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DEPARTMENT OF
WATER RESOURCES

Orr Affidavit

Exhibit 15

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DEPT. OF WATER RESOURCES

Transcript of Idaho Water Resource Board
public hearing on proposed
State Water Plan amendments
(Jan. 29, 1985)

Third Orr Affidavit

EXHIBIT 24

STATE WATER PLAN HEARING)
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PUBLIC HEARING
BEFORE THE IDAHO WATER RESOURCE BOARD

POCATELLO, IDAHO

JANUARY 29, 1985

2:00 P.M.

TRANSCRIPTION BY:
Canyon Transcription
P.O. Box 387
Caldwell, Idaho 83606

Proceedings recorded by electronic sound recording.
Transcript produced by Transcription service.

A P P E A R A N C E S:

Gene Gray
Dave Rydalch
Jim Shawver
Wayne Haas
Don Kramer
Frank Sherman
Catherine Spinner Schucren
C.R. Schucren
Sally M. Gibson
Dan Nev
Mike Caldwell
Richard L. Hahn
John R. Scott
Gary Gunderson
Lyle Michaelson
Gerald Ramsey
Herman McDevitt

1 (Proceedings begin.)

2 MR. GRAY: This is the State Water Planning
3 Hearing, January 29, Pocatello, 2:00 p.m., Littletree Inn.
4 Good afternoon, ladies and gentlemen. It's nice
5 that you braved the weather to be here. My name is Gene
6 Gray and I'm chairman of the Idaho Water Resource Board and
7 I should explain to you the two entities we have in the
8 State. We have the Department of Water Resources which
9 deals with management of water. We have a regional office
10 over in Idaho Falls, those folks, and we're here as the
11 Water Resource Board and we're appointed by the governor
12 and passed through the senate confirmation proceedings.

13 The members with us today are Dave Rydall on the
14 end. Dave is a farmer in the St. Anthony area. We have
15 Jim Shawver who farms in the Eden area, both board members.
16 Wayne Haas is with the Department of Water Resources out of
17 Boise. We have Don Kramer who's a farmer in the Castleford
18 area and I'm an insurance agent and small-time farmer in
19 the Payette area. We have Frank Sherman with the
20 Department of Water Resources who will be explaining some
21 of the procedures.

22 We're here today mainly to take your oral or
23 written testimony of proposed changes to Policy 32, the
24 State Water Plan. And since there are only I think two of
25 you that will be testifying, what we're going to do is kind

3

1 of break tradition. Instead of going into the testimony
2 and just taking that and then closing the meeting, we're
3 going to give you a few comments. We'll have Mr. Sherman
4 kind of give you an overview of the proposed changes to
5 Policy 32 that we would like to do. Then we'll take the
6 public testimony. We'll close the meeting and then we'll
7 open it up to questions if you have any.

8 So that might make it a little better. If you take
9 a look at your "Currents," I'll try to explain to you how
10 the thing is set up. On December 13 of 1984, the Water
11 Resource Board accepted a proposed change for Policy 32.
12 We have not adopted it. We have just accepted this to
13 bring it before you to get your testimony and see how you
14 feel about it or if you think it should be changed, it
15 should be thrown out, whatever should be done. That's what
16 we're here to listen to.

17 The first page kind of gives you some general
18 information at the bottom. We have the meeting schedule.
19 Tomorrow night we'll be in Burley and the next night,
20 Thursday evening, we'll be in Twin Falls. On February 5,
21 we will be in Boise and on February 6, we will be in
22 Lewiston. We will accept written testimony from you until
23 February 22. Any written testimony that you might like to
24 give us today we'll accept of course but if you want to go
25 home and do some homework and do some talking with other

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1 people and things and get it to us later, that's great.
2 But get it to us by the 22nd day of February and just use
3 the address that's on the "Currents" and that's -- you can
4 use the Idaho Water Resource Board, Statehouse, Boise,
5 Idaho, 83720.

6 First page, general information. Page 2 and page 3
7 are the proposed revisions that we're bringing before you
8 today. Mr. Sherman will be covering those shortly for you.

9 From page 4, 5, 6 and 7 is what is referred to
10 generally as the legislative package and this is what
11 the -- what the legislature is supposed to get passed to
12 make this whole thing work. If you look on page 7 on the
13 right-hand side, it shows you the action that must be taken
14 by May 15, 1985 to validate the agreement. No. 1, State
15 Water Plan is to be amended and that's why we're here today
16 to get your input because we will be the body that will be
17 doing the amending to the State Water Plan.

18 No. 2, the legislative package must be passed.
19 No. 3, the appropriate action by the PUC or legislature is
20 called for and agreement must be taken. No. 4, an
21 appropriate order by the Federal Energy Regulatory
22 Commission acceptable to the parties to the agreement must
23 be issued. 5, the Idaho PUC must dismiss the 1977 petition
24 by the Idaho rate payers. 6, if the Oregon PUC enters into
25 any of it, they will also have to be approved as far as

5

1 (Inaudible) is concerned. And 7, enactment by the
2 legislature of subordination language is set forth in
3 Exhibits 7A and 7B to the agreement. You'll find those on
4 pages 4 through 7.

5 And with that, Mr. Sherman, would you like to go
6 ahead and we'll start right on page 2 and Frank will just
7 start with 32 and go through all of the amendments. If you
8 have a very short question as Frank is going through this,
9 we'll try to answer it but we would like you to hold your
10 questions until after we have the testimony. Mr. Sherman.

11 MR. SHERMAN: I'll start with the existing water
12 plan. Policy 32 is a policy which allocates the
13 unappropriated waters in the Snake River Basin. When the
14 Idaho State Supreme Court decided that Swan Falls -- the
15 water right that Idaho Power claimed at Swan Falls was a
16 legitimate right and had not been subordinated with their
17 agreement concerning Canyon Complex, it made the existing
18 Policy 32 wrong basically because the water that's
19 allocated to various uses in this policy relied on being
20 able to take Idaho Falls water away from them.

21 When the State and Idaho Power entered into the
22 agreement in October of last year, they specified certain
23 trade-offs and balances, compromises between the State and
24 Idaho Power.

25 We start right off with Policy 32 as it's shown in

6

1 front of you. The intent of this policy is to establish
 2 the minimum flows called for by the agreement at Murphy
 3 Gauging Station which is just below Swan Falls Dam.
 4 The existing water plan says that the year-round
 5 minimum flow at Murphy shall be 3300 cfs. This is an
 6 unrealistic estimate if indeed Idaho Power has a legitimate
 7 right at Swan Falls greater than that number.
 8 The compromise basically is you will set 3900 cfs
 9 through your irrigation season, 5600 cfs during the
 10 wintertime. In return for the State Water Plan saying the
 11 river should never go below those flows, Idaho Power will
 12 give up some of the water they claim.
 13 The board has also added some minimum flows at
 14 Johnson's Farm and Lime Point which are gauging stations or
 15 measuring points below the Hell's Canyon Complex. The
 16 existing State Water Plan recognizes that these are
 17 (inaudible) licensed and called for by the license. The
 18 board in this plan acknowledges that they're important
 19 flows and they're necessary for the well-being of the
 20 people on the river.
 21 The proposed revision would incorporate those
 22 (inaudible) state flows also. It gives it added
 23 recognition that if for some reason there would be a change
 24 in the Idaho Power license, those flows should still be
 25 guaranteed by the State Water Plan.

7

1 The next policy, 32A, water held in trust by the
 2 state. You're going to find some references here and other
 3 places to Idaho Code 42-203C or whatever. These parts of
 4 the Idaho Code don't even exist yet. They're in the
 5 so-called legislative package that's in the back. So you
 6 can check -- if one of those things bother you, you can
 7 check the back.
 8 It is the policy of Idaho that water held in trust
 9 by the State pursuant to blah, blah, blah of the Idaho Code
 10 be reallocated to the uses only that meet certain criteria.
 11 The agreement basically says that water that Idaho Power
 12 has claimed to give to the State, the State can reallocate
 13 that to other uses. Because it's water that has already
 14 been appropriated, the new criteria for the use of that
 15 water can be (inaudible). And that's basically what Policy
 16 32-A says.
 17 Any of the water that Idaho Power claimed that has
 18 been given to the State special criteria other than the
 19 normal beneficial use, non-speculative, the impact on your
 20 neighbor, those kind of (inaudible) still will be in place
 21 but there will be additional criteria for this water that
 22 Idaho Power had claimed.
 23 32B, domestic, commercial, municipal and
 24 industrial. The existing water plan which talks in terms
 25 of acre-feet rather than cfs set aside a certain amount of

8

1 water for municipal and industrial uses.
 2 The proposed revision would change that volume to a
 3 flow rate and basically keep it the same. We're talking in
 4 this case though rather than amounts diverted because the
 5 intent now is for the State to try and manage the river
 6 until we get to these magic flow numbers, the intent here
 7 is to allow up to 150 cfs consumptive use. Existing
 8 diversion from the basin for these kind of uses, domestic,
 9 commercial, municipal and industrial. The best we can
 10 estimate is an average of 404 cfs.
 11 Much of that -- this is where it gets a little
 12 complicated. Much of that is for non-consumptive uses. If
 13 you know water budget, the water that's taken from
 14 municipalities that people drink, the waste products go
 15 back to the river and the water basically balances out. Or
 16 it comes back to the system through whatever sewage
 17 disposal there might be. We know consumptive uses in these
 18 kinds of diversions but lawn watering in (inaudible)
 19 community, golf courses, those kind of things, swimming
 20 pool (inaudible) consumptive use. So 150 cfs of water for
 21 consumptive purposes will be significantly more in terms of
 22 diversion from the river.
 23 (Inaudible) the State are setting this aside from
 24 whatever block of water is available from Idaho Power.
 25 Now, I say from whatever block of water because the

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1 examples in the discussions always revolve around the flow
 2 at Murphy because that's where the court case is held
 3 (inaudible).
 4 Idaho Power has a claimed right in all their
 5 (inaudible) facilities in the river. In many cases, it's
 6 larger than the claim at Swan Falls but as part of the
 7 agreement, Idaho Power has said they will not protest lack
 8 of water at their upstream facilities as long as the 3900
 9 and 5600 (inaudible) Murphy Gauge. They might protest if
 10 something illegal is going on but as long as everybody's
 11 willing to say, well, they're not getting their water at
 12 some other dam, as long as the 39 and 56 are going by
 13 Murphy, they're satisfied.
 14 Policy 32C, agriculture. The existing water plan,
 15 as I say, was first adopted in '76 and at that time, the
 16 board set targets or at least hoped there would be new
 17 agricultural development. There's been sort of a
 18 controversy over a magic number of acres and we haven't
 19 come close to reaching that number with the agricultural
 20 economy at the present. There isn't (inaudible)
 21 irrigation.
 22 What the board proposes in this new policy is
 23 basically to say those waters that they hold in trust, some
 24 portion has to go for domestic, commercial, municipal and
 25 industrial. The rest is available for agricultural uses.

10

1 The only magic acreage number now is the restriction saying
2 that no more than 80,000 acres should go in a 4-year
3 period. Over the last 8 or 10 years, the average number of
4 new acres coming into the development (Inaudible) irrigated
5 agriculture development in the State is right about 17,000
6 per year. So the average of 80,000 over a 4-year period
7 would be up to 20,000 acres per year but no more.

8 Policy 32D, hydropower. Basically that says
9 hydropower shall be recognized as a beneficial use. That
10 the depletion of river flows below the levels established
11 in the beginning, the Murphy Gauge criteria is not
12 (Inaudible). Idaho Power's already recognizing
13 (Inaudible).

14 The minimum flow at Murphy serves several purposes,
15 certainly one of which is hydropower. It guarantees so
16 much water will come through the lowest dam, the Swan Falls
17 Dam, the one that (Inaudible). It provides flow for fish
18 wildlife (Inaudible) so it is not in the public interest
19 for the flows to go lower than that.

20 Policy 32E, navigation. This is basically a repeat
21 from what's in the existing State Water Plan. It says
22 these kind of flows are enough to satisfy the needs of
23 recreational water users and those commercial boaters who
24 use the river below Hell's Canyon Dam.

25 Aquaculture. Once again, a repeat basically of

11

1 what is in the existing State Water Plan. Basically it
2 says if you want to process aquaculture products, you need
3 more water, you come out of the DCMI because it's a
4 commercial endeavor. It says that the minimum flows
5 established should provide enough water for aquaculture
6 uses. They should probably realize many of the (Inaudible)
7 farmers rely on discharges from Thousand Springs.

8 The policy points out that this agreement will
9 insure that some discharges continue to occur at Thousand
10 Springs because that's basically where the river gets its
11 water below Milner Dam to insure a flow to Murphy. But the
12 State is not going to promise someone who uses those spring
13 flows that it's always going to be there in the amount they
14 may need. They may have to reconstruct the diversion dam.
15 In an extreme case, they might have to drill wells because
16 a water right in Idaho does not guarantee (Inaudible)
17 diversion. It (Inaudible) a right to water.

18 Policy 32G, fish, wildlife and recreation. This is
19 an awkward policy. The board has done the best they can I
20 feel. It is the policy of Idaho that the minimum flows
21 established are sufficient and are necessary to meet the
22 minimum requirements for aquatic life, fish and wildlife
23 and to provide water for recreation in the Snake River
24 below Milner Dam. The stream flow depletion below the
25 (Inaudible) is not (Inaudible).

12

1 The board will recognize that these are not
2 optimum. These are not the best flows for fish and
3 wildlife and aquatic life. They are the minimum flows.
4 They will support and sustain the fishery for example.
5 They will provide for recreational uses.

6 The board has two different mechanisms to establish
7 minimum flows. The one we're talking about today is by
8 stating in the water plan. The flow at such and such a
9 point shall never go below whatever. They also have the
10 authority to appropriate the unappropriated waters in the
11 state for in-stream values. Now, they have done that in
12 many cases on streams that are tributary to the Snake River
13 and will probably continue to do that. Their hope is that
14 between the processes, we'll be able to support the kind of
15 fisheries and wildlife recreational values (Inaudible).

16 Policy 32H, water quality and pollution control. A
17 repeat of what's in the existing water plan. It basically
18 says you can't use good water to dilute bad quality water
19 to try and satisfy the citizens of the state or the federal
20 government. The board feels there are enough existing
21 rules and regulations and laws in place to ensure the
22 reasonable water quality within the state. This is not in
23 their mind an appropriate use of water to use water just to
24 dilute somebody's contaminated water.

25 Policy 32I, new storage. This is a very

13

1 complicated sensitive issue. The negotiators of the
2 agreement specifically asked the board to address this
3 problem, specifically suggested language that they felt was
4 appropriate. There are two basic criteria here or two
5 parts to this policy.

6 The first part is that before new storage is
7 constructed anywhere in the basin above Swan Falls Dam, the
8 director of the Department of Water Resources should make a
9 determination that maximum use of the existing facilities
10 is being made.

11 It's almost an impossible task. There are several
12 reasons for this. There at the moment are unappropriated
13 waters in the reservoirs within the system. There are also
14 a lot of appropriated waters that are not used for the
15 purpose they were appropriated. Those waters are generally
16 released by the water master on October 1 so he can make
17 space for next year's run-off. If we're in a situation
18 where people are fighting over the water in the system, it
19 seems inappropriate to have the water stored and it's not
20 being used and it's basically dumped every October.

21 So the negotiators wanted the board to address this
22 question. The board has agreed to do this. They've
23 incorporated the suggested language in this policy and they
24 have agreed to look at some of the social and legal
25 barriers to more efficient use of water in the system.

14

1 I'll just skip over a couple of areas very quickly.
2 There is an established water bank in the state. There is
3 a mechanism and rules and regulations where a person who
4 has more water than he needs can sell or lease that water
5 to someone else. Some uses these rules and regulations
6 made (inaudible) by the committee and I (inaudible). But
7 it's not used to any great extent. The reasons are if a
8 person has water stored behind a reservoir, he can only
9 lease or sell that water on a one-year contract. Like
10 someone who's coming in and wants to do something new is
11 only assured water on a limited basis. He's not going to
12 put very much money in (inaudible) financed.

13 The other problem was water stored behind the
14 federal reservoir is you are not allowed to make profit on
15 that water. It seems a reasonable rule in that if my
16 father had had an old water right and we were building one
17 of these dams 20 years ago, I'm not using the water, the
18 federal government paid for most of the construction cost,
19 why should I be able to take that water and sell it at a
20 profit to me?

21 It seems reasonable from that point of view but it
22 seems very illogical in that if I can't make a profit on
23 that water, why should I bother to go through the hassle of
24 trying to sell it to somebody else. Therefore it sits
25 there year after year and it's not used.

15

1 There are State barriers to more efficient use of
2 the water in the system. Even though we have the water
3 bank business, the user has to be very careful that he
4 would lease his water for five years in a row because if he
5 doesn't apply it to his own land for his own beneficial
6 use, he may lose his water right.

7 If a person has that water stored that he doesn't
8 need and he tries to sell it to someone who's going to
9 consumptively use that water, that becomes an expansion of
10 a water right. The only way I could sell the water held in
11 storage that would reduce the amount of acreage I would
12 irrigate. Otherwise that water which was proven up as
13 beneficial use for my property, it goes to another
14 consumptive use. That's a violation of State law.

15 So this policy basically says the board is going to
16 push for everybody involved, Bureau of Reclamation, the
17 State, to take a look at these kind of problems and see if
18 we can more efficiently use the water system.

19 Everybody wants to know is this a real barrier to
20 new storage? I think to some degree maybe but certainly
21 it's not as much of a barrier as (inaudible) lack of good
22 downslope, the lack of water to fill the major reservoir on
23 a year-to-year basis. It's a barrier only if the director
24 has to make a finding. If the director were asked today to
25 make a finding, he would probably say no because there's

16

1 unappropriated water in the system. Once there's no longer
2 unappropriated water, his finding would have to be these
3 legal barriers prevent us from doing anything different.
4 Therefore, we're doing the best we can. If the water board
5 through their efforts in conjunction with the Bureau of
6 Reclamation, for example, can get some of these policies
7 changed, then there will be water available for other uses
8 and new construction may not be necessarily a mere term.

9 There's a second part to this new storage policy
10 and it applies only below Milner Dam. Idaho Power's
11 wintertime operation is an important part of their whole
12 system. There's two -- my understanding, there are two key
13 ingredients here. One is that they have a guaranteed buyer
14 on the west coast during the wintertime because of all the
15 electric heating. It's getting so (inaudible) guarantee to
16 buy in Idaho because of the cold weather we've had lately
17 also. So they can sell power very easily at that time.

18 The other reason of course is that the Hell's
19 Canyon Complex and Brownlee Reservoir has to get filled and
20 that's when it gets filled, during non-irrigation season.

21 As part of the trade-offs, the State agreed that
22 anyone who wanted to divert water during the wintertime for
23 storage purposes below Milner Dam would have to enter into
24 some kind of an agreement with Idaho Power Company and
25 mitigate for the company's operational losses. What the

17

1 mitigation will be, no one knows. It's going to be on a
2 case by case basis. It certainly is a barrier to new
3 diversions below Milner Dam. It may be that you're
4 building a few extra thousand acre-feet to let Idaho Power
5 call when they want and that may be enough (inaudible). If
6 you can show the timing of your releases will benefit Idaho
7 Power rather than really hurt them, that may be mitigation.
8 But at the moment, no one is really clear.

9 But the agreement asks for and the proposed State
10 Water Plan will say that wintertime diversion for storage
11 below Milner Dam, some kind of mitigation for Idaho Power
12 has to be considered.

13 There's only one last policy, Policy 32J. Storing
14 water for management purposes. The whole idea of the
15 agreement is that the whole Snake Basin is going to be
16 managed by a summertime and wintertime flow at Murphy Gauge
17 and Swan Falls Dam. As a person who works for the Idaho
18 Department of Water Resources, I know that at some point
19 down the road, that's going to be a real difficult task to
20 accomplish. This policy suggests that while reservoir
21 storage while unappropriated water is available, the State
22 should try and get some so that if the regulators make a
23 mistake down the road, they've got a place to call for
24 water and meet these flows.

25 The real problem is not within the river itself

18

1 because we can shut off (inaudible). The problem is that a
2 zero flow allowable at Milner Dam during most of the
3 irrigation and low flow periods of the year, the water in
4 the Snake River is discharged from Thousand Springs.
5 That's where the Snake River excess goes. Trying to manage
6 the whole Snake (inaudible) aquifer in conjunction with a
7 river to meet these minimum flows at Murphy Gauge is the
8 real task. Certainly most of us know enough about
9 (inaudible) to know that if you made a call (inaudible) on
10 a pumper who is 50 miles from Thousand Springs, the effect
11 of shutting him off might not show up for six months at
12 which point, who cares.

13 It's not appropriate if you're going to manage
14 groundwater and surface water together. You have to
15 (inaudible) the impact of the aquifer on the river in the
16 summertime to shut off the (inaudible) when there
17 (inaudible).

18 So from the point of view of the regulator or the
19 manager, while there's unappropriated water available, it
20 sure would be nice if we could get a hold of some of that.
21 Now, from the day we could get a hold of it until we made
22 the mistake that causes to use it for this purpose, that
23 water could go to the water bank where anybody who wanted
24 to use it for a year or whatever could do so. It could be
25 sold to Idaho Power for example. But it would be sort of

19

1 an insurance policy much like an irrigator has stored water
2 for insurance if he doesn't get his natural flow right.
3 This would be an insurance policy for the Department of
4 Water Resources if they find they can't meet the terms of
5 this agreement.

6 One thing I would say about calling for that water
7 in a low flow year, the agreement -- this is not part of
8 Policy 32. The agreement specifies that all current users,
9 all people who have (inaudible) water use upon signing of
10 the agreement are protected. If nature didn't cooperate
11 and the flows were going below 3900, those people who were
12 in place before the agreement was signed would still be
13 allowed to use the water right with only the people who
14 (inaudible) on water after the signing of the agreement,
15 that would be subject to being shut off (inaudible) flows.

16 MR. GRAY: Thank you, Mr. Sherman. We'll now take
17 public testimony. We'll first hear from Sally M. Gibson
18 followed by Mike Caldwell. Sally. Please state your name,
19 address and telephone number for the record, please.

20 MS. GIBSON: I'm Sally Gibson. I'm the president
21 of the League of Women Voters of Idaho and I'm representing
22 that organization here today. I live at 1507 East Lander
23 in Pocatello. My telephone number is 233-6516.

24 The League of Women Voters thanks you for this
25 opportunity to comment on the suggested revision of Policy

20

1 32 of the State Water Plan. We recognize that changes are
2 necessary to implement the Swan Falls agreement between the
3 State of Idaho and Idaho Power Company.

4 A general adjudication to determine the nature,
5 extent and priority of all water users in the Snake River
6 Basin is vital to the entire water plan. We must have an
7 inventory of water rights. No good manager would ever
8 consider a guess about the most important commodity in his
9 business; in this case, water.

10 We recognize that this process will be costly but
11 it is essential for the State to know precisely how much
12 water is legally claimed and how much, if any, remains for
13 future appropriation. Until adjudication is complete, the
14 minimum flow at the Murphy Gauging Station should be set at
15 4500 cubic feet per second. This is the present average
16 summer flow.

17 It is our position that for the present, actual
18 Snake River flows remain in the river. It should be
19 possible to establish a mechanism for the transfer of water
20 rights between willing sellers and buyers. With this in
21 place, water for new development could be brought or
22 acquired through water conservation. Preventing
23 speculative agricultural ventures is a benefit to Idaho's
24 present agricultural community.

25 Along with adjudication of water rights must come

21

1 complete hydrologic and economic studies of the Snake River
2 Basin. These studies are needed to determine the lengths
3 between surface and groundwater supplies. We must have
4 information on the physical characteristics of our
5 aquifers. Thousand Springs provides the Swan Falls flow.
6 Groundwater depletion is serious and we need geologic data.

7 The League of Women Voters advocates multiple use
8 for the water remaining after priority water user claims.
9 We are very much disturbed by Policy 32C which would make
10 water held in trust and not used for domestic, commercial,
11 municipal and industrial purposes available for irrigation
12 requirements. As I stated previously, we maintain that
13 speculative agricultural ventures are not beneficial to our
14 agricultural industry.

15 While we believe that every effort should be made
16 to honor current valid water rights, we also maintain that
17 there are more than two competing uses. Negotiators have
18 talked about balancing the need to produce hydroelectric
19 power against the need to make water available for
20 agricultural development.

21 We respectively (sic) submit that there are other
22 uses for Snake River water, namely, fish, wildlife and
23 recreation. We are concerned about the impacts on fish,
24 wildlife and recreation. We do not believe that these uses
25 can take any decreases in water rights. All beneficial

22

1 uses could be made more equal by not putting specific
 2 figures in for only one beneficial use. Putting in a
 3 quantitative target for agricultural development only means
 4 that fish, wildlife and recreation uses will be
 5 subordinated.

6 Policy 32G states that minimum flows are sufficient
 7 and necessary to meet the minimum requirements for aquatic
 8 life, fish and wildlife and to provide water for recreation
 9 in the Snake River below Milner Dam. We would like to see
 10 economic reasons for and development targets for all
 11 beneficial uses.

12 Finally, we are concerned about representation of
 13 the public interest. We know that individuals will not
 14 come to these hearings to represent themselves. Witness
 15 the few numbers at this meeting this afternoon. Our
 16 organization is a public interest organization but we
 17 cannot and do not represent all aspects of the public. Our
 18 aim is to encourage individuals and groups to speak for
 19 themselves at these hearings. Consider the opinions of
 20 those who will not come to these hearings. They are the
 21 public interest and so are their children and
 22 grandchildren.

23 A river system is a dynamic and connected whole
 24 which should be treated in the nature of a public trust for
 25 the whole state. Thank you for listening to us.

23

1 evidently you guys were -- you gentlemen were left out in
 2 the cold on how the minimum flow was going to be.

3 I also want to kind of praise you a little bit too.

4 I want to thank you for the opportunity to come and to have
 5 these -- or to give the testimony here and also to let you
 6 know that this idea of being allowed to take your water out
 7 -- that's in reservoirs and allow it to be sold for another
 8 use perhaps would be one of the finest solutions that could
 9 come out of this agreement. I personally feel that this is
 10 the way to go.

11 Another thing I'd like to talk to you about is the
 12 reservation water right. I'd like to -- at this time,
 13 nobody's mentioned anything about it. Do the Indian tribes
 14 in Idaho have a -- have a right on -- in this agreement or
 15 how is it going to be addressed at a later time? Is there
 16 -- a question could be answered to me how is that going to
 17 work? And that probably finishes my testimony. Thank you.

18 MR. GRAY: Mr. Rydalch, any questions?

19 MR. RYDALCH: Don't have any.

20 MR. GRAY: Mr. Shawver.

21 MR. SHAWVER: I think I'll answer that question for
 22 you after the hearing.

23 MR. GRAY: Mr. Kramer.

24 MR. KRAMER: None. Not right now.

25 MR. GRAY: Okay. Thank you very much, Mike. Is

25

1 MR. GRAY: Sally, might you stand for questions
 2 from the board members, please? Mr. Rydalch, any
 3 questions?

4 MR. RYDALCH: No questions.

5 MR. GRAY: Jim?

6 MR. SHAWVER: I have no questions.

7 MR. HAAS: No questions.

8 MR. GRAY: Thank you very much. Might we get a
 9 copy of that if you have an extra? Thank you very much.

10 Chair calls Mike Caldwell.

11 MR. CALDWELL: Thank you. I'm Mike Caldwell. I
 12 live at Route 3, Box 173, Blackfoot, Idaho. I live on
 13 (Inaudible) Road.

14 The main reason I'm here today to testify before
 15 you gentlemen is that one thing to start out to (inaudible)
 16 you a little bit and to make the point that a number of
 17 people have mentioned to me and to different meetings
 18 across the area that perhaps that the big money people, the
 19 utilities in particular, have went around you. You
 20 gentlemen are sitting on the board seeing this thing kind
 21 of coming and then allowed yourselves to be boxed out
 22 politically away from where the decision-making was to be
 23 made. You're appointed by the governor in my opinion to
 24 kind of oversee this water thing and when the final
 25 agreement was made at Swan -- on the Swan Falls agreement,

24

1 there anyone else who might like to testify that we don't
 2 have indicated here? If not, we'll close the formal
 3 hearing and we'll open it up for questions and answered.

4 Mr. Sherman. What we'd like you to do is if you
 5 have a question, please come to the mike so we can get it
 6 on tape. We've found that we've had some questions that
 7 have given us a lot of information that we really need that
 8 didn't wind up on tape. So what we would like you to do is
 9 come forward to the mike and state your question or if you
 10 can carry far enough so we can hear it on the recorder,
 11 that would be fine too.

12 Questions, ladies and gentlemen. Mike.

13 MR. CALDWELL: Could I get an answer to the
 14 question I asked during the testimony? Where is the --
 15 where does the individual Indian water right come into this
 16 thing?

17 UNIDENTIFIED SPEAKER: Mr. Chairman. This really
 18 isn't the board's problem. It's not part of the State
 19 Water Plan as proposed -- the proposed revisions would have
 20 the State Water Plan Policy 32 read. The existing State
 21 Water Plan had asked the Indian tribes and the federal
 22 government to quantify their rights before today
 23 (inaudible). It's yet to happen.

24 One of the main purposes for the adjudication and
 25 one of the reasons it gets more widespread support than one

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1 would necessarily expect is that the adjudication is
2 designed to force the Indian tribe and the federal
3 government to quantify their water rights.

4 The federal government can only be forced to
5 participate in an adjudication if it's what's called a
6 system-wide adjudication (inaudible) system-wide
7 adjudication. Indian tribes and the so-called federal
8 reserved rights will be quantified. That includes the
9 order that the Forest Service might want, (inaudible)
10 whoever. That's why right now, the adjudication is
11 scheduled to start in Lewiston and include the Salmon and
12 Clearwater Rivers which are obviously not a part of the
13 problem at Swan Falls Dam but by starting there or
14 threatening to start there, we feel we can force the
15 federal government under their own rules to participate in
16 the adjudication and to do the adjudication in the state
17 courts. Okay.

18 MR. CALDWELL: On the year -- your statement you
19 give before the testimony stage, you said that there would
20 be a year that after the modification of these things went
21 into effect and anything that come along after that would
22 have to stand by the agreement? Is that -- does this
23 include the --

24 UNIDENTIFIED SPEAKER: No. Part of the
25 adjudication of a water right is, one, proven that it's

27

1 been beneficially used and its priority date is given
2 (inaudible) system. Federal government and the reservation
3 would have priority dates based on when that land was
4 withdrawn from the public domain meaning Fort Hall could
5 have an 1800 water right.

6 MR. GRAY: Yes, sir.

7 UNIDENTIFIED SPEAKER: As far as you stated in your
8 testimony that all those rights that have occurred and
9 applications that have been filed prior to October of 1984
10 would be given that right under the existing rules, but the
11 water rights that are applied for after that date would
12 come under the criteria of the agreement. In addition,
13 there would be special criteria they would have to meet --
14 that Idaho Power --

15 UNIDENTIFIED SPEAKER: No, not Idaho Power. You
16 were right -- I was with you all the way until -- you had
17 it exactly right. Those waters held in trust by the state,
18 it says established by Idaho Code 42-203A and that's
19 basically the existing criteria to get water right and
20 Idaho Code 42-203C.

21 UNIDENTIFIED SPEAKER: (Inaudible.)

22 UNIDENTIFIED SPEAKER: The legislature has to adopt
23 these; not Idaho Power. It's something that the
24 legislature's got to adopt and Mr. Gray can give you the
25 reference to the page.

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1 UNIDENTIFIED SPEAKER: This is criteria that is in
2 the agreement that has been additionally put in over and
3 above what was done before?

4 UNIDENTIFIED SPEAKER: Right.

5 UNIDENTIFIED SPEAKER: And this is the additional
6 criteria that that refers to.

7 UNIDENTIFIED SPEAKER: Right. And those will be
8 for the water that Idaho Power claimed that the State is
9 not (inaudible).

10 UNIDENTIFIED SPEAKER: This is the 45 to 3900 cfs?

11 UNIDENTIFIED SPEAKER: That's at the Murphy Gauge.
12 It's a different number at every different dam on the
13 river. But yeah, that's true.

14 UNIDENTIFIED SPEAKER: It's not -- too, I'd like a
15 clarification or have you elaborate on your interpretation
16 of the beneficial use criteria that would have to be met by
17 say a person applying for a water right for a deep well.

18 Is this going to be -- is your understanding -- is this
19 something that's going to be similar to like EPA
20 environmental impact statements?

21 UNIDENTIFIED SPEAKER: No.

22 UNIDENTIFIED SPEAKER: Or is this going to be
23 something similar to like in the past a little bit more
24 simple that an individual farmer might be able to handle?

25 UNIDENTIFIED SPEAKER: It's going to be not that

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1 different. A person who's going -- wishes to use a deep
2 well, for example, I would say (inaudible) because that
3 brings the whole thing together will have to meet the
4 criteria they have to meet right now plus they will be
5 evaluated on their impact on hydropower generation, are
6 they in the family farm tradition, and I can't remember the
7 others but they're listed in the page there what the
8 legislature's going to ask to adopt. What the legislature
9 actually adopts may be different and that (inaudible)
10 changes. But it's supposed to be a simple check-off system
11 that's going to take order, yes, it's going to hurt Idaho
12 Power directly in terms of hydropower generation because we
13 have to analyze the impact on the rate payers in the state.
14 (Inaudible), yes or no. We come up with a simple five or
15 six check-off list that the department does as part of the
16 routine process in application.

17 UNIDENTIFIED SPEAKER: Look on page 6 of this
18 "Currents" and the first column, clear at the top. This is
19 the additional criteria. It starts on the previous page,
20 the public interest determination (inaudible) being approved
21 and continues on page 6. As Mr. Sherman indicated, this
22 was the draft language. This is before the legislature --
23 what they finally end up with of course we don't know. But
24 I guess the parties to the agreement, one of their
25 stipulations was that whatever the legislature ends up with

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1 is supposed be quite close to this. They said that any
 2 major changes they would have problems with.
 3 UNIDENTIFIED SPEAKER: Pretty well void the
 4 agreement (inaudible). (Inaudible) considered by
 5 (inaudible) there's any drastic changes as determined by
 6 those -- any one of those two parties, they can avoid the
 7 whole agreement. Is that correct?
 8 UNIDENTIFIED SPEAKER: That's what we heard.
 9 MR. GRAY: That's the talk on the street.
 10 UNIDENTIFIED SPEAKER: So it's pretty well going to
 11 have to come in line with what's been signed within pretty
 12 close limits.
 13 MR. GRAY: If this does not fall in line by May 15
 14 as it's supposed to, 1985, then the negotiators will meet
 15 again and they'll either come up with another proposal or
 16 else it will go back in the courts.
 17 UNIDENTIFIED SPEAKER: It will go back to step one
 18 again.
 19 MR. GRAY: That's correct. Mike.
 20 UNIDENTIFIED SPEAKER: Was your gentlemen's
 21 original thoughts on this when you was confronted with the
 22 Swan Falls issue in itself was to condemn the dam at Swan
 23 Falls and to have the State end up owning them and then
 24 selling it back to Idaho Power without its water rights?
 25 MR. GRAY: No. The board -- the board never did

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1 make a determination that they should purchase Swan Falls.
 2 What we did is we requested staff to look into the
 3 possibility or the fees --
 4 (Tape No. 1 ends. Tape No. 2 begins.)
 5 UNIDENTIFIED SPEAKER: The way I understood it at
 6 the beginning there, it was one of the thoughts -- this is,
 7 (inaudible) you fellows (inaudible) to that initial
 8 thinking.
 9 MR. GRAY: No. We have broad shoulders and we're
 10 back. Anymore questions? Sally.
 11 MS. GIBSON: I think what you state the action that
 12 must be taken by May 15 is kind of scary. Do you really
 13 anticipate that all of this will be done by May 15?
 14 MR. GRAY: Do I really have to answer that
 15 question? We hope that it takes place by May 15.
 16 UNIDENTIFIED SPEAKER: Mr. Chairman, could I add --
 17 MR. GRAY: Yes.
 18 UNIDENTIFIED SPEAKER: Could I add that the
 19 principals to the agreement stated that they would sit down
 20 on May 15 and (inaudible). There's a little leeway
 21 (inaudible) they're not going in the right direction or
 22 not.
 23 MS. GIBSON: Because you're even dealing with a
 24 different state here and I know that these things take a
 25 long, long time to get done so, in other words, we could

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1 best push for that.
 2 UNIDENTIFIED SPEAKER: That's correct. Thank you.
 3 MR. GRAY: I'd like to point out that Mr. Herman
 4 McDevitt from Pocatello, attorney at law, is with us and
 5 Herman is a former board member. It's nice to have you,
 6 Herman.
 7 MR. MCDEVITT: Thank you.
 8 MR. GRAY: We also have Rich Hahn in the back.
 9 Rich is with Idaho Power Company. He might be able to
 10 field a couple questions if you have one that you'd like to
 11 direct toward the utility.
 12 UNIDENTIFIED SPEAKER: Do you think that there will
 13 be any -- my thinking on the deal is that the reason why --
 14 one of the reasons why Idaho Power's rates have been so low
 15 for so long is the possibility in the back of their mind
 16 the company's thinking that there was a chance they
 17 wouldn't have any water right in the river and that if they
 18 had the guaranteed stream flow of this 3900 cfs that there
 19 might not be the thinking in their mind to keep the rates
 20 low or (inaudible). He's probably not going to admit it
 21 even if there is but --
 22 MR. HAHN: I really can't answer that question. I
 23 wasn't a part of the negotiating team and that would be
 24 better responded to our representative on the negotiating
 25 team (inaudible). I'm here simply to observe the meeting.

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1 UNIDENTIFIED SPEAKER: Mr. Chairman.
 2 MR. GRAY: Yes, Mr. Sherman.
 3 MR. SHERMAN: I would -- as part of follow-up to
 4 that question though, until the Idaho Supreme Court made
 5 the decision that the Swan Falls claim by Idaho Power had
 6 not been subordinated by the Hell's Canyon Drain, both the
 7 power company and all State agencies were operating under
 8 the assumption that the water right at Swan Falls was
 9 (inaudible). I don't think it was until '82 that Idaho
 10 Power realized that they really had a claim toward
 11 (inaudible).
 12 MR. GRAY: Yes, sir.
 13 UNIDENTIFIED SPEAKER: As I understand it, this
 14 4500 cubic feet per second at the Murphy Gauge, that is the
 15 present low flow for the irrigation season and that's
 16 why -- that's why they (inaudible) at that point and they
 17 kind of split the difference between 45 and 33?
 18 UNIDENTIFIED SPEAKER: Yes, that's correct. The
 19 historical flow at Murphy is 4500 cfs for an irrigation
 20 season. The water plan called for 3300. That was the
 21 starting point for the State. The 45 that Idaho Power
 22 actually had had been given was at least a reasonable
 23 starting point from their point of view (inaudible).
 24 UNIDENTIFIED SPEAKER: And so this pretty much
 25 gives the State an additional 600 cfs during low flow that

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1 they can appropriate and give out in (inaudible) to water
 2 users.
 3 UNIDENTIFIED SPEAKER: That's correct.
 4 UNIDENTIFIED SPEAKER: Whether it be domestic or
 5 (Inaudible).
 6 UNIDENTIFIED SPEAKER: And in good water years,
 7 there's more water than that available.
 8 UNIDENTIFIED SPEAKER: Thank you.
 9 MR. GRAY: One thing I would like to address, Mike,
 10 you made mention of the fact that the Water Resource Board
 11 had not been party to the negotiations. One thing you have
 12 to keep in the back of your mind that the governor was one
 13 of the three parties to the negotiations and he is our
 14 boss.
 15 UNIDENTIFIED SPEAKER: I realize that. He was
 16 taken into it from you gentleman supposedly when the
 17 (inaudible). The thing that probably -- if you lay it out
 18 in black and white, everybody can see how everybody's being
 19 handled and one thing another, (inaudible) but it seems
 20 like it was a closed-door deal done over a cup of coffee or
 21 if they didn't drink coffee, (Inaudible). But there was --
 22 it seems like a deal that was made -- the same kind of deal
 23 that was made with -- that Len Jordan was supposed to have
 24 made with the president of Idaho Power in the beginning
 25 when he said they were going to have this subordination.

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1 And what bothered me about it is it's out here in
 2 black and white. Everybody can read it and it's fine for
 3 now, but what's going to happen when Governor Evans has
 4 passed on for six months and Idaho Power decides to change
 5 their mind again?
 6 UNIDENTIFIED SPEAKER: Well, the thing is, it's
 7 very important for us to take the input as we go down the
 8 Snake system because that is going to be an important part
 9 of the overall package and you are going to have something
 10 to say about it and that's what's good about our system I
 11 think. I think Mr. McDevitt's in the starting blocks.
 12 Herm, did you want to make a statement?
 13 MR. McDEVITT: Mr. Chairman, I'd like to carry on
 14 with Mike's comment not saying you guys were left out but
 15 in saying that the intent certainly to assure the agreement
 16 for more than the length of Governor Evans' term is by
 17 getting specific pieces of legislature. It's by putting it
 18 in the water plan. But quite honestly, once it's in place,
 19 the water plan gets reviewed every five years by law. It
 20 can be changed. The legislature meets yearly and can
 21 change any law they want. So there's no real guarantee.
 22 The best you can do is make it the law of the land and
 23 that's certainly the intent.
 24 UNIDENTIFIED SPEAKER: Thank you. Any other
 25 questions? Yes.

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1 UNIDENTIFIED SPEAKER: How is the -- this SJR-117
 2 actually going to affect the Department of Water Resources?
 3 Is it going to put the whole water plan up for debate every
 4 year in the legislature or --
 5 UNIDENTIFIED SPEAKER: No. SJR-117 doesn't affect
 6 the Department of Water Resources whatsoever. It affects
 7 the Idaho Water Resource Board but it does not change the
 8 function of the board. Our main function is still to
 9 develop water policy for the State of Idaho. But now the
 10 legislature has overview of our process or let's put it
 11 this way: Your process.
 12 UNIDENTIFIED SPEAKER: They have the final --
 13 UNIDENTIFIED SPEAKER: That's exactly correct.
 14 UNIDENTIFIED SPEAKER: -- acceptance or rejection of
 15 what the policy --
 16 UNIDENTIFIED SPEAKER: That's correct.
 17 UNIDENTIFIED SPEAKER: What policy you feel -- what
 18 you hope to come out with saying this is the policy the
 19 State should use that goes before the legislature and they
 20 have to say yes, this is what will happen (Inaudible).
 21 They give it back to you and say try again.
 22 UNIDENTIFIED SPEAKER: That could happen.
 23 Basically the process now is the board goes through. We
 24 take public hearing and we develop policy on what we think
 25 you said. That's the public process.

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1 UNIDENTIFIED SPEAKER: Right.
 2 MR. GRAY: It used to be when the board then said
 3 this is policy, it was policy. Well, it isn't that way or
 4 won't be that way from now on because when the people of
 5 the State of Idaho voted to accept SJR-117 or the
 6 constitutional amendment, what they said in fact was, yes,
 7 we realize the water board is going to develop policy but
 8 we want to give the legislature overview of what they do
 9 and that's what SJR-117 did.
 10 UNIDENTIFIED SPEAKER: So actually it's going to
 11 give the legislature the right to accept or reject the
 12 policy you come forward with?
 13 MR. GRAY: That's correct. Or change or amend.
 14 UNIDENTIFIED SPEAKER: Or change.
 15 MR. GRAY: Or change or amend.
 16 UNIDENTIFIED SPEAKER: So then how much are you
 17 going to have to say about what actually becomes water
 18 policy?
 19 MR. GRAY: We're going to have a whole lot to say
 20 about what the process involved is to get it to there but
 21 on the final say-so, you better talk to your legislators
 22 because that's -- that's what the public decided they
 23 wanted to do with this.
 24 UNIDENTIFIED SPEAKER: Thank you.
 25 MR. GRAY: Okay. We'll meet again tonight at 7:00

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1 p.m. in the same room if you would like to join us again
2 and you're certainly welcome.
3 (Tape ends.)
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STATE OF IDAHO)
) SS
COUNTY OF CANYON)

I, TAMARA A. WEBER, State-certified and licensed
Transcriber, do hereby certify:

That the foregoing transcript is a transcript of
cassettes made of the proceedings in the matter of the
Public Hearing in re: State Water Plan before the Idaho
Water Resource Board, January 29, 1985, 2:00 p.m.,
Pocatello, Idaho; that the foregoing pages 1 through 39 of
this transcript contains as accurate and complete a
transcription of said cassettes as I was able to make.

IN WITNESS WHEREOF, I have hereunto set my hand
this 6th day of November, 2007.


TAMARA A. WEBER, CSR RMR
Idaho CSR License No. 278
Transcriber

STATE WATER PLAN HEARING)
_____)

PUBLIC HEARING
BEFORE THE IDAHO WATER RESOURCE BOARD
POCATELLO, IDAHO
JANUARY 29, 1985
7:00 P.M.

TRANSCRIPTION BY:
Canyon Transcription
P.O. Box 387
Caldwell, Idaho 83606

Proceedings recorded by electronic sound recording.
Transcript produced by transcription service.

A P P E A R A N C E S:

Gene Gray
Dave Rydulch
Jim Shawver
Wayne Haas
Don Kramer
Frank Sherman
Richard L. Hahn
Lynn Ruby
Charles Pace
Dan Daley
Mack Gamblin
James Osborn
Tom Stroschein
Gordon Toeus
Harold Funk
Ritchey Toeus
Ben Caveness
Gary Gohring

1 (Tape begins.)
2 UNIDENTIFIED SPEAKER: This is a recording of the
3 State Water Plan hearings in Pocatello on January 29 at
4 7:00 p.m.
5 MR. GRAY: -- Resource Board's public hearings on
6 the revisions of Policy 32 of the State Water Plan. With
7 me tonight is Dave Rydalch. Dave's a farmer in the St.
8 Anthony area and he's also a member of (Inaudible). And
9 Wayne Haas with the Department of Water Resources; Don
10 Kramer who's handling the sign-in sheet back there is a
11 farmer from Castleford, board member; J.D. Williams,
12 attorney at law from Preston. We have Ken Dunn, director
13 of the Department of Water Resource with us tonight. Frank
14 Sherman from the Department of Water Resources will be
15 talking to you and we have Tom Stroschein is Congressman
16 Stallings' agricultural fieldman.
17 So with that, we'll kind of get started. If you
18 kind of grab your "Currents" and take a look at the front
19 page, the front page will give you a general rundown of
20 what has transpired to this point as far as the board is
21 concerned. The board is charged with making water policy
22 for the State of Idaho. The State Water Plan was developed
23 and put together for the public hearing process by the
24 Idaho Water Resource Board. What we're going to be talking
25 about tonight is revisions to Policy 32 and we accepted

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1 some revision language in December of 1984 and that's what
2 we have with us tonight and that's what we would like you
3 to testify on.

4 If you take a look at page 2 and page 3 inside your
5 paper, you'll find the language and proposed revisions for
6 Policy No. 32. Page 4 through 7 is the legislative package
7 that our legislature is working on at the State capital
8 present.

9 Now, in order of representation, if you'll look at
10 the right-hand side of page 7, you'll see actions that must
11 take place for this thing to be in place and that must all
12 be done by May 15, 1985. No. 1, the State State Water Plan
13 is to be amended and that's what we're here in front of you
14 for this evening is to get your input on that portion of
15 it.

16 No. 2, the legislative package must be passed.
17 No. 3, the appropriate action by the PUC or legislature as
18 called for in agreement is taken. 4, an appropriate order
19 by the Federal Energy Regulatory Commission acceptable to
20 the parties to the agreement must be issued. The Idaho PUC
21 must dismiss the 1977 petition by the Idaho rate payers.

22 No. 6, if required, the Oregon PUC must also
23 approve the package. No. 7, enactment by the legislature
24 of subordination language as set forth in Exhibit 7A and 7B
25 which you find on pages 4 through 7.

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1 So with that, we'll have Mr. Sherman briefly give
2 you an overview of the changes that we're contemplating in
3 Policy 32. We'll follow that by public -- your public
4 response. We'll close the public response and then we'll
5 open it up for questions and answered. Mr. Sherman,

6 MR. SHERMAN: The existing State Water Plan is a
7 policy that's directed towards water use in the Snake River
8 Basin. It needs to be changed for two reasons. When this
9 plan was first drawn up, the idea about managing water in
10 the basin was to allocate the water in the system for
11 specific uses.

12 When the Idaho Supreme Court in 1982 decided that
13 the water right at Swan Falls Dam held by Idaho Power was
14 an unsubordinated water right, (inaudible) water year, it
15 made these allocations inaccurate. When this plan was put
16 together, it was assumed that the Idaho Power water rights
17 at Swan Falls was subordinated and the State could take
18 that water away from the power company.

19 So allocations that are (inaudible) how much
20 water's available. The other and more pressing (inaudible)
21 is that, as Mr. Gray explained, the State and Idaho Power
22 reached an agreement and compromised to resolve the
23 conflict. They specified certain changes that they felt
24 had to be made to the water plan.

25 Proposed language addresses those changes very

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1 specifically (Inaudible) incorporate (inaudible) into the
2 State Water Plan. The old policy was just a general
3 statement saying that it is the policy of the State that
4 the water shall be allocated to the public with the
5 following criteria or uses.

6 What we've attempted to do in the revised version
7 is spell out this policy of the State of the waters and how
8 they will be used and what the board feels about the
9 different uses (inaudible).

10 So let's start right off with Policy 32. It's a
11 key policy. The intent of the agreement and certainly the
12 way the agreement can be implemented in terms of water --
13 managing the water in the system is treat the groundwater
14 and surface water as an entity to try and manage all the
15 waters in the basin.

16 The agreement says that because of the conflict at
17 Swan Falls and the Murphy Gauging Station that's the
18 nearest U.S. Geological Gauging Station on the river to
19 Swan Falls, there's a controversy around that and the fact
20 that the existing State Water Plan specifies a year-round
21 flow of 3300 cfs. The key change right away has to be
22 we're going to change those flows.

23 Idaho Power had claimed -- has a claimed water
24 right in the Swan Falls Dam of 8400 cfs. The river has
25 been as low as 4500 cfs in the summertime. This is a

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1 historic fact. The negotiators in trying to implement some
2 kind of compromise said, "Well, we've already been down to
3 45. The State Water Plan calls for 33. Let's split the
4 (Inaudible)." We come up with 3900 in the summertime
5 because a significantly larger (inaudible) water goes past
6 that point, the (Inaudible).

7 The compromise (inaudible) 5600 cfs (inaudible).
8 It's a compromise. Why is it a compromise? Because Idaho
9 Power says as long as that volume of water flows past that
10 gauge, they will not take action through the State against
11 anyone for (inaudible) water rights providing those people
12 are making beneficial use of that water right prior to the
13 signing of agreement. The whole intent of the agreement is
14 to rationally split up the water that's left; protect the
15 existing user.

16 You'll note that the proposed policy discusses
17 minimum flows of (inaudible). In the existing water plan,
18 the plan recognizes these flows because they are part of
19 Idaho Power's license to operate (Inaudible) hydropower
20 complex.

21 It was felt that by incorporating these officially
22 into the State Water Plan, they would assure those flows no
23 matter what might happen to the (inaudible). So the draft
24 language suggests that two additional (inaudible) would be
25 appropriate. There are two other flows in the existing

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1 water plain which will remain unchanged. One at Milner
2 Dam. (Inaudible) has to be fixed because if water
3 shortage -- all the water's appropriated above that plan.
4 That (inaudible) should stay the same. It's the minimum
5 flow established by the gauging station in Weiser set for
6 4750 cfs. That flow will remain unchanged.

7 Policy 32A, water held in trust by the State. In
8 trying to effect the compromise, what happened to the water
9 that Idaho Power claimed that they were no longer going to
10 get guaranteed to them? The decision was made that that
11 water should be held in trust fund (Inaudible). The State
12 could allocate it to the uses.

13 The problem that comes into the matter is that
14 these (inaudible) had already been appropriated. We're not
15 talking about the unappropriated waters of the State.
16 We're talking about water that we generally and is now
17 available for reallocation to other uses.

18 The agreement that was reached says you can
19 reallocate the water. Idaho Power has the use of that
20 water until it is reallocated. Because it's sort of
21 special water, the State can and will put special criteria
22 upon people who want to use it.

23 You'll notice at the end of the draft language, it
24 talks about Idaho Code 42-203C. There is no such piece in
25 the Idaho Code today. This is what the legislature has to

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1 do. The board is recognizing that because it has been
2 appropriated or claimed at one time, new criteria can be
3 put on people who want to use it. It's up to the
4 legislature to establish those criteria. The suggested
5 language for those criteria is contained in the back pages
6 of the (Inaudible).

7 Policy 32B, domestic, commercial, municipal and
8 industrial. Existing water plan has an allocation of water
9 that's based on mistaken assumptions about no water being
10 available (inaudible) for municipal and industrial uses.
11 It's given in acre-feet. The existing water plan is
12 volume. The negotiators talked always in terms of rate of
13 flow. If you convert the volume it set aside and the water
14 plans to date from municipal, industrial uses, you come out
15 to about 144 cfs. The proposed language suggests setting
16 aside 150 cfs for consumptive uses (Inaudible).

17 We're still talking about how much water
18 (Inaudible). How much water is (inaudible). The
19 department is going to be charged with managing this block
20 of water and how much water is consumed.

21 If you do water budget analysis for a community,
22 consumptive losses are basically (inaudible) watering
23 grass. People who drink the water, it goes on through to
24 the treatment plant and back to the river, back on the
25 land. It's not lost in the system. So consumptive uses

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1 for new industry (inaudible) consumptive use for standard
2 population is very low. Many of the new industries who
3 come in (Inaudible) irrigated. Therefore, they may even
4 get a net increase if the water is available to the State
5 to use. We set aside 150 cfs.

6 As you probably know, the water plan has to be
7 reevaluated and readopted every five years. If this number
8 was off by a major factor, it would be changed.

9 Policy 32C, agriculture. The existing plan said
10 that it was the policy of the State to try and maintain
11 Idaho's position in the nation in terms of food and
12 (inaudible) production. Based on that, estimates of what
13 the agricultural growth in the nation would be and the plan
14 hoped for specific months of new irrigation.

15 Recognizing that now there's not as much water
16 available as we thought there was, this particular policy
17 would only state that of those waters held by the State
18 what used to be Idaho (Inaudible), after we satisfy all the
19 DCMI uses, the remaining water be would be available to
20 (Inaudible).

21 32D, hydropower. This is so short, I can read it.
22 "It is the policy of Idaho that hydropower use be
23 recognized as a beneficial use of water." (Inaudible.)
24 And that depletion of flows below the minimum average daily
25 flow set forth in Policy 32 is not in the public interest.

10

1 If you're a ratepayer, it's not in the public interest to
2 see (inaudible). As part of the trade-off of getting the
3 water released by Idaho Power, the negotiators had to say,
4 "Okay. We can treat those minimum flows as part of your
5 water right. Now the water's going to be guaranteed to you
6 forever." (Inaudible.)

7 Navigation. This is basically the exact language
8 that's in the current water plan. It just says that by the
9 establishment of an easement, there's always going to be
10 enough water to use for recreational purposes and for
11 commercial and navigation (inaudible) navigation purposes.

12 Aquaculture. There's two basic statements. The
13 first one is that anyone in the aquaculture business who
14 wants to get a water right to process (inaudible) that
15 water should be counted against the DCMI reservation.
16 Second part which is really already in the water plan is
17 that because of the minimum flows and because of the fact
18 that for most of the summer, the water in the river where
19 aquaculture occurs, water comes out of Thousand Springs.
20 That water will hopefully be -- certainly enough would have
21 to be here to satisfy (inaudible) gauge. So there should
22 be water available for aquaculture purposes.

23 Because some of these people rely on discharge from
24 the aquifer itself at Thousand Springs for their water use,
25 the State cannot guarantee that their need for diversion is

11

1 protected. The water right in the State of Idaho
2 guarantees you access to water. It does not necessarily
3 protect how you get it. If you continue (inaudible), a
4 trout farm might have to change its diversion (inaudible)
5 in extreme cases (inaudible) and dig a well. It takes
6 priority (inaudible).

7 Policy 32G. Fish, wildlife and recreation. This
8 is basically the language that's in the existing water plan
9 and realize that the language that's in there was based on
10 a year-round flow of 3300 (inaudible); not the 39
11 (inaudible). It's a policy of Idaho and the board that
12 these minimal flows satisfy the minimum requirement of fish
13 and wildlife and aquaculture and aquatic life and
14 recreational purposes.

15 The board does not pretend that these are optimum
16 (inaudible) but they are the minimum values in the state to
17 serve sort of outdoor recreation (inaudible) come to accept
18 being available to us in Idaho.

19 Water quality and pollution control, Policy 32H.
20 The part of the country where we're concerned about the
21 amount of water available are the people who use any water.
22 It seems inappropriate to take good water and mix it with
23 bad to cover up a pollution problem. The board feels that
24 there are enough laws about water quality that if they're
25 all implemented, we don't have a real major water problem.

12

1 The water quality problem in Idaho (inaudible). Therefore,
2 pollution dilution is not a beneficial use of the water.

3 Policy 32I, new storage. Very complicated policy
4 that tries to express two different criteria I guess with
5 two different -- there's going to be some parts overlapping
6 areas of the state. The State, we're saying there's not
7 enough (inaudible) to satisfy existing old water rights.
8 It seems wrong somehow that on October 1, the water master
9 on the representation changes the flow at Milner Dam from a
10 few thousand cfs to 12,000 cfs. This flow is basically
11 made up of water that is held in the reservoir storage all
12 summer long and dumped to make room for next year's run-
13 off.

14 (Inaudible) terrible (inaudible) in our water, we
15 got to manage it better if we can. So the very first part
16 of this policy is that no new storage projects above the
17 Murphy Gauge should be approved unless the director of the
18 Department of Water Resources finds that maximum use is
19 being made of the existing system.

20 Today, he probably couldn't find that because there
21 are unappropriated waters at least in one major reservoir
22 in the system. Once those waters are appropriated, what
23 other barriers that you would have to look at. We really
24 want to use our water and use it as best we can. There are
25 some legal barriers to water trade-off.

13

1 The State has set rules and regulations for a water
2 bank. (Inaudible) users. (Inaudible) has used that in the
3 upper Snake as a means for someone who has excess water to
4 sell it to someone who doesn't have enough.

5 One of the things that the board will be asking is
6 can these rules and regulations be approved but there are
7 some other more serious barriers. The person that stores
8 water behind the federal dam, he may not release those
9 (inaudible). No problems to the farmer involved except
10 it's (inaudible). The big problem for a new user, you want
11 to be guaranteed water while you're (inaudible). Major
12 legal difference.

13 Another major federal legal difference is if you
14 have water stored behind the (inaudible), you may not sell
15 that water (inaudible). You can't sell it (inaudible).
16 This is not only not an incentive. It's clear disincentive
17 to people who have water storage. Why should they go
18 through the hassle of arranging an agreement with
19 (inaudible) going to the water bank if at the end of all of
20 this there's no profit?

21 So there are people who have full (inaudible), full
22 right to stored water who use that stored water once
23 (inaudible) in some cases, (inaudible). The city of
24 Pocatello is an example. They had an emergency water
25 supply (inaudible) reservoirs. They don't even have a good

14

1 way to get out of it. The water sits there all summer long
2 (inaudible).
3 So the board has accepted the charge of negotiators
4 to try and look at these kind of problems. The State has
5 their own problems. If you have water and you want to sell
6 it to another user, that user better not be a consumptive
7 user or you're (inaudible) your water right if you continue
8 with your own operation. That's a real problem. You have
9 to hope to find a non-consumptive user and (inaudible).

10 The second part of this policy is directed
11 specifically to that (inaudible) of the river below Milner
12 Dam. Idaho Power Company and their systems operation
13 relies on wintertime flows for two purposes. One, they can
14 sell to the west coast for using (inaudible). The last few
15 winters, there have been plenty of demand for electricity
16 for heating in Idaho itself.

17 The second reason is that gas (inaudible)
18 reservoir. (Inaudible) storage reservoir in the
19 (inaudible). So they are concerned that they did not want
20 to see a lot of water taken out in the wintertime when it
21 would impact on their operation (inaudible). They can't --
22 did not argue. The negotiators agreed that above Milner
23 there is a requirement for zero flow back to the dam. They
24 couldn't work out (inaudible) but below Milner to the
25 Murphy Gauge, the negotiators compromised and said, "Okay.

15

1 Anybody who wants to divert from that (inaudible) of the
2 river during the wintertime for storage purposes, some kind
3 of analysis and mitigation must be supplied to the power
4 company if there's a negative loss or negative effect on
5 their operations.

6 The word "mitigation" is carefully used. It
7 implies a lessening of the impact. Compensation was
8 avoided because that generally (inaudible). Certainly if
9 someone wanted to use some of that water and store it
10 during the wintertime, they had to replace its value on a
11 dollar for dollar basis because (inaudible). Mitigate
12 means lessen the impact in some way. Maybe by storing some
13 of that water in your own facility which you would like
14 (inaudible). It may be that your releases will be timed so
15 that they (inaudible). It may be economics (inaudible).

16 How is mitigation calculated? Something the water
17 board has to face when the time comes. The negotiators
18 couldn't agree amongst themselves (inaudible) what they
19 feel is an adequate resolution. The whole composition of
20 the river shouldn't be held up by (inaudible). If and when
21 we get a general proposal, the water board is charged
22 (inaudible).

23 Policy 32J. The last one. It says "Stored water
24 for management purposes." As I said earlier, it is
25 available perhaps. There are at least unappropriated

16

1 waters in the system. If the State is charged with
2 managing the river so it never goes below (inaudible) in
3 the summertime, 5600 in the wintertime, we can hire the
4 best technicians you want for that job and sooner or later
5 someday probably somebody's going to mess up.

6 If they don't mess up, they have been so
7 conservative that we're not taking full advantage of the
8 water that's available. But if they try and issue water
9 rights and try and manage the river now to this magic
10 number, (inaudible), the State should have some (inaudible)
11 call for (inaudible).

12 Many of the junior users are probably going to be
13 out on the (inaudible). We (inaudible) with the effect of
14 shutting them off in flow the Murphy Gauge, it's not going
15 to show up for six months or it might be so subtle, you
16 never see it. Therefore, to meet that flow, we're thinking
17 in terms of water available to (inaudible).

18 It seems appropriate to try and get the water now
19 while there are unappropriated waters rather than to wait
20 10 or 15 years and realize we may need that water and not
21 be able to find it; at least not be able to find it as
22 cheap as we may find it now. There's no (inaudible) if the
23 State could acquire some water, it will probably go to the
24 water bank. It could be sold to Idaho Power or be put to
25 use but it will be there in case the problem would develop.

17

1 I think Mr. Chairman, I'd like to stop.

2 MR. GRAY: Thank you, Mr. Sherman. We will now
3 start taking public testimony and the chair would call
4 first Dan Daley.

5 MR. DALEY: Mr. Chairman, members of the board. My
6 name is Dan Daley. I'm a fisheries biologist for the
7 Shoshone Bannock Tribes.

8 MR. GRAY: Dan, would you give us your address and
9 telephone number so we could reach you if we need to?

10 MR. DALEY: Sure. Post Office Box 306, Fort Hall,
11 Idaho, 83203. And the telephone number is (208) 238-3900.

12 MR. GRAY: Thank you.

13 MR. DALEY: The tribes are concerned about the new
14 State Water Plan for the Snake River Basin and also can
15 only view the State Water Plan in light of the Swan Falls
16 agreement and the later general adjudication in the Snake
17 River Basin.

18 We think the State Water Plan is being modified in
19 view of those -- of the Swan Falls agreement and in view of
20 the later general adjudication and therefore must be viewed
21 in concert with those -- with those two actions.

22 We have two general concerns, two basic concerns.
23 One of those is that we're concerned that the changes in
24 the State Water Plan and the Swan Falls agreement are being
25 viewed as a local level decision and being viewed as having

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1 impacts only on a local basis.

2 This is just untrue. Any changes we make in water
3 use in the Snake River Plain in the Snake River Basin will
4 have a regional impact not just throughout Idaho but
5 throughout the Columbia River Basin.

6 One of the reasons this is true is because any
7 agreement at Swan Falls and any change in water use can
8 potentially affect the water budget and for the benefit of
9 anybody in the room who's unfamiliar with the water budget,
10 I'll briefly describe it. It's a plan that was initiated
11 by the Columbia Basin -- or by the Northwest Power Planning
12 Council in their Columbia Basin Fish and Wildlife Program.
13 It's implemented through Bonneville Power Administration
14 largely at the expense of the rate payers.

15 And the plan itself is designed to guarantee flows
16 and guarantee storage within the Columbia River Basin
17 including the Snake River to -- or moderate flows
18 throughout those basins to guarantee passage flows during
19 anadromous fish, fish both migrating upriver to spawn and
20 (inaudible) migrating downriver to the ocean.

21 This plan requires certain storage within the Snake
22 River so that that storage can be moderated and allowed to
23 spill over the dams at those critical times when fish are
24 migrating upriver and migrating downriver. Any agreement
25 at Swan Falls could have impact on Idaho Power's ability to

19

1 comply with the water budget.

2 Non-compliance with the water budget on Idaho
3 Power's part could have an impact all the way down the
4 Columbia River Basin but more importantly, it's certainly
5 going to have an impact on fish reaching the Salmon River
6 Drainage and the Clearwater Drainage, anadromous fish
7 reaching those areas. That in turn will have an impact on
8 aboriginal treaty rights that the Sho-Bans hold and that
9 the Nez Perce hold and also on Idaho sportsmen in general.

10 A decline in the number of fish reaching either the
11 Salmon River or the Clearwater River will be felt
12 throughout Idaho and probably throughout the Columbia River
13 Basin. That's one of our concerns and that's one reason
14 why the State Water Plan should be viewed in light of any
15 impacts it might have on a regional basis.

16 The other concern we have is that we see very
17 little indication that water quality impacts are being
18 considered either in the State Water Plan or in the Swan
19 Falls agreement or later in the general adjudication.
20 Whenever you change the priority use of water, in this case
21 from hydropower to irrigation, and if you open up new lands
22 for irrigation, you're going to have a definite water
23 quality impact.

24 In other words, when water is used for irrigation
25 and returns to the river as surface flows, it brings with

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1 it certain amounts of dissolved salts, suspended sediment,
2 the changes in temperature, normally an increase in
3 temperature and that has a water quality impact throughout
4 the Snake River and below Swan Falls; not just in the
5 general area of irrigation or the general area of new
6 development.

7 Our concern in this light is that at the present
8 time, we have very little idea how water -- how much water
9 returns to the Snake River as groundwater flow, how much
10 water recharges the Snake River as surface flow and in
11 fact, we have -- we have only a vague idea of how much
12 water is being diverted at each point along the system.

13 Without these kinds of information, we cannot
14 develop a detailed comprehensive river model. Without a
15 detailed comprehensive river model, we should be very
16 cautious in accepting any kind of State Water Plan or Snake
17 River water plan and any kind of agreement at Swan Falls.

18 In other words, the kind of information we need to
19 gather is once water is diverted from the Snake River and
20 it's either spread over the land through a sprinkler system
21 or flood irrigation, we need to know how much water is lost
22 through evaporation. How much water is lost through
23 transpiration? How much water returns in groundwater flow
24 since -- if it recharges the Snake River as groundwater, it
25 has a chance to filter out some of the impurities and how

21

1 much is returned as surface flow.

2 Our main concern is the larger point of the water
3 that's going to return as surface flow because that's the
4 water that's going to contain the higher quantities of
5 dissolved salts, higher suspended solids and probably
6 increase the temperature.

7 An example of the lack of interest in the Snake
8 water plan in this regard is Policy 32H, water quality and
9 pollution control. And this policy -- this part of the
10 Policy 32 states that it is a policy of Idaho that the use
11 of water to provide pollution dilution is not a beneficial
12 use of water. If we increase the amount of water diverted
13 through irrigation and if the amount of water that returns
14 to the Snake River increases or it returns to the Snake
15 River by surface flow increases, this is going to have a
16 definite impact on water quality in the Snake River. It's
17 going to degrade the water quality.

18 Lack of mention that increasing the amount of water
19 that stays in the river could dilute this impact is either
20 an oversight or it's -- it's ignoring the fact that we're
21 going to have water quality impacts. These water quality
22 impacts are going to be detrimental to irrigators farther
23 downstream and they're going to be detrimental to fish and
24 wildlife.

25 One last concern is that although Policy 32 states

22

1 that the minimum flow set in the policy should provide for
2 the protection of fish and wildlife habitat -- aquatic
3 life, recreation, aesthetic beauty, transportation and
4 navigation values and water quality, it becomes apparent
5 that these minimum flows, particularly the minimum flow of
6 3900 cfs during the irrigation season in Swan Falls will
7 not provide for the protection of fish and wildlife.

8 This is based on the fact that in 1977, Idaho Fish
9 and Game prepared a report that stated or recommended
10 minimum stream flows below Swan Falls at 5500 cfs for
11 rearing -- for rearing of fish alone. Okay. Generally,
12 that rearing time occurs right during irrigation season,
13 exactly when we're guaranteeing only 3900 cfs over Swan
14 Falls in this water plan.

15 So it's the Shoshone Bannock Tribe's policy or at
16 least concern that we are not adequately studying the
17 impacts of this water plan. We are not adequately studying
18 the ramifications -- regional and local ramifications of
19 the Swan Falls agreement and we cannot adequately predict
20 what impacts this water plan and the agreement is going to
21 have on the Snake River Basin without first development of
22 a detailed comprehensive water plan of the type that I just
23 described a few minutes ago.

24 Thanks very much for your time.

25 MR. GRAY: Thank you, Dan. We might have a

23

1 question for you here if we could. Mr. Rydalch, any
2 questions?

3 MR. RYDALCH: I don't believe I do.

4 MR. GRAY: Mr. Williams.

5 MR. WILLIAMS: I do. Mr. Daley, on the water
6 budget concept (Inaudible), do you have any particular
7 recommendations (Inaudible) our planning to assist with
8 that program (Inaudible)?

9 MR. DALEY: Yeah. Well, one of the most direct and
10 immediate things we can do is request Idaho Power to
11 project -- they have the information available and they can
12 project whether they're going to be able to comply with the
13 water budget.

14 (Tape No. 2 ends. Tape No. 3 begins.)

15 MR. DALEY: The Swan Falls agreement will put a
16 further constraint on their compliance. What we're
17 primarily concerned on a political level is that the Swan
18 Falls agreement will give Idaho Power an out. They'll say
19 we can't comply with the water budget and with the State
20 Water Plan and the Swan Falls agreement all at the same
21 time. Therefore, the water budget will go down the tubes
22 and we still have the Swan Falls agreement. Without the
23 water budget, we cannot assure anadromous fish runs in the
24 Salmon and Clearwater Basin. Plain and simple.

25 We know for a fact that the guaranteed 3900 cfs at

24

1 Swan Falls during low water years will interfere with the
2 storage capacity of Brownlee Dam. That storage behind
3 Brownlee is primarily going to be responsible for
4 compliance with the water budget.

5 Now, whether -- whether Idaho Power can alleviate
6 that or not is -- needs to be determined at some future
7 date, but I would suggest that we request Idaho Power to
8 lay their cards on the table as far as water budget goes.

9 MR. WILLIAMS: Anything else? Any other ideas?

10 MR. DALEY: As far as Idaho Power --

11 MR. WILLIAMS: The water --

12 UNIDENTIFIED SPEAKER: Affecting the water budget?

13 MR. DALEY: Well, there's actually a group of
14 experts involved with the water budget called the water
15 budget managers. Those people need to be contacted by the
16 State. I've already talked to them and they've described
17 in general what kind of impacts they think will occur and
18 they could supply very detailed information, very detailed
19 predictions or at least projections as to what kind of
20 problems or lack of problems they're going to have with the
21 Swan Falls agreement and the water budget.

22 The other people who can probably give technical
23 advice is the Northwest Power Planning Council -- the staff
24 of the Northwest Power Planning Council and I would suggest
25 we contact them.

25

1 MR. WILLIAMS: Thank you.

2

3 MR. GRAY: Mr. Kramer.

4 MR. KRAMER: That was a very good presentation
5 considering I don't see a whole pile of notes there.

6 MR. DALEY: I'm getting used to it.

7 MR. GRAY: A couple things, Dan, before you get
8 away.

9 MR. DALEY: Yeah.

10 MR. GRAY: You made mention that the way that we
11 have structured 32H is very weak in reference to water
12 quality.

13 MR. DALEY: Yeah.

14 MR. GRAY: Would you be willing to sit down
15 yourself and write out something the way you would like to
16 see it?

17 MR. DALEY: Certainly.

18 MR. GRAY: And we will be accepting written
19 testimony until February 22.

20 MR. DALEY: Certainly. Be glad to.

21 MR. GRAY: And just send it to the Department of
22 Water Resources, Statehouse, in Boise at the address on the
23 "Currents."

24 MR. DALEY: Okay.

25 MR. GRAY: Another thing in regard to your -- to

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1 your water budget, the Idaho Water Resource Board has been
2 working on a project on the Weiser River for several years
3 now and that's referred to as the Galloway Project. Are
4 you familiar with it?

5 MR. DALEY: Vaguely. Vaguely.

6 MR. GRAY: The Corps of Engineers should have their
7 feasibility study completed by July of this year. There
8 are three levels of dams that they're investigating. If
9 the large dam were to go in, it would store 1.2 million
10 acre-feet of water. So that's something that we may be
11 asking you help on later but I just give you that for
12 information because there is that possibility:

13 MR. DALEY: And after that feasibility study is
14 complete, you can be sure you'll be hearing from Shoshone
15 Bannock Tribes on the issue also.

16 MR. GRAY: Fantastic. Thank you.

17 MR. DALEY: Sure.

18 MR. GRAY: The board would call Charles Pace.

19 MR. PACE: Thank you. My name is Charles Pace. I
20 live here in Pocatello. No. 7 Dartmouth. I'm an economist
21 at Idaho State University and Idaho State of course doesn't
22 necessarily endorse the views that I'm advocating.

23 I think there's a number of good things about the
24 Swan Falls agreement. One of course is the recognition --
25 explicit recognition of the interaction of surface and

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1 groundwater with all the accompanying hydrological and
2 economic implications that are location-specific. The
3 other thing that I think is probably good about the
4 agreement is that it sort of diffuses the situation in that
5 it's worked out any time you can work out or negotiate,
6 work out a deal, it's probably preferred to ending up in
7 court. The question is whether that activity can be
8 extended.

9 If we start looking though at the economic
10 implications, one of the things that the agreement does is
11 it contains language in there that says priority will be
12 given to future allocations of water that promote the
13 family farming tradition and so on. And economically,
14 there's a lot of uncertainty in Idaho. Where are we going
15 to be in 20 years? If you the present situation and extend
16 it in the future, I think the consensus among most people
17 is that the water probably has its greatest value left in
18 the river in terms of its ability to just simply generate
19 revenues. I mention there the Hamilton Lyman (phonetic)
20 Study on the loss of power concept and so on. But there's
21 no reason to think that that's going to be the situation
22 forever. And I think it's probably a mistake to get locked
23 into public interest criteria that tend to favor one
24 particular approach.

25 There's also the question of how we define the

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1 public interest. The agreement sets aside 600 cfs for use
2 according to the public interest. And obviously the way
3 that the public interest is defined is going to be critical
4 here. In terms of the criteria that have been suggested in
5 the agreement and are contained in your newspaper, the
6 public interest really needs to have further -- further
7 definition. I think you have to look at both quantifiable
8 and qualitative effects of different alternative
9 strategies. What will be the value of the loss of
10 hydroelectric capability if stream flows decline?

11 And like Dan Daley already pointed out, you have to
12 not only consider Swan Falls. I think PUC came up with a
13 \$55 million figure at Swan Falls but you have to consider
14 the Idaho -- the Hell's Canyon Complex, the three in Hell's
15 Canyon and then you have to consider also the Lower Snake
16 River, the (Inaudible) and then the lower -- hydropower
17 generation on the Lower Columbia: The Dalles, Bonneville,
18 John Day, McNary. All of those will be affected by
19 depletions of in-stream flows in terms of loss to
20 evaporation and transpiration and also other types of losses
21 of water with diversions.

22 So I think you have to look at the loss of hydro
23 capability not just at Swan Falls but all the way
24 downstream. You also are going to have to consider the
25 primary -- or in the public interest criteria the primary,

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1 secondary and tertiary values generated by consumptive uses
2 and often those have substantial economic values.

3 But those things are already placed on the agenda.
4 The things that are sort of lacking here are the things
5 that Dan Daley was bringing out. What will be the impacts
6 on fish and wildlife if in-stream flows decline? You have
7 to consider a number of resident fisheries. It may be that
8 we can use a market -- a water market. We can design a
9 water market to facilitate water rental and transfer of
10 water rights down the road and provide water for
11 consumptive uses or use the water in-stream to generate
12 hydroelectric power.

13 But if we cut down on the minimum -- on the minimal
14 flows from 4500 to 3900 and from 65 or the 2800 that's
15 going to be cut off in the winter and it has the kind of
16 biological impacts that we're talked about, what we mean
17 there is irreversible changes in the amount of genetic
18 information and just because things like resident fisheries
19 are not exchanged in the marketplace doesn't mean that they
20 don't have economic value. It may be that that is the
21 long-term effect here in terms of how we're going to be
22 looking back at this say 50 or 100 years from now. This is
23 when we add some irreparable damage to the resident
24 fisheries.

25 It's also significant that you have an endangered

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1 population of white sturgeon in the upper river. In the
2 lower river where this -- where this fish isn't endangered
3 provides significant fishery. People spend literally
4 hundreds of dollars on equipment and very valuable fishery
5 on the lower river and it's possible that the sturgeon
6 might thrive in the upper river.

7 Another issue that was brought out with this whole
8 question of the water budget and one of the other things
9 besides the question of fish and wildlife in-stream that
10 was neglected here was the whole question of out of region
11 import -- out of state but within the region impacts on
12 fish and wildlife. And the water budget is an obvious
13 concern there but there's also a lot more to the Northwest
14 Power Planning Council's activities. There's a whole area
15 of restricted development, protected areas and a focus also
16 not just on anadromous fish but also on resident fish so I
17 think that has to be taken into account here too and it's
18 obviously not being taken into account.

19 I think that's probably the greatest thing -- the
20 greatest flaw in this agreement is that it was worked out
21 by two of a number of interests -- of a number of groups
22 that have interest in water policy in the Snake River. The
23 new agreement neglects fish and wildlife, it neglects
24 federal reserve rights and interests outside of the State
25 of Idaho.

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1 As it was pointed out before, the whole agreement
2 is also intimately bound up with the whole question of
3 adjudication of the Snake River and here the potential I
4 think for negotiation of federal reserve rights is enormous
5 as are the dangers of not negotiating, of ending up in
6 court and settling those with litigation. The last thing
7 in the world I think that anybody wants is to have enormous
8 amounts expended on legal fees so there's -- I'm not sure
9 of this but I would guess that there is a very large
10 possibility, a great deal of room for negotiation when it
11 comes to the whole question of federal reserve rights. Not
12 just the Shoshone Bannock rights but also the INEL
13 questions and so on.

14 I've already mentioned the impacts on fish and
15 wildlife throughout the Columbia River Basin. Another
16 thing that the agreement calls for is the design of
17 efficient water markets so that water can be provided
18 outside of an appropriate -- or an appropriation process.
19 This, as you pointed out, is going to require changes in
20 Idaho water law. But there's another question here and
21 that's how should the market be organized and one principle
22 here is that you should have limit -- as few limitations on
23 entry as possible; that the State should use water price --
24 the price of water to allocate between different uses
25 rather than restricting the participation of different

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1 groups in the water market. That will tend to guarantee a
2 greater efficiency in the allocation decision than it will
3 if you simply bar individuals from participating in the
4 market.

5 As you mentioned before, there's a possibility for
6 purchasing unallocated water storage, primarily from the
7 Federal Bureau of Reclamation and the Corps of Engineers.
8 I'll close on this because I was at a conference not too
9 long ago in Portland and a man from the Yakima Indian
10 Nation, Bill Yellup (phonetic), stood up and gave a speech
11 and he went through a lot of different things but what he
12 had to say basically was, look, this is a wet year now.
13 Okay. When this comes to a dry year, what we're going to
14 do is we're going to end up in court.

15 And that -- I think that's probably something to
16 remember. While that water is out there now, it may be a
17 good time to get an agreement, but at the same time, you
18 want to get that agreement in terms of not just -- not just
19 the wet water years but also nail it down in terms of what
20 happens during the years when there's not enough to go
21 around to be allocated to a fully allocated system. I
22 think that's a real difficult question.

23 MR. GRAY: Thank you, Mr. Pace. Mr. Rydalch, any
24 questions?

25 MR. RYDALCH: Are you in favor of Policy 32J on the

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1 stored water for management purposes? You're kind of vague
2 on that.

3 MR. PACE: The question of storage I think has to
4 have a full accounting of costs. There's several things
5 that you hear in Idaho about -- it's almost as if we could
6 dewater the river at the Idaho border and that would not
7 necessarily be bad for Idaho. I certainly don't think that
8 that we need to hold back every bit of water. The water in
9 the stream flowing down the river has uses; not just
10 hydroelectric.

11 In terms of additional water storage, I'm not
12 necessarily opposed to additional water storage but
13 additional water storage that doesn't account for severe
14 impacts on fish and wildlife I think would probably be a
15 mistake. So the question on the Galloway Project for
16 example in Weiser, I'm not sure it's in the -- or the power
17 planning council is going to see it as a contribution to
18 their efforts to budget water for downstream migration if
19 you have significant detrimental impacts on upstream
20 fisheries.

21 So I think there's -- you know, as long as you have
22 a full accounting of costs in the question of water
23 storage, I don't see any problem with that.

24 MR. RYDALCH: Thank you.

25 MR. GRAY: Could we -- could we request you send us

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1 a copy of your testimony?
 2 MR. PACE: Sure.
 3 MR. GRAY: By February 22.
 4 MR. PACE: You bet.
 5 MR. GRAY: Okay. Thank you. Is there anyone else
 6 who would like to testify at this time? We will close
 7 testimony and open it up for questions and answers.
 8 Questions, anybody?
 9 UNIDENTIFIED SPEAKER: I have one question.
 10 Possibly readjudication I guess (inaudible). The concern
 11 of some of the people with some of the old established
 12 rights (inaudible) groundwater system -- we end up with two
 13 rights. You got an underground water right on the piece of
 14 ground and also a right on the land that is under
 15 Reclamation property (inaudible). Is there going to be
 16 some latitude (inaudible). Is that one -- is that person
 17 going to have to decide which right that he's going to have
 18 or (inaudible) there going to be some latitude to release
 19 it (inaudible)?
 20 MR. GRAY: Frank, would you like to respond to
 21 that?
 22 MR. SHERMAN: (Inaudible.) If a person has a claim
 23 or a water right of surface and groundwater, the value of
 24 his right is only for the amount of water he can put to
 25 beneficial use. (Inaudible) is the water right to be

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1 recorded (inaudible). It's no different than Idaho Power's
 2 right. They claim some large water right in Swan Falls in
 3 excess of (inaudible). Certainly a latitude for which
 4 right the person will have to sell in terms of surface
 5 (inaudible) property if he indeed wants to sell.
 6 (Inaudible.) In fact, he could assume (inaudible), he
 7 could change his point of diversion and use one or the
 8 other (inaudible).
 9 UNIDENTIFIED SPEAKER: My concern is that really
 10 it's going to be hard (inaudible) understand that
 11 (inaudible). See, that's my concern.
 12 MR. SHERMAN: Under the (inaudible) system, it's
 13 tied to the land and the (inaudible) release it for some
 14 period of time but it would be up to the (inaudible)
 15 director himself (inaudible).
 16 UNIDENTIFIED SPEAKER: So a determination is going
 17 to have to be made though because only so much water's
 18 going to be indicated for that piece of land, right?
 19 MR. SHERMAN: Right. (Inaudible.)
 20 UNIDENTIFIED SPEAKER: Tell me about the
 21 adjudication in general. People are terribly concerned
 22 about what the adjudication does (inaudible).
 23 MR. SHERMAN: In addition to quantifying what's
 24 happening out there, it really provides a court order
 25 saying this man is entitled to this much water and it sets

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1 the priority date (inaudible) shut off in terms of managing
 2 the water for the local area (inaudible) system. So we've
 3 done adjudication in this part of the state (inaudible)
 4 thousands of water rights gone on for years and years have
 5 (inaudible).
 6 MR. GRAY: Sixteen.
 7 MR. SHERMAN: Sixteen people (inaudible). So it
 8 ends up getting resolved. People have (inaudible) claims
 9 of this rights (inaudible) and they sell their property,
 10 the buyer knows what he's getting. Anyways (inaudible)
 11 individual. The problem with this adjudication (inaudible)
 12 that for the first (inaudible) past adjudications that they
 13 have (inaudible). In other words, it's take 10 to 15 years
 14 to do (inaudible). What was different is that we're
 15 talking about big dollars because we're talking about a big
 16 land area. Hopefully there will be enough dollars
 17 (inaudible).
 18 The agreement itself specifies that any person who
 19 was making beneficial use of the water including in terms
 20 of when (inaudible) shall be protected. (Inaudible) a
 21 natural cause, (inaudible), those people will be protected.
 22 Even if the flow at Murphy goes below 3900 through natural
 23 causes, those people will be protected. If the flow were
 24 to go below 3900 in a natural drought disaster, only people
 25 who have appropriated water and approved (inaudible) uses

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1 after the signing is (inaudible).
 2 MR. GRAY: Yes, Dan.
 3 MR. DALEY: One of the problems there, the tribes
 4 ask (inaudible). And that being the case, we really hate
 5 to see the State rush into (inaudible) water rights for a
 6 couple of reasons. First, the (inaudible) require trying
 7 to quantify his water rights. We hate to see our water
 8 rights appropriated above us.
 9 The other problem is that since we're dealing with
 10 the Snake River Adjudication of the Snake River Basin,
 11 we're also involving the Shoshone Paiute and (inaudible).
 12 And we're going to be -- It looks like we're going to be
 13 adjudicating all the way up the Salmon River and the
 14 Clearwater River also. These guys have never been involved
 15 in any of the discussions and we're already anticipating
 16 this (inaudible). We're still going to require some
 17 (inaudible) administration of the Shoshone Paiute
 18 (inaudible).
 19 So as far as federal reserve water rights go, the
 20 only adjudication we can do is (inaudible) to gather more
 21 information (inaudible) Water Resources need to gather more
 22 information than just how much the water (inaudible).
 23 UNIDENTIFIED SPEAKER: You've raised several key
 24 points, Dan, and I don't disagree with any of them.
 25 (Inaudible) what I think is the (inaudible) negotiator

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1 takes (inaudible). The reason for improving the Salmon
2 (inaudible) is to assure (inaudible).

3 UNIDENTIFIED SPEAKER: (Inaudible.)

4 UNIDENTIFIED SPEAKER: (Inaudible.)

5 UNIDENTIFIED SPEAKER: Yeah, but I think in the
6 compromised position (inaudible). The second point is that
7 I know you've (inaudible). We're not ready to (inaudible).
8 The estimate we're making now is ten years. It's going to
9 be (inaudible). It goes into (inaudible) that really
10 struck me is it may not be (inaudible) but we have
11 (inaudible) take the position that we (inaudible) terms of
12 how does that protect you, Idaho Power's (inaudible) 8400
13 and (inaudible).

14 MR. GRAY: Dan, one question. When was the
15 reservation created? What was the date?

16 MR. DALEY: '67 (inaudible).

17 MR. GRAY: 1867?

18 MR. DALEY: Yes.

19 MR. GRAY: Any other questions? Yes, sir.

20 UNIDENTIFIED SPEAKER: Where is the actual process
21 (inaudible) applications? At what point in the State Water
22 Plan do you have to make that decision and is that in here
23 someplace or is that (inaudible)?

24 MR. SHERMAN: In terms of future applications,
25 we're talking about a general application for appropriated

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1 water?

2 UNIDENTIFIED SPEAKER: Consumptive use.

3 MR. SHERMAN: As long as it's not wintertime
4 diversion below Milner Dam, (inaudible). The agreement
5 specifies as part of the agreement (inaudible) enable the
6 governor to enter into (inaudible). That's being done.
7 7500 (inaudible). The agreement would provide that anybody
8 who had not proven beneficial use (inaudible) but had an
9 application filed with the department, they would be
10 reviewed in terms of do they meet the new criteria.
11 (Inaudible) file -- new filing would be behind the
12 applications on hand in terms of (inaudible). Certainly
13 nothing can be done till the legislature (inaudible).
14 (Inaudible) is obligated to process those ones they've been
15 holding for (inaudible).

16 UNIDENTIFIED SPEAKER: Are they doing that now? Is
17 that --

18 MR. SHERMAN: They have to wait until the
19 legislature (inaudible).

20 UNIDENTIFIED SPEAKER: But the department is
21 (inaudible) the legislature, are they going to do it after
22 the rule setting (inaudible)?

23 MR. SHERMAN: The legislature will adopt the
24 language which directs (inaudible). They would have to
25 probably (inaudible). But people have been asking me

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1 should they file (inaudible). I had one guy (inaudible).

2 I think the date of your application is still key

3 (inaudible). So yes, (inaudible). Remember that there's a

4 filing fee. If the agreement doesn't go through, the

5 department may hold that filing fee for the next 10 years

6 and you're not going to see it. (Inaudible.)

7 MR. GRAY: Yes, sir.

8 UNIDENTIFIED SPEAKER: My understanding is that the
9 3900 is sufficient (inaudible).

10 UNIDENTIFIED SPEAKER: I can't say that for an
11 honest fact. I almost doubt it but it is the compromised
12 numbers that are (inaudible). I think certainly the 5600
13 in the wintertime, typically you see (inaudible). I doubt
14 that 3900 with a flow going through the reservoir
15 (inaudible).

16 UNIDENTIFIED SPEAKER: The reason I ask is if
17 that's what those figures are based on, why is there any
18 reason (inaudible) fish and wildlife and recreation and
19 necessarily be -- not be subject to (inaudible) impact? In
20 other words, because of the (inaudible) minimum flows
21 established (inaudible) are sufficient to meet the minimum
22 requirements but I guess what I'm thinking is that my
23 understanding is that those minimum flows were set
24 (inaudible) and not for fish and wildlife. Is there a
25 (inaudible) sort of study of fish and wildlife that

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1 (inaudible)?

2 UNIDENTIFIED SPEAKER: Yeah. Not at 39

3 specifically because that increases (inaudible). The State
4 Water Plan (inaudible). 3300 was a compromise which after
5 hearing public testimony (inaudible) they decided that was
6 a reasonable number that's not (inaudible). The
7 legislature proved that (inaudible).

8 So from a pure fishery point of view, now is when
9 the (inaudible) could have been -- the whole agreement when
10 we pick at bits and pieces of it, you have to remember that
11 three different entities sat down basically and looked
12 (inaudible). We think that 3900 is still (inaudible). I
13 agree with Dan that it would have been nice if (inaudible).
14 I guarantee more (inaudible). We were not (inaudible).

15 MR. GRAY: Mr. Dunn.

16 MR. DUNN: One of the other things that happens
17 with the 3900 (inaudible), you don't have 3300 is that the
18 3300 was never set by (inaudible). Let's assume we get
19 down the road 20 or 30 years and they approach that 3300.
20 If the pressures were such that (inaudible) to lower that
21 to 3000, all that would need to be -- to do to accomplish
22 that would be (inaudible). The State Water Plan is
23 (inaudible). With the agreement (inaudible). You can't
24 remove that. The only way you can lower that (inaudible)
25 from that point on. You'd have to purchase that

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1 (Inaudible) down to the system. So it gives you -- to
2 guarantee the 39 can't be (Inaudible).

3 MR. GRAY: Dan.

4 MR. DALEY: There's also a disadvantage to that
5 because it is a vested water right and you can't raise it
6 either (Inaudible).

7 (Inaudible discussion had.)

8 UNIDENTIFIED SPEAKER: The only thing that -- the
9 only thing behind it was if the power company allows us --
10 puts in play -- it allows us to go down to 3900,
11 (Inaudible), through the agreement, they won't have any
12 recourse when that one day flow is 3900. If the decision
13 (Inaudible) whether is to raise it (Inaudible). But you
14 can never go below that amount.

15 UNIDENTIFIED SPEAKER: (Inaudible) the fact that
16 the 3900 was arrived at by three lawyers essentially
17 negotiating (Inaudible) based on these lawyers who have
18 very little expertise in (Inaudible) flows and (Inaudible)
19 minimal (Inaudible). There's nothing you can do about it
20 except say that we're not going to repeat that mistake.
21 (Inaudible). It really scares me that (Inaudible) regional
22 impact and negotiate an entity such as the Swan Falls
23 agreement based on the three lawyers (Inaudible).

24 MR. GRAY: Dan, let's let Mr. Caveness say
25 something. I think he might have something --

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1 MR. CAVENESS: (Inaudible.) One of the things that
2 I think you have to keep in mind is that when our state was
3 formed and our laws were set up, they were set up strictly
4 (Inaudible) orientation. Either mining, manufacturing or
5 agriculture with no reservation whatsoever for (Inaudible).
6 What they were -- and our laws to this day are designed for
7 (Inaudible). It doesn't matter what happens to the fish.
8 If there are enough farmers on the creek to dry the creek
9 up, the creek is dead and the fish are dead and nothing's
10 left. And it was that concept of the law framework that
11 those parties were negotiating from.

12 The scenario that was faced by the negotiators was
13 one if Idaho Power proposed (Inaudible) they would be
14 entitled not to change the water plan. It was draw down to
15 the 3300 feet both winter and summer that they would be
16 entitled to receive compensation for hydropower losses
17 only. There would be no (Inaudible) under our existing law
18 other than (Inaudible) minimal stream flow protection under
19 the recently enacted provisions of the Idaho Code which
20 relate to public interest and trying to establish stream
21 flows.

22 They could possibly (Inaudible). But otherwise,
23 the power company would give compensation to rate payers
24 (Inaudible) because they would receive compensation for the
25 losses. Idaho Power would (Inaudible) 3300. The fish and

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1 wildlife would not have any protection. Consequently, on
2 the flip side, if you want to call it (Inaudible) or the
3 irrigation interest at this point. The river still could
4 be depleted to 3300 feet summer and winter but no
5 compensation to the power company. No compensation for the
6 fish. So I think that the (Inaudible) and the difficulty
7 that the negotiators were addressing was they were
8 addressing legal issues based on existing legal rights
9 under existing laws and they had no legal authority to give
10 any legal status to (Inaudible) interest in the river and
11 since they were increasing the minimum flows above those
12 presently set, I assume that they were thinking they
13 couldn't hurt anything because they were only increasing
14 the amount of water in the river.

15 The other comment that I was going to make was that
16 people should be aware that the average flows of that river
17 are greatly in excess of 3900 or the 5600 in the winter.
18 Those are the lowest recorded flows since the beginning of
19 time. 4500 and 6100, Tim, 6300. 6300 is the lowest
20 recorded flow in the winter and 4500 is the lowest recorded
21 flow in the summer.

22 And essentially what they did then (Inaudible) took
23 the 1200 cfs that was left over and seen what the average
24 flow was and the lowest flow (Inaudible) for power and fish
25 and will allow only 6 of the 1200 left (Inaudible) to be

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1 used for irrigation (Inaudible). I guess it's a legal
2 (Inaudible) reason they acted the way they did is because
3 of the archaic laws which stressed consumptive use over all
4 other issues in the river.

5 MR. GRAY: Thank you.

6 MR. CAVENESS: (Inaudible.)

7 MR. GRAY: I knew you would though. Are there any
8 other questions? Yes, sir.

9 UNIDENTIFIED SPEAKER: I'm a little confused about
10 the distinction that's drawn between man-caused reduction
11 in the flow and (Inaudible). I had the impression that
12 water users' rights were protected under a certain
13 (Inaudible) and the river could then be gone down below
14 that minimum flow established (Inaudible).

15 MR. SHERMAN: That's correct. The person whose use
16 is in place will be protected even if it went below that
17 (Inaudible).

18 UNIDENTIFIED SPEAKER: So we're not talking about
19 (Inaudible).

20 UNIDENTIFIED SPEAKER: (Inaudible.)

21 UNIDENTIFIED SPEAKER: Except in order to go below
22 3900 (Inaudible), you have to have a situation that is
23 substantially more than that (Inaudible). With the
24 existing development and the (Inaudible), you still don't
25 get (Inaudible).

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1 UNIDENTIFIED SPEAKER: (Inaudible.)
2 UNIDENTIFIED SPEAKER: That's what we're trying to
3 do is the increased use would be limited so we didn't
4 violate that. That's what we aim for is taking the dryest
5 period (Inaudible).
6 UNIDENTIFIED SPEAKER: (Inaudible.)
7 UNIDENTIFIED SPEAKER: I'd like to see some water
8 available if we get down to 3900 and it turns out
9 (inaudible).
10 MR. GRAY: Anymore questions? Okay. We'll call
11 the meeting adjourned.
12 (Tape ends.)
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STATE OF IDAHO)
) SS
COUNTY OF CANYON)

I, TAMARA A. WEBER, State-certified and licensed
transcriber, do hereby certify:

That the foregoing transcript is a transcript of
cassettes made of the proceedings in the matter of the
Public Hearing in re: State Water Plan before the Idaho
Water Resource Board, January 29, 1985, 7:00 p.m.,
Pocatello, Idaho; that the foregoing pages 1 through 47 of
this transcript contains as accurate and complete a
transcription of said cassettes as I was able to make.

IN WITNESS WHEREOF, I have hereunto set my hand
this 6th day of November, 2007.



TAMARA A. WEBER, CSR RMR
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