRMAN KRAMER: That's why you can't talk  
15 and say hydro is the only use for that.  
16 MR. NELSON: But I think, Mr. Chairman, one  
17 comment that if anadromous fish require more water  
18 for protection, then that interest is going to  
19 have to be separately developed. You can't expect  
20 the resolution of a dispute over hydropower rights  
21 to try to resolve a separate controversy over fish  
22 needs.  
23 And if the anadromous fish require more  
24 water, the interests that are supporting that are  
25 going to have to come forward and make sure that

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1 that interest is addressed.  
2 Second, one of the reasons for  
3 including the public interest criteria and one of  
4 the reasons that that's so important, we think, to  
5 this whole package is that, as you say, hydro  
6 energy on a cheap basis is important. In theory,  
7 if this program is properly administered, that  
8 importance will be recognized and will itself  
9 become a deterrent to the development which will  
10 impinge on hydro generation.  
11 So that's reason for doing this, is to  
12 make sure that those kinds of concerns are  
13 addressed in the process, which we don't have now  
14 and no place to really address it.  
15 CHAIRMAN KRAMER: Front row.  
16 UNKNOWN SPEAKER: Gentlemen, I presume we  
17 have 600 cfs that, in effect, more or less, is the  
18 old Idaho water rights that we are going to sell  
19 to whatever is the most economically feasible  
20 development program that is brought forward to a  
21 Board.  
22 Now, the question I have, is there a  
23 priority list as to what you would consider one  
24 above the other? Would you consider possibly a  
25 fish farm above an agricultural farm, a community

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1 development above a recreational use? Do you have  
2 outlined any priorities along that line?

3 MR. NELSON: I haven't seen any. I think it  
4 would depend -- that analysis as it's focused in  
5 the public interest criteria is initially largely  
6 economic. So on your examples, my guess is, on an  
7 economic basis, in other words, where you say an  
8 acre foot of hydropower will develop "X" kilowatt  
9 hours, which is worth so much money in this  
10 particular time period, that any non-consumptive  
11 use would result in a better economic analysis  
12 than a consumptive use.

13 So obviously a fish farm would impinge  
14 less on hydro development than would a standard  
15 dirt farm. And recreation use wouldn't be -- if  
16 you're looking at a reservoir, for example, you  
17 get some evaporation, but it's not consumptive in  
18 the usual sense.

19 So on your question, I would say if you  
20 had a priority economically, it would be that  
21 you're going to have to find non-consumptive uses  
22 have less of an economic detriment to hydropower.  
23 So they would be preferred that way.

24 UNKNOWN SPEAKER: Well, if I could continue  
25 to question a little bit, doesn't the constitution

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1 of the state of Idaho give water traditionally  
2 some sort of a priority for residential,  
3 individual consumption, and then down for  
4 communities, and then I believe agriculture in our  
5 state.

6 Are those things going to be negated by  
7 this?

8 MR. NELSON: No. Those things are  
9 constitutional preferences, and all that means is  
10 that a more-preferred use can condemn and acquire  
11 a less-preferred use. So if you needed water for  
12 a city, you could condemn water off a farm, for  
13 example, but you have to pay for it. It's not a  
14 priority. It's a preference.

15 MR. KOLE: Part of this agreement is that  
16 you still have "first in time, first in right."  
17 In other words, the best development that's first  
18 in time goes forward. So, for example, all the  
19 undeveloped permits that are out there that come  
20 back through the public interest criteria, they  
21 will still have their priority date of when they  
22 filed back in 1977, '78, and whenever. But that  
23 first in time is still a part of the system.

24 UNKNOWN SPEAKER: What would you say, then,  
25 that those people that are tremendously concerned

11 (Pages 41 to 44)

1 about their power generation, because they're  
2 elderly and on fixed incomes and they represent  
3 consumer groups, should also consider that the  
4 price of food would affect them also. And as far  
5 as agricultural is concerned, there are few people  
6 that are going to develop a farm that doesn't have  
7 an economic return on investment. So I think some  
8 of the concerns there are overstated.

9 CHAIRMAN KRAMER: Mr. Chapman.

10 MR. CHAPMAN: Mr. Chairman, I've got three  
11 questions: one for Pat, one for Tom, and then one  
12 for the panel, whoever wants to answer it.

13 Pat, in a meeting that you and the  
14 attorney general and I had sometime back, the  
15 attorney general's office was adamantly opposed to  
16 the language that is now 7B. They were supponing  
17 the language that said "subordinated" but with  
18 opposed language that referred to "water rights  
19 shall be subject to subordination."

20 My question to you is, why the abrupt  
21 turnaround?

22 MR. KOLE: Well, every time you're in  
23 negotiations, you end up having to give up on some  
24 points. And what we ended up agreeing to was to,  
25 in essence, have the water right placed in trust

1 in the ownership of the state in exchange for  
2 which we went with the concept of the  
3 subordinatable water right.

4 MR. CHAPMAN: So the attorney general's  
5 office feels that that is as protected as the  
6 earlier language, the subordinated language, since  
7 the water right is in trust.

8 MR. KOLE: Yeah. As best we can, we think  
9 so. You know, you never can predict everything,  
10 50 years from now what a court will do. But as  
11 best we can see, we think we're protected.

12 MR. CHAPMAN: Thank you. Tom, the question  
13 I have for you, it's my understanding that  
14 Idaho Power has asked under the 11-80 contract  
15 that the existing water users be dismissed. If  
16 something goes awry and this agreement falls by  
17 the wayside, what happens to those people? Are  
18 they re-sued? Are they still left out? What  
19 happens?

20 MR. NELSON: No. The 11-80 contract says  
21 that once we dismiss, you know, the earth can  
22 tremble and the halls of government come tumbling  
23 down and they're still dismissed. And the  
24 dismissal was with prejudice. So to the extent  
25 that we could build a system which is a total

1 sign-off by the company as the those folks, we did  
2 that.

3 Now, as we have talked before, you have  
4 to hasten to tell them that this is not a rose  
5 garden either. And if they have a problem with  
6 their neighbors or some other part of the system,  
7 they're still going to have those problems. But  
8 as far as the power company's water rights,  
9 they're out of the case for good.

10 MR. CHAPMAN: The last question I have is  
11 that the agreement refers to the full utilization  
12 of existing storage above Murphy. I've asked the  
13 question two or three times before in different  
14 meetings as to what is full utilization of the  
15 those reservoirs.

16 And I wonder if any of you have a  
17 better answer than you did in the past or whether  
18 you now can define what a fully utilized reservoir  
19 is. There are lot of people who would like to  
20 know.

21 MR. NELSON: Well, I don't think the answer  
22 is any different, Sherl, because our concept is  
23 still the same. As you know, the constraints on  
24 water use in a federal reservoir is pretty much a  
25 question of federal law, at least initially. And

1 it's our intuitive belief, at least it's intuitive  
2 on my part, that there's some water uses built  
3 around excess storage, and that to the extent that  
4 within the boundaries of federal policy, the state  
5 can force the question to be asked, "Is this  
6 really the way we want to use the water," that  
7 those questions should be asked.

8 So my feeling is, what we have written,  
9 and I think by compatriots agree, is simply a  
10 system that asks the question. And once you run  
11 up against a federal policy or a state policy that  
12 says, "This is the way it's going to be," then you  
13 have fully utilized the water in the reservoir.

14 I have some real problems with the way  
15 the federal policy operates in conjunction with  
16 the water bank, where the city of Pocatello sits  
17 there with 40,000 acre feet of storage in  
18 Palisades Reservoir, which is largely unusable by  
19 anybody. They can rent it on a short-term basis  
20 year-to-year and yet the basis on which they  
21 bought it indicates that it's going to be years  
22 and years and years before they need it for  
23 exchange on their groundwater impact. There  
24 should be some system in place where that 40,000  
25 acre feet gets put to use.

1 And that was what we intended to  
2 enforce or to suggest was, let's ask the question.  
3 And if we find out that it's an impossibility to  
4 change the federal policies that restrict that  
5 use, then that water is fully utilized, and we'll  
6 go on about our business. But it seems that's  
7 pretty good sense to have somebody ask the  
8 question.

9 MR. CHAPMAN: Thank you.

10 MR. COSTELLO: Don, could I just say a word  
11 on Sheri's first question?

12 CHAIRMAN KRAMER: Okay. First, be sure to  
13 state your name, Sheri Chapman, Idaho Water  
14 Association.

15 MR. COSTELLO: Sheri, you wrote to me or to  
16 the governor on behalf your Board a few weeks ago,  
17 and I've been out on these circuits and haven't  
18 had a chance to answer you. But on that first  
19 question, you asked whether because this was going  
20 to become subordinated in the future, whether it  
21 would take individual subordination proceedings  
22 for each new user to have their right become  
23 senior to the hydropower right.

24 Because of your concern we inserted  
25 language, that the old language said "subject to

1 would be if they gave away their rights.

2 If their rights were lost because they  
3 lost the lawsuit, they could not be faulted by the  
4 PUC, and the PUC couldn't take that out of the  
5 shareholder's hide, and the shareholders in turn  
6 couldn't take it out of management's hide for  
7 having acted unreasonably.

8 But since this is to an extent a  
9 consensual transaction in settling the lawsuit, it  
10 would expose the company to a claim that they had  
11 arguably given something up. And the only way for  
12 us to induce them to give something up is to  
13 negate the possibility that they would be  
14 penalized for that.

15 But in my view, had the suit gone  
16 full-course, there is a very real possibility that  
17 they would have ended up, in essence, giving up or  
18 having taken away from them much more than they  
19 have in this settlement.

20 So looked at from that standpoint,  
21 there isn't a loss to the ratepayer, because had  
22 the state won the suit, as they very well might  
23 have done, we actually are arriving in this  
24 settlement at a position where more water is  
25 devoted to hydropower and other in-stream uses

1 subordination." The language now reads "shall be  
2 subordinated to subsequent uses upon approval of  
3 such uses." So that it is automatic, that as soon  
4 as they clear the water department, subordination  
5 attaches automatically. There isn't any separate  
6 proceeding that they have to go through.

7 MR. CHAPMAN: Thank you.

8 CHAIRMAN KRAMER: Talk louder, though.

9 MR. FOTHERGILL: Al Fothergill. Mr. Nelson  
10 has said that we don't know how much this is going  
11 to cost, and maybe nothing. But as I read this,  
12 and maybe you can tell me, Mr. Costello, as I read  
13 this, the governor and Idaho Power have signed a  
14 piece of paper saying that the public utilities --  
15 they're asking for legislation, really, that "The  
16 public Utility Commission not consider  
17 compensation for consumers for lost capacity in  
18 the hydropower system, effectively acknowledging  
19 it's going to cost the consumer something.

20 Is that an accurate reading of this?

21 MR. COSTELLO: No. I wouldn't say it's  
22 exactly accurate, Al. The reason -- well, let me  
23 back up a second. If you look at this from the  
24 point of view of the power company, as the only  
25 way they could lose out in this whole transaction

1 than would have been the case had it run its full  
2 course.

3 MR. FOTHERGILL: Just a follow-up just to  
4 make sure. Does not this agreement say that the  
5 Public Utilities Commission will not be enabled to  
6 consider the rates from consumers asking for  
7 compensation for the loss of the hydropower  
8 system?

9 MR. COSTELLO: As a result of this  
10 settlement.

11 MR. FOTHERGILL: Yes. Yeah, that's what I  
12 wanted to know. Thank you.

13 MR. MILES: I had another question. I  
14 suppose this is for Mr. Sherman. First, what is  
15 going to be the determination of the groundwater  
16 case history, because as we know, the Snake River  
17 has two sources. It has Jackson Lake, which is  
18 completely dried up at Milner. We have the  
19 underground source that comes from Wyoming to  
20 Oxford and comes out nearly four or five miles  
21 upstream -- or downstream from Milner and  
22 eventually at Feldman Springs. The Supreme Court  
23 has ruled that groundwater comes under interstate  
24 commerce. So how does this agreement propose to  
25 settle that knotty question?

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1 CHAIRMAN KRAMER: Mr. Sherman.

2 MR. SHERMAN: The lawyers are laughing at  
3 me, knowing that all the groundwater geologists  
4 don't deal with interstate commerce. One thing it  
5 does, Mr. Miles, is the state through this  
6 agreement basically is saying that there's a large  
7 chunk of water in that river that is already  
8 appropriated. It is therefore not subject to  
9 appropriation or use by other entities. This is  
10 one way that the Snake system is protected. And  
11 if the agreement goes through, the other rivers of  
12 the state are protected from the diversion of the  
13 water to California.

14 Because we are saying we are making the  
15 beneficial use of that water in the state now if  
16 you can't take it out of the state. That's the  
17 interstate commerce aspect of it.

18 The question of the Snake going  
19 up-river, as I said earlier, we need the money to  
20 do the hydrologic studies. 4500 is what we have  
21 reached in 1981 at Murphy. The model says we  
22 would have reached it several times in the past.  
23 If we're going to allow continued consumptive uses  
24 on the aquifer, we need to be able to predict what  
25 the effect is.

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1 And I think the first constraint is the  
2 600 cfs that's identified. The second constraint  
3 is, the economics of new agricultural development  
4 certainly. And many of our small businesses and  
5 industrial people are not expanding right now. So  
6 I think if we can get the money for the studies,  
7 we've got maybe just enough time to --

8 MR. MILES: Mr. Chairman, Mr. Sherman, can  
9 the state of Idaho fully appropriate underground  
10 water that -- in a navigable river, what about the  
11 claims that Oregon and Washington might have on  
12 this water?

13 MR. SHERMAN: Their claim would have to go  
14 through either -- will have to go through a river  
15 compact. And we are in a position of saying,  
16 we're not satisfying a hydropower right in our own  
17 state at the moment.

18 Are we wasting any water, then?

19 No. Our water in that river is  
20 appropriated. Entering into a negotiation as we  
21 did with Wyoming or as we did with Wyoming and  
22 Utah on the Bear there, our position is, that  
23 water is appropriated. Some of it is appropriated  
24 as a minimum stream flow. That water would be  
25 allowed to pass to Oregon state. That water is

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1 subject to demands from downstream states. But  
2 that water that you say is --

3 MR. MILES: That's only 4500 cfs.

4 MR. NELSON: Mr. Chairman?

5 CHAIRMAN KRAMER: Yeah, Tom.

6 MR. NELSON: Let me have a shot at this.

7 Harold, if I could search your apples from your  
8 oranges for a minute, the case you're talking  
9 about involved a state's attempt to control the  
10 appropriation of groundwater in its state for use  
11 in another state. And the Supreme Court said,  
12 "Hey, state, your particular system is no good."

13 Now, Idaho has a similar system which  
14 is not involved in what we're doing here, because  
15 we're not exporting groundwater. The Snake River  
16 intercepts the groundwater, it becomes surface  
17 water, and so far as I know, there's no thought  
18 that somebody down in Oregon is contemplating  
19 appropriating groundwater in Idaho for use in  
20 Oregon. If they want to do that, that's a  
21 separate problem, but that has nothing to do with  
22 what we're trying to do with this agreement.

23 MR. MILES: Now, Mr. Chairman,  
24 Mr. Nelson, if you look at the water rights filed  
25 on the Oregon slope, it takes water from the

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1 Snake River. And in a low water year, it looks to  
2 me like that you would have a conflict between  
3 those irrigators on the Oregon slope for some of  
4 this water in the Snake River.

5 MR. NELSON: Well, that may be. It's below  
6 Swan Falls and not really involved here. As Frank  
7 said, there's really a couple of ways you can do  
8 that. You can handle it with a compact with  
9 Oregon whereby you would try to limit the Oregon  
10 appropriation. You could do it with an interstate  
11 stream case in the U.S. Supreme Court, which would  
12 probably get done about the year 2056.

13 But in any event, it has nothing to do  
14 with Swan Falls. Those people can't hurt a water  
15 right at Swan Falls with anything they do in  
16 Oregon.

17 CHAIRMAN KRAMER: Be sure to state your  
18 name, Harold Miles. Mr. Ford.

19 MR. FORD: On page 4 of the agreement,  
20 there's just some language that I wanted to make  
21 sure I understood. Number C and D there on page  
22 4: The company's rights in paragraph 7A and 7B  
23 are also subordinate, and then subordinate is two  
24 different things in C and D.

25 Does that language refer to the

14 (Pages 53 to 56)

1 unsubordinated right?

2 MR. KOLE: Yeah, it does. What that  
3 language is there for is that if we made a real  
4 bad mistake and we totally miscalculated so that  
5 existing uses took the river below 39, those uses  
6 would still have a subordinated -- or the  
7 company's water right would still be subordinated  
8 as to existing uses in place today. Okay?

9 We don't think we made that kind of  
10 mistake, but we wanted to make it crystal clear  
11 that as best we could, people who are currently  
12 using water will be protected by this agreement.

13 MR. FORD: Talking about in the state,  
14 you're talking in terms of the existing hydrologic  
15 data.

16 MR. KOLE: Yeah, if our computer model is  
17 wrong. Existing people will be protected.

18 MR. NELSON: From the power company.

19 MR. KOLE: From the power company. Now,  
20 that doesn't mean that those uses could not be  
21 precluded, for example, by a preexisting minimum  
22 stream flow. Okay?

23 MR. FORD: Okay. On D, could Ken or  
24 somebody tell me, have you got any estimate of the  
25 amount of water that's being beneficially used on

1 which there is no application or any filing that  
2 we're talking about?

3 MR. KRAMER: Mr. Dunn, do you know that?

4 MR. DUNN: That's one of the reasons for the  
5 adjudication. We don't know how much water is  
6 being used without benefit of a permit. We know  
7 there's some because of the old constitutional  
8 method, you know, prior to the enactment of  
9 statutes that say normally to establish a right is  
10 by permit, all you've got to do is use the water  
11 and you had a right. There is some of that --

12 UNKNOWN SPEAKER: Have you got an  
13 adjustment, Ken, as to whether C and D are going  
14 to come into play and the likelihood of that?

15 MR. DUNN: No. We're confident it won't.  
16 And we -- I don't know how much water is not  
17 covered by permit. What I do know is that the  
18 water that's being used is not violating it.  
19 That's what we're trying to say is, uses that are  
20 presently there we ought to recognize, and that is  
21 one of the things that the power company has been  
22 saying since Swan Falls began, is that there needs  
23 to be some way to protect existing uses.

24 We're confident that C and D would  
25 never come into play, but rather than take the

1 risk of, for whatever reason, that it would, we  
2 have to have those.

3 MR. NELSON: I think, Pat, too, was, there's  
4 a kicker in D that doesn't leap out at you, that  
5 some of these people have really got a Hobson's  
6 choice to make, if you have a clearly illegal  
7 water user.

8 I mean, a guy who has just gone out and  
9 punched a hole in the ground and started to use  
10 water, he has no water right at all against  
11 anybody today. So he comes in next April and  
12 files. He has an April '85 priority. He's got  
13 maybe a 1979 use experience, he's got to come back  
14 under public interest. And he might find that he  
15 doesn't have either a water right or a permit or  
16 any chance of getting one, depending on the  
17 specifics of his particular use.

18 Some of those people are going to be  
19 hard put to decide whether or not to file by the  
20 deadline. I can hardly wait.

21 CHAIRMAN KRAMER: Chuck.

22 MR. JONES: I'm Charles Jones. I represent  
23 District 11 of the water Users Association, and my  
24 question is to Ken.

25 Under this agreement, the adjudication

1 portion of it, are you planning on re-adjudicating  
2 all the adjudicated rivers?

3 MR. DUNN: Yes. We would --

4 MR. JONES: Why?

5 MR. DUNN: Pardon?

6 MR. JONES: Why, is my next question.

7 MR. DUNN: Well, other than in the Snake  
8 Basin, other than the Payette and the Lemhi,  
9 virtually every other decree that was entered into  
10 either has a defect in terms of describing the  
11 water right or the uses have changed so  
12 dramatically that they don't recognize reality in  
13 terms of what that right is.

14 Whatever the uses are, wherever you  
15 find the uses are, that would be the water right  
16 there. And I know there's some concern in saying,  
17 well, gee whiz, if they come in and look at a  
18 stream that's adjudicated, they'll take away some  
19 of our rights. Well, if a user hasn't been using  
20 the water, he didn't have one anyway.

21 MR. JONES: Are you saying, then, if you  
22 re-adjudicate, any legitimate user isn't going to  
23 lose his right?

24 MR. DUNN: That's correct.

25 MR. JONES: If he's using the water, he's

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1 going to keep it.

2 MR. DUNN: That's correct. And in addition,  
3 some illegitimate users may get a right because  
4 they have been using it for a long time. And you  
5 can find that they've got a right that they just  
6 never bothered to get a permit for, earlier users.  
7 You finally tie down all those rights that we just  
8 don't know about.

9 MR. JONES: Why are you excluding the Lemhi  
10 and the Payette?

11 MR. DUNN: Because we've recently done a  
12 general adjudication of those. The Payette is in  
13 the final throws that we've been working on for a  
14 number of years, and the Lemhi was completed about  
15 two years ago finally. We started that in about  
16 '37.

17 MR. JONES: Are those the only two?

18 MR. DUNN: Those are the only two general  
19 adjudications that we've done in my --

20 MR. JONES: Have you ever done any  
21 adjudication on the Snake River?

22 MR. DUNN: Not on the Snake River.  
23 not as a general adjudication. There's been some  
24 stipulated summary supplemental decrees issued on  
25 existing decrees, but the whole thing has never

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1 been done.

2 MR. JONES: Will they be redone?

3 MR. DUNN: Yes. All of the water rights on  
4 the Snake River will be done and its tributaries.  
5 Whether they're decreed, licensed, or permit or  
6 whatever it is, the court will finally say, this  
7 is the water right. And that's what we don't have  
8 right now.

9 Going into the upper Snake, the Rexburg  
10 decree, for people who live up there, you know,  
11 it's a -- it's almost a holy document. But when  
12 you look at that thing, it doesn't define the  
13 water rights. It says that somebody has got the  
14 right to 50 cfs, but it doesn't describe where to,  
15 It doesn't describe the period or point of  
16 diversion.

17 In effect, it has a defect in it. And  
18 those things need to be clarified for the  
19 protection of that water user against some future  
20 people who might say that they don't have a water  
21 right.

22 UNKNOWN SPEAKER: I have one more question  
23 Mr. Chairman. I guess I don't know who it goes to  
24 -- Pat, I guess, one of the Pats.

25 Under the subordination deal, the

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1 language, is it going to cover all rivers?

2 MR. COSTELLO: Well, it would -- yeah.

3 Prospective subordination, right. Yeah.

4 (Simultaneous responses.)

5 UNKNOWN SPEAKER: New water; not old water.

6 MR. COSTELLO: Right. Except that it would

7 cover old water to the extent that if there are

8 un-subordinated rights out there, as there do

9 appear to be, they would also be invited to come

10 into this same kind of arrangement whereby in

11 exchange for us recognizing an un-subordinated

12 right to the level of a minimum stream flow, they

13 would agree to place their rights above that in

14 trust with the state to be subordinated over time.

15 UNKNOWN SPEAKER: To follow up on that,

16 then, say a water district has high ground, that

17 they could re-issue some of this unused water or

18 something when you re-adjudicate. Will they have

19 first preference in putting it back in their own

20 district?

21 UNKNOWN SPEAKER: No.

22 UNKNOWN SPEAKER: No.

23 MR. KOLE: No preference.

24 UNKNOWN SPEAKER: No.

25 MR. DUNN: But let's assume that as of -- we

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1 start the adjudication today, next year, whenever,

2 at the time we're defining those rights, in the

3 intervening time, the districts have gone back and

4 placed some water into the irrigation to protect

5 those rights. Because the irrigation district,

6 and the irrigation district is pretty unique, it

7 has a right to irrigate anything within its

8 boundaries. Not just a specific river.

9 MR. STRIGGER: Jack Strigger, Southwest

10 Idaho Development Association, Sage Brush

11 Rebellion, and I guess a couple others.

12 My question is, well, I guess three

13 parts here and then I'll be still. I don't see

14 where you have really addressed, and I hope that

15 sometime you will, upstream storage which would be

16 beneficial to everyone. And I presume in your

17 appropriations maybe something will be said about

18 that.

19 And then the groundwater rights have

20 always been a stickler because -- and the water

21 that has been asked for on the wells, there are --

22 many times there are very legitimate arguments as

23 to whether it has anything to do with what

24 actually gets into the Snake River in a perched

25 water table, and so forth. And just arbitrarily

16 (Pages 61 to 64)

1 to draw a line on a map, you can apply for a well  
2 here and you can't apply for a well there, there's  
3 tremendous political football.

4 The other thing -- when this is put  
5 into practice, are we going to have three layers  
6 of state agencies to go through: the water board,  
7 the PUC, and a committee headed by the governor?  
8 Or are we going to go through the same general  
9 procedures that we do now?

10 CHAIRMAN KRAMER: Let's take that one at a  
11 time.

12 MR. KOLE: I'll do the last one. You go  
13 through the department, and there won't be any  
14 committee through which you have to go to. And  
15 it's our hope that what we have here will cut back  
16 on red tape.

17 MR. STRIGGER: Very good.

18 MR. NELSON: I will say that you may see  
19 some new faces at the department. I think now you  
20 have an option for the in-stream flow interests  
21 and come in and question the economics or the  
22 public interest. You may see the PUC there on the  
23 question of what is the lost energy. So you may  
24 see some new faces when you get there, but I agree  
25 with Pat, hopefully you'll only go one place just

1 Snake River Basin procedures.

2 In practice, it's really hard to find a  
3 perched water table that's not tributary. If you  
4 get the bathtub full, the water is going to run  
5 out of it. And if you take the water out, the  
6 water that would otherwise run out of it stays in  
7 it. So a true perched water table that's not  
8 tributary is pretty rare, but you could postulate  
9 that they're there, and to the extent they are,  
10 they would be found not tributary.

11 CHAIRMAN KRAMER: It's time to break.

12 Did you have a question?

13 MR. FORD: I want to ask a question about  
14 the proposed criteria, the public interest  
15 criteria.

16 Mr. Nelson said that we can't expect a  
17 resolution of a hydri-rights controversy to settle  
18 issues relating to the anadromous fish  
19 arrangement. I understand that point of view, but  
20 it's also true that, in fact, the settlement does  
21 impact all water users on the Snake River.  
22 settling the conflict around particular uses, has  
23 an impact on all uses.

24 MR. NELSON: Oh, sure. Yeah. That's why I  
25 say that the minimum flow can't address anadromous

1 like you do now.

2 MR. COSTELLO: And on the up-stream storage,  
3 I guess it's in here by omission, because by  
4 maintaining the zero flow at Milner, it still  
5 provides for any future up-stream storage projects  
6 that become feasible above Milner.

7 MR. KOLE: The idea there is that  
8 eventually, if you look at the federal  
9 government's involvement in up-stream storage  
10 projects, it's becoming less and less likely that  
11 you're going to see any federal involvement of any  
12 significant nature.

13 So what we're trying to do here is to  
14 create some incentive for the state and private  
15 parties to begin that up-stream storage  
16 enhancement.

17 MR. NELSON: On the other question you  
18 asked, Jack, I guess that's a question of what's a  
19 tributary. And it's obvious that in order to  
20 challenge somebody's use, you have to show that  
21 he's tributary to your use and that he has the  
22 potential for adversely affecting your use.

23 So if you have a true perched water  
24 table, then you can say, I'm not tributary. And  
25 in theory you could exclude yourself from the

1 fish concerns separately. But I think your point  
2 on the public interest criteria is well-taken,  
3 because the state presented bills to the  
4 legislature last year that had fish and wildlife  
5 concerns, for example, in those same criteria.

6 I lost the battle to include them this  
7 time, the theory being that it's already in the  
8 local interest criteria, which we left in the  
9 statute. So there was some feeling it was  
10 duplication, and that was one of the issues. The  
11 tradeoffs was that I didn't get fish and wildlife  
12 in there because the theory was it's already  
13 there.

14 MR. FORD: Well, let me ask the other  
15 parties. Did you consider, then, putting fish and  
16 wildlife, other in-stream uses, as a part of the  
17 criteria, and if you did, why did you decide not  
18 to?

19 MR. COSTELLO: Well, it's exactly as Tom  
20 said because currently the environmental and  
21 conservation community views the local public  
22 interest prong of the determination as being their  
23 opening to assert these -- the wildlife values.

24 If we had put them expressly in our  
25 criteria, we would have had to repeal the local

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1 public interest. And we thought that we would be  
2 buying ourselves a whole lot more or creating a  
3 whole lot more suspicion if we repealed the local  
4 public interest and said, "This is replacing  
5 that." Instead we said, "This is supplemental to  
6 that."

7 So you still have the local public  
8 interest, which includes the wildlife, and  
9 overlaying on that, the new criteria that  
10 addresses streams that have hydropower facilities  
11 at the bottom of it.

12 MR. FORD: But doesn't the local public  
13 interest also include all other local public  
14 interests: agriculture, hydropower, all the  
15 others that indeed you mentioned in the  
16 (inaudible). Maybe Ken needs to help me here.  
17 And it seems to me this stacks the deck a bit.

18 You've got now a number of criteria  
19 already in place, and then you add these criteria  
20 to them. And the director makes a decision on  
21 water rights based on the existing ones plus these  
22 new ones.

23 MR. KOLE: Well, Pat, I think you're getting  
24 precisely to the point where we sat down and we  
25 frankly negotiated back and forth. Some points

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1 which group applies and which one supersedes and  
2 how do they interrelate.

3 MR. KOLE: Well, you know, you never know  
4 until the Supreme Court actually rules on it. But  
5 what you've got is a two-tier analysis right now.  
6 You've got all the criteria that currently exists  
7 under law, and then over and above that you've got  
8 the new public interest criteria that will apply  
9 in certain situations like in the Snake River.

10 Okay? So you've got all the protection  
11 that you currently have under law, and then you've  
12 got these new criteria that a development will  
13 have to meet before it goes forward.

14 MS. BRAY: I have questions about your  
15 neutrality in terms of all the same interests that  
16 are mentioned in the local criteria right now are  
17 mentioned except for fish and game. I'm not sure  
18 I see the neutrality there. Why was one excluded  
19 and not two or three excluded, or why not all  
20 included, both places, so you have the same  
21 considerations at both levels?

22 MR. KOLE: Well, it's just the way you read  
23 it. I read it as being neutral, and that's how we  
24 intended it.

25 MR. NELSON: I think, I might say, Senator,

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1 went one direction. Some points went the other  
2 direction.

3 I think if you look at the package as a  
4 whole, it's a neutral package. It doesn't favor  
5 one set or another set. It's a neutral package.  
6 Now, if you read it so you believe it's stacking  
7 the deck, then so be it. But the way we intended  
8 it is, it's neutral.

9 And if development can justify itself,  
10 it goes forward. If it can't justify itself, it  
11 doesn't. And you consider all the factors, but no  
12 one factor should be entitled to any higher  
13 priority than any other factor. And that's why we  
14 specifically wrote that in there.

15 MR. COSTELLO: And I would also say for the  
16 governor's part, if the fish and wildlife  
17 interests aren't being -- aren't adequately  
18 protected under the current local public interest  
19 analysis, I'm sure he would not be opposed to  
20 including that in the new public interest analysis  
21 that we've proposed here.

22 UNKNOWN SPEAKER: Senator?

23 MS. BRAY: Gail Bray, Boise. For  
24 Notus can you tell me the intermeshing of the  
25 local and the state public interest there, when

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1 that in terms of a statute that's easy to use and  
2 so on, it would have been my preference to abandon  
3 local public interest in the context in which it's  
4 used and set out in that session the items you  
5 want the director to consider. Because I frankly  
6 don't know anything that is or isn't automatically  
7 included in the local public interest. I think  
8 it's a treacherous standard to leave there, if  
9 it's intended to protect important interests.  
10 That would be my preference.

11 But the way our compromise came out was  
12 to avoid building ourselves a large constituency,  
13 and we would see a plan against their interest to  
14 eliminate local public interest. What we did was  
15 take a marginally unworkable statute now and make  
16 it maybe more so. But we just thought --

17 (Break in recording.)

18 MR. DUNN: -- For example, on a stream in  
19 the Hagerman Valley, there was some strong  
20 protests registered by people who were opposed to  
21 a new fish hatchery there because of the  
22 environment of that stream. And it went so far as  
23 to opposing the hatchery because it wasn't the  
24 proper use of the land. Not just the water, the  
25 land.

18 (Pages 69 to 72)

1 I thought and my predecessor thought  
2 that that was carrying public interest too far  
3 from my perspective -- from the director's  
4 perspective. And that went to court, and the  
5 court said no, it isn't, you have to consider  
6 everything. You have to look at the use of the  
7 land and how does that conform with other uses.  
8 So the courts have said that's very broad, and  
9 that's the way we've been using it.  
10 MS. BRAY: I have just one last question,  
11 and I promise it will be the last. If you've left  
12 in place the local public infrastructure for use  
13 of local public interest and you have given to the  
14 director and the board the state public interest  
15 criterion, it seems to me you have excluded one of  
16 those interests to be considered at the state  
17 level in determining your water right. And I'm  
18 still curious as to how, if it was being valuable  
19 at the local level, how it's not being equally as  
20 valuable at the state level.  
21 MR. KOLE: I really don't read it that way.  
22 You know, if you look at the Snake River as a  
23 whole, you know, the local public interest has  
24 been defined very broadly. I just don't --  
25 MS. BRAY: I know you don't. Can I hear

1 from him?  
2 MR. KOLE: Sure.  
3 CHAIRMAN KRAMER: Mr. Director.  
4 MR. DUNN: The local public interest is not  
5 the public interest of a hundred feet along the  
6 stream. If that stream goes someplace, that's the  
7 local public interest. Really, if it's a question  
8 of impact on Snake River, I think the local public  
9 interest is the effects on the Snake River. It's  
10 not something that's very, very narrowly defined.  
11 CHAIRMAN KRAMER: Senator?  
12 MR. RINGERT: Bill Ringert, Boise.  
13 Senator, I think you have to understand  
14 the definition of local public interest.  
15 MS. BRAY: I'm trying.  
16 MR. RINGERT: Well, it says the people in  
17 the area that would be affected by the use, you  
18 know, and if that's the whole state, then the  
19 whole state is the local public interest. That's  
20 the way I read it.  
21 MR. DUNN: Yeah. That's right.  
22 CHAIRMAN KRAMER: Ladies and Gentlemen, it's  
23 10 o'clock. We've been at it two and a half  
24 hours. We've cut it off at 10 o'clock at every  
25 other time.

1 These people will be up here. From now  
2 on, you can walk on up and talk to them. We will  
3 be back January or February for public input from  
4 you. Until then, we appreciate your time and your  
5 energy and your efforts to come here.  
6 UNKNOWN SPEAKER: Can I ask one question of  
7 the board?  
8 CHAIRMAN: The board? Okay.  
9 UNKNOWN SPEAKER: Does the board intend to  
10 take a position on this going into the legislature  
11 or on specific parts of it? Or are you guys  
12 waiting until your hearings --  
13 CHAIRMAN KRAMER: We will wait until we come  
14 back out and have public hearings and have input  
15 from the public. We have had nothing -- we're no  
16 different than you are sitting up to the table  
17 right now.

18  
19 (End of recording.)  
20  
21  
22  
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25

# 1 REPORTER'S CERTIFICATE

2  
3  
4 I, Dianne E. Cromwell, Court Reporter, a  
5 Notary Public, do hereby certify:  
6 That I am the reporter who transcribed  
7 the proceedings had in the above-entitled action  
8 in machine shorthand and thereafter the same was  
9 reduced into typewriting under my direct  
10 supervision; and

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

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand July 25, 2007.  
17  
18  
19  
20

21 Dianne E. Cromwell, Court Reporter  
22 CSR No. 21  
23  
24  
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1 R E P O R T E R ' S C E R T I F I C A T E

2  
3  
4 I, Dianne E. Cromwell, Court Reporter, a  
5 Notary Public, do hereby certify:

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

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

15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand July 25, 2007.

17  
18  
19 

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