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DEPARTMENT OF
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Exhibit 14

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DEPT. OF WATER RESOURCES

Transcript of Idaho Water Resource Board
public hearing on proposed
State Water Plan amendments
(Jan. 28, 1985)

Third Orr Affidavit

EXHIBIT 23

REPORTER'S TRANSCRIPTION
OF TAPED STATE WATER PLAN HEARING
ON POLICY 32
IDAHO FALLS
JANUARY 28, 1985

Reported by: Mary Jeana Reiner, CSR#711
Pages 1 - 51

1 P R O C E E D I N G S

2
3
4 UNIDENTIFIED SPEAKER: Testing one, two, three.
5 This is a recording of the state water plan hearing on
6 January 28th in Idaho Falls at 2:00 p.m.

7 MR. GRAY: We are only going to have one person
8 who'll testify this afternoon, and we'll close the
9 meeting until 7:00 this evening.

10 UNIDENTIFIED SPEAKER: What did you say the purpose
11 of the meeting was for now?

12 MR. GRAY: To take public testimony on Policy 32 of
13 the state water plan.

14 My name is Gene Gray. I'm chairman of the Idaho
15 Water Resource Board. And with me today is Don Kramer,
16 board member. Dave Rydalch, board member. Jim Shaw,
17 board member. And with staff we have Wayne Haus and
18 Frank Sherman.

19 Does everyone have a copy of the Currents magazine?
20 I'll briefly kind of go through this. Front page you'll
21 notice the listing of the meeting areas that we have
22 planned for the next two weeks.

23 On page 2 and 3, you'll find a proposed revision of
24 Policy 32 of the state water plan, which of course deals
25 with the Snake River system. This is a proposed

1 revision, and this is what we plan on taking testimony on
2 in the six meetings ahead of us.

3 If you go over to page 4 and on toward the back of
4 the paper, you'll find the legislative package, which our
5 legislators are working on in Boise.

6 We will not be dealing with the legislative package
7 today. We will be dealing with Policy 32.

8 When you come up for your testimony, please approach
9 the mic and give us your name, your address and please
10 your telephone number so we can make it a point of record
11 to make sure that we contact you for any mailings that
12 might go out.

13 So with that, I'll call Dale Rockwood.

14 Dale.

15 MR. ROCKWOOD: Mr. Chairman, gentlemen, I am Dale
16 Rockwood. I live at Route 1, Box 218, Idaho Falls.
17 Phone number is 522-4913.

18 I represent the progressive irrigation district.
19 I'm also a committee -- I'm also a member of a committee
20 of nine. I am not speaking on behalf of the committee of
21 nine, although they have endorsed the changes. I'm just
22 speaking on behalf of the progressive irrigation
23 district.

24 And I would like to rise in support of the proposed
25 changes going from 3,900 in the summer to 5,600 in the

1 winter. I like the legislators. I guess I would like to
2 have a green and a red button and then a gray one, and we
3 endorse this just in the wet years, Mr. Chairman.

4 MR. CHAIRMAN: Thank you very much, Dale.

5 Is there anyone else that would like to testify at
6 this time?

7 UNIDENTIFIED SPEAKER: Mr. Chairman.

8 MR. CHAIRMAN: Yes, sir.

9 UNIDENTIFIED SPEAKER: I don't want to testify, but
10 there are a lot of people like myself who are not -- just
11 reading the paper is all we know about. I wonder, since
12 probably there will be some time available, if the board
13 couldn't explain to us, at least in a degree, just what's
14 going on. I mean, there is a lot of questions. Would
15 that be asking too much?

16 MR. CHAIRMAN: Mr. Sherman, would you like to field
17 that question?

18 MR SHERMAN: How much time we taking, Mr. Chairman?

19 MR. CHAIRMAN: Well, since we only had one person
20 testify before us, take the afternoon, if you would like.
21 It might take us several.

22 UNIDENTIFIED SPEAKER: Do you want to close the
23 official hearing?

24 MR. CHAIRMAN: Yes, I will close the official
25 hearing as of now.

1 UNIDENTIFIED SPEAKER: Go ahead, Mr. Sherman (sic).

2 MR. GRAY: Good evening, gentlemen. My name is Gene
3 Gray. I'm chairman of the Idaho Water Resource Board.
4 And we're here tonight to take public testimony on Policy
5 32.

6 But first I would like to introduce you to some of
7 the people that we have here. On the far end is J. D.
8 Williams from Creston. Dave Rydalch from St. Anthony.
9 Both board members. Wayne Haus, the Department of Water
10 Resources. Jim Shaw from Eden, department -- or board
11 member. And Don Kramer from Castle Ford, board member.
12 Frank Sherman, department of water resources.

13 Now, does everybody have a copy of the Currents? If
14 you don't, step back and grab one in the back there.

15 What you might do is just kind of take a look at the
16 first page to start with. And what we'll be talking
17 about this evening is the revision of Policy 32, which
18 deals primarily with the Snake River system.

19 In December, the Water Resource Board accepted some
20 revised draft policy for Policy 32. We did not adopt it.
21 We accepted it to bring to the public. So that's what
22 we're here about tonight.

23 The first two pages would be page 2 and page 3 deal
24 with the revisions that we have proposed that you comment
25 on this evening. In a few minutes I'm going to have

1 Frank Sherman briefly go over those with you, and we'll
2 go right over the top of them fairly rapidly to kind of
3 get it in your mind exactly how they fit the overall
4 package.

5 On pages 4 through 7 is what is commonly referred to
6 as the legislative package. And we were here the latter
7 part of October with the people that drafted that. A
8 member from the governor's office, a member from Idaho
9 Power, and a member from the attorney general's office.

10 So without further ado, we'll have Mr. Sherman give
11 you a brief runover of Policy 32. And if you would like,
12 you might just follow through with it.

13 When Frank's through, we'll start public testimony,
14 and I would like you to come forward to the mic, state
15 your name, address, telephone number. While Frank is
16 going through Policy 32, we'll accept a couple questions
17 for clarification purposes, because we've got to be
18 fairly short with these so we can get to the public
19 hearing process. After we close the public hearing, if
20 we've got some time, we'll stand for questions if you
21 have any.

22 Frank.

23 MR. SHERMAN: The original state water plan,
24 the existing state water plan first -- well, first we
25 we're talking 1976. Under Policy 32, Snake River Basin

1 basically says the available unappropriated water to the
2 Snake River Basin are allocated to satisfy existing uses
3 (inaudible) for future growth and development and protect
4 the environment. The allocation is recognized under the
5 protective water system rights. The water allocations
6 are made by large regions to allow the widest possible
7 direction of application.

8 And then there is accompanying text to this policy
9 that discusses all of the water uses in the basin. In
10 some cases allocates water for new development or new
11 uses to those different entities and tries to cover all
12 water use in the Snake Basin as it existed for the
13 next -- to the year 2020.

14 In looking at that and being faced with the problem
15 of redesigning or amending that policy, because of the
16 Swan Falls agreement, we chose or the board chose to pick
17 out those parts of existing Policy 32 on a real policy
18 rather than just simple allocation, highlight them, that
19 is the policy (inaudible). That is the policy of the
20 water board. And then have underneath those text to
21 explain (inaudible) for that particular policy.

22 So if you look at page 2 in the Currents, you'll see
23 that it starts out with, "Policy 32 Snake River Basin.
24 It is the policy of Idaho that the ground water and
25 surface water of the basin be managed to meet or exceed a

1 minimum average daily flow of zero measured at the Milner
2 gauging station, 3,900 cfs from April 1 to October 31 and
3 5,600 cfs from November 1 to March 31 measured at the
4 Murphy gauging station, and 4750 cfs measured at the
5 Weiser gauging station. A minimum average daily flow of
6 5,000 cfs at Johnson's Bar shall be maintained at Lime
7 Point (river mile 172) a minimum of 95 percent of the
8 time. Lower flows may be permitted at Lime Point only
9 during the months of July, August, and September.

10 Waters not held in trust by the State in accordance
11 with Policy 32A," which is the next policy, "shall be
12 allocated according to the criteria established by Idaho
13 Code 42-203A."

14 One of the problems with bringing out these
15 revisions, these proposed revisions at this time, is that
16 we're doing this because it's part of the package that
17 the governor and the Idaho Power Company put together.
18 Part of that package calls for action on the part of the
19 legislature.

20 What the legislature is being asked to do is
21 contained in the Currents issue on pages 4 and 5, is my
22 guess. And we, the board, is assuming that they'll get
23 their job done if we can get our job done. If they don't
24 get their job done, we won't do our part. So it's sort
25 of a mutual let's see if we can all get it done. So

1 (inaudible) that are not -- that don't even exist,
2 (inaudible) proposed legislative package.

3 This policy does several things: One, it represents
4 the compromise the State and Idaho Power made in the
5 flows of Murphy Gauge. The flow of Murphy and the old
6 water plan and the existing water plan -- I keep calling
7 it the old. The existing water plan calls for a flow of
8 3,300 cfs at the Murphy Gauge year-round.

9 Historic low flows in the summertime have been down
10 as low as 4,500. Idaho Power claims the water right of
11 8,400. That claim right was the basis for the legal
12 business going on in (inaudible) district court. The
13 negotiator decided to take the 4,500 historic low flow
14 and what the water plan called for and split the
15 difference. That's the water that's really available use
16 for discussion.

17 Disagreement. These minimum flows would satisfy
18 Idaho Power to the point that as long as these flows
19 exist, Idaho Power would not protest, and any of their
20 hydro facilities upstream the Murphy Gauge (inaudible) --
21 any amount of water that comes through, as long as these
22 flows go by the Murphy Gauge.

23 Now, we talked about waters not held in trust by the
24 State. Idaho Power has a claim of 8,400 at the Swan
25 Falls. It has larger claims at some of the other dams

1 upstream. Those waters within that claim of Idaho Power
2 are to be held in trust by the State for reallocation of
3 other uses.

4 Second, the policy directly addresses this issue.
5 And it says that, "It is the policy of Idaho that water
6 held in trust by the State pursuant to Idaho Code 42-203B
7 be reallocated to new uses in accordance with the
8 criteria established by Idaho Code 42-203A and 42-203C."

9 It doesn't mean much as you read the ballot, but
10 basically as proposed, 203A are the existing requirements
11 to get a water right. It has to do with (inaudible). It
12 has to be public interest.

13 42-203C is a whole new set of criteria which the
14 (inaudible) to apply, because this is not unappropriated
15 water. These are waters that were claimed by Idaho
16 Power. They are being held in trust by the State. They
17 are not the unappropriated water (inaudible). Anybody
18 can have a shot at these waters also. But because they
19 were originally appropriated by Idaho Power, the State is
20 going to give special restrictions. (Inaudible) special
21 restrictions. Special criteria from the board that can
22 be given away.

23 This is the section that discusses the effect on
24 hydropower. It's the family farm interest. The whole
25 series of criteria have been suggested to the legislative

1 (inaudible).

2 "32B - Domestic Commercial and Municipal and
3 Industrial. It is the policy of Idaho that 150 cfs of
4 water for consumptive purposes held in trust by the State
5 pursuant to Policy 32A be reallocated to meet future
6 domestic, commercial, municipal and industrial uses in
7 accordance with state law."

8 The old -- the existing state water plan allocates
9 in terms of acre feet 144 cfs for new commercial -- well,
10 municipal and industrial we called it at that time.
11 There are several columns with that. One, we were
12 allocated more which belonged to Idaho Power, because we
13 thought they were subordinating (inaudible). So all
14 those allocations in the existing plan were based on the
15 idea of (inaudible). The Supreme Court's decision
16 suggests we may not be able to. Therefore, the
17 compromise (inaudible) work with.

18 In actual fact, though, because the use of water for
19 industry and human consumption is so important, we have
20 actually set aside as much water, in fact, slightly more
21 in this policy than in the existing water plan. We have
22 included domestic uses here. The old water plan was
23 silent on domestic (inaudible). We want to keep track of
24 it.

25 In terms of actual consumptive use, this probably is

1 close to doubling the amount, increasing by the same
2 amount of (inaudible), the amount of water and use for
3 this in this part of the state now.

4 "Policy 32C - Agriculture. It is the policy of
5 Idaho that appropriated water held in trust by the State
6 pursuant to Policy 32A less the amount of water necessary
7 to provide for present and future DCMU uses as set forth
8 in Policy 32B shall be available for reallocation to meet
9 new and supplemental irrigation requirements which
10 conform to Idaho Code 42-203A, B, and C."

11 All this is really stating is that the State has
12 some water in its grasp that used to be claimed by Idaho
13 Power, and there are really only two ways to consume it:
14 One is to use it for industry, and the other (inaudible).
15 Any water after you meet the requirements of the
16 municipal and industrial and commercial allocation is
17 left over for agriculture use. Why it's not an iceberg
18 number here is because of the difference in claimed water
19 at each facility by Idaho Power.

20 The example we use everywhere in this text is the
21 8,400 versus 4,500 versus 3,900 at the Murphy Gauge. But
22 at different places along the river the amount of water
23 held in the trust by the State is different.

24 "Policy 32D - Hydropower. It is the policy of Idaho
25 that hydropower use be recognized as a beneficial use of

1 water, and that depletion of flows below the minimum
2 average daily flows set forth in Policy 32 is not in the
3 public interest."

4 Idaho Power has already recognized the beneficial
5 use of water. As part of the agreement, these -- this
6 3,900 flow in the irrigation season, the 5,600 cfs in the
7 wintertime in Murphy ought to be regarded as
8 unsubordinated (inaudible).

9 Supreme Court rules their right there was not
10 subordinated. For some of the water, we'll continue
11 along the same lines if they are not subordinated.

12 Idaho Power has stated in the agreement they will
13 not object to those people making beneficial uses of the
14 water at the time the agreement is signed, but they will
15 take action against new users, those users particularly
16 if they are using their water if the flow (inaudible).
17 And the state agrees by signing the agreement.
18 (inaudible) water plan, but they have a legitimate
19 complaint if we ever get below those numbers.

20 "32E - Navigation. It is the policy of Idaho that
21 water sufficient for commercial and recreational
22 navigation is provided by the minimum flows established
23 for the Snake River."

24 It says basically the language in the existing
25 plan, the flows provide that the people (inaudible) below

1 (inaudible) Canyon are satisfied. There should be enough
2 water for recreational uses in the (inaudible).

3 "32F - Agriculture. It is the policy of Idaho that
4 water necessary to process agriculture products be
5 included as a component of the DCMI as provided in Policy
6 32B. The minimum flows established for the Murphy
7 gauging station provide an adequate water supply for
8 agriculture, however it is recognized that it may be
9 necessary to construct different diversion facilities
10 than presently exist."

11 Again, it's no change for the existing water plan.
12 It provides that each one build a plant to process fish
13 (inaudible) commercial user. It says that as long as you
14 are going to have flows in the river, and most of that
15 water in the summertime comes out of the thousand
16 springs, these trout farmers are probably going to be
17 okay. But a water right doesn't necessarily guarantee
18 use flow of water. It guarantees you access to the
19 water. If these guys make enough to reconstruct the
20 stream courses leading away from spring, (inaudible).
21 But as I say, no change in the existing water plan.

22 "Policy 32H - Water Quality and Pollution Control.
23 It is the policy of Idaho that the use of water to
24 provide pollution delusion is not a beneficial use of
25 water."

1 There is really no change from the existing state
2 water plan. The attitude of the water board is that
3 there are enough laws to protect water quality. You
4 don't need to take good water (inaudible).

5 UNIDENTIFIED SPEAKER: You skipped G.

6 MR. SHERMAN: I skipped G? I'm sorry. Now I've
7 lost my place totally.

8 "Policy 32G - Fish, Wildlife, and Recreation. It is
9 the policy of Idaho that the minimum flows established
10 under Policy 32 are sufficient and necessary to meet the
11 minimum requirements for aquatic life, fish and wildlife
12 and to provide water for recreation in the Snake River
13 below Milner Dam. Stream flow depletion below the
14 minimum flows is not in the public interest."

15 It is not in this public interest, because
16 (inaudible) hydropower. It's not in the public interest
17 because of its impact on fish, wildlife and recreation.

18 Basically, we are guaranteeing by these changes to
19 the water plan, if the agreement package goes through,
20 that there will be more water in the river than there
21 might have been, because the minimum flow was raised from
22 3,300 at Murphy year-round up to 3,900.

23 The board is the only authority in the state that
24 can allocate or appropriate water for in-stream flow
25 purposes. They can do it by specific designation in the

1 water plan, or they can go out and appropriate water from
2 the unappropriated waters of the state on any region of
3 any stream within the state. Between the two, they feel
4 that minimum water is available for these purposes. They
5 don't -- I'm not going to suggest that optimum value for
6 fish (inaudible) for example, but minimum water will be
7 available to keep things more or less on an even keel as
8 they are (inaudible).

9 Water quality and pollution control we'll skip.

10 New storage. This is a very awkward one. It
11 impacts (inaudible) to some extent and other parts of the
12 Snake in sort of a different way.

13 "It is the policy of Idaho that maximum use must be
14 made of the existing storage facilities in the basin.
15 New storage up-stream from the Murphy Gauge should only
16 be approved after it is determined that insofar as
17 possible maximum use of existing storage is being made.
18 Approval of new storage projects that would divert water
19 from the mainstream of the Snake River between Milner and
20 Murphy during the period November 1 to March 31 should be
21 coupled with provisions that mitigate the impact such
22 depletions would have on the generation of hydropower."

23 The text explains it in two parts: First of all,
24 maximum use of existing storage facilities. We all know
25 that there are people who have a full natural flow right,

1 and they also have a full reservoir stored water right.
2 How many times they use their reservoir water? It may be
3 once every 10 years. It may be once in 20 years. The
4 city of Pocatello has never used theirs, for example.

5 There are lots of cases where water sits in the
6 reservoir all during irrigation season, and on October
7 1st the water master has to turn it down the river
8 because he needs to have space (inaudible).

9 If we are (inaudible) water short we're going to
10 have special criteria for people who want to use the
11 water. We're going to say that Idaho Power has the water
12 right and some of the dams are no longer valid. It seems
13 wrong to store water that is never going to be used and
14 it's going to be turned (inaudible) October 1st.

15 The negotiators of the agreement felt that it was
16 appropriate to put this in the water plan and ask the
17 board to ask questions why does this happen. Are there
18 legal or social barriers that we can overcome.

19 Go through a couple of quick legal barriers. If you
20 store water behind the federal dam, you can only lease it
21 for one year at a time. The state has a water bank plan.
22 You can sell water, but if you don't lease it for one
23 year at a time, nobody can come in and do anything in the
24 way of new development (inaudible) water.

25 If you stored water in the federal reservoir, you

1 cannot make a profit and sell the water. That put a
2 little incentive for someone who has water he needs one
3 year in nine or maybe even one year in five to try and
4 wheel it around and sell it off, because he can't make a
5 profit on that water. There are a couple of state
6 barriers. If you don't use your water for five years in
7 a row, (inaudible) washed to water.

8 There is another state barrier. If you can become
9 efficient and use less water than you have then and you
10 have some excess water, you can't sell it for another
11 consumptive use because that's an expansion of a water
12 right. That water is going on new land.

13 These are the kinds of things that the water board
14 has been asked to address. Ask the questions at least.
15 If someone were to propose a project today, his
16 (inaudible) on use of the existing storage being made, we
17 probably determine -- the director has the authority, the
18 director of the department of water resources has the
19 authority to make that decision. He would probably
20 decide no, because there is some unallocated water in
21 (inaudible).

22 Once that water's not allocated, there are no longer
23 unallocated waters in the system, hopefully by that time
24 the board will have at least been able to ask the Bureau
25 of Reclamation, ask about changing the state laws that

1 seem to be a barrier.

2 They are working on simplifying the rules and
3 regulations for the water bank as it exists today so the
4 (inaudible) a lot easier.

5 Hopefully, if all those questions have been asked
6 and we can't get anything changed, then we are doing the
7 best we can under the (inaudible) system. Ideally we
8 would be able to change some of these laws so a person
9 could at least water for more than one year at a time, so
10 a person could make some minimum profit at least by
11 selling his water.

12 That's the intent of this basically. Bring me
13 people of the state's attention on the fact that we have
14 some water that sits here every year and then goes down
15 the river in the fall so we can make space to make sure
16 there is runoff. If we are finding we're water short,
17 let's try and use that water.

18 Now, the other one is a different condition in the
19 sense that luckily it only applies for the wintertime
20 diversions below Milner Dam. In this case, because of
21 its impact on Idaho Power's operational scheme in two
22 ways, Idaho Power has a ready market on the West Coast
23 for electricity during the wintertime, because it's used
24 for heating out there. The other way it approaches is
25 that Brownlee Reservoir at the head of the three dam

1 Hells Canyon complex is they are making storage for
2 runoff, except where they dump water above stream.

3 So they like to (inaudible) reservoir, and they like
4 to generate power so they can sell it while we're filling
5 the reservoir.

6 As part of a compromise, it was agreed that if
7 somebody wanted to (inaudible) water below Milner where
8 it's effect is clearly quickly (inaudible) in Swan Falls,
9 they should be subject to supplying some sort of
10 mitigation to Idaho Power for their losses.

11 Now, a text here very clearly says that mitigation
12 is lessening of the impact. Not compensation, which
13 generally means equal. But mitigation. Something should
14 be worked out so that Idaho Power doesn't take a direct
15 loss.

16 Now, it could well be that mitigation would be, if
17 you're going to store water in the wintertime, store a
18 little more and let us call for it when we want it. It
19 may be that mitigation is, you're going to release it
20 when we need it. It could be mitigation in money, but
21 that is one of the hardest things of all to work out.

22 But people below Milner, above Murphy, wintertime
23 diversions for storage, if you come with a legitimate use
24 in the wintertime where you are going to consume that
25 water, or use it right then, that's fine. For storage

1 purposes, we have to work out a deal with Idaho Power
2 through the Department of Water Resources to try and
3 mitigate the impact on Idaho Power's operation.

4 The details are not spelled out. The three
5 negotiators couldn't agree what would be appropriate.
6 The water board suggested some language. It didn't seem
7 to go over very well with the three negotiators or the
8 legal advisors of the three negotiators. It is less
9 silent until such a project comes up and stares us in the
10 face.

11 Very last policy, "Stored Water for Management
12 Purposes. It is the policy of Idaho Power that reservoir
13 storage be acquired in the name of the Idaho Water
14 Resource Board to provide management flexibility to
15 assuring the minimum flows designated for the Snake
16 River."

17 As a technician I can tell you that we've got big
18 Snake (inaudible) out there which contributes to the
19 water in Thousand Springs which makes up most of the flow
20 in that reach of the river in the summertime. I can't
21 begin to hit that right on 3,900. It sure would be nice
22 if the State had some (inaudible) if I make a mistake.

23 That's the intent of this particular thing, the last
24 policy. (Inaudible.) If there is unallocated water
25 (inaudible) why shouldn't the State get -- (inaudible)

1 they could sell from Idaho Power on a yearly basis. But
2 the State ought to have someplace to call for water if
3 the State messes up and can't (inaudible). I can't shut
4 off the (inaudible), because the impact of shutting it
5 off might not show up for six months. I can't call for
6 water from (inaudible) to get it here (inaudible).

7 THE COURT: Thank you, Mr. Sherman.

8 We'll start our testimony now. Would Phil Warner
9 like to be the first, followed by Eldred Lee.

10 MR. WARNER: Yes. I'm Phil Warner at 2374 Belmont
11 Avenue in Idaho Falls. My phone number is 524-3999.

12 I'm a past president of the Idaho Falls Chamber of
13 Commerce, and as initiated our industrial and economic
14 development group of which I am now a member. Our group
15 committee is involved in maintaining a balance to
16 economic health in the greater Idaho Falls area, which
17 includes the current industry and agriculture base as
18 well as potential new industry.

19 I don't have a formal or written document, but we
20 have some comments we would like to make on Policy 32B
21 dealing with domestic, commercial, municipal, industrial
22 uses.

23 The two comments are, one, the definition of
24 industrial uses as explained in the text appears to be
25 restrictive. That is, it says to process agricultural,

1 forest, mineral and other products. At least it may be
2 just a clarification, but we're quite concerned, we're
3 trying to attract all types of industry. And in here
4 we're not that, you know, may not be mining or timber,
5 and we're after high-tech industry, you know, electronics
6 and other areas. And the way the text is written, it
7 seems to exclude or potentially exclude broader uses of
8 the water.

9 Also, it appears that it's directed towards the
10 process of getting the product out when, in fact, I hope
11 it means, or we'd like to it mean the supportive use also
12 of the industrial base, which may include systems to
13 recover heat loss, cogeneration, et cetera. All right.
14 That's the first comment.

15 The second one has to do with the amount allocated
16 for this DCMI use. I believe over the 35-year period
17 amount allocated might allow if there were no other uses
18 for about a 2-percent growth. We, I know, and the people
19 you'll probably hear in Pocatello were trying to be very
20 aggressive about this, and this may not support a growth,
21 particularly in with the modification of Policy 32D,
22 which now causes any use for thermal power generation to
23 come out of this same allocation.

24 The previous -- the 1982 plan had 480 cubic feet per
25 second allocated to these two uses, the thermal

1 generation and DCM1. What's now proposed, 150 cubic feet
2 per second for both represents a 70 percent reduction in
3 this utilization, which seems a lot more than the
4 reduction in the general agreement.

5 And that concludes our statement.

6 MR. CHAIRMAN: Okay. Phil, why don't you stand for
7 questions from the board.

8 MR. WARNER: Sure.

9 MR. CHAIRMAN: Any questions down below?

10 J. D.: I do.

11 J. D.: Mr. Chairman. You made that reference to
12 2-percent growth. Did you drag (sic) that by for us?

13 MR. WARNER: Well, I was just -- I hadn't
14 realized -- I was just -- we were looking at in general
15 just the amount of growth, but when you mentioned that
16 the 150 for the whole area might be a doubling of the
17 amount that's used now, a quick calculation says that
18 would allow for a 2-percent growth. That's all. If it
19 includes all the other, you know, commercial, domestic
20 uses. It's 35 years we're talking about. That's how I
21 came to that number.

22 MR. CHAIRMAN: Mr. Rydalch, any questions?

23 MR. RYDALCH: No.

24 MR. CHAIRMAN: Thanks a lot Phil. I wonder if you
25 might do something for us.

1 MR. WARNER: Sure.

2 MR. CHAIRMAN: Might you structure some kind of
3 wording that you can get to us. We will be accepting
4 written testimony until February 22nd. And if you like,
5 you might mail it to the Idaho Water Resource Board --

6 MR. WARNER: Okay.

7 MR. CHAIRMAN: -- State House in Boise 83720. We
8 would be very receptive to --

9 MR. WARNER: Yeah. Fine. I didn't know on the
10 text on the industrial uses. I thought it probably
11 needed some lawyer to -- but we wanted to make sure it
12 didn't exclude the kinds of growth that we are after here
13 in this part of the state.

14 Thank you.

15 MR. CHAIRMAN: Thank you very much.

16 Mr. Lee.

17 MR. LEE: My name is Eldred Lee. I'm the secretary
18 of the Great Feeder Canal Company. It doesn't own
19 specifically any water. However, it takes water out of
20 the South Fork of the Snake River and is efficient in, I
21 call it, fighting the river in order for 14 different
22 major canals, plus about 25 or 30 other individuals to
23 take water from the South Fork. There are very few
24 diversions on the south side of the river from Heise on
25 down that do not take out of the Great Feeder Canal.

1 And I asked Ron Carlson what we were running last, a
2 year ago last spring. And our head at that time was
3 450,000 second feet. So it's not a small operation.

4 And I'd just like to comment about two or three of
5 these things. The fact that a person may not be against
6 or for this plan still causes questions to arise in a
7 person's mind. And I think that the question arises more
8 is one of administration probably than it is maybe a
9 principle.

10 Anyway, it depends upon how it's administered. And
11 so maybe we could look at it in that point of view.

12 So let's look at two or three things. One of them
13 32D. Now, we've gone through these other things, and
14 apparently they have been given some pretty good
15 consideration. "It is the policy of Idaho that
16 hydropower be recognized as a beneficial use of water,
17 and that depletion of flows below the minimum average
18 daily flows set forth in Policy 32 is not in the public
19 interest."

20 Now, up to that point we're talking about the
21 minimum flows. However, it is the policy of Idaho that
22 hydropower used to be recognized as a beneficial use of
23 water, period, seems to put anything above the minimum
24 flows in an equal category with anything, any other type
25 of development.

1 Now, it's conceivable -- if my reasoning is correct,
2 it's conceivable then that hydropower in the
3 administration of it could take precedence under certain
4 conditions of industrial development, agricultural
5 development or other development depending upon how it's
6 administered; is that correct?

7 MR. CHAIRMAN: We are taking your testimony right
8 now.

9 MR. LEE: Okay. Maybe you can answer that question
10 later. But if hydropower at some time should become so
11 important that these other things are minimized, and that
12 the future development in these other categories could
13 not take place, then the question that hydropower be
14 recognized as a beneficial use might be important in the
15 decision-making of whether a decree or a right might be
16 awarded to them rather than to something else as I look
17 at it.

18 Okay. Let's go on to 32I. New storage. It's our
19 opinion that the legal language in this particular
20 section would cause difficulties if there should be a
21 need and a desire to build a new dam. In our opinion
22 Teton Dam is essential. There are other areas on the
23 South Fork of the Snake River, which could be utilized in
24 storing water. If there is to be any large development
25 and use of water over the next many years in the state of

1 Idaho, the only way that you're going to get sufficient
2 water to take care of it is to have some storage. If
3 there is any impediment put in the way so that new
4 storage cannot be built, then you're going to delay and
5 restrict the development of anything that comes under the
6 jurisdiction -- under the Snake River where water is
7 essential.

8 It appears to me that since the minimum flows, and
9 it says back here in some of this material in the back
10 that this entire policy is based on a minimum flow at
11 Milner that anything that can develop or anything that's
12 affected above Milner should not be affected by this
13 agreement. And it is affected by that agreement.

14 New storage, this phase right here is affected, very
15 seriously, because now if it is put into effect in order,
16 for instance, to have the Teton Dam, we're going to have
17 to overcome this particular paragraph right here. And
18 it's my opinion, and it's the opinion of many of those
19 that are in our system, that new storage is going to be
20 essential.

21 Now, last year I understand that 6,800,000 feet went
22 over Milner -- second -- acre feet went over Milner.
23 Now, that's enough water to take care of all of the water
24 needs in the entire state of Idaho for a year, so I'm
25 told. No verification. But it's a lot of water.

1 The only way that that's going to be captured and
2 utilized to any large extent, because it comes through in
3 such a large quantity and at such a time that it can be
4 spread out, the only way that's going to be utilized is
5 to have some new storage. I think that we should
6 encourage new storage rather than to put anything in it
7 that restricts it.

8 Let's go down to manage storage -- stored water for
9 management purposes. I've listened to the discussions,
10 and I was in the meeting last fall. In my opinion,
11 there's a conflict of interest if this is done. And I
12 say that because on my -- my understanding is that the
13 State of Idaho and the Department of Water Resources is
14 primarily responsible for distributing the water
15 according to the decrees and the claims that are on it.
16 And they have -- they have a very delicate job in trying
17 to satisfy all of the claims that are there and to keep
18 everybody happy. If they get in the position that they
19 are going to own water and they have the ability then to
20 put it here or to put it there, or to utilize it if it's
21 going to be utilized solely down below Swan Falls, it's
22 my opinion that it's subsidizing primarily in addition to
23 what's here, the claim by the, or the right by Idaho
24 Power to have the minimum flows at Swan Falls.

25 I don't know whether I make myself quite clear, but

1 the legislature right now is battling over where they are
2 going to get sufficient money to supply the needs of the
3 various agencies in the state.

4 Whether it's right for State of Idaho to invest
5 state funds, which are badly needed somewhere else, in
6 water, which is available only on a call, can we say, or
7 a short-term basis, I question it very seriously. I
8 question it. And if Idaho Power is content to have a
9 minimum flow at Milner, it's my opinion that the State of
10 Idaho is not responsible, if that should fall below that
11 particular point, they are not responsible to make that
12 flow up.

13 And as I understand it, additional water can be
14 allocated, but I think that if additional water is
15 allocated after today, you know, shall we say, anybody
16 who gets a water right with a right later than 1985 is
17 going to have to take a chance on that thing being shut
18 off once in a while, and --

19 --- TAPE 2 ---

20 MR. LEE: -- including Idaho Power be subsidized
21 below Milner when the rest of the Snake River is not.

22 I have one other item that I want to comment on, and
23 I don't think that's in this proposed revision, but then
24 I think it's something that should be considered. And I
25 think if we don't get a chance to go over to the

1 legislature to get testimony, why maybe you can carry it
2 over there.

3 And that is the fact that in the adjudication
4 process they say that the fee has to be paid the first
5 year and you pay interest on it after that for five years
6 if you want to delay your payment. It appears to me that
7 if it's going to require ten years to adjudicate and
8 complete the adjudication process, that anybody who is
9 making a claim and has a right to delay the payment of
10 their -- that is for the adjudication process, that it
11 should not be necessary to have to pay interest.

12 I think that that's in the budget that's set up by
13 the Department of Water Resources for the adjudication
14 process. Now, I haven't seen this, but I was told today
15 that there is no place in that for the addition of the
16 money which would be accrued in interest to going to that
17 fund.

18 And personally, I think that those laws or rules
19 ought to be changed so that if they make their payments
20 substantially as they should, that interest is not
21 necessary.

22 I think those are most of my comments.

23 MR. CHAIRMAN: Thank you, Mr. Lee. We'll see if we
24 have some questions from the board.

25 Mr. Williams?

1 MR. WILLIAMS: No.

2 MR CHAIRMAN: Mr. Rydalch?

3 MR. RYDALCH: No.

4 UNIDENTIFIED SPEAKER: I don't believe (inaudible.)

5 MR. CHAIRMAN: Mr. Lee, I wonder if you might -- you
6 had indicated where hydropower under 32D seems to have
7 been placed above and beyond maybe the other uses in the
8 posed language of revision 32. Might you give us
9 something in writing between now and February 22nd?

10 MR. LEE: Yes, we could. Now, I don't know whether
11 I interpret that right or not, but as I understand the
12 present law, it includes certain categories, but it does
13 not include hydropower as a beneficial use in the public
14 interest.

15 And just the way this thing is written, if it
16 includes anything other than the minimum flows which are
17 set up, then it's my -- I get the idea that it pertains
18 to any right which Idaho Power could obtain. Now, if
19 that's true, then I think that it's carrying that
20 opportunity quite a bit far, because as I understand it,
21 any rights from now on are going to be subordinated to
22 these other consumptive use privileges.

23 Is that right?

24 MR. CHAIRMAN: As soon as we get our public
25 testimony over, we'll try to have question and answer.

1 MR. LEE: Okay. Thank you.

2 MR. CHAIRMAN: The board would call Jerry Jayne,
3 please.

4 MR. JAYNE: My name is Jerry Jayne. I live at 1568
5 Lola Street in Idaho Falls. My phone is 523-6692.

6 And I want to thank you members of the board and the
7 department for the time and effort of holding these
8 hearings.

9 I went to one of your October meetings last year and
10 was a little frustrated in not being able to sound off
11 there, because I thought -- I went under the impression
12 it was a hearing, and it was just an information session.
13 So I get my chance tonight. So that's all right.

14 I'm quite unhappy with the Swan Falls agreement. I
15 think Idaho Power gave up too much. And I think the
16 whole agreement is biased too much to favor future new
17 irrigation development at the expense of other public
18 resources and values.

19 There are parts of it I support, which I think we
20 need to do. For example, the adjudication, which is
21 going to be expensive and time-consuming, though I think
22 it's necessary in order to get a better handle on the
23 flows in knowing who owns what and what we have left in
24 the Snake River Basin.

25 I certainly support the establishment of an

1 effective water marketing system where a willing seller
2 could sell to a buyer a water right. And probably the
3 hydrologic and economic studies in the Snake Basin are
4 worthwhile, too, even though they may be slightly
5 expensive.

6 As far as your alteration of Policy 32 of the water
7 plan, I support the one that would rescind the
8 endorsement of the target of 850,000 acres in the new
9 irrigated land in the Snake by the year 2020. I think,
10 as you recall, conservation groups have been complaining
11 about that ever since it was proposed in 1976. It's not
12 realistic, and I'm glad to see you're talking about doing
13 away with that.

14 All right. The problems I have are basically two,
15 two major points: One is the minimum Murphy flow, and
16 the other is the public interest criteria. And I don't
17 know if you're going to be making recommendations on the
18 latter or not to the legislature. I'm assuming you are,
19 since they were eluded to here in one of the policies as
20 the new criteria, I assume, the (inaudible) criteria on
21 allocation.

22 These criteria, again, are biased -- or the proposed
23 criteria are biased very much in favor of new irrigation
24 development at hydropower development. There is no
25 mention whatsoever of fish, wildlife, and recreational

1 values. And I think frankly the governor and the
2 attorney general of Idaho Power sold us all down the
3 river there on fish and wildlife values.

4 I would recommend there a couple of changes: One
5 would be to add a criterion on maintaining fisheries'
6 habitat, both anadromous, below Swan Falls, of course,
7 and the resident fishery habitat and adequate needs
8 there. And I would also do away with the criterion
9 calling for staged development a new irrigated land
10 20,000 acres per year, 80,000 for four. I think that's
11 part of the old fix we had on the need or perceived need
12 to develop more irrigated land, which is anything but
13 true.

14 The minimum flow proposed is not a compromise. The
15 legal existing minimum flow -- the legal minimum flow at
16 Murphy of course is 3,300 second feet. The actual low
17 flow as it was indicated gets down to about 4,500 second
18 feet. That's what the fish have to live with. And
19 that's already below, well below an optimum for fish and
20 wildlife needs below Murphy.

21 Taking the mid point and giving 600 cfs to a future
22 development, much of which would go for probably new
23 irrigation development or whatever is proposing not to
24 compromise but to take away significant fraction of the
25 flow, the actual low flow there now. And this would be

1 quite detrimental to fisheries, not to mention Idaho
2 Power customers.

3 So I would propose that you set that figure at 4,500
4 and namely make the actual flow the legal minimum flow,
5 4,500 cfs. The water that's in the river should stay
6 there. New irrigation development or new developments
7 are to come from water rights that are exchanged to the
8 water marking system or by conservation.

9 I support several of the provisions that you are
10 talking about tonight in Policy 32, of course. Provision
11 for hydropower 32D and 32E for navigation and 32B for
12 DCMI. And of course I do support 32H, I believe it is,
13 to provide use and flexibility to try to meet minimum
14 flows by owning for the state of Idaho some of the water
15 that hasn't been allocated yet that's on the reservoirs.
16 I think that's very worthwhile.

17 In fact, I have a problem with Policy 32C -- I'm
18 sorry 32A. Water held in trust by the State. That seems
19 to me that by proposing to hold water in trust for future
20 development, this is upside down. You ought to be
21 holding the water in trust for public values for
22 in-stream flow needs rather than promoting more
23 development, which is going to be very unwise.

24 I wanted to comment also on the subsidy, which is
25 now offered to new irrigation development, especially the

1 large-scale ones. It's been documented that it costs
2 something over \$400 an acre per year to open new
3 irrigated land in the lower Snake Basin. For electrical
4 energy, this is primarily a replacement cost as well as
5 the high pumping costs. And the thing that is the kicker
6 in this, is that the new developer, the developer of the
7 new land doesn't pay much of this. The Idaho Power
8 customers, of course, would.

9 So it places an unnatural type of motivation on that
10 kind of development, which is not only environmentally
11 damaging by taking more water out of the river, but also
12 very expensive and wasteful, detrimental to existing
13 farmers by producing (inaudible) on the market and
14 expensive to the Idaho Power customers.

15 So I would hope you just recommend 4,500 cfs as the
16 legal minimum.

17 Thank you.

18 MR. CHAIRMAN: Okay. Jerry. Jim.

19 Jerry, you had indicated that you think the language
20 should be expanded maybe some for fish, wildlife and
21 recreation. Might we ask you to take your leisure time
22 and get it to us by February 22nd.

23 MR. JAYNE: Sure.

24 MR. CHAIRMAN: Take 32G and expand it for us a
25 little bit.

1 MR. JAYNE: I don't think that mentions the criteria
2 proposal at all, does it? That's why I wasn't sure you
3 were going to listen to comments about it tonight and why
4 I hadn't prepared very well on that. But apparently you
5 are going to be making comments on the proposal.

6 MR. CHAIRMAN: (Inaudible) proposal. Anything
7 having to do with Policy 32.

8 MR. JAYNE: Gee, it's A, isn't it, you're talking --
9 is that the --

10 MR. CHAIRMAN: No, it should be Policy 32G. Fish,
11 Wildlife and Recreation.

12 MR. JAYNE: Well, that's as distinct from the public
13 interest criteria talked about under 32A, isn't it?

14 UNIDENTIFIED SPEAKER: Talking about the legislation
15 (inaudible) mentioned in Policy 32A.

16 MR. JAYNE: Oh, okay. Yeah. I'll be happy to send
17 you something.

18 MR. CHAIRMAN: Thank you.

19 MR. JAYNE: Sure.

20 MR. CHAIRMAN: Is there anyone else who wishes to
21 testify.

22 Yes, sir.

23 MR. STORER: Claude Storer is my name. I'm a member
24 of the committee of nine. I also farm in the area, and I
25 run a fairly large cattle operation in the area.

1 I'm concerned mainly about the water marketing plan.
2 You mentioned a while ago that the State could buy
3 (inaudible) water and use it to fill this. Well, right
4 now, my understanding is that (inaudible) water cost
5 about \$5.00 an acre foot. And not only \$5.00 an acre
6 foot, but by the time it gets to the river through that
7 fancy channel they've built, it loses 50 percent of that.

8 So I don't see any way the State can acquire
9 (inaudible) water at \$10.00 an acre foot to use for this
10 program. And that's what it will cost by the time it
11 gets to the river.

12 Second, this marketing plan of water you talked
13 about for the public use, a long-term marketing program,
14 you take -- right now through the water bank, water is
15 2.50 an acre foot, which is about the limit that
16 agriculture can afford to pay. Well, you open this up to
17 a long-term marketing, and I can see what in the future
18 what Idaho Power can afford to pay for that water.

19 Myself, I own 950 inches of water in two different
20 canals. Just suppose that I sell that water to Idaho
21 Power, put that ground in crested wheat for a long term.
22 Now, one year I can't do this. But if I put that ground
23 to long-term in crested wheat, can you imagine what's
24 going to happen to District 93's tax base, Boghill
25 (phonetic) County's tax base when that water goes into a

1 long-term period? You think about that. On one year I
2 can't do that.

3 Right now we have an effective water marketing plan
4 through the committee of nine and through the water bank
5 one year at a time. There is no way that Idaho Power or
6 anybody else can buy that water off them farms and I can
7 put them farms in crested wheat for one year.

8 You think about this long term and what it could do
9 to Boghill County's tax base. If this water should be
10 transferred down the river, a lot of these farms, I pay
11 several thousand dollars in taxes. I'm not so sure I
12 wouldn't sell that water for a million dollars, which
13 appears it's worth, and put them farms in crested wheat
14 if this long-term marketing plan goes into effect.

15 Before you put this long-term marketing into effect,
16 you better consider what this will do to the tax base of
17 many counties around Idaho. School districts, for one
18 thing. I pay several thousand dollars in school taxes.

19 Before you put this long-term marketing program into
20 effect, I suggest you think long and hard at this.

21 Thank you.

22 MR. CHAIRMAN: Any questions.

23 Anyone else would like to testify?

24 How many members on the committee of nine?

25 UNIDENTIFIED SPEAKER: Nine.

1 MR. CHAIRMAN: We will close the testimony, and we
2 will stand ready to answer some of your questions if we
3 might.

4 Mr. Sherman, could you come forward, please. If you
5 have a question, if you would come forward to the mic and
6 maybe we can get Mr. Sherman over here a little closer to
7 this one. (Inaudible.)

8 UNIDENTIFIED SPEAKER: I believe I can be heard from
9 here, but I'll go to the mic if I need to.

10 UNIDENTIFIED SPEAKER: Are you picking it up?

11 UNIDENTIFIED SPEAKER: Yeah, I'm picking you up.

12 UNIDENTIFIED SPEAKER: My question is, it seems to
13 me we're bringing together here three major entities:
14 One is water users, the agriculture people, commercial
15 use. And then especially on the Salmon River drainage,
16 the Middle Fork drainage, some of the streams where
17 agriculture and commercial use have been very restricted.
18 I understand that the federal government has got to be an
19 important portion of the adjudication process.

20 What do you feel the impact of that is going to be?

21 UNIDENTIFIED SPEAKER: You can do an adjudication
22 without involving the federal government, sir. I think
23 most of the ones done in the state to date -- in fact all
24 of them, that I know of, have been that way.

25 The concern here is that when you're talking about

1 such a large portion of the state where you've got a
2 major Indian reservation, those federal reserved rights
3 become important if you're going to try and manage the
4 river down to some magic number like 3,900 cfs in the
5 summertime.

6 The reason for starting way down at Lewiston, so
7 you're talking about the Salmon and Clearwater where
8 there are basically no agricultural developments, is to
9 be sure we can force the federal government to come into
10 the state court, participate in our adjudication process.

11 There is a federal law which says if the state is
12 doing a system wide adjudication, the federal government
13 will participate.

14 Hopefully a compromise will be reached so that the
15 adjudication starts at Swan Falls Dam at Murphy Gauge
16 more properly. But because of the amount of water that
17 may be reserved and unquantified for the Indian
18 reservation, for the national parks, or the historic
19 monument out here, and the forest service areas, if
20 you're going to try and manage the thing down to some
21 magic number, you need to know those. And that is the
22 reason for the adjudication, the reason for trying to
23 bring the federal government in.

24 MR. CHAIRMAN: Mr. Gray.

25 UNIDENTIFIED SPEAKER: Mr. Sherman, I think one of

1 the questions was asked also, this agreement is not to
2 stop new storage. It's just to find out what we have in
3 the storage; isn't that correct?

4 UNIDENTIFIED SPEAKER: Mr. Chairman, Mr. Kramer.
5 The adjudication is to find out how much water we use,
6 where and when, because if we've got worry about the
7 exact flow in the river, we'd have to start worrying
8 about consumptive uses and not amounts of water diverted.

9 The agreement and proposed revision to the state
10 water plan does specify that before a new storage can be
11 constructed, the director of the department of water
12 resources has to make a determination about maximum use
13 of existing storage is being made.

14 UNIDENTIFIED SPEAKER: Okay. But what has to be
15 done there if we talk about two people we're really
16 concerned about that we had stopped the new storage. If
17 we find out that we need new storage or that the water in
18 the dams is used, then we can -- there is no problem.

19 UNIDENTIFIED SPEAKER: (Inaudible.) Yes, then we're
20 doing the best we can under existing rules and
21 regulations and under existing laws. The intent is for
22 the water board to publicly or privately have those rules
23 and regulations examined. Ask if there can be changes to
24 make the water marketing system more efficient.

25 If the board does that, and we can't change the

1 federal law that says you can't lease for more than one
2 year at a time, or you can't sell your water for a
3 profit, then the director has no option except to find,
4 in my opinion, once there is no unallocated water, the
5 maximum use is being made under existing criteria.

6 UNIDENTIFIED SPEAKER: I think you will find that
7 after this adjudication is made, I'm kind of in favor of
8 the adjudication itself. I think maybe we need that.
9 But I think that you'll find that after this adjudication
10 is done the water findings are done, by the time the
11 Indians take out their block of water that they are going
12 to take, everybody gets their block of water, I think
13 that the government will come to the fact that we do need
14 Teton back, because I don't think that water is going to
15 be there.

16 MR. CHAIRMAN: Mr. Lee.

17 MR. LEE: The point that I have raised is that it is
18 the policy of Idaho that maximum use must have made
19 existing storage facilities in the basin before new ones
20 were made. Why have it there at all. Why use their
21 (inaudible). The only thing this does is assure the
22 Idaho Power company that you're going to get the heavy
23 spring flows that go through.

24 And instead of running them right straight on down
25 the Snake River, we just as well put them in the dam and

1 spread them over the year so that they can be utilized in
2 some manner, perhaps it might be advisable in our use of
3 it. Spread it over the year so that they can be used.
4 But we're putting restrictions (inaudible) that can be
5 used in court on building or putting in new dairies. And
6 why have it there at all. And there are lots of places
7 up above Burley (sic) that are suitable and yet we say
8 that this pertains -- their plan pertains principally or
9 I've heard solely (inaudible), and that's not true.

10 MR. CHAIRMAN: Mr. Sherman.

11 MR. SHERMAN: I didn't hear the question,
12 Mr. Chairman, but I will say Mr. Lee is correct. The
13 idea that maximum use of existing facilities be made is
14 for the whole system (inaudible.) The restriction
15 calling for mitigation for wintertime diversion supply is
16 only below (inaudible) dam.

17 Mr. Chairman.

18 MR. CHAIRMAN: Mr. Haus.

19 MR. HAUS: To respond to the man's question, why is
20 it there at all or why is it in the proposed draft to the
21 state water plan, I think the answer is that the three
22 negotiators or the three parties to the agreement, this
23 is one of the things that they asked for.

24 In the October 25th agreement and in the
25 (inaudible), they said that this is part of the

1 agreement. So the draft state water plan, since it was
2 drafted to reflect what would be needed in the state
3 water plan to reflect that agreement, that's the reason
4 it's in this state water plan.

5 MR. CHAIRMAN: Mr. Lee.

6 MR. LEE: What I'm saying is that you don't have to
7 agree with it, and we don't have to agree with it. And
8 we ought to throw it out.

9 MR. CHAIRMAN: Mr. Darrington.

10 MR. DARRINGTON: How comfortable is the committee.
11 There are lots of things that have come up here in a
12 short period of time. We stored it back in the fall.
13 And we're pushing this thing right along, which I agree
14 with it, but I wonder -- I've always been concerned that
15 Idaho Power have their homework done a little better than
16 the rest of us did when the (inaudible) started.

17 And I'm wondering now if the time window, if being
18 compressed so, that when we get through here and we get
19 so these meetings don't cost us money, if there is going
20 to be a tremendous amount of trying to (inaudible) the
21 position from environmentalists and from Idaho Power.

22 MR. CHAIRMAN: By committee, do you mean the Water
23 Resource Board?

24 MR. DARRINGTON: Yes, Water Resource Board.

25 MR. CHAIRMAN: I don't think the Water Resource

1 Board is comfortable at all. We have ten more meetings
2 after tonight to go to the public with before we can form
3 any kind of an opinion.

4 MR. DARRINGTON: Are you prepared to lengthen --
5 now, as I understood in the fall we had a time deadline
6 on this. If we failed to meet that time deadline, then
7 everything was off.

8 MR. CHAIRMAN: Yes. If you'd all turn to page 7,
9 and I'm sorry I didn't mention that when we first got
10 started. On the right-hand side, it says, "Action must
11 be taken by May 15th, 1985 to validate agreement. Number
12 one, state water plan is amended." Well, that's what
13 we're attempting to do now with the public hearings that
14 we're doing. And your input tonight will be part of what
15 the board's final decision will be.

16 Number two, the legislative package is passed. And
17 they've indicated pretty much that the package, which is
18 in your paper here from page 4 to 7, must be passed
19 pretty much intact, as it reads.

20 Number three, appropriate action by the PUC or
21 legislature is called for and the agreement is taken.

22 Four, an appropriate order by federal energy
23 regulatory commission acceptable to the parties to the
24 agreement is issued.

25 Five, the Idaho PUC dismisses the 1977 petition by

1 the Idaho ratepayers.

2 Six, if required, the Oregon PUC approves the
3 package.

4 And seven, enactment by the legislature of
5 subordination language as set forth in Exhibit 7A and 7B
6 of the agreement.

7 So all of these things have to fall in place by May
8 15th, 1985.

9 We have with us tonight Rich Hahn from Idaho Power
10 Company. And if you have questions of a power company
11 representative, I'm sure Rich would be able to, be glad
12 to answer them when you write your -- okay.

13 If -- my understanding is that if this isn't taken
14 care of by May 15, then the three parties will go back in
15 negotiations.

16 UNIDENTIFIED SPEAKER: Or decide that the
17 negotiations are not necessary and go back to court.

18 MR. CHAIRMAN: Or decide that negotiations have
19 ceased.

20 UNIDENTIFIED SPEAKER: What's the feeling of you
21 gentlemen at this point in time? Are you comfortable
22 with the 15th?

23 MR. CHAIRMAN: I don't think we can really make that
24 determination until we've had all of our public hearings,
25 because we want to hear what the people of Idaho -- we're

1 representing you. So we want to know what you have to
2 say, which brings me to the point that tomorrow evening
3 we'll be in Pocatello, following evening Burley, and the
4 evening after that Twin Falls, if you wish to attend
5 those meetings.

6 Next week on Tuesday we'll be in Boise, and
7 Wednesday in Lewiston. And we'd be glad to have all of
8 you come with us.

9 Written testimony will be accepted until February
10 22nd.

11 Yes.

12 UNIDENTIFIED SPEAKER: Do you have final say on the
13 Murphy (inaudible) flow or does the legislature have that
14 say?

15 MR. CHAIRMAN: If you will take a peek on page No. 1
16 it talks about SJR 117, which was a constitutional
17 amendment. It used to be that you, the people of the
18 state of Idaho, through your Water Resource Board had the
19 final say on what happens. The voters of the state of
20 Idaho decided in November that's not the way it was going
21 to be any longer. So the legislature will have the final
22 say no matter what we come up with. I believe they refer
23 to it as overview.

24 UNIDENTIFIED SPEAKER: How about the public interest
25 criteria? Are you going to be making recommendations on

1 those also to the legislature or (inaudible)?

2 MR. CHAIRMAN: We will be making some
3 recommendations on that, yes. Hopefully we'll be picking
4 up some ideas as we go through our 12 meetings.

5 MR. KRAMER: Legislature makes that decision.

6 MR. CHAIRMAN: That's right. Mr. Kramer has very
7 accurately pointed out that the legislature will also
8 make that decision.

9 UNIDENTIFIED SPEAKER: That's a piece of
10 legislation, so.

11 UNIDENTIFIED SPEAKER: Yeah, that was my
12 understanding. I didn't know if you could make a
13 recommendation at all.

14 MR. CHAIRMAN: You will notice if you study Policy
15 32 that all through it it refers back to sections of the
16 Idaho code. And those sections of the Idaho code are the
17 proposed changes to the Idaho code and/or additions to
18 the Idaho code.

19 Any other questions, ladies and gentlemen?

20 Okay. We'll adjourn the meeting.

21 Thank you for coming.

22 (Conclusion of hearing.)
23
24
25

REPORTER'S CERTIFICATE

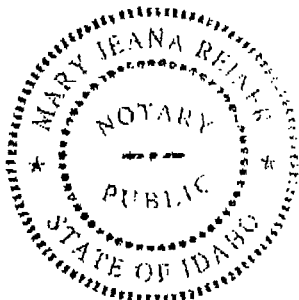
STATE OF IDAHO)
) ss.
COUNTY OF ADA)

I, MARY JEANA REINER, Certified Shorthand Reporter
and Notary Public in and for the State of Idaho, do
hereby certify:

That said taped proceeding was taken down by me in
shorthand and thereafter reduced to typewriting under my
direction, and that the foregoing transcript contains a
full, true and verbatim record of said taped proceeding.

I further certify that I have no interest in the
event of the action.

WITNESS my hand and seal this 6th day of November,
2007.



Mary Jeana Reiner
MARY JEANA REINER
CSR and Notary Public
in and for the
State of Idaho

My Commission Expires: 10-24-2013