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DEPARTMENT OF
WATER RESOURCES

Orr Affidavit

Exhibit 16

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DEPT. OF WATER RESOURCES

Transcript of Idaho Water Resource Board
public hearing on proposed
State Water Plan amendments
(Feb. 6, 1985)

Third Orr Affidavit

EXHIBIT 28

1 IDAHO WATER RESOURCES BOARD

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6 Public Information Meeting
7 regarding changes to State Water Plan - Policy 32
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11 TRANSCRIPT OF PROCEEDINGS

12 Held on February 6, 1985, at 2:00 and 7:00 p.m.
13 before Gene Gray, Chairman Idaho Water Resource Board
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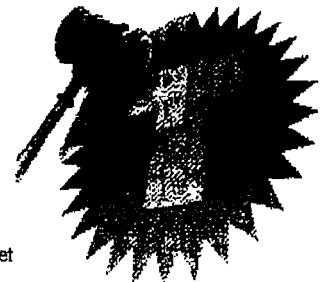
15 Lewiston, Idaho
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24 Transcribed by
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ORIGINAL

A P P E A R A N C E S

Present:

GENE GRAY - Chairman of IWRB
ROBERT HAMMES
DAVE RYDALCH
JIM SHAWVER
WAYNE HAAS
FRANK SHERMAN

Audience members who testified:

MALCOLM CRAWFORD (2 p.m.) - Lewiston Orchards
Irrigation District

PAUL TUTCHER (2 p.m.) - 1411 Prospect Avenue,
Lewiston

DONALD SATCHWELL (7 p.m.) - North 4340 Idaho Road,
Post Falls

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Page 1

IDAHO WATER RESOURCES BOARD

Public Information Meeting

regarding changes to State Water Plan - Policy 32

TRANSCRIPT OF PROCEEDINGS

Held on February 6, 1985, at 2:00 and 7:00 p.m.

before Gene Gray, Chairman Idaho Water Resource Board

Lewiston, Idaho

Transcribed by
Frances J. Morris
CSR No. 696

Page 3

LEWISTON, IDAHO

February 6, 1985, 2:00 p.m.

CHAIRMAN GRAY: Good evening, Ladies and Gentlemen. My name is Gene Gray. I'm chairman of the Idaho Water Resource Board. With me today, we have Robert Hammes, who is a Board member from St. Maries, in the newspaper business and the book business; Dave Rydalch from St. Anthony who is a farmer and also from Committee of Nine which is a water organization on the Upper Snake system; we have Jim Shawver from Eden, Idaho who is secretary of the Idaho Water Resource Board and a farmer in the Eden area; and Wayne Haas from the Department of Water Resources; and Frank Sherman, geologist from the Department of Water Resources.

And what we are here to speak to you about today is Policy 32, the existing state water plan. In December of 1983 the Board accepted some draft language for a proposed change to Policy 32.

So what we are here today is to take your testimony. Since we don't have too many people, we are going to kind of break training here a little bit and do this a little different. I will have Mr. Sherman give you a brief overview of

Page 2

APPEARANCES

Present:

GENE GRAY - Chairman of IWRB
ROBERT HAMMES
DAVE RYDALCH
JIM SHAWVER
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Page 4

Policy 32. After that, we will take testimony, oral testimony, from those of you who wish to testify. We will close the testimony, then we will open it for questions and answers.

Now, if you kind of follow through The Currents, the first page kind of gives you an overview of the state Water Resource Board, what our function is. Page 2 and page 3 will give you Policy 32 as we've accepted the draft language. And that's what we would like you to critique for us, or at least give us written testimony on.

Going on over, you will see page 4, page 5 is the Swan Falls agreement that was put together and agreed upon by the governor's office; the office of the attorney general, state of Idaho; and Idaho Power Company.

Going on over to Page 6, basically the right-hand side of page 5 and page 6 and 7 is the legislative package which our legislators are now working on at the State Capitol.

If you take a look on page 7 to the far right-hand column, you will notice actions that must be taken by May 15 for the implementation of this whole thing.

No. 1, the state water plan is to be

1 (Pages 1 to 4)

1 amended. That's why we are before you today is to
2 get your suggestions, your fears, whatever you
3 might have, as far as the Water Board revising this
4 and then passing it on to our state legislature.

5 No. 2, legislative package must be
6 passed, and it's going to have to be passed pretty
7 much intact as you will find it in The Currents.

8 No. 3, appropriate action by the Public
9 Utility Commission or the legislature; as required
10 an agreement must be taken.

11 No. 4, there must be an appropriate
12 order by the Federal Energy Regulatory Commission
13 pretty much okaying the way the package is and the
14 way the legislature may go ahead and pass it.

15 No. 5, the Idaho Public Utilities
16 Commission must dismiss the lawsuit from 1977 which
17 was filed by the Idaho ratepayers.

18 No. 6, since we have three dams in the
19 state of Idaho which border our neighboring state
20 of Oregon, the Hells Canyon Complex, if required it
21 may also have to be okayed by the Oregon Public
22 Utilities Commission.

23 No. 7, enactment by the legislature of
24 subordination language as set forth in 7A and 7B.
25 You will find 7A and 7B on page 7 just to the left

1 of the box we are looking at.

2 So what we will do now is, we will have
3 Mr. Frank Sherman from the Department of Water
4 Resources give you an overview. And if you like,
5 you can kind of follow what he's discussing on page
6 2 and page 3.

7 Mr. Sherman?

8 MR. SHERMAN: Unless you live with that whole
9 situation almost on a day-to-day basis, it gets a
10 little bit complicated in that there is in place
11 the Idaho state water plan.

12 There were two different documents
13 signed in October of last year; one, an agreement
14 to agree, and one, a legal document using legal
15 language specifying what the state and Idaho Power
16 agreed to. They are the exhibits as in The
17 Currents for proposed legislative changes. Some of
18 those have been amended already or modified as they
19 proceed through the legislature.

20 And then there are the proposed changes
21 to the water plan that the Board wishes to address
22 at this time. It does get a little bit
23 complicated. Since I assume most people here
24 aren't particularly interested in what happens
25 above Swan Falls and Murphy Gage (unintelligible).

2 (Pages 5 to 8)

1 I will try and emphasize those things that might be
2 important to the local area.

3 The existing water plan has policies for
4 the Snake Basin, the Bear River, the Panhandle
5 region. And the intent back in 1976, when this
6 plan was first adopted, was to allocate the
7 remaining unappropriated waters in the system or in
8 that particular basin for specific new uses.

9 The agreement that the state and Idaho
10 Power entered into called for specific changes to
11 that. It needed to be updated anyhow. It is
12 updated every five years. But in 1982, when the
13 Idaho Supreme Court ruled that the power company
14 had a legitimate and valid unsubordinated claim at
15 Swan Falls Dam for water, all the allocations in
16 the existing water plan were based on the premise
17 that the state could take Idaho Power's water and
18 use it for their purposes in the 3300 minimum the
19 Supreme Court established for Murphy Gage just
20 below Swan Falls.

21 This plan, as it stands today, specifies
22 probably an unrealistic number given Idaho Power's
23 claim in Swan Falls Dam.

24 Now, we got into litigation, and it
25 finally came down to the point where both the power

1 company and the state felt that trying to resolve
2 these complex issues in the courts was not the way
3 to go. It was back in district court. Certainly
4 any decision reached in district court, one of the
5 two parties would have taken it back to the Idaho
6 Supreme Court. It may have been five or ten years
7 before something was put in place by the courts
8 which would have then directed the Department of
9 Water Resources, particularly, on how water was to
10 be used in the system.

11 Part of the problem, of course, was they
12 assumed, as did the Supreme Court, recognized the
13 valid right of Idaho Power. The Department of
14 Water Resources stopped issuing new water rights
15 above Swan Falls Dam. Now, if we couldn't satisfy
16 Idaho Power's water right and it was legitimate, we
17 certainly couldn't be issuing new permits for the
18 use of water (inaudible) and declare a moratorium.
19 We have several thousand permits on file that have
20 not been ruled on. If we had to wait another five
21 or ten years, clearly it would be more (inaudible).

22 People in the basin were being done a
23 disservice in that they wanted to do something, and
24 they had to wait and see what would happen.
25 Everything is sort of at a standstill. The state

1 and Idaho Power agreed to the compromise, and the
2 compromise itself speaks to several different
3 things. It speaks to new stream flows at the
4 Murphy Gage. If you're going to have a compromise
5 we have two different positions someplace in
6 between the compromise.

7 Now, the state water plan calls for a
8 minimum year-round flow at the Murphy Gage just
9 below Swan Falls Dam at 3300 cfs. Idaho Power had
10 a claimed water right of 8400 cfs, quite a
11 discrepancy if indeed we had to satisfy their
12 right.

13 Even in the negotiation process, Idaho
14 Power recognized that the minimum flow had already
15 been down to 4500 cfs. Typically, for management
16 purposes, we use the average daily flow: four
17 readings, ten readings, 24 readings in one day
18 averaged together because of the influences of
19 minor thunderstorms, pumps on and off, Idaho
20 Power's (unintelligible) operations. So we talk in
21 terms of the daily average.

22 It had already been up to 4500 cfs. The
23 only way we could guarantee more water than that
24 was to shut off current users in the basin. The
25 legislature has clearly shown in several efforts,

1 River down to 3900 cfs, plug that back in the
2 wintertime uses, it turns out (inaudible) for the
3 wintertime season. But change from the existing
4 water plan in that it specified a year-round flow
5 is not a change in terms of water law or thinking
6 because most water uses in the state (inaudible),
7 typically irrigation, from April 1st to September
8 30th.

9 The existing water plan recognizes the
10 importance -- and this is the most important for
11 the people in this area, particularly -- recognizes
12 the importance of the FERC license of the Hells
13 Canyon Complex. It talks about minimum flows at
14 Lime Point and Johnson's Bar (inaudible). In order
15 to assure those flows, the intent of the Board is
16 to add those flows as a state water policy.

17 While we recognize that those flows
18 would be desirable, if the federal government and
19 Idaho Power reach some different compromise
20 (inaudible), those flows could go away. The intent
21 of the Board is to add them to the state water plan
22 specifically as state policy so that, if for some
23 reason the federal government and Idaho Power
24 change the license so that it wouldn't have to be
25 those numbers, they would still be guaranteed by

1 1, to subordinate Idaho Power's water right; 2, to
2 allow the governor to enter into a contract with
3 the power companies, that they did not want to see
4 existing users shut off.

5 So the compromise was affected between
6 the historic low flow and what the state water plan
7 called for. And that's where 3900 comes from. If
8 you take 4500 and 3500, the difference is 1200 cfs,
9 and you compromise and cut that number in half, you
10 get 600.

11 The power company basically is saying,
12 "We are going to split what's available, and you
13 take this part and we will take the other part," to
14 satisfy upstream development (unintelligible)
15 additional depletion.

16 So the 3900 which is specified in the
17 agreement in Policy 32 of the Snake River Basin
18 speaks to what was reached by the negotiators. And
19 in discussing the idea of compromise, there is
20 certainly a lot more water going past that gage in
21 the wintertime than in the summertime so they just
22 chose a higher number.

23 There are several legitimate reasons for
24 this number. Principally, if you take and project
25 the kind of development that might take the Snake

1 the state water plan.

2 So that really is all Policy 32, as
3 identified here, docs. It proposes to use the
4 3900/5600 cfs at Murphy as specified by the
5 agreement and to add, as far as the state water
6 plan, minimum flows at Lime Point and Johnson's
7 Bar.

8 It goes on to talk about waters not held
9 in trust by the state are considered unappropriated
10 waters, and those waters held by the state shall be
11 issued under certain criteria. Now, what this
12 proposed revision does is to break out of the old
13 water plan every one of those allocations and try
14 and identify them as a specific policy. And in
15 doing that, the whole question of what happens to
16 the water that Idaho Power claimed becomes policy
17 in and of itself, really.

18 So Policy 32A, Water Held in Trust By
19 the State. What Idaho Power and the state agreed
20 to was that, as long as 3900 cfs in the summertime
21 and 5600 cfs wintertime goes past the Murphy Gage,
22 Idaho Power will not take action against any other
23 water user in the basin and call for water based on
24 their current right at Swan Falls, nor will they
25 call for water at any of their upstream facilities.

1 All the examples talking about the Swan
2 Falls compromise, all the assumptions made really
3 seem to revolve around the Swan Falls Dam because
4 that's where the lawsuit originated. That's where
5 the numbers that were developed in court and where
6 the compromise came from. But in fact Idaho Power
7 claims a lot more than 8400 at (unintelligible)
8 Dam.

9 As part of the tradeoff with the state,
10 as long as the 3900 cfs in the summertime goes past
11 the Murphy Gage, Idaho Power will not call or
12 exercise their water right on upstream structures.

13 But what it basically comes down to,
14 using the Swan Falls example, is Idaho Power says,
15 "We have a valid claim according to your Supreme
16 Court." Now, what the size of that claim might be
17 is dependent upon what district court. "We weren't
18 getting the water we claimed; therefore, maybe" --
19 (inaudible) the idea of forfeiture, if you don't
20 use your water within five years (inaudible) is one
21 of the things the state law and Idaho Constitution
22 provides in statute. The state may regulate stream
23 flow for Idaho Power purposes (inaudible) entitled
24 to all this water that they were claiming.

25 So Idaho Power said, "We will give up

1 There are existing criteria that have to
2 be satisfied before you can get a water right from
3 the state, and those are basically listed in the
4 Idaho Code as 42-203A.

5 203B specifies that, yes, Idaho Power,
6 or any kind of power water right, can be held in
7 trust by the state. And 42-203C says that, if the
8 state wants to reallocate water that had been
9 claimed by a hydropower company, they may impose
10 special criteria upon anyone who applies for that
11 water.

12 Now, the special criteria as proposed by
13 the negotiators as part of the legislative package
14 talks about the effect upon the economy of the
15 state, the effect upon the hydropower rate base,
16 the effect upon the family farm tradition. There
17 are five or six new criteria that, before you can
18 get some of this water that used to belong to Idaho
19 Power, you have to satisfy this new criteria.

20 Policy 32B, Domestic, Commercial,
21 Municipal, and Industrial. The existing water plan
22 sets aside a volume of water -- because when this
23 was first drawn up, it was in terms of acre feet --
24 for new municipal and industrial uses. They
25 converted that figure to cubic feet per second,

1 our water right provided you assure us it will
2 never go below 3900." Those waters, then, that
3 Idaho Power is saying "we are giving up" were
4 actually appropriated waters of the state. They
5 filed the proper claim. The paperwork is on file
6 with the Department of Water Resources. Because
7 those waters were claimed at one time, they are not
8 considered the unappropriated waters of the state.
9 Most of you realize that the citizen in Idaho is
10 guaranteed the right to appropriate, use the
11 unappropriated waters of the state. Now, that
12 right shall never be denied, according to the
13 Constitution.

14 But because Idaho Power had already
15 appropriated those waters, put it to beneficial use
16 by running it through their generators, they are
17 not available for the ordinary citizen to rely upon
18 or to use. So, so much for the subordinating
19 Supreme Court ruling that it's not subordinated.

20 So Idaho Power turned over, basically,
21 all their water rights above 3900 cfs to the state.
22 The state says, "We will reallocate that water for
23 other uses provided you meet certain criteria."
24 And that's Idaho Code 42-203A, B, C, as listed on
25 Policy 32A.

1 which the negotiators were talking about and what
2 was in the agreement. It turns out to be roughly
3 150 cfs; in fact 144. By adding domestic, the
4 intent is to add a little bit more water to that
5 number just to cover it. But if you stop and think
6 about it, we are talking about consumptive uses
7 now. It really doesn't matter how much water you
8 divert; it's how much water you consume out of the
9 basin.

10 An irrigator that burns six or seven
11 acre feet per acre and his crops only use three,
12 the other water goes to recharge the aquifer or
13 comes back to the river directly as surface runoff.

14 So we are talking about consumptive use.
15 And in terms of any kind of water budget analysis,
16 the person who drinks water, the individual human,
17 doesn't consume much water. The amount of intake
18 he has from beverages that are bottled outside the
19 basin, that's a lucky thing. In the Snake Plain
20 Basin, there is only one brewery, for example.

21 Your wastewaters actually balance out
22 what you drink if you could ignore the amount of
23 water actually lost from perspiration. By
24 digesting food, you actually create more water than
25 you're consuming. So the domestic, the amount of

1 water that's used by the human population of the
2 area is not a significant factor. In fact, if you
3 take a look at the numbers the department has, it
4 turns out that those municipal diversions which are
5 used to water lawns, golf courses, city parks, are
6 probably the biggest consumers in the whole basin.
7 This amount, 150 cfs, of this water that
8 the state now owns in trust is set aside for
9 consumptive purposes. It will probably allow for
10 the doubling of the population and industry of the
11 whole basin.

12 If you take -- it's a fairly inclusive
13 title -- if you take domestic, commercial,
14 municipal, industrial, probably the only other
15 consumptive use is agriculture. So Policy 32C
16 specifically says that those waters now held by
17 Idaho, less the amount reserved for DCMI, shall be
18 available for new agricultural development or
19 agricultural uses in general. It specifies that,
20 if you are applying for that water that Idaho Power
21 formerly claimed, you have to meet new additional
22 criteria. Conceivable, and certainly the intent of
23 the negotiators, was the idea that the first
24 applicant who thinks he can put it to beneficial use
25 automatically has the right to the water. That's

1 no longer going to be the case.

2 These waters are special waters. They
3 belong to somebody else. They have been returned
4 to the state for a new allocation, new criteria.

5 Policy 32D, talks about hydropower.
6 Specifies that the use of water for hydropower is a
7 beneficial use. That's already in the state water
8 plan, the Constitution -- not the Constitution --
9 the Idaho Code, and points out that the depletion
10 of flows below the minimum average daily flow as
11 set forth in Policy 32 is not in the public
12 interest.

13 As part of the tradeoff from the power
14 company to the state, the power company had to be
15 guaranteed something. And what they have been
16 guaranteed is 3900 cfs in the summertime and
17 5600 cfs in the wintertime.

18 If the flows were ever to go below that
19 point, Idaho Power should, would, and will take
20 action through the state against any new
21 appropriator of water. The intent of this
22 agreement is to protect the existing user. For
23 anybody who can prove, can only show beneficial use
24 of water after the signing of the agreement, if the
25 flows ever get below those specified, Idaho Power

1 has legal grounds to demand he be shut off or he
2 supply them with water somehow.

3 Policy 32E, Navigation. This is
4 basically no change from the existing state water
5 plan except that in '76 and '82, when it was
6 re-adopted, the Board was thinking in terms of
7 3300 cfs at the Murphy Gage coupled with the
8 federal licenses for the Idaho Power Complex
9 supplying enough water for recreational purposes
10 and commercial navigation below the Hells Canyon
11 Complex. They now have raised it to over 3900;
12 they feel, therefore, even better about the fact
13 that there is enough for recreation and navigation.

14 Aquaculture. The major factor,
15 particularly in Twin Falls (unintelligible) of the
16 river, trout farming, catfish farming, this
17 specifies clearly that, in aquaculture if you want
18 to process fish, any water for that purpose has to
19 come out of the commercial, municipal, and
20 industrial uses. It's not a very water consumptive
21 commercial operation, but it should be counted
22 against that 150 cfs set aside for those purposes.

23 It points out that many of these fish
24 farmers rely on the discharges from Thousand
25 Springs for their water flow, divert the water from

1 the springs discharge through the (unintelligible).
2 They have a water right. Ford and the department
3 feels that, by having 3900 at Murphy, they are
4 going to probably always have water coming out at
5 Thousand Springs.

6 The plan as it exists -- and it's
7 proposed to revise it or not change -- calls for a
8 zero minimum flow at Milner Dam near Twin Falls.
9 All the water in the Upper Snake above that point
10 is basically allocated to existing uses.

11 It is legal, and has happened on rare
12 occasions, that there is no water coming past the
13 Milner Dam. The only major recharge to the river,
14 then, between Milner Dam and the Murphy Gage below
15 Swan Falls is the Thousand Springs discharge.

16 So if you are going to specify 3900 at
17 the Murphy Gage, and most of that water in the
18 summertime is coming from Thousand Springs, those
19 trout farmers relying on the Thousand Springs
20 should have water available to them.

21 But state law does not provide that a
22 water right guarantees your needs of diversion. It
23 provides only that you have access to water, the
24 priority date associated with that water right.

25 Conceivably, if the flow sent to

1 Thousand Springs was to decline, the trout farmer
2 may have to change his diversion structures. In
3 the worst case situation, he may actually have to
4 construct a well.

5 But as I say, law does not provide that
6 a water right guarantees you a means of diversion;
7 it just specifics you are allowed (unintelligible)
8 water.

9 And that basic language is in the
10 existing water plan, not necessarily that all the
11 trout farmers were aware of the existing plan, if
12 anymore are aware of this proposed revision.

13 Policy 32G, Fish, Wildlife and
14 Recreation. Back when the original water plan was
15 adopted in 1976, there were a number of studies
16 conducted about the need of fish and wildlife, for
17 water for recreational purposes in the basin
18 particularly at the Swan Falls (inaudible).

19 The numbers are significantly higher
20 than 3300, and they are higher than 3900. The
21 water plan represents a compromise just like the
22 Swan Falls agreement does. And in '76, by trying
23 to balance the fish/wildlife interests against the
24 interests of new consumptive upstream development,
25 the Board reached 3300. It's what they thought was

1 a reasonable compromise. They recognized in the
2 existing water plan that is not the best number
3 that flows for fish, wildlife, and recreation, but
4 it is one they felt would afford some protection
5 for those resources and form a basis for continued
6 use of it. By raising the minimum flow, the Board
7 had at least the feeling it was moving in the right
8 direction, and, while still not optimum by any
9 means, it does afford some protection for fish,
10 wildlife, and recreational uses.

11 Policy 32H, Water Quality, Pollution,
12 and Control, in an area of the state where we are
13 so water short that you can't satisfy the existing
14 water rights, it seems to be a misuse of water to
15 allow it to be used for simple dilution of
16 pollution.

17 The Board proposes to adopt this
18 policy -- and it's spelled out in slightly
19 different terms in the existing water plan -- that
20 to use water, good water, to dilute bad water is
21 not a beneficial use for water. The Board feels
22 there are enough existing state and federal laws on
23 the books if properly enforced that water quality
24 in Idaho shall be maintained at a fairly high
25 level. Certainly no one should be able get a water

1 right to use water just to dilute their waste
2 (inaudible) rather than acquire water for that
3 purpose.

4 Policy 32I, New Storage, one that may
5 not be particularly significant in this part of the
6 state. It's a key factor in the upper basin in the
7 whole Snake system above Murphy.

8 This particular policy has two specific
9 parts, both parts mandated by the agreement. The
10 first part basically says that, unless some kind of
11 determination is made that we are making maximum
12 use of the water storage facilities in the basin,
13 no new storage should be created.

14 (Unintelligible) for several different
15 competing interests. Certainly there is a large
16 segment of the population that says we have enough
17 dams. Idaho Power likes to see as much water
18 coming down the river in the wintertime as
19 possible. It chose the Brownlee Reservoir which is
20 the only storage facility of the Hells Canyon
21 Complex -- or in the Hells Canyon Complex, at
22 least.

23 If you stop and look at what the
24 negotiators were really asking, in this case they
25 were asking the Water Board, wanted it included in

1 the water plan, to take some action. Most of the
2 reservoirs in the system were built for irrigation
3 storage. Some minor benefits for flood control and
4 recreation in some cases. Some would have it
5 constructed totally for irrigation storage, and yet
6 they seem to be partially full in the summertime,
7 in some cases quite full. And that's probably
8 because of a number of reasons.

9 In Idaho, water law provides that you
10 can have a full natural flow right for a
11 consumptive purpose. Using irrigation, for
12 example, you may have as many water from a stream
13 as is necessary to irrigate so much acres. And you
14 may have an 1870 or 1880 priority right.

15 That water is almost always going to be
16 guaranteed for you. But law provides that you may
17 have an additional full water right in storage as
18 an assurance point.

19 Some of the farmers in Eastern Idaho
20 with early priority rights on natural flows used
21 their water once in five years, once in ten years,
22 or less. The city folk felt, for example, a water
23 right in a reservoir which they required years ago,
24 they thought Pocatello was going to increase in
25 amount and size, and water and consumptive needs

1 would increase.
2 They never called for that water. They
3 had no means to divert it. If they called for that
4 water, the only way they could get it would be to
5 put pumps in the river and try and catch it when it
6 went past.

7 So there are lots of examples one can
8 use about water held in storage that's never used.
9 And on October 1st, when the water master in that
10 area has to create new space for the next year's
11 runoff, he just dumps the water down the river.

12 It's not necessarily going to waste.
13 You got Idaho Power, you got downstream hydropower
14 generation facilities. But in late fall, even
15 Idaho Power is not trying to fill Brownlee
16 Reservoir. So this water is basically water that
17 has sat around, has not been used. If there were
18 some way that this water could be exchanged for new
19 uses, maybe we wouldn't be as water short as we
20 think we are.

21 Now, federal law provides -- and these
22 are some of the kinds of areas: First of all, the
23 dam was built for a specific purpose all brought by
24 Congress. The water stored behind that dam can
25 only be used for those purposes. It might be only

1 time. The intent of that, I suppose, is to protect
2 the irrigator, the person who holds the water.
3 There is no way that big business or even new
4 farmers can come in, and if all they are guaranteed
5 is water at a one-year-at-a-time basis, well,
6 they'll not finance that kind of operation.

7 All you have to do is (unintelligible)
8 the people in the area, and there would be no water
9 available when you have business. So you can't
10 lease or sell your water for more than one year at
11 a time. There is certainly a barrier for trying to
12 move this water around so that newer uses can be
13 satisfied.

14 The state has a number of laws which
15 apply to this situation, and they are equally
16 restrictive. You can't expand a water right. You
17 have water, and its beneficial use is to be used to
18 irrigate these certain number of acres described in
19 a water right and the certification. The law
20 provides that you cannot use that water for a
21 consumptive use at any other point. It makes
22 sense, in trying to keep track of the water in the
23 system in that you would never have any idea how
24 much water was going to actually be consumed if
25 these people could actually sell their water to

1 for irrigation, it might be only used for a certain
2 project. So you can't move it around even if you
3 wanted to.

4 The state has a water bank mechanism so
5 that a person who has excess water can lease it to
6 someone who needs the water. But the federal law
7 provides that the waters behind a federal reservoir
8 are (unintelligible) a federal dam. You cannot
9 sell it and work a profit.

10 It's a fair deal from the point of view
11 that, why should somebody be able to make an
12 enormous profit on water that his grandfather or
13 father paid some minimal amount and helped support
14 the construction of the dam (unintelligible); and
15 why should he be able to make a big profit off
16 water stored behind the dam, then? At least a
17 part, and in some cases the biggest part of it, was
18 paid for by federal dollars.

19 So that's realistic from that point of
20 view. It would be very unrealistic if you expect
21 someone who has excess water to make it available
22 to someone else. It's hardly worth its while if
23 you can't make a profit letting go of this water.

24 Another federal restriction is that you
25 can only lease or sell your water for one year at a

1 someone else who were going to consume a portion of
2 it. So -- but it certainly provides a barrier
3 because the only use a person with excess water,
4 even if he does put the water back in theory, the
5 only use that can be made of it is for a
6 non-consumptive use.

7 It's the argument, then, if you don't
8 use your water, you're not supposed to use it once
9 in five years; typically you lose your water
10 rights. So there are both state and federal
11 barriers to state a more efficient use of water in
12 the system.

13 The Board has been asked and has agreed
14 to trying to find out, are there ways to get around
15 both state and federal restrictions on optimum,
16 maximum, whatever you want to define it, better use
17 of the water that is stored already in the system.

18 If you had to ask the director of the
19 Department of Water Resources today to make a
20 decision on it, are we doing the best we can on our
21 water, he would probably have to say no because
22 there is some unallocated water behind the
23 reservoir (unintelligible) to the Snake.

24 Once that water is allocated, the
25 director has to make a decision and would probably

1 have to rule under existing law, and we're probably
2 doing the best we can. The intent is for the Board
3 to see some of these restrictions about how we can
4 better use the water. Some of those restrictions
5 can be changed.

6 Certainly there's a lot of problems to
7 try and change state or federal law as it relates
8 to reservoir storage, but the intent of the Board,
9 as far as response, is to look into can these
10 things be changed.

11 The second part of Policy 32I applies
12 strictly to the reach of the river from Milner Dam
13 downstream to the Murphy Gage. Idaho Power is
14 quite concerned about filling Brownlee Reservoir.
15 There is no question about that, the amount of
16 revenues they generate from a full Brownlee
17 Reservoir. If Idaho Power is going to participate
18 in the Northwest Power Claim Council Fisheries
19 Augmentation Scheme, they are going to need water
20 there to provide for the so-called fish rushes.

21 In trying to work out compromises, the
22 negotiators agreed finally that filling that
23 reservoir is so important that anybody who wanted
24 to divert water directly out of the river during
25 the wintertime for storage purposes, the impact of

1 that diversion can be measured in some sort of
2 mitigation should the supply be granted and given
3 to Idaho Power for that impact on their system's
4 operation.

5 The plan does not specify, the proposed
6 revisions of the plan do not specify, what that
7 mitigation would be. Certainly it would have to be
8 calculated on the individual base. The amount of
9 water diverted at the time of the year, each
10 project, each proposed wintertime diversion, would
11 be different.

12 The intent is to lessen the negative
13 impact on Idaho Power's operations. It may be that
14 the timing of the return flows is beneficial to
15 Idaho Power than the mitigation (inaudible) itself.
16 It may be that someone who wants to have water in
17 the wintertime can do additional amount of acre
18 feet which are available to Idaho Power at cost.
19 These are the kind of things that mitigation
20 (inaudible). It doesn't mean a calculation of the
21 economic dollars lost by Idaho Power. That's not
22 the idea behind it. The idea is somehow, before we
23 can let somebody take water out of the river in the
24 wintertime in that region, we have to evaluate and
25 try and lessen the impact on Idaho Power's

1 operations.

2 There is one last policy, and it's
3 called Stored Water for Management Purposes. This
4 is one the few changes that's not directly a
5 reflection of either the agreement or the Supreme
6 Court decision, but it's certainly indirectly a
7 reflection of that.

8 The agreement and the proposed changes
9 to the water plan require that the Department of
10 Water Resources always maintain 3900/5600,
11 depending on the time of year, at the Murphy Gage.

12 If the department is going to issue any
13 new water rights for upstream development, they
14 have to be weighed, then, against their impact on
15 those flows. As I said earlier, there can be no --
16 conceivably there are periods of the year when
17 there is no flow coming down the river past the
18 Milner Dam and we are relying totally upon
19 discharges from Thousand Springs, the discharges
20 from the Snake River Plain aquifer.

21 We try to manage water. As soon as you
22 start talking about trying to manage groundwater
23 and surface water, that's the intent of these
24 changes in the water plan; that's the intent of the
25 agreement that you're going to try and manage all

1 the water, ground and surface water, within the
2 basin as a unit, or at least manage them so that
3 you're always concerned about the minimum flow at
4 Murphy.

5 It gets very complicated when we are
6 talking about an aquifer that's sort of 100 miles
7 long and 50 to 70 miles wide. And someone who is
8 pumping water 50 miles from Thousand Springs, if
9 the flow gets low at Murphy Gage and you want to
10 shut him off, it would do no good to the flow at
11 Murphy Gage because the effects of his pumping
12 groundwater out there might not show up for weeks,
13 months, (inaudible).

14 So if the department is going to be
15 allowed to issue new water rights, particularly for
16 groundwater purposes, they are going to have to
17 either, one, be very conservative because there is
18 no magic cutoff when you get close to 3900 because
19 you're shutting off at (unintelligible), or they
20 have to have some water someplace they can call
21 from to cover up the mistake they might make, like
22 over-appropriating water. And that's the intent of
23 this.

24 There are unallocated waters. There is
25 water available in the Upper Snake system that

1 could be specified for the use. If it could be
2 obtained by the state, it would be there if the
3 department gets down too close to 3900 and they
4 make a mistake.

5 Ken Dunn, the director of the
6 department, in a public hearing said, "The
7 possibility of me managing the river, coupled with
8 the aquifer to 3900 exactly, is nil. We don't know
9 enough about the aquifer to do it. Even if we knew
10 a whole lot more, the possibility of managing to
11 some magic number like that are nil." The idea is
12 to have this water available in case the department
13 goes overboard, particularly with the idea that, if
14 we issue too many permits to groundwater users, we
15 can't make up the water in the river.

16 The idea here, of course, is that, if we
17 can acquire some water in the system, it would not
18 sit idle. It would be put in the water bank, it
19 would be sold by Idaho Power or whatever. But it
20 would be available as insurance if the department
21 were to need it.

22 Those are the policies as proposed. I
23 would just like to touch on a couple of things
24 about the agreement that relate to the policies, I
25 guess.

1 The agreement specifies that, if the
2 flow of Murphy goes below 3900 and it's the cause
3 of natural consequences, not some mistake on the
4 part of the Department of Water Resources, Idaho
5 Power will not protest. They will take no action
6 against the nexus of the user. If the flow goes
7 below 3900, any new appropriator, anyone who has
8 got some of this water or is using water to
9 formally (unintelligible), they will be subject to
10 call. They would have to shut off so the
11 department could get their water.

12 The agreement speaks to establishing the
13 criteria for the re-allocation of this water, and
14 the Board is merely saying that in this case it
15 will recognize whatever the legislature does. The
16 agreement speaks to the so-called general
17 adjudications of the system, and (unintelligible)
18 requirements for two purposes. One, if the state
19 is going to finally manage the river and the
20 aquifer together so that it always maintains flow
21 on the river, they need to know what uses are there
22 (inaudible). They need to get a priority system so
23 that in a water shortage, certain users can be shut
24 off. That's part of it.

25 The other part, of course, is that the

1 federal government and the Indian tribes claim
2 reserve water rights. Now, if you take all the
3 national forests, the Craters of the Moon, the
4 INEEL, the reservation near Idaho Falls, plus the
5 Fort Hall Indian Reservation, there are a lot of
6 federally reserved water rights in the Upper Snake
7 system.

8 The only way an (unintelligible) is
9 adopted in '76, it asked the federal government and
10 the Indian tribes to quantify the amount of water
11 they feel they need. The existing plan provides
12 that the Department of Water Resources will provide
13 technical assistance to the Indian tribes, for
14 example, to quantify their water rights.

15 To date, these have not been quantified.
16 The only way to force the federal government to
17 quantify their water right or to participate in the
18 state adjudication is to do what's called a systems
19 adjudication. Negotiators felt that, if they
20 started at Lewiston where the Snake River starts
21 out of the state and include all the tributaries
22 upstream, that's a system-wide adjudication. There
23 is nothing more the state can do as far as where it
24 leaves the state.

25 That's why the existing legislative

1 package specifies an adjudication beginning at
2 Lewiston. Its sole intent in starting at Lewiston
3 is to force the Indians and the federal government
4 to participate in the adjudication. In the state
5 court, it specifies how much water they feel they
6 need for the purposes of (inaudible) regulation,
7 and once and for all we will have a list of all the
8 water (unintelligible) in the Snake system.

9 Now, they had a piece of legislation
10 introduced this session which would provide that
11 the Indians not participate in the adjudication,
12 for the Fort Hall group particularly, not
13 participate in the adjudication, but that they
14 negotiate their water rights with the state.

15 What that means in terms of what it
16 could pass, what that means in terms of how they
17 vote the adjudication is handled, I don't think
18 it's important because the adjudication is
19 basically a negotiation between an individual water
20 right holder and the state. If an adjudication is
21 done and this area is included, what happens is,
22 the department comes out with their records and
23 sits down with every water right holder in the area
24 and says, "This is what we show. What do you
25 claim? Let's discuss it. If we can reach an

1 agreement, fine, that's it," otherwise the private
2 individual has the right to go to court
3 (inaudible).

4 Once everybody compromises or goes to
5 court, the court issues a decree and places all the
6 water rights into whatever basin -- and in this
7 case, let's say from Lewiston above -- in order of
8 priority. It establishes the mechanism so the
9 water master in a time of water shortage can
10 (inaudible).

11 Mr. Gray, I think that's enough.

12 CHAIRMAN GRAY: Excellent. We will now open
13 up the meeting for public testimony, and we have
14 one person to testify. Malcolm Crawford.

15 Malcolm, would you please step forward,
16 state your name, address, and telephone number for
17 the record, please.

18 MR. CRAWFORD: My name is Malcolm Crawford.
19 I'm manager of Lewiston Orchards Irrigation
20 District. I reside at 521 Karen Avenue in
21 Lewiston.

22 (End tape 1)

23 MR. CRAWFORD: I'd like to thank the Board
24 for coming all the way up here to Lewiston to
25 participate with us. We appreciate some attention

1 up here on this end because we realize that the big
2 lag is usually on the agricultural end. Even
3 though I'm manager of an irrigation district, under
4 Reclamation law, it's not what you guys are used to
5 down at St. Anthony's or along the Snake.

6 It's a water utility company,
7 essentially. We no longer have any commercial
8 agricultural interests at all. It's 4,000 acres of
9 subdivisions, and it's really the bedroom for
10 Lewiston up on the hill.

11 I want to testify today in three areas:
12 One, the need for adjudication; two, the need for
13 the beneficiaries to pay for the adjudication; and
14 three, the need for upstream and off-stream storage
15 in the state of Idaho.

16 I'm a member of the Idaho Water Users
17 Association. I'm also the American Waterworks
18 Association which has to do with our utility
19 affiliations. I'm glad to say that the convention
20 in Boise last month, the Idaho Water Users voted to
21 support the water plan as -- pretty much as
22 presented. And as I circulated there and talked to
23 people, mostly farmers, who were at that
24 convention, there was very little opposition to the
25 plan in its entirety.

10 (Pages 37 to 40)

1 There was some opposition to it in
2 regard to the fees, the apportionment of who was
3 going to pay for it, and how it was -- how those
4 fees were going to be collected, and this sort of
5 thing. But in general, the people who were
6 objecting on the score of, say, a dollar per acre
7 for an adjudication fee, in my opinion are
8 extremely short-sighted. I think they are not
9 taking into account the real need for an
10 adjudication process in the state of Idaho in order
11 to clarify the appropriations on the Snake Basin.
12 It's just got to be done in order to -- so that we
13 aren't constantly in the courts.

14 It's all been explained here, and
15 you're all more aware than I of the ramifications
16 of it. But I want you to know that, you know,
17 representing about 17,000 people here in my
18 irrigation district, we can see the benefits of
19 adjudication. And we are in favor of adjudication.
20 We are in favor of paying a fair share acreage-wise
21 based on our area up there for consumptive use for
22 our M&I consumption.

23 Either way it's something that we feel
24 is necessary. It has to be done, and we're very
25 glad to see the state of Idaho moving in that

1 direction. And I believe that all the people who
2 benefit need to pay for it. I think there has to
3 be a look at methods of other users that you
4 wouldn't normally be able to put your finger on,
5 like the recreational people, and all of those who
6 benefit from the use of the waters in the state.

7 That's the most difficult area, of
8 course, is to collect fees, but maybe through
9 licensing or use fees, or something like that, that
10 could be done.

11 I've been -- well, I started out as a
12 mining engineer, and I've been in this kind of work
13 in Oregon and California and now Idaho for the last
14 two years all over the West. And the real way to
15 get more water to use for beneficial uses is
16 through upstream and off-stream storage. That's
17 the only way that you can help nature to provide
18 more of this resource.

19 And we just had a good, long
20 dissertation about the reasons why we aren't even
21 able, at this point in time, to utilize all the
22 storage resources that we have on the Snake. And
23 that's really a shame. Those rules, those laws,
24 were made by men, and they can be corrected --
25 well, maybe that's not the right term. I don't

1 know enough about it to say whether they should be
2 corrected, amended. But some way that pathway
3 should be eased so that beneficial use can be made
4 of that water on the year-round.

5 Why have 56,000(sic) cfs at the gaging
6 station in the winter and 33,000(sic) in the summer.
7 if the best use of it were otherwise than that, if
8 you can save that spring runoff and use it at other
9 times and trade off through the water bank, or
10 whatever. And those things have to be pursued by
11 the state, the legislature and the Water Board as
12 well.

13 I know it's being done on the Columbia
14 with centralized computer use of the water. It's
15 being done on the Central Valley Project in
16 California. And where the Snake River is the
17 trunkline, the vital water passageway, through the
18 whole state of Idaho, essentially, it seems to me
19 that it's within our grasp to take control and to
20 increase our development of that resource and make
21 a better use of it.

22 The situation isn't going to get better
23 as we get more populated and more M&I uses, and so
24 forth. It's just going to get more complicated.
25 and we're going to be in court more often.

1 Thank you very much.

2 CHAIRMAN GRAY: Mr. Crawford, why don't you
3 stand for questions if the Board members have one.

4 MR. CRAWFORD: Sure.

5 CHAIRMAN GRAY: Mr. Hammes, do you have a
6 question for Mr. Crawford?

7 MR. HAMMES: I have no questions.

8 CHAIRMAN GRAY: Mr. Rydalcch?

9 MR. RYDALCH: I have none.

10 MR. CRAWFORD: It was a pretty general
11 statement.

12 CHAIRMAN GRAY: I think pretty much what you
13 had to say is what we're hearing all up and down
14 the river. And we thank you very much.

15 Is there anyone else who would like to
16 testify at this time?

17 Yes, sir?

18 MR. TUTCHER: I'm Paul Tatcher. I live at
19 1411 Prospect in Lewiston. My phone number is
20 743-6271.

21 I have some concern with the minimum
22 flow restrictions. Idaho Power doesn't really give
23 a damn what the minimum flow is down here below
24 Hells Canyon Dam because it's of no benefit to
25 them.

1 What they do is, they cut the water off
2 in the summer. In other words, you're out there in
3 a boat or in a raft, and you don't have any water.
4 You're -- they drop the water a foot,
5 foot-and-a-half an hour, and you're sitting up on
6 the beach, you're ten feet from the river.

7 It's inconvenient for people who are
8 trying to use the river, and it's destroyed the
9 fishing on the river. I've lived here all my life
10 and been on the river all my life. And I've seen
11 the bass fishing up there, just it's been
12 devastated. The beaches are gone.

13 The thing is, the minimum average is
14 not -- you know, it's not -- nobody is watching it.
15 If they regulate themselves at Lime Point and at
16 Johnson's Bar, it doesn't matter to them how much
17 water comes by there because they've generated
18 their power at Hells Canyon Dam.

19 I think there should be more concern,
20 you know, as to what goes on down here. It's great
21 that you have plenty of water in Southern Idaho,
22 but I live -- I have a lot right across from Lime
23 Point, and I can go out and I can see how fast it
24 drops every night and how much it comes up every
25 day. And it makes it, you know, very difficult to

1 use the river for anything down here. I know it's
2 a concern that I have.

3 Thank you.

4 CHAIRMAN GRAY: Mr. Hammes?

5 MR. HAMMES: I'll pass the question just --

6 CHAIRMAN GRAY: Mr. Rydalcch?

7 MR. RYDALCH: I have no questions.

8 CHAIRMAN GRAY: Mr. Shawver?

9 MR. SHAWVER: I have nothing.

10 CHAIRMAN GRAY: What are you talking about
11 fluctuations as far as elevations? Talking ten
12 feet? Five feet?

13 MR. TUTCHER: I've seen it as much as 15
14 feet, for example, at Lower Granite. It's a
15 fairly -- let's face it. When you drop it a foot,
16 are you talking about the bank at a 45-degree angle
17 from the river? Are you talking about ten percent?
18 At a ten-percent angle, I've seen at Salt Creek you
19 can lose 50 feet. At Lower Granite you can lose 12
20 feet. That happens every day. I mean, it isn't
21 something that happens once in a while.

22 What happens is, they store the water,
23 and during peak use during the day, they start
24 dropping the river. At night it comes back up.

25 It's pretty well known that bass, when

Page 45

1 they spawn, go up in the rocky areas and the
2 beaches and they'll spawn. Well, those eggs are
3 exposed every day. Every 24-hour period they're
4 exposed, and they die.

5 And it's -- you know, it just -- I ran
6 float trips. I was on the river for two summers.
7 I was on the river every day for six months. I
8 slept on the river every night, and there wasn't
9 one night that it didn't happen. You'd set up a
10 kitchen on the beach, and the river would be from
11 here to the wall, and in an hour you'd be up to
12 your knees in water. Get up the next morning, the
13 river would be from here to the street. I mean, it
14 fluctuated that much.

15 And I don't think that -- I don't know
16 who runs the gages at Lime Point and at Johnson's
17 Bar, and I certainly don't have the means to
18 measure the river myself. But I find it hard to
19 believe that, if I get in at a certain time and
20 they tell me, okay, the river is running at 8500
21 feet and I see the thing cut in half that it's
22 being maintained at 5,000. I don't believe that.
23 I just don't -- you know, I suppose with averages,
24 if there's 70,000 coming down in the winter and
25 2,000 coming down in the summer, they can average

Page 46

1 it out and say, "Well, our minimum average is,
2 we've maintained it at 5,000," when in essence, you
3 know, it's jumping up and down like crazy.

4 I don't think there's a lot of concern
5 for the minimum flow down here. I haven't seen it.

6 CHAIRMAN GRAY: Mr. Hammes?

7 MR. HAMMES: No, the question I was about to
8 ask he made clear in supplementary remarks.

9 CHAIRMAN GRAY: Any further questions?

10 UNKNOWN SPEAKER: I have no questions.

11 CHAIRMAN GRAY: Mr. Shawver?

12 MR. SHAWVER: I have none.

13 CHAIRMAN GRAY: Thank you very much.

14 MR. TUTCHER: Thank you.

15 CHAIRMAN GRAY: Anyone else wish to testify
16 at this time?

17 If not, we'll close the testimony part,
18 and we would open it up for questions and answers.
19 And we have Frank Sherman again with us from the
20 department who can handle the technical questions
21 for us.

22 MR. SHERMAN: Could I start off -- when I'm
23 talking, I try not to listen to myself and I think
24 I should.

25 (Laughter)

12 (Pages 45 to 48)

Page 47

1 MR. SHERMAN: The point I was trying to make
2 about the adjudication that I didn't make is that,
3 despite the excellent testimony supporting the
4 concept of adjudication, we've been (inaudible) in
5 this area. I think it's quite likely that the
6 adjudication (inaudible). Specifying Lewiston
7 forces the federal government under
8 (unintelligible) and regulations that they
9 participate in the adjudicating. Since the
10 agreement itself only specifies actions above Swan
11 Falls Dam, I think it's fifty-fifty that they would
12 start there. I don't think anyone in water
13 management would argue that they need the whole
14 state adjudicated at some point.

15 In terms of dollars and cents, we may
16 well -- we'll take the smallest chunk we can, still
17 including the Fort Hall Reservation.

18 UNKNOWN SPEAKER: Are you talking about
19 taking (unintelligible) and adjudicating one at a
20 time?

21 MR. SHERMAN: Yeah, we can all -- we talk
22 about -- the estimate is \$28 million over ten
23 years. And it's hard to judge, because, any
24 adjudication the department has ever done before
25 has basically taken ten or more years because

Page 48

1 they've been done out of the general fund. And
2 usually three or four people, at most, have been
3 hired to do them. So they stretch out over ten
4 years. All the department really did was to
5 extrapolate the increase in size in this one and
6 say, "Okay, if you get it done in ten years
7 (inaudible)."

8 As a non-Board member, I didn't ask a
9 question, but the last testimony was quite
10 interesting. And quite honestly, it's the only
11 testimony supporting even the inclusion of the Lime
12 Point and Johnson's Bar flow. As far as the state
13 water plan -- and I judge, and I don't know if the
14 gentleman will correct me today -- he not only
15 would support giving those flows any more authority
16 than they might have; he would support more in
17 looking at fluctuations and perhaps (inaudible).

18 I would point out that in speaking of
19 funding an adjudication, recreational interests,
20 they are hard to pin down. But the state, where
21 the Board has specified a minimum stream flow, has
22 to pay on that water as part of the adjudication
23 process. One of the concerns (inaudible).

24 I think, Mr. Gray, with that, I'll be
25 scared.

1 CHAIRMAN GRAY: Mr. Haas?
 2 MR. HAAS: The concern over the river
 3 fluctuations, it's in the license which you're
 4 adding to the state water plan. And I just call
 5 your attention to the fact that we're used to
 6 talking about cfs, but there is, in this material
 7 adding to the state water plan, it talks about the
 8 maximum variation in river stage at the Johnson's
 9 Bar not to exceed one foot per hour. There is
 10 nothing in this language which you've put in to try
 11 out concerning Lime Point. And, of course, the
 12 one-foot-per-hour, how much riverbank is exposed or
 13 unexposed is different.
 14 CHAIRMAN GRAY: If you look at the bottom of
 15 page 2, take your Currents and look at the bottom
 16 of page 2 on the left-hand side and go up, gosh,
 17 let's see, about five or six lines, now that's on
 18 Idaho Power's federal power license, that language.
 19 MR. TUTCHER: That's what I'm getting at.
 20 Above the dam, Idaho Power's concern was to
 21 maintain minimum flows because they need the water
 22 to generate the power. Once it goes over Hells
 23 Canyon Dam, that's water that's lost to them and
 24 they have no more use for it. They don't care
 25 what — in other words, what I'm saying is that, I

1 CHAIRMAN GRAY: That's a good idea.
 2 UNKNOWN SPEAKER: I have a question.
 3 CHAIRMAN GRAY: Yes.
 4 UNKNOWN SPEAKER: How does your plan fit, or
 5 have you had any comment whatsoever from the
 6 federal people about whether or not your water plan
 7 actually meets the requirements for water quality
 8 standards?
 9 CHAIRMAN GRAY: Okay. The first thing that
 10 you have to realize, it is your plan, our plan.
 11 UNKNOWN SPEAKER: Has it been submitted to
 12 the federal government?
 13 CHAIRMAN GRAY: Oh, yes. We had testimony
 14 yesterday from the Bureau of Reclamation. We have
 15 not heard from the Forest Service; we have not
 16 heard from the Bureau of Land Management; we have
 17 not heard from any of the tribes.
 18 UNKNOWN SPEAKER: Does the U.S. Fish and
 19 Wildlife Service have any jurisdiction whatsoever?
 20 CHAIRMAN GRAY: Go ahead.
 21 MR. SHERMAN: I guess I'll answer this in two
 22 parts. One, let me talk about the Fish and
 23 Wildlife Service. The Fish and Wildlife Service
 24 has not testified (unintelligible). They — I have
 25 spoken to them (unintelligible). And they are

1 guess in essence, if they're violating that,
 2 nobody's doing anything about that.
 3 CHAIRMAN GRAY: Could we ask you to do one
 4 thing? We can't change the federal verbiage in the
 5 federal license as we've indicated it here. But
 6 we'll be accepting written testimony until February
 7 22nd. And you can send that to the Statehouse, the
 8 Water Resource Board, Statehouse, 83720. If you
 9 might, just draft some language up for us of how
 10 you think it might fit or dovetail into Policy 32,
 11 we'd sure appreciate it.
 12 MR. TUTCHER: All right.
 13 CHAIRMAN GRAY: And anyone else here who
 14 hasn't testified today, if you don't want to
 15 testify up here, we will accept written testimony
 16 from everyone in the state until February 22nd
 17 regarding Policy 32.
 18 Mr. Sherman?
 19 MR. SHERMAN: I suggest, Mr. Chairman, that
 20 the Board might wish to entertain, or it may appear
 21 in different testimony, that at least one of these
 22 specified points (inaudible) at all, and that the
 23 Board should encourage the department to seek, as
 24 part of the underlying studies, better gages on a
 25 day-to-day basis at these points.

1 pleased with the idea that the minimum flow is set
 2 by the plan to be raised. They are considering, if
 3 there is a systems-wide adjudication, participating
 4 in the (unintelligible) of the Snake, for example,
 5 (unintelligible) for wildlife purposes and
 6 (unintelligible) much higher.
 7 In terms of water quality, the Nez
 8 Perce people — not the Nez Perce.
 9 UNKNOWN SPEAKER: The Shoshone.
 10 MR. SHERMAN: — the Shoshone, the
 11 Shoshone/Bannock people from Fort Hall, came to
 12 represent their (inaudible) water quality questions
 13 (inaudible). The Environmental Protection Agency
 14 has not commented principally (inaudible).
 15 The concern over the existing language,
 16 there is really only one concern. I don't think
 17 anybody wants to see us use good water to dilute
 18 pollution (inaudible).
 19 The Board and most of the people who
 20 talk to the issue feel that discharge should be
 21 part of the (inaudible) plan. There is some
 22 concern, however, that if the flows in the river
 23 were to be (inaudible) — the intent is still to
 24 put the burden of any obligation (inaudible).
 25 UNKNOWN SPEAKER: Well, I saw nothing in here

1 that mentions the 208 code. And I found that --
2 MR. SHERMAN: -- hard to believe? I think
3 it's -- the 208 program in Idaho, it's been run by
4 the Health and Welfare department. And in the
5 existing water plan, it's just not (inaudible).

6 CHAIRMAN GRAY: Mr. Sherman, excuse me.
7 Would you briefly just describe 208 for those of us
8 that are here that are not familiar with it?

9 MR. SHERMAN: Maybe the lady could do it
10 better than I can. Coming from my point of view,
11 208 is a national effort funded by the
12 Environmental Protection Agency to address and plan
13 for water quality policy.

14 In Idaho it has principally been
15 (inaudible) Policy 32.

16 CHAIRMAN GRAY: Now, one other thing. The
17 governor has just established a water quality
18 Board. And if you look on page 7 under -- right
19 next to the box where we looked at all the things
20 that must be taken into account, it shows as
21 Exhibit 8. And if you'll go, it will appear -- if
22 it's codified, it will appear as 42-1805. And drop
23 down to paragraph 5. And that's about the only
24 place in here that you'll find anything dealing
25 with water quality. But it will be codified as

1 42-1805.

2 UNKNOWN SPEAKER: I understood the specific
3 plan of the 208 program was mandated to have been
4 completed at a certain time, which I think may have
5 already passed.

6 MR. SHERMAN: Yeah, it has. The existing
7 Department of Health and Welfare rules and
8 regulations (inaudible).

9 UNKNOWN SPEAKER: Well, I was particularly
10 interested in your testimony about the aquifer and
11 how that was -- but the fact was, that was the area
12 that was most affected.

13 UNKNOWN SPEAKER: (Inaudible) yellow plumes.
14 (Laughter)

15 UNKNOWN SPEAKER: Well, it will definitely
16 affect for many the taking of water.

17 MR. SHERMAN: Yes. I think the main concern
18 in terms of reduced flow of the river because of
19 increased consumptive use is that there is less
20 good water in the river; therefore a waste
21 discharger has less water to mix his effluent in to
22 meet whatever standards. The intent of (inaudible)
23 and the state Board is to require (inaudible).

24 The other concern, of course, is, if you
25 defer water for agricultural uses, particularly, or

1 industrial uses where it is used as cooling water
2 or processed water and returned to the river and
3 frequent use of (unintelligible). That's a major
4 concern, but the position of the state is that they
5 have to meet the existing discharge standards in
6 order to do that or perhaps change the temperature.
7 I don't see major water quality changes in that
8 regard.

9 Now, the 208 program, except for some
10 areas like sewage treatment lagoons and land
11 surface disposal of industrial waste does not
12 really address quality of water in the aquifer.
13 The principal authority for that is the Water
14 Board, the Department of Water Resources. And as I
15 said, it's the principal in that they regulate
16 waste disposal and injection wells. Those make a
17 difference (inaudible).

18 The Water Board has rules and
19 regulations for waste disposal and injection wells.
20 They have applied to the EPA for primacy of the
21 underground injection control program. We should
22 hear this month, actually, whether we're going to
23 get it or not.

24 The Board, in trying to add groundwater
25 to the policies for the existing water plan, the

1 nice blue colored thing I have up, they have been
2 criticizing because it does not address groundwater
3 in any fashion.

4 Had someone arbitrarily said, okay, when
5 we started this process two years ago, before the
6 whole Swan Falls thing broke out in our face, we're
7 going to adopt groundwater quantity standards and
8 then we're going to come right back with
9 (inaudible). It's all involved with water quality.

10 (unintelligible), sole source distribution,
11 (unintelligible) aquifer, EPA not backing off of
12 that and the state. Mr. Gray had mentioned they

13 set up a special water quality task force or
14 committee, advisory group, and they're going to
15 address rules and regulations in the aquifer.

16 UNKNOWN SPEAKER: Is anyone from the group,
17 may I ask, involved?

18 UNKNOWN SPEAKER: I'm just positive there is,
19 but who it is, I don't know.

20 MR. SHERMAN: It's a fairly large committee,
21 and in that regard I'm positive (inaudible).
22 They're meeting today for the first time.

23 CHAIRMAN GRAY: If what I may be reading from
24 you is you see a weakness possibly with 3211; would
25 that be true? Could you possibly -- we see some

Page 57

1 weaknesses with it, also. Might you put something
2 together in writing for us and submit it by the
3 22nd? We'd sure appreciate it. But it's --
4 everything that we can get is going to help.
5 This is not the final form; this is just
6 a rough draft, so to speak, of what we hope to come
7 up with when all the testimony is taken into
8 account. So it would be important to us -- it's on
9 page --
10 UNKNOWN SPEAKER: Yes, I have it.
11 CHAIRMAN GRAY: Okay. But we would really
12 appreciate it.
13 One thing I might mention is, a member
14 of the Idaho Water Resource Board is from Lewiston,
15 Dick Wagner. And Dick couldn't be with us today.
16 So any problems you have, why, you might get a hold
17 of Mr. Wagner.
18 Any other questions we might answer for
19 you? If not, again I'll reiterate that we will
20 accept written testimony until February 22nd. And
21 it can be sent to the Statehouse, Boise 83720. And
22 we will meet again here tonight at 7:00 p.m. if you
23 care to join us again.
24 Thank you for coming.
25 (Recess)

Page 58

1 LEWISTON, IDAHO
2 February 6, 1985, 7:00 p.m.
3
4 (Joke told about a cowboy and a reverend)
5
6 CHAIRMAN GRAY: My name is Cienc Gray, and I'm
7 chairman of the Idaho Water Resource Board. And on
8 my right is Bob Hammes from St. Maries, a
9 publisher, a newspaper man, book store owner, et
10 cetera; Dave Rydalah who is a Committee of Nine
11 which is an Upper Snake River irrigation
12 conglomerate and also a farmer at St. Anthony; and
13 over here is Jim Shawver who is the secretary of
14 the Idaho Water Resource Board and a farmer in the
15 Eden area; and we've got Wayne Haas from the
16 Department of Water Resources; and Frank Sherman,
17 geologist from the Department of Water Resources.
18 And we're here to talk to you about
19 Policy 32, or some changes to Policy 32, of the
20 state water plan. And if you've got your
21 Currents -- did you get a copy of that? -- if you
22 just kind of grab that, I'll just kind of thumb
23 through it with you a little bit.
24 Page 1 kind of gives you an overview of
25 the Water Resource Board, our function and a little

Page 59

1 bit about Policy 32 and the state water plan.
2 Page 2 and 3 deal directly with the
3 revisions of Policy 32 of the state water plan.
4 If you go on over to page 4 and half of
5 page 5, you'll find the entirety of the agreement
6 that came about between the governor and his staff,
7 the attorney general, their staff, and Idaho Power
8 Company.
9 The rest of page 5 through page 7 is the
10 legislative package which our legislators are
11 presently working on at the State Capitol.
12 On page 7 on the right-hand side there
13 are seven items which deal directly with the
14 package, what we're doing with you as far as Policy
15 32 is concerned. And No. 1 is State Water Plan, is
16 Amended. And that's why we're here to talk about
17 the amendment to Policy 32 of the state water plan.
18 No. 2, these all must take place by May
19 15 of this year. No. 2, the legislative package
20 must be passed which you have before you.
21 Appropriate action taken by the Public
22 Utilities Commission or the legislature as called
23 for in the agreement between all parties.
24 Appropriate order by the Federal Energy
25 Regulatory Commission kind of okaying this

Page 60

1 entirety.
2 No. 5 is the Public Utilities Commission
3 will dismiss the lawsuit as filed by the ratepayers
4 in 1977.
5 And No. 6, if required, the Oregon PUC
6 must okay the package. And the reason for that is
7 because of the Hells Canyon Complex for those
8 bordering the state of Oregon. We don't know if
9 that is going to be something that has to be had,
10 but it's included anyway.
11 Then enactment of the legislature by
12 Exhibit 7A and 7B as you see just to the left of
13 this.
14 So what we'd like to do is, we'll have
15 Frank give you kind of an overview and the changes
16 of Policy 32 as we see them. And then we'll open
17 it up to your statement, and close that, and then
18 have questions and answers.
19 Frank?
20 MR. SHERMAN: There are five people up here
21 who have heard this story once or twice or three
22 times before. It reminds me of the time that I
23 drove to Post Falls about two years ago to talk
24 about groundwater. And two staff people from the
25 Department of Water Resources and two citizens were

15 (Pages 57 to 60)

1 there, and we gave them an hour and a half. We
2 dumped a full load on them.

3 (Laughter)

4 MR. SILLERMAN: I guess the best way to look at
5 this -- and there is a lot of confusing things
6 going on -- about the only place you don't have a
7 compromise is to get things in court. And that was
8 the whole reason behind the state and Idaho Power
9 agreeing to sit down and discuss the whole Snake
10 River Basin and try and settle it.

11 We've been to court, district court, the
12 Supreme Court and back in district court.
13 Whichever side won there, the other side was going
14 to take it back to the Supreme Court. And that's
15 the only way you don't get a compromise.

16 The state water plan, as it exists today
17 in terms of Policy 32 which addresses the Snake
18 River Basin, allocates water. It says the
19 unappropriated waters of the state shall be used
20 for this, this, this. There's nothing wrong with
21 that. So when the Supreme Court said that Swan
22 Falls Dam, Idaho Power had a water right that was
23 not subordinated, it was a legitimate water right,
24 they recognized the claim to be 8400 cfs. Most
25 summers they didn't get anywhere near that. In

1 fact, the lowest flow had been down to 4500 cfs.

2 Well, the original water plan was a
3 compromise. I mean, there were -- the Fish and
4 Wildlife interests produced studies that said you
5 needed the flows up 5500 and higher. And the
6 upstream irrigators said Swan Falls is
7 subordinated, therefore we want to take all the
8 water out of the river. And so the 3300 cfs at the
9 Murphy Gage near Swan Falls represents a
10 compromise.

11 The governor, the attorney general, and
12 Idaho Power Company sat down and said, "Let's
13 settle it out of court," basically. "Let's find a
14 mutual ground that we can all agree on." And in
15 October they signed two documents. October 1st
16 they signed one that basically said they were
17 willing to agree and these were the points that
18 need to be addressed. They turned their lawyers
19 loose on it on October 25th. They signed another
20 one which put all that gentleman's agreement into
21 legal terms, and put forth the stuff they wanted to
22 send to the legislature. Told the lawyers what
23 changes they felt had to be made to the water plan.

24 And that's sort of where we're at. I'll
25 go -- the thing we have to remember is, there is a

1 water plan in place that talks about certain
2 things. The changes, as the Board is now
3 presenting them, represent, one, what the agreement
4 specifies they had to change and some other things
5 that seemed reasonable to do at this time.

6 The whole legislative package, then, a
7 lot of it passed one body or the other of the
8 legislature today and will move on to the other as
9 we go on very soon.

10 The agreement itself, things have
11 changed even since October. We're trying to keep
12 everybody happy (inaudible).

13 The proposed revisions of the water
14 plan, things that these gentlemen are specifically
15 concerned about, start off, and, instead of trying
16 to allocate the waters in one little policy that
17 says we allocate the waters hereby, and we have
18 page after page of how the water is supposed to be
19 used, the Board has chosen this time to say it is
20 the policy. But it is the policy but highlight
21 those things that they feel are really important.

22 Certainly, if you're going to try and
23 manage the whole Snake River Basin at least above
24 Murphy Gage and above Swan Falls, the dam just
25 south of Boise, you need to have some guidelines.

1 And the guidelines, as the agreement sets it and
2 the Board has agreed to take it out to the public,
3 changes the minimum flow at Murphy Gage to 3300 cfs
4 year-round; to 3900 cfs in the summertime, 5600 cfs
5 in the wintertime.

6 Not an unusual thing to specify certain
7 periods of use for a water right (unintelligible),
8 but different from the water plan as it stands
9 today.

10 Why is it raised to 3900? Where did
11 3900 come from? Is it a magic number? It's going
12 to be magic if the agreement is put in place and
13 the water plan changes are adopted, but it's not
14 magic in that it was arrived at by saying that the
15 river had already been down to 4500 cfs. That's
16 just sort of one point of view. The other point
17 was that the water plan calls for 3300. If you
18 really split the difference, that's where the 3900
19 comes from. So it's a compromise to start with.

20 5600 comes from two different attitudes.
21 One, there's a lot more water going down the river
22 in the wintertime. And in terms of what Idaho
23 Power wanted out of any compromise, they certainly
24 wanted to protect filling the Brownlee Reservoir.
25 So that was the only storage they had in the Uells

1 Canyon Complex, a key to their whole operation.
2 They wanted more out of the wintertime out. And if
3 you take the 3900, stick it into a computer, to get
4 it down to 3900 in the summertime, the Department
5 of Water Resources projects that 5600 is about
6 where it would be in the wintertime.

7 So those are how those numbers were
8 arrived at. As I say, it's going to split waters
9 in the river between two competing interests.

10 The Board at this time is proposing to
11 include as specific water policy a couple of points
12 in the river that have never been mentioned before,
13 only peripherally mentioned in the past. They're
14 going to continue the zero flow at Milner Dam. All
15 the water in the Upper Snake in low water years can
16 be appropriated; therefore, there is no requirement
17 for the water to be dumped past Milner Dam. All
18 the water that occurs in the river during those low
19 flow periods basically is not a spring fishing
20 area.

21 They're going to specify, continue to
22 specify, that, at the Weiser Gage, 4750 cfs is
23 appropriate. It's a minimum flow. Since this plan
24 was adopted in '76, I think there's only been one
25 day when the flow ever got below that. And that

1 has claimed this water, it's been put to beneficial
2 use, and yet now Idaho Power is turning it back to
3 the state so the state can give it to other users,
4 at least a portion of it.

5 So this specifies certain portions of
6 the Idaho Code that have to be satisfied before
7 this Idaho Power water can be given to other people
8 to use. These portions of the Idaho Code don't
9 even exist today. We're sort of relying on the
10 legislature to do what the legislative package and
11 the intent of the negotiators was.

12 The key one, of course, is that, as
13 appropriated water, the state can put new criteria
14 or additional criteria on anybody who wants to use
15 it. So a person who applies for some of this water
16 that Idaho Power claimed and now given over to the
17 state, in addition to having to satisfy the normal
18 criteria of beneficial use -- non-speculative,
19 public interest -- may now have to also satisfy an
20 additional set of criteria which talks to general
21 economics of the state, the impact of hydropower,
22 the family farm tradition. A new set of criteria.
23 And that's because this water had been
24 appropriated, put to beneficial use, and the state
25 now has it in its hands to re-allocate.

1 was because of some unusual operational procedures
2 on the Payette River. So it's a reasonable flow,
3 and it is designed to assure that Brownlee gets
4 some water for Idaho Power purposes.

5 But they're adding Lime Point and
6 Johnson's Bar. Now, the existing water plan just
7 says the federal license for the Hells Canyon
8 Complex specifies these flows at Hells Canyon. And
9 the existing plan says that's a good idea. Those
10 are necessary flows to protect the fish and
11 wildlife and navigation and all the other things.

12 The Board is proposing to adopt those as
13 part of the water plan specifically as the policy
14 of the state the idea being that, if the license
15 were ever changed at the Hells Canyon Complex,
16 these flows would be guaranteed by the state water
17 plan.

18 As I said, we try to keep everybody
19 happy and protect those interests downstream of the
20 Hells Canyon Complex. They should be assured
21 something.

22 Policy 32A. And I'll say this is the
23 case of spelling out what's policy and what's the
24 explanatory text. Basically, it deals with several
25 different things. It points out that Idaho Power

1 Policy 32B, Domestic, Commercial,
2 Municipal, and Industrial. The existing water
3 plan, when they thought they could take the river
4 down to 3300, allocated in terms of acre feet about
5 144 cfs on an average daily diversion for new
6 municipal and industrial uses. The Board
7 recognizes that the Supreme Court said that Idaho
8 Power has a legitimate water right. The compromise
9 says we won't take it below 3900 even in the
10 summertime; therefore, there's less water available
11 for these other competing uses.

12 The Board still proposes to reserve
13 150 cfs. Now, by including domestic uses, it
14 really doesn't change the parameters because the
15 human being doesn't really consume that much water.
16 You drink some water, and there's wastes go out,
17 and it sort of balances out. But they have changed
18 the provisions for the proposed thermal power
19 generation in the Snake River Basin.

20 Back in '76 everybody was concerned
21 about energy, and that was the big thing. Right
22 now Idaho Power generates more energy than what's
23 consumed in the state. So it will change some of
24 the different uses we perceive being made of this.
25 But right now there's only about 100 -- no, 400 cfs

1 are diverted for these kinds of uses in the Snake
2 Basin. And that's total diversion.

3 The whole intent now is to try and
4 manage the river and the aquifer that contributes
5 to the river on consumptive use. If you think
6 about total diversions from municipal water supply,
7 the only consumptive use may be some small industry
8 that uses some that goes up into the smokestack as
9 steam. The watering of the lawn is probably the
10 biggest consumptive user of municipal water.

11 A lot of the industry in Idaho is very
12 non-consumptive in that it's cooling water, wash
13 water. It gets back into the system. People who
14 might come in and want to start a new industry,
15 most of the land that's available for purchase, it
16 would be relatively low cost. It's irrigated
17 agricultural land. The amount of water that goes
18 on per acre for Idaho may well compensate for all
19 the consumptive uses that new industry ends up
20 with.

21 We don't think that water
22 (unintelligible) are necessary for
23 (unintelligible). But 150 cfs, just as a guess,
24 would probably provide for double the population of
25 those living in the basin.

1 The water plan gets revised every five
2 years; therefore, if this number is a bad guess, it
3 can be changed.

4 Policy 32C, Agriculture. If you talk
5 about domestic, commercial, municipal, and
6 industrial, the only other (unintelligible)
7 consumptive use is agriculture. Therefore, the
8 board's policy, as far as we can tell the intent of
9 the negotiators of the agreement, is to reserve the
10 rest of the water that's available now to be used
11 for agricultural purposes. We have to use
12 (inaudible) for DCMI, as I say, because you can
13 change the DCMI. The amount that's available for
14 new agriculture could change also.

15 It's hard to explain, I guess, but
16 everyone always talks about Swan Falls because
17 that's where the lawsuit took place. But Idaho
18 Power claims a different amount of water at every
19 one of their upstream facilities. In some cases
20 it's 11, 12,000 cfs. As part of the compromise,
21 Idaho Power said, "As long as 3900 cfs goes past
22 the Murphy Gage in the summertime, we will not
23 protest no matter how much water we're receiving at
24 any of our other gages." So what people say, they
25 took the water that was left in the river, split it

1 in half, half for increased (inaudible) Swan Falls
2 Dam at Murphy. That's only true in that reach for
3 that (unintelligible) Swan Falls. Upstream the
4 numbers change. The intent doesn't change,
5 however.

6 Idaho Power has agreed that the state
7 can use their water, they can reallocate it as long
8 as the new legislative criteria are met, and as
9 long as the flow at Murphy Gage never goes below
10 3900.

11 Policy 32D, Hydropower. It's already a
12 beneficial use of water in Idaho to use water for
13 hydropower purposes for generation of electricity.
14 The water plan will now specifically recognize
15 that, and they will further state that depletion of
16 the flows below the 3900 and 5600 established at
17 Murphy Gage are not in the public interest.

18 This is pretty clearly a protection for
19 Idaho Power for giving up something. You know,
20 they could go to court and argue, then, maybe their
21 8400 cfs claim was legitimate. Maybe they
22 forfeited water down to the (unintelligible) flow,
23 but they still had rights to all the water in the
24 river. So they're giving up something. And in
25 return, they're getting protected by the Water

1 Board adopting 3900 in the state minimum flow. The
2 intent is that it should never go below that.

3 32E, Navigation. This is basically the
4 same language that's in the water plan today. And
5 it's the policy of the Board in Idaho that, by
6 setting these kinds of minimum flows, there's
7 enough water in the river for recreational
8 purposes. And there will be enough water coming
9 through the Hells Canyon Complex for any commercial
10 navigation that takes place.

11 Aquaculture, 32F. Particularly in the
12 reach from about Twin Falls down to Bliss, most of
13 the so-called trout farming or fish farming takes
14 place. There are catfish and trout that are raised
15 in that region. Most of the people rely on
16 discharges from Thousand Springs.

17 If a person who is engaged in fish
18 farming wants to get a water right to process
19 fish -- clean it up before he packages it, or
20 whatever is involved in processing trout -- that
21 water should be regarded as commercial withdrawal,
22 and it should come out of that water reserved for
23 DCMI.

24 (End of Tape 2)

25 MR. SHERMAN: (Gap in testimony transitioning

18 (Pages 69 to 72)

1 from Tape 2 to Tape 3) -- water forever. Probably,
2 ycs. But this probably points out specific facets
3 of the state law which says that a water right
4 insures that you have the ability to use water. It
5 does not guarantee your need for diversion. If the
6 spring flows have not been (unintelligible), a
7 trout farmer may have to change (unintelligible)
8 and a (unintelligible). If he's still entitled to
9 use that water, it's going to priority date. It's
10 just that state law will not necessarily guarantee
11 (inaudible).

12 That's basically in the existing water
13 plan, it's just brought out and highlighted here as
14 an amended version.

15 Policy 32G, Fish, Wildlife, and
16 Recreation. The existing water plan basically says
17 that 3300, while not an optimal number for fish and
18 wildlife purposes, will provide some minimum
19 resource. Ford feels that 3900 is a better number
20 in terms of protecting fish and wildlife. So they
21 basically say, here is the policy of Idaho that the
22 minimum flows established under Policy 32 are
23 sufficient and necessary to meet the minimum
24 requirements for aquatic life, fish, and wildlife,
25 and to provide water for recreation in the Snake

1 appropriate water, the Board feels that they are
2 protecting some minimum value of fish, wildlife,
3 and recreation.

4 Policy 32II, Water Quality and Pollution
5 Control. In an area where we are water short, we
6 can't satisfy Idaho Power's water right as well as
7 legitimate competing water rights, it seems a bad
8 idea to let somebody appropriate water for the
9 purpose of diluting his wastewater. Anybody who
10 gets a permit has to meet some certain standards.
11 In the board's mind if this is adopted, it will not
12 be the policy of Idaho that taking water and mixing
13 it with bad water so you can dump it in the river
14 wherever, it's not a beneficial use of water. You
15 want to tighten up your pollution control
16 mechanisms before you want to use good water just
17 to dilute bad water.

18 Policy 32I, New Storage. This is called
19 for in the agreement. There are several reasons
20 for it, and you will find this in the (inaudible)
21 policy. It's one that really -- I can't say
22 definitely applies, because anything that happens
23 on the Snake River applies. But it's more in terms
24 of upstream from Murphy.

25 The very first part of this two-pronged

1 River below Milner Dam.

2 The other thing that the Board has as
3 sort of an ace-in-the-hole or going for it, or
4 whatever language that you want to use, is that, in
5 a different policy of the state, they provide and
6 have had legislative approval and have been
7 appropriating water for in-stream flow purposes.
8 The Board is the only agency that can appropriate
9 water for in-stream flow values.

10 Now, the thing that gets a little bit
11 sticky here is that they may appropriate the
12 unappropriated waters just like any citizen has the
13 right to appropriate unappropriated waters of the
14 state. And most of the reliable water in the Snake
15 River system now is being held in trust by the
16 state because Idaho Power already appropriated it
17 once.

18 But on many of the tributary streams,
19 and even on the main Snake where there are
20 unappropriated waters, the Board has either applied
21 for and gotten in-stream flows or are in the
22 process of doing so.

23 So between these two different
24 mechanisms, one, by establishing minimum flows
25 through the water plan and having the ability to

1 policy is that, before new storage permits are
2 approved, some kind of examination and
3 determination should be made that we're doing the
4 best job we can with the existing storage
5 facilities in the system.

6 Now, the negotiators maintained -- and
7 this may be reworded for (unintelligible) more
8 directly -- but they maintained that there are
9 legal barriers. There are federal rules and
10 regulations in federal law and state law, that
11 prevent the best use, the maximum use of the water,
12 that's stored already in the river system.

13 Anybody who lives on the Snake or
14 follows the flows in the Snake realizes that on
15 October 1st every year the water master dumps a lot
16 of water at Milner Dam to make room for next year's
17 runoff. This year the flow was 12,000 cfs on
18 October 1st.

19 That's where it's been held in storage
20 all year long, and it's insurance water, and it's
21 never used. It would be ideal if those waters
22 could be moved around, made available to someone
23 who wants to use it.

24 The state has what's called the water
25 bank. The rules and regulations provide for these

Page 77

1 kind of water exchanges, a so-called willing seller
2 to a willing buyer. The Committee of Nine where
3 Mr. Rydall is a representative or member provides
4 using those authorities to actually move some water
5 around within the system. But the barriers to
6 making the most efficient use of that are really
7 hard to overcome.

8 Let me start off with the federal
9 barriers. Most federal dams when they're built
10 have specific allocations that are often associated
11 with them. And they have so much water that's
12 supposed to be for fish and wildlife, so much for
13 irrigation, so much for flood control. And those
14 waters cannot be used for any other purpose.

15 The federal government also provides
16 that, if you store water behind a federal reservoir
17 and you want to sell it, you can only do that one
18 year at a time. It's sort of a nice protection for
19 the irrigator in the system in that nobody is going
20 to come in and try and buy up the water right
21 because they can only get it for one year at a
22 time. It's not going to put much money into it, no
23 bank is going to finance a new project when it's
24 only got one-year's water supply storage. But it
25 means that a farmer who had that (unintelligible)

Page 78

1 water can't sell if for more than a year at a time
2 also.

3 So the other provision the federal
4 government has is that you can't sell water from
5 behind a federal dam at a profit. You can't make a
6 profit on your water. It made sense when it was
7 put in, in that, why should somebody whose father
8 bought cheap storage in a dam and the feds paid for
9 half or more for it, why should he be able to make
10 a big windfall on selling this water. But there is
11 certainly no incentive for somebody to sell his
12 water and make a profit. It's not even worth going
13 through the paperwork if you can't make any profit.

14 So that prevents the exchange of water
15 in the system. The state also has barriers for
16 more efficient use of water. And certainly one of
17 these is that you can't expand a water right. You
18 can have a full natural flow right for a piece of
19 property. You can have a stored water right for
20 the same amount of water for the same piece of
21 property. If you only need that water once in ten
22 years, it would seem logical that the best use
23 would be to let you give it or sell it to somebody
24 else. But if that other person is going to make a
25 consumptive use of that water, that's an expansion

Page 79

1 of a water right. That water is designed to
2 irrigate a certain piece of property, a certain
3 acreage, and in essence, almost a certain crop or
4 crop rotation. If you're going to sell it to
5 another consumptive user, that may double the
6 amount of consumption, basically. And if everybody
7 did that, everything would be so out of control,
8 and our water resource would be buried.

9 So that's a provision of state law. The
10 only way you can sell that water now is basically
11 sell it to a non-consumptive user. And that's
12 basically Idaho Power. The state law provides that
13 if you don't use your water once in five years,
14 (inaudible). Now, that doesn't apply to stored
15 water, but people are real concerned about what
16 they feel obviously some other use for five years
17 (inaudible).

18 So a lot of things that could be looked
19 at might be changed so that we can make better use
20 of the water that's already in the system. It's
21 hard to stand up in public and say, "We're out of
22 water. We can't satisfy Idaho Power; therefore, we
23 got to take some of your water away," and
24 12,000 cfs comes past the river on October 1st, and
25 that's just because the water runs through Murphy

Page 80

1 Gage.

2 So the negotiators specifically asked
3 the Board to look into this problem, approach the
4 federal government, approach water resources, the
5 state legislature to see if more efficient use
6 could be made of the water. One of the first
7 steps, of course, is to rewrite the water bank
8 rules and regulations so they are more flexible,
9 and that's being done.

10 Whether the Board will ever be able to
11 accomplish anything, changing federal law when it
12 relates to water, (unintelligible) maybe Idaho by
13 itself isn't going to (unintelligible). The Board
14 is willing to explore the possibilities.

15 If the director had to make a
16 determination now, are we doing the best we can
17 with the water that's in the system, he'd have to
18 say heck no because there's unallocated water in
19 Ririe Reservoir right now that's up for sale for
20 (unintelligible). Once that water is gone, and if
21 we can't change the federal law, we can't change
22 the state law, then it's certainly -- the director
23 has to find that we're doing the best we can under
24 the existing regulations in Idaho. But the intent
25 is to make the Board, make the state, make the

20 (Pages 77 to 80)

1 citizens aware that there are perhaps artificial
2 barriers to better use of water.

3 The second part of this policy it talks
4 specifically to the reach from Milner Dam to Swan
5 Falls Dam or Murphy Gage, a few miles below it,
6 nearest (unintelligible) gage. Idaho Power, of
7 course, relies for the great extent their whole
8 operation on the Hells Canyon Complex. To get
9 their benefits out of it, they have to fill
10 Brownlee Reservoir (inaudible).

11 So as part of the tradeoff, they have
12 asked and the state has agreed that, for anyone who
13 wants to apply to divert water from that reach of
14 river, Milner Dam to Murphy Gage, for wintertime
15 diversion for storage purposes, the effect of that
16 diversion on Idaho Power's operation should be
17 calculated. Some kind of mitigation should be
18 supplied to the power company.

19 Now, the text underneath this policy
20 specifically defines mitigation. The idea is we're
21 not going to give Idaho Power or require someone to
22 give Idaho Power dollar-per-dollar value. We're
23 basically saying, if it's got a negative impact, we
24 want to reduce that impact as best we can.

25 Quite honestly, the wording is vague at

1 unallocated waters with the idea that, as they try
2 and manage this whole river system down to 3900 cfs
3 in the summertime and 5600 cfs in the wintertime,
4 the state is not infallible. At some point, far
5 from likely, but possibly they could screw up. And
6 it sure would be nice if we had a place to recall
7 that water and cover our mistake.

8 Now, the choices are really two. The
9 department can be very conservative in issuing new
10 permits. It can hold on to all the water that's in
11 the river and never get it close to 3900. Or they
12 can say, "Okay, if we screw up, there's water we
13 can call. Let's see if we can run it down to
14 3900."

15 If the state were to have this water, I
16 think the department would be much more liberal in
17 issuing a permit. The intent would not be to hold
18 it in storage forever. We're a long ways from
19 3900 cfs in Murphy Gage now, some 600 cfs in
20 summertime flow. It could be sold to Idaho Power,
21 it could go in the water bank. The water would not
22 sit idle necessarily, but it would always be there
23 when we could see that we were getting close to
24 3900.

25 Why does the state feel it needs

1 this point. The negotiators themselves couldn't
2 agree on what was appropriate, and so they dumped
3 it in the Water Board's lap. And when the Water
4 Board gets the first firm proposal in front of it,
5 they will go through and calculate it.

6 They can either set the rules and
7 regulations, but that becomes very awkward in that
8 they're going to have to look at each proposed
9 project as an individual project. The timing of
10 the diversion, the amount, when the wastewaters
11 might come out of the river. All these things will
12 be involved in it.

13 I guess when the time comes, the Board
14 is going to have to scratch their hair, probably
15 coming off of public hearings, and say, "These are
16 what we think is appropriate for mitigation."

17 There's one very last policy, and it is
18 not demanded by the agreement. It's sort of a new
19 idea, something to take out to the public and see
20 what kind of reaction there is to it. It's called
21 Stored Water for Management Purposes. As I pointed
22 out, there are at this time unallocated waters in
23 Ririe Reservoir.

24 The intent of this policy is for the
25 state to acquire at least a portion of those

1 insurance in trying to manage the river down to
2 this magic number? I guess it's because of the
3 Snake River Plain aquifer. If you can have zero
4 flow at Milner Dam in the summertime -- and on the
5 rare occasion it gets to that point -- most of the
6 water in the river, by the time it gets to Murphy
7 Gage is discharge water from Thousand Springs and
8 (inaudible) the Snake River Plain aquifer dumping
9 into the river.

10 Now, one of the best ways to probably
11 use the remaining water that's so-called in the
12 river going past Murphy Gage would be to allow
13 groundwater pumpers to use it. A man can pump
14 water in July and August on the Snake Plain
15 aquifer. The effect of that pumping would not show
16 up in the river until October, November, December.
17 Admittedly we don't know enough about it to be
18 exact. Certainly we know there's a delay time used
19 on the aquifer to Thousand Springs discharge.

20 If we had to allocate these waters out
21 to 600-or-so cfs we think we had that belonged to
22 Idaho Power, and we found we made a mistake and we
23 called for the junior people to be shut off, we
24 could shut off 50, 100, 200 easy from the Snake
25 Plain aquifer and see no effect at Murphy.

1 It's not fair to shut off the junior
2 surface water appropriator while some junior
3 groundwater pumper keeps pumping merrily away. But
4 you got to be trying to manage the whole thing to
5 get that magic number that everybody will be -- so
6 if we made a mistake, we'd like to have water
7 available. Make sure Idaho Power gets theirs, that
8 the fish and wildlife people are happy, the 3900 is
9 still there, and scratch our heads and figure out
10 who to shut off or hope we get a wet year the next
11 year, whichever may come first.

12 The agreement specifically provides that
13 Idaho Power will not take action against the person
14 who is in place and can prove beneficial use by the
15 signing of the agreement -- October 1st,
16 actually -- the framework part of it. No matter
17 what happens in the river, they won't take action
18 against those people. Idaho Power has agreed that
19 anybody who is in place is protected. They are
20 recognizing that they made a mistake not protesting
21 their use of the water.

22 But what they are saying is that anybody
23 after that date who darn well knew there was a
24 problem, and if the water isn't there, they're
25 going to call for it. And as I tried to point out,

1 calling for water from a groundwater user doesn't
2 make much good sense if you need it in the river
3 today or tomorrow.

4 The other thing the department some day
5 may be faced with is, in Colorado, for example,
6 when a person applies for a new groundwater permit,
7 he has to prove in some of the restricted basins
8 that he has surface water available to meet a river
9 call as far as what he can pump. Now, if we get
10 down close to 3900, the department probably would
11 rather have that kind of insurance than this water
12 sitting (inaudible).

13 But if we wait until we're down at that
14 point, I don't foresee any unallocated water
15 available in the river. If a groundwater user
16 wants a permit and the state's going to say you got
17 to prove you can guarantee us river water equal to
18 the amount you're going to pump, it's going to have
19 to go to the water bank, and he may well be faced
20 with a year-to-year lease situation. If the state
21 had some water, they wouldn't have to give it to
22 the water bank to sell to Idaho Power; they can
23 sell it to the groundwater guy who needed the
24 insurance water.

25 So there are several aspects of this

1 that might be beneficial. As I said, the agreement
2 protects the existing user; it provides that
3 anybody who wants water after October 1st or who
4 cannot prove he used water beneficially before
5 October 1st knows darn well the water shortage
6 situation in that part of the Snake River Basin.
7 He should have his eyes open when he goes in and
8 asks for water rights. He may be shut off.

9 So those are the parts that -- of the
10 agreement that specifically are being addressed by
11 the water plan. Now, there are several other parts
12 of the agreement, of course, that people in this
13 part of the state are knowledgeable about. The
14 adjudication clearly is one of them.

15 There are two reasons for the
16 adjudication. Basically, one, if you're going to
17 try and manage the water in the river down to some
18 magic number, you're going to include groundwater,
19 you darn well better know who has got what water
20 and what (unintelligible) he makes out of that
21 water (inaudible). It's important to have that
22 kind of information on hand.

23 The other one, of course, is that the
24 federal government, through the federal reserve
25 water rights, the reserved rights held for Indian

1 reservations has never quantified how much water
2 they claimed in the basin. If you take in all the
3 national forests, the INFEL facility near Idaho
4 Falls, and the Fort Hall Indian Reservation,
5 conceivably there's a lot of water that they might
6 claim that we can't now account for. And if we're
7 down to -- in a low flow year, we've only got about
8 600 cfs above what we claim is the minimum and
9 these people want to come and take water in the
10 future, we don't know what they really got.

11 The only way to force the federal
12 government and the Indians to participate in an
13 adjudication, the state court has to do a
14 system-wide adjudication.

15 So the agreement as it's set today calls
16 for -- and the legislation that's in the
17 legislature calls for -- adjudication starting at
18 Lewiston. Certainly we feel as the state agency
19 and Board feels and negotiators felt that, by
20 starting at Lewiston, there was no way that the
21 feds could get out of it. Their own rules and
22 regulations say in a system-wide adjudication they
23 have to participate. Then they deal with the state
24 court.

25 I think that on the part of the

1 negotiators and perhaps the Department of Water
2 Resources, they'd just as soon see it start at Swan
3 Falls. That's where the controversy came from.
4 That's where the original court case mentioned
5 specifically. But it's important enough to get the
6 Indians and the feds involved. The state is
7 willing to do the whole thing if they have to.

8 If you kept track of what's happening in
9 the legislature, the Shoshone/Bannock Indians at
10 least, have got enough people to put in a piece of
11 legislation which says let's exclude us from the
12 adjudication, but we will sit down in the state
13 (inaudible).

14 So what's going to happen on that
15 aspect, no one knows. I would assume that, if the
16 Indians, the Shoshone/Bannocks, can get their
17 legislation through some negotiations, the
18 adjudication may well start to crumble. That's
19 also if the federal government recognizes the
20 forest service, BLM, and all the rest of them from
21 the state. If one of those federal agencies
22 refuses, I think it will start (inaudible) so we
23 can force them all.

24 This will be the first time the state
25 has ever tried adjudication of this size. In the

1 water map is on shaky ground, and we might have to
2 shut the light off. You really need the decree to
3 function. And clearly bits and pieces of the Snake
4 Basin have been done, but none that's been ever
5 lined together.

6 Mr. Gray, I think I'll stop. There's a
7 couple of other things I thought about, but kind of
8 slipped me at the time.

9 CHAIRMAN GRAY: Thank you, Mr. Sherman.
10 MR. HAMMES: Mr. Chairman, I have a question
11 for Mr. Sherman.

12 CHAIRMAN GRAY: Yes.

13 MR. HAMMES: You make only reference to the
14 Shoshone/Bannocks. What about the other
15 reservations?

16 MR. SHERMAN: Mr. Gray, Mr. Hammes, the
17 Shoshone/Bannocks, because they are the group above
18 Swan Falls are most directly involved. They have
19 in fact been trying to work in quantifying their
20 water rights for the last couple of years. And as
21 part of the political gamesmanship, it could
22 probably go to federal court and ask for water. So
23 they are the particular tribe most directly
24 affected, I think, by the whole Swan Falls issue.

25 Now, the Nez Perce, for example, if

1 past adjudications have always been funded by the
2 so-called general fund of the legislature.
3 (Unintelligible) taxpayers of all the state have
4 paid for every adjudication the department has done
5 no matter how small it's been and how restrictive
6 in the allocation.

7 Because the Snake River Basin is so big,
8 even if you start at Murphy, the intent is to put
9 in legislation that this adjudication and probably
10 all future adjudications will be paid for by the
11 people in the affected area.

12 \$28 million for ten years to be paid is
13 the best guess at this time. It's based on the
14 fact that previously the legislature has funded
15 three or four people, and it's taken us ten years
16 to (inaudible). If we extend one (inaudible) for
17 the whole Snake Basin and expand three or four
18 people into whatever \$28 million will buy,
19 (unintelligible).

20 It's a real stumbling block.
21 Negotiators, the Board, most of the legislature
22 feels something had to be done at some time. Our
23 staff at water resources, of course, would say the
24 whole state should be adjudicated.

25 If you don't have a court decree, a

1 adjudication is started at Lewiston, would be
2 involved. They're two years or more behind the
3 Shoshone/Bannocks in that they haven't started
4 trying to quantify their water rights. They are
5 looking at the whole water rights question from a
6 different point of view in that most likely Indian
7 water rights on the Clearwater/Salmon are going to
8 be for in-stream flow purposes, fisheries aspect,
9 fish and wildlife aspect; whereas the Fort Hall
10 people, based on previous adjudications and federal
11 case law, could probably demand enough water to
12 irrigate all the irrigable acres on their
13 reservation, the priority date from the 1860s.

14 The thing that both Indian nations have
15 going for them, I think, is that in the
16 adjudication, every individual water user sits down
17 with their representative of the Department of
18 Water Resources and says, "This is what I claim.
19 What do your records show?"

20 In the case of the Indian nations, it
21 would probably take a full ten years that we're
22 estimating for adjudication to resolve their water
23 right. The advantage of the general adjudication
24 of getting the Indians and the state court, is
25 that, if after ten years of negotiation with the

1 Department of Water Resources no compromise would
2 be affected, Idaho state courts would set what
3 their water rights are. And certainly most legal
4 people would say better state court than federal
5 court.

6 MR. HAMMES: Mr. Chairman, Mr. Sherman, is
7 all of the Duck Valley outside the Snake?

8 MR. SHERMAN: No, I don't think it is. But I
9 honestly don't know. It's certainly Owyhee
10 (unintelligible) --

11 UNKNOWN SPEAKER: It's in a wide range.

12 UNKNOWN SPEAKER: All of it? I thought some
13 of it drained into Nevada.

14 MR. SHERMAN: Oh, yeah, yeah. Well, the
15 problem we had with that is the Owyhee comes into
16 the state. That portion of the south fork of the
17 Owyhee is not on the reservation. But as it goes
18 into the reservation area, it comes back in the
19 state. It's really out of Idaho.

20 Now, I think, the intent of the
21 negotiators, and just as formal discussion, is to
22 recognize whatever claim they might make and
23 realize that they have to be approached. But they
24 may better be served by acquiring water rights in
25 Oregon.

1 but I also believe that it sets a precedent as far
2 as the rest of the state is concerned.

3 And one of my concerns is that, in
4 talking with Pat Kole, I believe his name is, with
5 the attorney general's office that in North Idaho
6 we are sitting in a position with the Spokane River
7 above the dam at Post Falls which could erupt into
8 the very same thing. And therefore I would like to
9 see a precedent set in the Snake River that we
10 could fall back upon. I think that -- maybe that's
11 not the correct wording, but it's sets a tone for
12 where we could go.

13 As far as adjudication is concerned, I'm
14 in very much agreement, if I understood him right.
15 I would like to see the whole state adjudicated. I
16 realize that that's probably a ways down the line.
17 But I really believe that is the only way that you
18 can really manage the whole state water plan. If
19 we adjudicate part of the state and not the other
20 part of the state, when a problem comes up, which
21 way do you go? I just believe if we do the whole
22 state, we'd be much better off.

23 I guess that's my main thrust for
24 tonight. I can answer any questions that you might
25 have.

1 CHAIRMAN GRAY: The Owyhee comes back into
2 the Snake system between Nyssa and Adrian. So it
3 comes out of Idaho into Oregon and then back in
4 again.

5 Thank you, Mr. Sherman.

6 We'll now open our meeting for public
7 comment. And the Board would call Donald
8 Satchwell. Don?

9 MR. SATCHELWELL: Mr. Chairman, Fellow Board
10 Members, thank you. I have followed the Swan Falls
11 thing quite a little bit. I am fairly familiar
12 with the package as it now stands.

13 I think my main thrust tonight would be
14 to urge you to take a very serious look at changing
15 the state water plan so that the minimum stream
16 flow at Murphy Gage would reach 3900 in the
17 winter time -- I have the dates here, but -- and
18 that 5600. I mean, 3900 in the summer and 5600 in
19 the winter.

20 I think this is the key to the Swan
21 Falls plan as far as the state water plan is
22 concerned. If I am wrong in that, why, maybe you
23 can correct me a little later on that. But I do
24 believe that the package as a whole is probably the
25 best solution, not only to the Snake River Plain,

1 CHAIRMAN GRAY: Don, I forgot one thing.
2 Would you give us your mailing address and your
3 telephone number for the record?

4 MR. SATCHELWELL: Okay.

5 CHAIRMAN GRAY: Can I ask you that?

6 MR. SATCHELWELL: My name is Don Satchwell. My
7 mailing address is North 4340 Idaho Road, Post
8 Falls, Idaho. And my phone is area code
9 (208) 773-5285.

10 CHAIRMAN GRAY: Thank you. Let's see if we
11 have any questions from Board members.

12 Mr. Hammes?

13 MR. HAMMES: No questions.

14 CHAIRMAN GRAY: Mr. Rydalch?

15 MR. RYDALCH: No questions.

16 UNKNOWN SPEAKER: I have none.

17 CHAIRMAN GRAY: Okay. Is there -- that will
18 do it. Thank you.

19 MR. SATCHELWELL: Thank you.

20 CHAIRMAN GRAY: Art, would you like to
21 testify on anything?

22 UNKNOWN SPEAKER: No, (inaudible).

23 CHAIRMAN GRAY: Okay. Thank you.

24 We'll close the official public

25 testimony and open it for questions and answers

1 now. Do you fellows have something you'd like to
 2 whip on the staff or us?
 3 (Laughter)
 4 UNKNOWN SPEAKER: (Inaudible) a fire load?
 5 UNKNOWN SPEAKER: Not really. I guess maybe
 6 I would have maybe a question for the Board. And
 7 how many public meetings have you had on the Swan
 8 Falls issue so far?
 9 CHAIRMAN GRAY: This is the 12th and final.
 10 UNKNOWN SPEAKER: This is the 12th and final.
 11 CHAIRMAN GRAY: Yes.
 12 UNKNOWN SPEAKER: What has the general
 13 consensus been? Do they favor the package?
 14 CHAIRMAN GRAY: I would say from Idaho Falls
 15 to Lewiston, in the six locations where we've held
 16 meetings, two meetings each day, one at 2:00 and
 17 one at 7:00 p.m., in general I would say that the
 18 state is in favor of the package. I think that
 19 people have had enough of seven years of litigation
 20 and arguing and trying to run things through the
 21 legislature, and they're ready for something to
 22 happen. And all indications are that, by gosh,
 23 maybe it will.
 24 We will accept written testimony until
 25 February 22nd, if you fellows would care to write

1 above Murphy, this is the only place that will
 2 appear. The Board is going also set aside 150 cfs
 3 of that water that used to be claimed by Idaho
 4 Power, some of it (inaudible).
 5 CHAIRMAN GRAY: Anything else, gentlemen?
 6 UNKNOWN SPEAKER: No.
 7 CHAIRMAN GRAY: We would officially close the
 8 meeting.
 9 (End of Tape 3 and end of proceeding.)

1 something to us. And something may not come to
 2 your mind this evening, but if you would like to
 3 write it, just send it to the Water Resource Board,
 4 Statehouse, Boise 83720, and we'd be glad to hear
 5 from you.
 6 UNKNOWN SPEAKER: Just to clarify -- and I
 7 won't mind to get up -- really the key to this
 8 whole thing as far as -- all you're going to change
 9 at this particular time is the minimum stream
 10 flows, is it not?
 11 CHAIRMAN GRAY: And in the items that you see
 12 in Policy 32. We've been taking input on these ten
 13 items that you'll find on page 2 and 3. And from
 14 the input that we have received, we'll take all
 15 that input, try to synthesize it, and put it back
 16 into a form what we think we've heard from the
 17 public. We will then submit that to the
 18 legislature, and that will be the kingpin to get
 19 this whole thing going.
 20 UNKNOWN SPEAKER: Okay.
 21 CHAIRMAN GRAY: Mr. Sherman?
 22 MR. SHERMAN: I would respond also that this
 23 will be the only place that the concept of maximum
 24 use of reservoir storage in the system, mitigation
 25 (inaudible) diversions as far as below Milner and

1 REPORTER'S CERTIFICATE

2
 3
 4 I, Frances J. Morris Court Reporter, a
 5 Notary Public, do hereby certify:
 6 That I am the reporter who transcribed
 7 the proceedings had in the above-entitled action
 8 in machine shorthand and thereafter the same was
 9 reduced into typewriting under my direct
 10 supervision; and
 11 That the foregoing transcript contains a
 12 full, true, and accurate record of the proceedings
 13 to the extent they were audible and intelligible
 14 in the above and foregoing cause, which was heard
 15 at Lewiston, Idaho.
 16 IN WITNESS WHEREOF, I have hereunto set
 17 my hand this ____ day of ____ 2007.
 18
 19
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 21

Frances J. Morris Court Reporter
 CSR No. 696

A ability 73:4 74:25 able 22:25 26:11,15 40:4 40:21 78:9 80:10 above-entitled 100:7 accept 50:15 57:20 97:24 accepted 3:19 4:9 accepting 50:6 access 20:23 accomplish 80:11 account 39:9 53:20 57:8 88:6 accurate 100:12 ace-in-the-hole 74:3 acquire 23:2 33:17 82:25 acquiring 93:24 acre 15:23 16:11,11 30:17 39:6 68:4 69:18 acreage 79:3 acreage-wise 39:20 acres 24:13 27:18 38:8 92:12 action 5:8 12:22 18:20 24:1 34:5 59:21 85:13 85:17 100:7 actions 4:22 47:10 add 11:16,21 12:5 16:4 55:24 adding 16:3 49:4,7 66:5 addition 67:17 additional 10:15 17:21 24:17 30:17 67:14,20 address 6:21 37:16 53:12 55:12 56:2,15 96:2,7 addressed 62:18 87:10 addresses 61:17 adjudicate 95:19 adjudicated 47:14 90:24 95:15 adjudicating 47:9,19 adjudication 35:18,19,22 36:1,4,11,13,17,18,20 38:12,13 39:7,10,19,19 47:2,4,6,24 48:19,22 52:3 87:14,16 88:13,14 88:17,22 89:12,18,25 90:4,9 92:1,16,22,23 95:13 adjudications 34:17 90:1 90:10 92:10 Admittedly 84:17 adopt 22:17 56:7 66:12 adopted 7:6 21:15 35:9 64:13 65:24 75:11 adopting 72:1 Adrian 94:2 advantage 92:23 advisory 56:14 affect 54:16 affiliations 38:19 afford 22:4,9	agencies 89:21 agency 52:13 53:12 74:8 88:18 ago 24:23 56:5 60:23 agree 6:14 62:14,17 82:2 agreed 4:14 6:16 9:1 12:19 28:13 29:22 64:2 71:6 81:12 85:18 agreeing 61:9 agreement 4:13 5:10 6:13 7:9 10:17 12:5 16:2 18:22,24 21:22 23:9 31:5,8,25 33:24 34:1,12 34:16 37:1 47:10 59:5 59:23 62:20 63:3,10 64:1,12 70:9 75:19 82:18 85:12,15 87:1,10 87:12 88:15 95:14 agricultural 17:18,19 38:2,8 54:25 69:17 70:11 agriculture 17:15 70:4,7 70:14 ahead 5:14 51:20 allocate 7:6 63:16,17 84:20 allocated 20:10 28:24 68:4 allocates 61:18 allocation 18:4 90:6 allocations 7:15 12:13 77:10 allow 10:2 17:9 22:15 84:12 allowed 21:7 32:15 amended 5:1 6:18 41:2 59:16 73:14 amendment 59:17 American 38:17 amount 16:17,22,25 17:7 17:17 24:25 26:13 29:15 30:8,17 35:10 69:17 70:13,18 78:20 79:6 82:10 86:18 analysis 16:15 angle 44:16,18 answer 51:21 57:18 95:24 answers 4:4 46:18 60:18 96:25 Anthony 3:9 58:12 Anthony's 38:5 anybody 18:23 29:23 52:17 67:14 75:9 76:13 85:19,22 87:3 anymore 21:12 anyway 60:10 appear 50:20 53:21,22 99:2 applied 55:20 74:20 applier 17:24 applies 15:10 29:11 67:15	75:22,23 86:6 apply 27:15 79:14 81:13 applying 17:20 apportionment 39:2 appreciate 37:25 50:11 57:3,12 approach 80:3,4 approached 93:23 appropriate 5:8,11 14:10 59:21,24 65:23 74:8,11 74:13 75:1,8 82:2,16 appropriated 14:4,15 65:16 67:13,24 74:16 appropriating 74:7 appropriations 39:11 appropriator 18:21 34:7 85:2 approval 74:6 approved 76:2 April 11:7 aquaculture 19:14,17 72:11 aquatic 73:24 aquifer 16:12 31:20 32:6 33:8,9 34:20 54:10 55:12 56:11,15 69:4 84:3,8,15,19,25 arbitrarily 56:4 area 3:14 7:2 11:11 17:2 22:12 25:10 27:8 36:21 36:23 39:21 40:7 47:5 54:11 58:15 65:20 75:5 90:11 93:18 96:8 areas 25:22 38:11 45:1 55:10 argue 47:13 71:20 arguing 97:20 argument 28:7 arrived 64:14 65:8 Art 96:20 artificial 81:1 aside 15:22 17:8 19:22 99:2 asked 28:13 35:9 80:2 81:12 asking 23:24,25 asks 87:8 aspect 89:15 92:8,9 aspects 86:25 assistance 35:13 associated 20:24 77:10 Association 38:17,18 assume 6:23 89:15 assumed 8:12 assumptions 13:2 assurance 24:18 assure 11:15 14:1 66:3 assured 66:20 attention 37:25 49:5 attitudes 64:20 attorney 4:15 59:7 62:11	95:5 audible 100:13 Audience 2:8 Augmentation 29:19 August 84:14 authorities 77:4 authority 48:15 55:13 automatically 17:25 available 10:12 14:17 17:18 20:20 26:21 27:9 30:18 32:25 33:12,20 68:10 69:15 70:10,13 76:22 85:7 86:8,15 Avenue 2:10 37:20 average 9:16,21 18:10 43:13 45:25 46:1 68:5 averaged 9:18 averages 45:23 aware 21:11,12 39:15 81:1 awkward 82:7 B B 14:24 back 7:5 8:3,5 11:1 16:13 21:14 28:4 44:24 56:8 61:12,14 67:2 68:20 69:13 93:18 94:1,3 95:10 98:15 backing 56:11 bad 22:20 70:2 75:7,13 75:17 balance 16:21 21:23 balances 68:17 bank 26:4 33:18 41:9 44:16 76:25 77:23 80:7 83:21 86:19,22 Bar 11:14 12:7 43:16 45:17 48:12 49:9 66:6 barrier 27:11 28:2 barriers 28:11 76:9 77:5 77:9 78:15 81:2 base 15:15 30:8 based 7:16 12:23 39:21 90:13 92:10 basic 21:9 basically 4:17 10:11 13:13 14:20 15:3 19:4 20:10 23:10 25:16 36:19 47:25 62:13,16 65:19 66:24 72:3 73:12 73:16,21 79:6,10,12 81:23 87:16 basin 7:4,8 8:22 9:24 10:17 12:23 16:9,19,20 17:6,11 21:17 23:6,12 32:2 37:6 39:11 61:10 61:18 63:23 68:19 69:2 69:25 87:6 88:2 90:7,17 91:4 basins 86:7	basis 6:9 22:5 27:5 50:25 bass 43:11 44:25 beach 43:6 45:10 beaches 43:12 45:2 Bear 7:4 bedroom 38:9 beginning 36:1 believe 40:1 45:19,22 53:2 94:24 95:1,4,17,21 belong 15:18 18:3 belonged 84:21 beneficial 14:15 17:24 18:7,23 22:21 27:17 30:14 40:15 41:3 67:1 67:18,24 71:12 75:14 85:14 87:1 beneficially 87:4 benefit 40:2,6 42:24 benefitees 38:13 benefits 24:3 39:18 81:9 best 22:2 28:20 29:2 41:7 61:4 76:4,11 78:22 80:16,23 81:24 84:10 90:13 94:25 better 19:12 28:16 29:4 41:21,22 50:24 53:10 73:19 79:19 81:2 87:19 93:4,24 95:22 beverages 16:18 big 26:15 27:3 38:1 68:21 78:10 90:7 biggest 17:6 26:17 69:10 bit 3:24 6:10,22 16:4 58:23 59:1 74:10 94:11 bits 91:3 Bliss 72:12 BLM 89:20 block 90:20 blue 56:1 Board 1:1,13 3:6,7,13,19 4:7 5:3 6:21 11:15,21 19:6 21:25 22:6,17,21 23:25 28:13 29:2,8 34:14 37:23 41:11 42:3 48:21 50:8,20,23 52:19 53:18 54:23 55:14,18 55:24 57:14 58:7,14,25 63:2,19 64:2 65:10 66:12 68:6,12 72:1,5 74:2,8,20 75:1 80:3,10 80:13,25 82:4,13 88:19 90:21 94:7,9 96:11 97:6 98:3 99:2 board's 70:8 75:11 82:3 boat 43:3 Bob 58:8 body 63:7 Boise 38:20 57:21 63:25 98:4 book 3:8 58:9 books 22:23
---	---	---	---	---

2/6/1985

border 5:19 bordering 60:8 bottled 16:18 bottom 49:14,15 bought 78:8 box 6:1 53:19 break 3:23 12:12 brewery 16:20 brief 3:25 briefly 53:7 broke 56:6 brought 25:23 73:13 Brownlee 23:19 25:15 29:14,16 64:24 66:3 81:10 budget 16:15 built 24:2 25:23 77:9 burden 52:24 Bureau 51:14,16 buried 79:8 burns 16:10 business 3:8,9 27:3,9 buy 77:20 90:18 huyer 77:2	17:22 22:25 23:15 27:11 28:2 29:6 30:7 31:6 45:17 63:22 64:23 78:11,16 80:22 84:18 88:18 93:3,9 certification 27:19 certify 100:5 cetera 58:10 cfs 9:9,10,15,22 10:8 12:4 12:20,21 13:10 14:21 16:3 17:7 18:16,17 19:7 19:22 41:5 49:6 61:24 62:1,8 64:3,4,15 65:22 68:5,13,25 69:23 70:20,21 71:21 76:17 79:24 83:2,3,19,19 84:21 88:8 99:2 chairman 1:13 2:5 3:4,5 37:12 42:2,5,8,12 44:4 44:6,8,10 46:6,9,11,13 46:15 49:1,14 50:3,13 50:19 51:1,3,9,13,20 53:6,16 56:23 57:11 58:6,7 91:9,10,12 93:6 94:1,9 96:1,5,10,14,17 96:20,23 97:9,11,14 98:11,21 99:5,7 change 3:20 11:3,5,24 19:4 20:7 21:2 29:7 50:4 55:6 63:4 68:14,23 70:13,14 71:4,4 73:7 80:21,21 98:8 changed 29:5,10 63:11 66:15 68:17 70:3 79:19 changes 1:7 6:17,20 7:10 31:4,8,24 55:7 58:19 60:15 62:23 63:2 64:3 64:13 changing 80:11 94:14 cheap 78:8 choices 83:8 chose 10:22 23:19 chosen 63:19 chunk 47:16 circulated 38:22 citizen 14:9,17 74:12 citizens 60:25 81:1 city 17:5 24:22 claim 7:14,23 13:15,16 14:5 29:18 35:1 36:25 61:24 71:21 88:6,8 92:18 93:22 claimed 9:10 12:16 13:18 14:7 15:9 17:21 67:1,16 88:2 99:3 claiming 13:24 claims 13:7 70:18 clarify 39:11 98:6 clean 72:19 clear 46:8 clearly 8:21 9:25 19:17	71:18 87:14 91:3 Clearwater/Salmon 92:7 close 4:3 32:18 33:3 46:17 60:17 83:11,23 86:10 96:24 99:7 code 14:24 15:4 18:9 53:1 67:6,8 96:8 codified 53:22,25 collect 40:8 collected 39:4 Colorado 86:5 colored 56:1 Columbia 41:13 column 4:22 come 19:19 27:4 56:8 57:6 64:11 69:14 72:22 77:20 82:11 85:11 88:9 98:1 comets 10:7 13:13 16:13 36:22 43:17,24 44:24 64:19,20 79:24 82:13 93:15,18 94:1,3 95:20 coming 20:4,12,18 23:18 31:17 37:24 45:24,25 53:10 57:24 72:8 82:15 comment 51:5 94:7 commented 52:14 commercial 15:20 17:13 19:10,19,21 38:7 68:1 70:5 72:9,21 Commission 5:9,12,16,22 59:22,25 60:2 committee 3:10 56:14,20 58:10 77:2 companies 10:3 company 4:16 7:13 8:1 10:11 15:9 18:14,14 38:6 59:8 62:12 81:18 compensate 69:18 competing 23:15 65:9 68:11 75:7 completed 54:4 complex 5:20 8:2 11:13 19:8,11 23:21,21 60:7 65:1 66:8,15,20 72:9 81:8 complicated 6:10,23 32:5 41:24 compromise 9:1,2,4,6 10:5,9,19 11:19 13:2,6 21:21 22:1 61:7,15 62:3 62:10 64:19,23 68:8 70:20 93:1 compromises 29:21 37:4 computer 41:14 65:3 Conceivable 17:22 conceivably 20:25 31:16 88:5 concept 47:4 98:23 concern 42:21 43:19 44:2 46:4 49:2,20 52:15,16	52:22 54:17,24 55:4 concerned 29:14 32:3 59:15 63:15 68:20 79:15 94:22 95:2,13 concerning 49:11 concerns 48:23 95:3 conducted 21:16 confusing 61:5 conglomerate 58:12 Congress 25:24 consensus 97:13 consequences 34:3 conservative 32:17 83:9 considered 12:9 14:8 considering 52:2 constantly 39:13 Constitution 13:21 14:13 18:8,8 construct 21:4 constructed 24:5 construction 26:14 consume 16:8,17 28:1 68:15 consumed 27:24 68:23 consumers 17:6 consuming 16:25 consumption 39:22 79:6 consumptive 16:6,14 17:9 17:15 19:20 21:24 24:11,25 27:21 39:21 54:19 69:5,7,10,19 70:7 78:25 79:5 contains 100:11 continue 65:14,21 continued 22:5 contract 10:2 contributes 69:4 control 22:12 24:3 41:19 55:21 75:5,15 77:13 79:7 controversy 89:3 convention 38:19,24 converted 15:25 cooling 55:1 69:12 copy 58:21 correct 48:14 94:23 95:11 corrected 40:24 41:2 cost 30:18 69:16 Council 29:18 counted 19:21 couple 33:23 65:11 91:7 91:20 coupled 19:7 33:7 course 8:11 33:16 34:25 40:8 49:11 54:24 67:12 80:7 81:7 87:12,23 90:23 courses 17:5 court 7:13,19 8:3,4,6,12 13:5,16,17 14:19 31:6 36:5 37:2,5,5 41:25	61:7,11,11,12,12,14,21 62:13 68:7 71:20 88:13 88:24 89:4 90:25 91:22 92:24 93:4,5 100:4,21 courts 8:2,7 39:13 93:2 cover 16:5 32:21 83:7 cowboy 58:4 Craters 35:3 Crawford 2:9 37:14,18 37:18,23 42:2,4,6,10 crazy 46:3 create 16:24 25:10 created 23:13 Creek 44:18 criteria 12:11 14:23 15:1 15:10,12,17,19 17:22 18:4 34:13 67:13,14,18 67:20,22 71:8 criticizing 56:2 critique 4:10 crop 79:3,4 crops 16:11 crumble 89:18 CSR 1:25 100:22 cubic 15:25 current 9:24 12:24 Currents 4:6 5:7 6:17 49:15 58:21 cut 10:9 43:1 45:21 65:2 cutoff 32:18
---	--	---	--	---

decline 21:1 decree 37:5 90:25 91:2 defer 54:25 define 28:16 defines 81:20 definitely 54:15 75:22 delay 84:18 demand 19:1 92:11 demanded 82:18 denied 14:12 department 3:14,16 6:3 8:8,13 14:6 17:3 20:2 28:19 31:9,12 32:14 33:3,6,12,20 34:4,11 35:12 36:22 46:20 47:24 48:4 50:23 53:4 54:7 55:14 58:16,17 60:25 65:4 83:9,16 86:4 86:10 89:1 90:4 92:17 93:1 dependent 13:17 depending 31:11 depletion 10:15 18:9 71:15 describe 53:7 described 27:18 designed 66:3 79:1 desirable 11:18 despite 47:3 destroyed 43:8 determination 23:11 76:3 80:16 devastated 43:12 developed 13:5 development 10:14,25 17:18 21:24 31:13 41:20 Dick 57:15,15 die 45:4 difference 10:8 55:17 64:18 different 3:24 6:12 9:2,5 11:19 22:19 23:14 30:11 49:13 50:21 64:8 64:20 66:25 68:24 70:18 74:5,23 92:6 difficult 40:7 43:25 digesting 16:24 dilute 22:20 23:1 52:17 75:17 diluting 75:9 dilution 22:15 direct 100:9 directed 8:8 direction 22:8 40:1 directly 16:13 29:24 31:4 59:2,13 76:8 91:18,23 director 28:18,25 33:5 80:15,22 discharge 20:1,15 52:20 55:5 84:7,19	discharger 54:21 discharges 19:24 31:19 31:19 72:16 discrepancy 9:11 discuss 36:25 61:9 discussing 6:5 10:19 discussion 93:21 dislikes 5:16 60:3 disposal 55:11,16,19 dissertation 40:20 disservice 8:23 distribution 56:10 district 2:9 8:3,4 13:17 37:20 38:3 39:18 61:11 61:12 diversion 20:22 21:2,6 30:1,10 68:5 69:2 73:5 81:15,16 82:10 diversions 17:4 69:6 98:25 divert 16:8 19:25 25:3 29:24 81:13 diverted 30:9 69:1 document 6:14 documents 6:12 62:15 doing 12:15 28:20 29:2 50:2 59:14 74:22 76:3 80:16,23 dollar 39:6 dollars 26:18 30:21 47:15 dollar-per-dollar 81:22 domestic 15:20 16:3,25 17:13 68:1,13 70:5 Don 94:8 96:1,6 Donald 2:12 94:7 double 69:24 79:5 doubling 17:10 dovetail 50:10 downstream 25:13 29:13 66:19 draft 3:20 4:9 50:9 57:6 drained 93:13 drawn 15:23 drink 16:22 68:16 drinks 16:16 drop 43:4 44:15 53:22 dropping 44:24 drops 43:24 drove 60:23 Duck 93:7 dump 75:13 dumped 61:2 65:17 82:2 dumping 84:8 dumps 25:11 76:15 Dunn 33:5	Eastern 24:19 easy 84:24 economic 30:21 economics 67:21 economy 15:14 Eden 3:12,14 58:15 effect 15:14,15,16 81:15 84:15,25 effects 32:11 efficient 28:11 77:6 78:16 80:5 effluent 54:21 effort 53:11 efforts 9:25 eggs 45:2 either 31:5 32:17 39:23 74:20 82:6 electricity 71:13 elevations 44:11 emphasize 7:1 enactment 5:23 60:11 encourage 50:23 ends 69:19 energy 5:12 59:24 68:21 68:22 enforced 22:23 engaged 72:17 engineer 40:12 enormous 26:12 enter 10:2 entered 7:10 entertain 50:20 entirety 38:25 59:5 60:1 entitled 13:23 73:8 Environmental 52:13 53:12 EPA 55:20 56:11 equal 86:17 equally 27:15 erupt 95:7 essence 46:2 50:1 79:3 essentially 38:7 41:18 established 7:19 53:17 71:16 73:22 establishes 37:8 establishing 34:12 74:24 estimate 47:22 estimating 92:22 et 58:9 evaluate 30:24 evening 3:4 98:2 everybody 37:4 63:12 66:18 68:20 79:6 85:5 exact 84:18 exactly 33:8 examination 76:2 example 13:14 16:20 24:12,22 35:14 44:14 52:4 86:5 91:25 examples 13:1 25:7 exceed 49:9	excellent 37:12 47:3 excess 26:5,21 28:3 exchange 78:14 exchanged 25:18 exchanges 77:1 exclude 89:11 excuse 53:6 exercise 13:12 Exhibit 53:21 60:12 exhibits 6:16 exist 67:9 existing 3:18 7:3,16 10:4 11:3,9 15:1,21 18:22 19:4 20:10 21:10,11 22:2,13,19,22 29:1 35:11,25 52:15 53:5 54:6 55:5,25 66:6,9 68:2 73:12,16 76:4 80:24 87:2 exists 20:6 61:16 expand 27:16 78:17 90:17 expansion 78:25 expect 26:20 explain 70:15 explained 39:14 explanatory 66:24 explore 80:14 exposed 45:3,4 49:12 extend 90:16 extent 81:7 100:13 extrapolate 48:5 extremely 39:8 eyes 87:7	far 4:21 5:3 12:5 29:9 35:23 44:11 48:12 59:14 70:8 83:4 86:9 94:21 95:1,13 97:8 98:8 98:25 farm 15:16 67:22 farmer 3:10,13 21:1 58:12,14 73:7 77:25 farmers 19:24 20:19 21:11 24:19 27:4 38:23 farming 19:16,16 72:13 72:13,18 fashion 56:3 fast 43:23 father 26:13 78:7 favor 39:19,20 97:13,18 fears 5:2 February 1:12 3:2 50:6 50:16 57:20 58:2 97:25 federal 5:12 11:18,23 19:8 22:22 25:21 26:6,7 26:8,18,24 28:10,15 29:7 35:1,9,16 36:3 47:7 49:18 50:4,5 51:6 51:12 59:24 66:7 76:9 76:10 77:8,9,15,16 78:3 78:5 80:4,11,21 87:24 87:24 88:11 89:19,21 91:22 92:10 93:4 federally 35:6 feds 78:8 88:21 89:6 fee 39:7 feel 19:12 35:11 36:5 39:23 52:20 63:21 79:16 83:25 88:18 feeling 22:7 feels 20:3 22:21 73:19 75:1 88:19 90:22 fees 39:2,4 40:8,9 feet 15:23,25 16:11 30:18 43:6 44:12,12,14,19,20 45:21 68:4 Fellow 94:9 fellows 97:1,25 felt 8:1 22:4 24:22 35:19 62:23 88:19 FERC 11:12 fifty-fifty 47:11 figure 15:25 85:9 file 8:19 14:5 filed 5:17 14:5 60:3 fill 25:15 81:9 filling 29:14,22 64:24 final 57:5 97:9,10 finally 7:25 29:22 34:19 finance 27:6 77:23 find 5:7,25 28:14 45:18 53:24 59:5 62:13 75:20 80:23 98:13 fine 37:1 finger 40:4
---	---	---	--	--

2/6/1985

fire 97:4	forgot 96:1	42:22 60:15 67:3 78:23	ground 32:1 62:14 91:1	49:22 60:7 64:25 66:7,8
firm 82:4	fork 93:16	81:21,22 86:21 96:2	grounds 19:1	66:15,20 72:9 81:8
first 4:6 7:6 15:23 17:23	form 22:5 57:5 98:16	given 7:22 30:2 67:7,16	groundwater 31:22 32:12	help 40:17 57:4
23:10 25:22 51:9 56:22	format 93:21	gives 4:6 58:24	32:16 33:14 55:24 56:2	helped 26:13
75:25 80:6 82:4 85:11	formally 34:9	giving 14:3 48:15 71:19	56:7 60:24 84:13 85:3	hereunto 100:16
89:24	formerly 17:21	71:24	86:1,6,15,23 87:18	high 22:24
fish 19:18,23 21:13,16	Fort 35:5 36:12 47:17	glad 38:19 39:25 98:4	group 36:12 56:14,16	higher 10:22 21:19,20
22:3,9 29:20 51:18,22	52:11 88:4 92:9	go 5:14 8:3 11:20 14:2	91:17	52:6 62:5
51:23 62:3 66:10 72:13	forth 5:24 18:11 41:24	18:18 26:23 37:2 43:23	guarantee 9:23 73:5,10	highlight 63:20
72:17,19 73:15,17,20	62:21	45:1 49:16 51:20 53:21	86:17	highlighted 73:13
73:24 75:2 77:12 85:8	forward 37:15	59:4 62:25 63:9 68:16	guaranteed 11:25 14:10	hill 38:10
92:9	found 53:1 84:22	71:20 72:2 82:5 83:21	18:15,16 24:16 27:4	hired 48:3
fisheries 29:18 92:8	four 9:16 48:2 90:15,17	86:19 91:22 95:12,21	66:16	historic 10:6
fishing 43:9,11 65:19	framework 85:16	goes 12:8,21 13:10 16:12	guarantees 20:22 21:6	hold 57:16 83:10,17
fish/wildlife 21:23	Frances 1:24 100:4,21	33:13 34:2,6 37:4 43:20	guess 33:25 50:1 51:21	holder 36:20,23
fit 50:10 51:4	Frank 2:7 3:15 6:3 46:19	49:22 69:8,17 70:21	61:4 69:23 70:2,15	holds 27:2
five 7:12 8:6,20 13:20	58:16 60:15,19	71:9 87:7 93:17	82:13 84:2 90:13 95:23	honestly 48:10 81:25 93:9
15:17 24:21 28:9 44:12	frb 11:1	going 3:23 4:12,17 5:6	97:5	hope 57:6 85:10
49:17 60:20 70:1 79:13	frequent 55:3	9:4 10:12,20 18:1 20:4	guidelines 63:25 64:1	hour 43:5 45:11 49:9 61:1
79:16	front 82:4	20:16 24:15,24 25:12	guy 86:23	human 16:16 17:1 68:15
flexible 80:8	full 24:6,7,10,17 29:16	27:24 28:1 29:17,19	guys 38:4	hydropower 15:9,15 18:5
float 45:6	61:2 78:18 92:21	31:12,25 32:14,16		18:6 25:13 67:21 71:11
flood 24:3 77:13	100:12	34:19 39:3,4 41:22,24	H	71:13
flow 9:8,14,16 10:6 11:4	function 4:8 58:25 91:3	41:25 55:22 56:7,8,14	Haas 2:7 3:14 49:1,2	I
13:23 18:10 19:25 20:8	fund 48:1 90:2	57:4 60:9 61:6,13 63:22	58:15	Idaho 1:1,13,15 2:12 3:1
20:25 22:6 24:10 31:17	funded 53:11 90:1,14	64:11,21 65:8,14,21	hair 82:14	3:6,12,13 4:15,16 5:15
32:3,9,10 34:2,6,20	funding 48:19	73:9 74:3 77:19,22,23	half 10:9 45:21 59:4 61:1	5:17,19 6:11,15 7:9,13
42:22,23 46:5 48:12,21	further 46:9 71:15	78:12,24 79:4 80:13	71:1,1 78:9	7:17,22 8:5,13,16 9:1,9
52:1 54:18 62:1 64:3	future 88:10 90:10	81:21 82:8,14 84:12	Halt 35:5 36:12 47:17	9:13,19 10:1 11:19,23
65:14,19,23,25 66:2		85:25 86:16,18,18	52:11 88:4 92:9	12:16,19,22 13:6,11,14
71:9,22 72:1 74:7,9	G	87:16,18 89:14 92:7,15	Hammes 2:5 3:7 42:5,7	13:21,23,25 14:3,9,14
76:17 78:18 83:20 84:4	gage 6:25 7:19 9:4,8	98:8,19 99:2	44:4,5 46:6,7 58:8	14:20,24 15:4,5,18
88:7 92:8 94:16	10:20 12:21 13:11 19:7		91:10,13,16 93:6 96:12	17:17,20 18:9,19,25
flows 9:3 11:13,15,16,17	20:14,17 29:13 31:11	golf 17:5	96:13	19:8 22:24 23:17 24:9
11:20 12:6 18:10,18,25	32:9,11 62:9 63:24 64:3	good 3:4 22:20 32:10	hand 87:22 100:17	24:19 25:13,15 29:13
22:3 24:20 30:14 31:15	65:22 70:22 71:9,17	40:19 51:1 52:17 54:20	handle 46:20	29:17 30:3,13,15,18,21
48:15 49:21 52:22 62:5	80:1 81:5,6,14 83:19	66:9 75:16 86:2	handled 36:17	30:25 33:19 34:4 35:4
66:8,10,16 71:16 72:6	84:7,12 94:16	gnash 49:16 97:22	hands 67:25	38:15,16,20 39:10,25
73:6,22 74:21,24 76:14	gages 45:16 50:24 70:24	gotten 74:21	happen 8:24 45:9 89:14	40:13 41:18 42:22
98:10	gaging 41:5	government 11:18,23	97:22	43:21 49:18,20 53:3,14
fluctuated 45:14	gamesmanship 91:21	35:1,9,16 36:3 47:7	happened 20:11	57:14 58:1,7,14 59:7
fluctuations 44:11 48:17	Gap 72:25	51:12 77:15 78:4 80:4	happening 89:8	61:8,22 62:12 64:22
49:3	Gene 1:13 2:5 3:5 58:6	87:24 88:12 89:19	happens 6:24 12:15 36:21	66:4,25 67:2,6,7,8,16
folk 24:22	general 4:15 17:19 34:16	governor 10:2 53:17 59:6	44:20,21,22 75:22	68:7,22 69:11,18 70:17
follow 4:5 6:5	39:5 42:10 48:1 59:7	62:11	85:17	70:21 71:6,12,19 72:5
followed 94:10	62:11 67:20 90:2 92:23	governor's 4:14	happy 63:12 66:19 85:8	73:21 74:16 75:6,12
follows 76:14	97:12,17	grab 58:22	hard 45:18 47:23 48:20	79:12,22 80:12,24 81:6
food 16:24	general's 95:5	Granite 44:14,19	53:2 70:15 77:7 79:21	81:16,21,22 83:20
foot 43:4 44:15 49:9	generate 29:16 49:22	granted 30:2	heads 85:9	84:22 85:7,13,18 86:22
foot-and-a-half 43:5	generated 43:17	grasp 41:19	Health 53:4 54:7	88:3 93:2,19 94:3 95:5
force 35:16 36:3 56:13	generates 68:22	Gray 1:13 2:5 3:4,5 37:11	hear 55:22 98:4	96:7,8 97:14 99:3
88:11 89:23	generation 25:14 68:19	37:12 42:2,5,8,12 44:4	heard 51:15,16,17 60:21	100:15
forces 47:7	71:13	44:6,8,10 46:6,9,11,13	98:16 100:14	Idea 10:19 13:19 17:23
Ford 20:2 73:19	generators 14:16	46:15 48:24 49:1,14	hearing 33:6 42:13	27:23 30:22,22 33:11
foregoing 100:11,14	gentleman 48:14	50:3,13 51:1,3,9,13,20	hearings 82:15	33:13,16 51:1 52:1 66:9
forever 86:14	gentleman's 62:20	53:6,16 56:12,23 57:11	heck 80:18	66:14 75:8 81:20 82:19
forest 51:15 89:20	gentlemen 3:5 63:14 99:5	58:6,6 91:6,9,12,16	held 1:12 12:8,10,18 15:6	83:1
forests 35:3 88:3	geologist 3:15 58:17	94:1 96:1,5,10,14,17,20	17:16 25:8 74:15 76:19	ideal 76:21
forever 73:1 83:18	getting 13:18 49:19 71:25	96:23 97:9,11,14 98:11	87:25 97:15	identified 12:3
forfeited 71:22	83:23 92:24	98:21 99:5,7	Hells 5:20 11:12 19:10	identity 12:14
forfeiture 13:19	give 3:25 4:8,11 6:4 13:25	great 43:20 81:7	23:20,21 42:24 43:18	

idle 33:18 83:22	intent 7:5 11:15,20 16:4	30:19 40:12 58:22,22	67:10 80:5 88:17 89:9	69:16 88:7
ignore 16:22	17:22 18:21 27:1 29:2,8	58:24 59:25 60:15 76:2	90:2,14,21 97:21 98:18	Lower 44:14,19
impact 29:25 30:3,13,25	30:12 31:23,24 32:22	77:1 81:17 82:20 86:11	legitimate 7:14 8:16	lowest 62:1
31:14 67:21 81:23,24	36:2 52:23 54:22 67:11	87:22 91:7	10:23 61:23 68:8 71:21	lucky 16:19
implementation 4:23	69:3 70:8 71:4 72:2	kinds 25:22 69:1 72:6	75:7	
importance 11:10,12	80:24 82:24 83:17 90:8	kingpin 98:18	lessen 30:12,25	M
important 7:2 11:10	93:20	kitchen 45:10	letting 26:23	machine 100:8
29:23 36:18 57:8 63:21	interest 18:12 67:19	knees 45:12	let's 36:25 37:7 44:15	magic 32:18 33:11 64:11
87:21 89:5	71:17	knew 33:9 85:23	49:17 62:12,13 83:13	64:12,14 84:2 85:5
impose 15:9	interested 6:24 54:10	know 33:8 34:21 39:16,16	89:11 96:10	87:18
inaudible 8:18,21 11:2,6	interesting 48:10	41:1,13 43:14,20,25	level 22:25	mailing 96:2,7
11:14,20 13:19,20,23	interests 21:23,24 23:15	44:1 45:5,15,23 46:3	Lewiston 1:15 2:9,11 3:1	main 54:17 74:19 94:13
21:18 23:2 30:15,20	38:8 48:19 62:4 65:9	48:13 56:19 60:8 71:19	35:20 36:2,2 37:7,19,21	95:23
32:13 34:22 36:6 37:3	66:19	84:17,18 87:19 88:10	37:24 38:10 42:19 47:6	maintain 31:10 49:21
37:10 47:4,6 48:7,17,23	introduced 36:10	93:9	57:14 58:1 88:18,20	maintained 22:24 45:22
50:22 52:12,13,14,18	involved 56:9,17 72:20	knowledgeable 87:13	92:1 97:15 100:15	46:2 76:6,8
52:21,23,24 53:5,15	82:12 89:6 91:18 92:2	known 44:25	liberal 83:16	maintains 34:20
54:8,13,22,23 55:17	in-stream 74:7,9,21 92:8	knows 87:5 89:15	license 11:12,24 49:3,18	major 19:14 20:13 55:3,7
56:9,21 63:12 70:12	irrigable 92:12	Kole 95:4	50:5 66:7,14	making 23:11 77:6
71:1 73:11 75:20 79:14	irrigate 24:13 27:18 79:2		licenses 19:8	Malcolm 2:9 37:14,15,18
79:17 81:10 84:8 86:12	92:12	L	licensing 40:9	man 58:9 84:13
87:21 89:13,22 90:16	irrigated 69:16	Ladies 3:4	life 43:9,10 73:24	manage 31:21,22,25 32:2
90:16 96:22 97:4 98:25	irrigation 2:9 11:7 24:2,5	lady 53:9	light 91:2	34:19 63:23 69:4 83:2
99:4	24:11 26:1 37:19 38:3	lag 38:2	likes 23:17	84:1 85:4 87:17 95:18
incentive 78:11	39:18 58:11 77:13	lagoons 55:10	Lime 11:14 12:6 43:15,22	management 9:15 31:3
include 35:21 65:11 87:18	irrigator 16:10 27:2	land 51:16 55:10 69:15	45:16 48:11 49:11 66:5	47:13 51:16 82:21
included 23:25 36:21	77:19	69:17	line 95:16	manager 37:19 38:3
60:10	irrigators 62:6	language 3:20 4:9 5:24	lines 49:17	managing 33:7,10
including 47:17 68:13	issue 31:12 32:15 33:14	6:15 21:9 49:10,18 50:9	list 36:7	mandated 23:9 54:3
inclusion 48:11	52:20 91:24 97:8	52:15 72:4 74:4	listed 14:24 15:3	map 91:1
inclusive 17:12	issued 12:11	lap 82:3	listen 46:23	Maries 3:8 58:8
inconvenient 43:7	issues 8:2 37:5	large 23:15 56:20	litigation 7:24 97:19	master 25:9 37:9 76:15
increase 24:24 25:1 41:20	issuing 8:14,17 83:9,17	late 25:14	little 3:24,24 6:10,22 16:4	material 49:6
48:5	items 59:13 98:11,13	Laughter 46:25 54:14	38:24 58:23,25 63:16	matter 16:7 43:16 70:23
increased 54:19 71:1	IWRB 2:5	61:3 97:3	74:10 94:11,23	85:16 90:5
Indian 35:1,5,10,13 87:25		law 11:5 13:21 20:21 21:5	live 6:8 42:18 43:22	maximum 23:11 28:16
88:4 92:6,14,20	J	24:9,16 25:21 26:6	lived 43:9	49:8 76:11 98:23
Indians 36:3,17 88:12	J 1:24 100:4,21	27:19 29:1,7 38:4 73:3	lives 76:13	mean 30:20 44:20 45:13
89:6,9,16 92:24	Jim 2:6 3:12 58:13	73:10 76:10,10 79:9,12	living 69:25	62:3 94:18
indicated 50:5	job 76:4	80:11,21,22 92:11	load 61:2 97:4	means 21:6 22:9 25:3
indications 97:22	Johnson's 11:14 12:6	lawn 69:9	local 7:2	36:15,16 45:17 77:25
indirectly 31:6	43:16 45:16 48:12 49:8	laws 17:5	locations 97:15	measure 45:18
individual 16:16 30:8	66:6	laws 22:22 27:14 40:23	logical 78:22	measured 30:1
36:19 37:2 82:9 92:16	join 57:23	lawsuit 5:16 13:4 60:3	long 12:20 13:10 32:7	mechanism 26:4 37:8
industrial 15:21,24 17:14	Joke 58:4	70:17	40:19 70:21 71:7,9	mechanisms 74:24 75:16
19:20 55:1,11 68:2,6	judge 47:23 48:13	lawyers 62:18,22	76:20 83:18	meet 14:23 17:21 54:22
70:6	July 84:14	lease 26:5,25 27:10 86:20	longer 18:1 38:7	55:5 57:22 73:23 75:10
industry 17:10 69:7,11,14	jumping 46:3	leaves 35:24	look 4:21 17:3 23:23 29:9	86:8
69:19	Junior 84:23 85:1,2	left 5:25 60:12 70:25	40:3 49:14,15 53:18	meeting 1:6 37:13 56:22
INEEL 35:4 88:3	jurisdiction 51:19	left-hand 49:16	61:4 80:3 82:8 94:14	94:6 99:8
infallible 83:4	K	legal 6:14,14 19:1 20:11	looked 53:19 79:18	meetings 97:7,16,16
influences 9:18	Karen 37:20	62:21 76:9 93:3	looking 6:1 48:17 92:5	meets 51:7
information 1:6 87:22	keep 27:22 63:11 66:18	legislation 36:9 88:16	loose 62:19	member 3:7 38:16 48:8
injection 55:16,19,21	keeps 85:3	89:11,17 90:9	lose 28:9 44:19,19	57:13 77:3
input 98:12,14,15	Ken 33:5	legislative 4:19 5:5 6:17	lost 16:23 30:21 49:23	members 2:8 42:3 94:10
insurance 33:20 76:20	kept 89:8	15:13 35:25 59:10,19	lot 10:20 13:7 29:6 33:10	96:11
84:1 86:11,24	key 23:6 65:1 67:12 94:20	63:6 67:10 71:8 74:6	35:5 43:22 46:4 61:5	men 40:24
insures 73:4	98:7	legislators 4:19 59:10	63:7 64:21 69:11 76:15	mention 57:13
Intact 5:7	kind 3:23 4:5,6 6:5 10:25	legislature 5:4,9,14,23	79:18 88:5	mentioned 56:12 65:12
intake 16:17	15:6 16:15 23:10 27:6	6:19 9:25 34:15 41:11	lots 25:7	65:13 89:4
intelligible 100:13		59:22 60:11 62:22 63:8	low 10:6 32:9 65:15,18	mentions 53:1

merely 34:14 merrily 85:3 met 71:8 methods 40:3 miles 32:6,7,8 81:5 million 47:22 90:12,18 Miller 20:8,13,14 29:12 31:18 65:14,17 74:1 76:16 81:4,14 84:4 98:25 mind 75:11 98:2,7 minimal 26:13 minimum 7:18 9:8,14 11:13 12:6 18:10 20:8 22:6 32:3 42:21,23 43:13 46:1,5 48:21 49:21 52:1 64:3 65:23 72:1,6 73:18,22,23 74:24 75:2 88:8 94:15 98:9 mixing 40:12 minor 9:19 24:3 mistake 32:21 33:4 34:3 83:7 84:22 85:6,20 misuse 22:14 mitigation 30:2,7,15,19 81:17,20 82:16 98:24 mix 54:21 mixing 75:12 modified 6:18 money 77:22 month 38:20 55:22 months 32:13 45:7 Moon 35:3 moratorium 8:18 morning 45:12 Morris 1:24 100:4,21 move 26:2 107:12 63:8 77:4 moved 76:22 moving 22:7 39:25 municipal 15:21,24 17:4 17:14 19:19 68:2,6 69:6 69:10 70:5 Murphy 6:25 7:19 9:4,8 12:4,21 13:11 19:7 20:3 20:14,17 23:7 29:13 31:11 32:4,9,11 34:2 62:9 63:24 64:3 70:22 71:2,9,17 75:24 79:25 81:5,14 83:19 84:6,12 84:25 90:8 94:16 99:1 mutual 62:14 M&I 39:22 41:23 N N 2:1 name 3:5 37:16,18 58:6 95:4 96:6 national 35:3 53:11 88:3 nationals 92:14,20	natural 24:10,20 34:3 78:18 nature 40:17 navigation 19:3,10,13 66:11 72:3,10 near 20:8 35:4 61:25 62:9 88:3 nearest 81:6 necessarily 21:10 25:12 73:10 83:22 necessary 24:13 39:24 66:10 69:22 73:23 need 21:16 29:19 33:21 34:21,22 35:11 36:6 38:12,12,14 39:9 40:2 47:13 49:21 62:18 63:25 73:5 78:21 86:2 91:2 needed 7:11 62:5 86:23 needs 20:22 24:25 26:6 83:25 negative 30:12 81:23 negotiate 36:14 negotiation 9:13 36:19 92:25 negotiations 89:17 negotiators 10:18 15:13 16:1 17:23 23:24 29:22 35:19 67:11 70:9 76:6 80:2 82:1 88:19 89:1 90:21 93:21 neighboring 5:19 Nevada 93:13 never 14:2,12 25:2,8 27:23 65:12 71:9 72:2 76:21 83:11 88:1 new 7:8 8:14,17 9:3 15:17 15:19,24 17:18,21 18:4 18:4,20 21:24 23:4,13 25:10,18 27:3 31:13 32:15 34:7 67:13,22 68:5 69:14,19 70:14 71:8 75:18 76:1 77:23 82:18 83:9 86:6 newer 27:12 newspaper 3:8 58:9 nexus 34:6 Nex 52:7,8 91:25 nice 56:1 77:18 83:6 night 43:24 44:24 45:8,9 nll 33:8,11 Nine 3:10 58:10 77:2 nobody's 50:2 non-Board 48:8 non-consumptive 28:6 69:12 79:11 non-speculative 67:18 normal 67:17 normally 40:4 North 2:12 95:5 96:7 Northwest 29:18	Notary 100:5 notice 4:22 November 84:16 number 7:22 10:9,22,24 16:5 21:15 22:2 24:8 27:14,18 33:11 37:16 42:19 64:11 70:2 73:17 73:19 84:2 85:5 87:18 96:3 numbers 11:25 13:5 17:3 21:19 65:7 71:4 Nyssa 94:2 O O 100:1 objecting 39:6 obligation 52:24 obtained 33:2 obviously 79:16 occasion 84:5 occasions 20:12 occurs 65:18 October 6:13 25:9 62:15 62:15,19 63:11 76:15 76:18 79:24 84:16 85:15 87:3,5 office 4:14,15 95:5 official 96:24 officially 99:7 off-stream 38:14 40:16 Oh 51:13 93:14 okay 45:20 48:6 51:9 56:4 57:11 60:6 83:12 96:4 96:17,23 98:20 okayed 5:21 okaying 5:13 59:25 old 12:12 once 24:21,21 28:8,24 36:7 37:4 44:21 49:22 60:21 74:17 78:21 79:13 80:20 one-foot-per-hour 49:12 one-year's 77:24 one-year-at-a-time 27:5 open 4:4 37:12 46:18 60:16 87:7 94:6 96:25 operation 19:21 27:6 30:4 65:1 81:8,16 operational 66:1 operations 9:20 30:13 31:1 opinion 39:7 opposition 38:24 39:1 optimal 73:17 optimum 22:8 28:15 oral 4:2 Orchards 2:9 37:19 order 5:12 11:14 37:7 39:10,12 55:6 59:24 ordinary 14:17 Oregon 5:20,21 40:13	60:5,8 93:25 94:3 organization 3:11 original 21:14 62:2 89:4 originated 13:4 outside 16:18 93:7 overboard 33:13 overcome 77:7 overview 3:25 4:7 6:4 58:24 60:15 over-appropriating 32:22 owner 58:9 owns 17:8 Owyhee 93:9,15,17 94:1 P P 2:1,1 100:1 package 4:19 5:5,13 15:13 36:1 59:10,14,19 60:6 63:6 67:10 94:12 94:24 97:13,18 packages 72:19 page 4:6,8,8,12,12,17,18 4:18,21 5:25 6:5,6 49:15,16 53:18 57:9 58:24 59:2,4,5,9,12 63:18,18 98:13 paid 26:13,18 78:8 90:4 90:10,12 Panhhandle 7:4 paperwork 14:5 78:13 paragraph 53:23 parameters 68:14 parks 17:5 part 8:11 10:13,13 13:9 15:13 18:13 23:5,10 26:17,17 29:11 34:4,24 34:25 46:17 48:22 50:24 52:21 66:13 70:20 75:25 81:3,11 85:16 87:6,13 88:25 91:21 95:19,20 partially 24:6 participate 29:17 35:17 36:4,11,13 37:25 47:9 88:12,23 participating 52:3 particular 7:8 23:8 91:23 98:9 particularly 6:24 8:9 11:11 19:15 21:18 23:5 32:15 33:13 36:12 54:9 54:25 72:11 parties 8:5 59:23 parts 23:9,9 51:22 87:9 87:11 pass 5:14 36:16 44:5 passageway 41:17 passed 5:6,6 54:5 59:20 63:7 passing 5:4 Pat 95:4	pathway 41:2 Paul 2:10 42:18 pay 38:13 39:3 40:2 48:22 Payette 66:2 paying 39:20 peak 44:23 people 3:23 6:23 8:22 11:11 27:8,25 38:23 39:5,17 40:1,5 43:7 48:2 51:6 52:8,11,19 60:20,24 67:7 69:13 70:24 72:15 79:15 84:23 85:8,18 87:12 88:9 90:10 90:11,15,18 92:10 93:4 97:19 Perce 52:8,8 91:25 perceive 68:24 percent 44:17 period 45:3 periods 31:16 64:7 65:19 peripherally 65:13 permit 75:10 83:17 86:6 86:16 permits 8:17,19 33:14 76:1 83:10 person 16:16 26:5 27:2 28:3 37:14 67:15 72:17 78:24 85:13 86:6 perspiration 16:23 phone 42:19 96:8 piece 36:9 78:18,20 79:2 89:10 pieces 91:3 pin 48:20 place 6:10 8:7 53:24 59:18 61:6 63:1 64:12 70:17 72:10,14 83:6 85:14,19 98:23 99:1 places 57:5 Plain 16:19 31:20 84:3,8 84:14,25 94:25 plan 1:7 3:19 4:25 6:11 6:21 7:3,6,16,21 9:7 10:6 11:4,9,21 12:1,6 12:13 15:21 18:8 19:5 20:6 21:10,11,14,21 22:2,19 24:1 30:5,6 31:9,24 35:11 38:21,25 48:13 49:4,7 51:4,6,10 51:10 52:2,21 53:5,12 54:3 55:25 58:20 59:1,3 59:15,17 61:16 62:2,23 63:1,14 64:8,13,17 65:23 66:6,9,13,17 68:3 70:1 71:14 72:4 73:13 73:16 74:25 87:11 94:15,21,21 95:18 please 37:15,17 pleased 52:1 plenty 43:21 plug 11:1
--	---	---	--	--

61:24
recognizes 11:9,11 68:7
89:19
recognizing 85:20
record 37:17 96:3 100:12
records 36:22 92:19
recreation 19:13 21:14
22:3 24:4 73:16,25 75:3
recreational 19:9 21:17
22:10 40:5 48:19 72:7
reduce 81:24
reduced 54:18 100:9
reference 91:13
reflection 31:5,7
refuses 89:22
regard 39:2 55:8 56:21
regarded 72:21
regarding 1:7 50:17
region 7:5 30:24 72:15
regulate 13:22 43:15
55:15
regulation 36:6
regulations 47:8 54:8
55:19 56:15 76:10,25
80:8,24 82:7 88:22
Regulatory 5:12 59:25
reiterate 57:19
relate 33:24
relates 29:7 80:12
relatively 69:16
reliable 74:14
relies 81:7
rely 14:17 19:24 72:15
relying 20:19 31:18 67:9
remaining 7:7 84:11
remarks 46:8
remember 62:25
reminds 60:22
reporter 100:4,6,21
represent 52:12 63:3
representative 77:3 92:17
representing 39:17
represents 21:21 62:9
require 31:9 54:23 81:21
required 5:9,20 24:23
60:5
requirement 65:16
requirements 34:18 51:7
73:24
reservation 35:4,5 47:17
88:4 92:13 93:17,18
reservations 88:1 91:15
reserve 35:2 68:12 70:9
87:24
reserved 17:17 35:6
72:22 87:25
reservoir 23:19 24:23
25:16 26:7 28:23 29:8
29:14,17,23 64:24
77:16 80:19 81:10
82:23 98:24

2/6/1985

reservoir 24:2
reside 37:20
resolve 8:1 92:22
resource 1:13 3:6,13 4:7
40:18 41:20 50:8 57:14
58:7,14,25 73:19 79:8
98:3
resources 1:1 3:15,16 4:4
8:9,14 14:6 22:5 28:19
31:10 34:4 35:12 40:22
55:14 58:16,17 60:25
65:5 80:4 89:2 90:23
92:18 93:1
respond 98:22
response 29:9
rest 59:9 70:10 89:20
95:2
restricted 86:7
restriction 26:24
restrictions 28:15 29:3,4
42:22
restrictive 27:16 90:5
return 30:14 71:25
returned 18:3 55:2
revenues 29:16
reverend 58:4
revise 20:7
revised 70:1
revising 5:3
revision 12:12 21:12
revisions 30:6 59:3 63:13
revolve 13:3
reworded 76:7
rewrite 80:7
re-adopted 19:6
re-allocate 67:25
re-allocation 34:13
right 8:13,16 9:10,12
10:1 12:24 13:12 14:1
14:10,12 15:2,6 17:25
20:2,22,24 21:6 22:7
23:1 24:10,14,17,23
27:16,19 35:17 36:20
36:23 37:2 40:25 43:22
50:12 53:18 56:8 58:8
61:22,23 64:7 68:8,21
68:25 72:18 73:3 74:13
75:6 77:20 78:17,18,19
79:1 80:19 92:23 95:14
rights 8:14 14:21 22:14
24:20 28:10 31:13
32:15 35:2,6,14 36:14
37:6 71:23 75:7 87:8,25
87:25 91:20 92:4,5,7
93:3,24
right-hand 4:18,22 59:12
Ririe 80:19 82:23
river 7:4 10:17 11:1
16:13 19:16 20:13
23:18 25:5,11 29:12,24
30:23 31:17,20 33:7,15

34:19,21 35:20 41:16
42:14 43:6,8,9,10 44:1
44:17,24 45:6,7,8,10,13
45:18,20 49:2,8 52:22
54:18,20 55:2 58:11
61:10,18 62:8 63:23
64:15,21 65:9,12,18
66:2 68:3,19 69:4,5
70:25 71:24 72:7 74:1
74:15 75:13,23 76:12
79:24 81:14 82:11 83:2
83:11 84:1,3,6,8,9,12
84:16 85:17 86:2,8,15
86:17 87:6,17 90:7
94:25 95:6,9
riverbank 49:12
Road 2:12 96:7
Robert 2:5 3:7
rocky 45:1
room 76:16
rotation 79:4
rough 57:6
roughly 16:2
rule 29:1
ruled 7:13 8:20
rules 40:23 54:7 55:18
56:15 76:9,25 80:8 82:6
88:21
ruling 14:19
run 53:3 83:13 97:20
running 14:16 45:20
runoff 16:13 25:11 41:8
76:17
runs 45:16 79:25
rushes 29:20
Rydaleh 2:6 3:9 42:8,9
44:6,7 58:10 77:3 96:14
96:15
S
S 2:1 100:1
sale 80:19
Salt 44:18
sat 25:17 62:12
Satchwell 2:12 94:8,9
96:4,6,19
satisfied 15:2 27:13 67:6
satisfy 8:15 9:11 10:14
15:19 22:13 67:17,19
75:6 79:22
save 41:8
saw 52:25
saying 10:11 14:3 34:14
49:25 64:14 81:23
85:22
says 13:14 14:22 15:7
17:16 23:10,16 36:24
61:18 63:17 66:7,9 68:9
73:3,16 89:11 92:18
Scheme 29:19
score 39:6

scratch 82:14 85:9
screw 83:5,12
season 11:3
seated 48:25
second 15:25 29:11 81:3
secretary 3:12 58:13
see 4:12 8:24 10:3 23:17
29:3 39:18,25 43:23
45:21 49:17 52:17 55:7
56:24,25 60:12,16 80:5
82:19 83:13,23 84:25
89:2 95:9,15 96:10
98:11
seek 50:23
seen 43:10 44:13,18 46:5
segment 23:16
sell 26:9,25 27:10,25
77:17 78:1,4,11,23 79:4
79:10,11 86:22,23
seller 77:1
selling 78:10
send 50:7 62:22 98:3
sense 27:22 78:6 86:2
sent 20:25 57:21
September 11:7
serious 94:14
served 93:24
service 51:15,19,23,23
89:20
cession 36:10
set 5:24 17:8 18:11 19:22
45:9 52:1 56:13 67:20
67:22 82:6 88:15 93:2
95:9 99:2 100:16
sets 15:22 64:1 95:1,11
setting 72:6
settle 61:10 62:13
seven 16:10 59:13 97:19
sewage 55:10
shaky 91:1
shame 40:23
share 39:20
Shawver 2:6 3:12 44:8,9
46:11,12 58:13
Sherman 2:7 3:15,25 6:3
6:7,8 46:19,22 47:1,21
50:18,19 51:21 52:10
53:2,6,9 54:6,17 56:20
58:16 60:20 61:4 72:25
91:9,11,16 93:6,8,14
94:5 98:21,22
short 22:13 25:19 75:5
shortage 34:23 37:9 87:5
shorthand 100:8
short-sighted 39:8
Shoshone/Bannock 52:11
89:9
Shoshone/Bannocks
89:16 91:14,17 92:3
show 18:23 32:12 36:24
84:15 92:19

shown 9:25
shows 53:20
Sho-Bans 52:9,10
shut 9:24 10:4 19:1 32:10
34:10,23 84:23,24 85:1
85:10 87:8 91:2
shutting 32:19
side 4:18 49:16 59:12
61:13,13
signed 6:13 62:15,16,19
significant 17:2 23:5
significantly 21:19
signing 18:24 85:15
simple 22:15
sir 42:17
sit 33:18 61:9 83:22 89:12
sits 36:23 92:16
sitting 43:5 86:12 95:6
situation 6:9 21:3 27:15
41:22 86:20 87:6
six 15:17 16:10 45:7
49:17 97:15
size 13:16 24:25 48:5
89:25
slept 45:8
slightly 22:18
slipped 91:8
small 69:7 90:5
smallest 47:16
smokestack 69:8
Snake 3:11 7:4 10:17,25
16:19 20:9 23:7 28:23
31:20 32:25 35:6,20
36:8 38:5 39:11 40:22
41:16 52:4 58:11 61:9
61:17 63:23 65:15
68:19 69:1 73:25 74:14
74:19 75:23 76:13,14
84:3,8,14,24 87:6 90:7
90:17 91:3 93:7 94:2,25
95:9
sold 33:19 83:20
sole 36:2 56:10
solution 94:25
somebody 18:3 26:11
30:23 75:8 78:7,11,23
someplace 9:5 32:20
soon 31:21 63:9 89:2
sort 8:25 30:1 32:6 39:4
62:24 64:16 67:9 68:17
74:3 77:18 82:18
source 56:10
south 63:25 93:16
Southern 43:21
so-called 29:20 34:16
72:13 77:1 84:11 90:2
space 25:10
spawn 45:1,2
speak 3:17 57:6
SPEAKER 46:10 47:18
51:2,4,11,18 52:9,25

54:2,9,13,15 56:16,18
57:10 93:11,12 96:16
96:22 97:4,5,10,12 98:6
98:20 99:6
speaking 48:18
speaks 9:2,3 10:18 34:12
34:16
special 15:10,12 18:2
56:13
specific 7:8,10 12:14 23:8
25:23 30:6 54:2 65:11
73:2 77:10
specifically 11:22 17:16
63:14 66:13 71:14 80:2
81:4,20 85:12 87:10
89:5
specifics 21:7 34:1
specified 10:16 11:4 12:4
18:25 33:1 48:21 50:22
specifics 7:21 15:5 17:19
18:6 19:17 36:1,5 47:10
63:4 66:8 67:5
specify 20:16 30:5 64:6
65:21,22
specifying 6:15 47:6
spelled 22:18
spelling 66:23
split 10:12 64:18 65:8
70:25
Spokane 95:6
spoken 51:25
spring 41:8 65:19 73:6
springs 19:25 20:1,5,15
20:18,19 21:1 31:19
32:8 72:16 84:7,19
St 3:8,9 38:5 58:8,12
staff 59:6,7 60:24 90:23
97:2
stage 49:8
stand 42:3 79:21
standards 51:8 54:22
55:5 56:7 75:10
stands 7:21 64:8 94:12
standstill 8:25
start 31:22 44:23 46:22
47:12 63:15 64:19
69:14 77:8 89:2,18,22
90:8
started 35:20 40:11 56:5
92:1,3
starting 36:2 88:17,20
starts 35:20
state 1:7,3 18:4 7:15,20
4:25 5:4,19,19 6:11,15
7:9,17 8:1,25 9:7 10:6
11:6,16,21,22 12:1,5,9
12:10,19,19 13:9,21,22
14:4,8,11,21,22 15:3,7
15:8,15 17:8 18:4,7,14
18:20 19:4 20:21 22:12
22:22 23:6 26:4 27:14

28:10,11,15 29:7 33:2 34:18 35:18,21,23,24 36:4,14,20 37:16 38:15 39:10,25 40:6 41:11,18 47:14 48:12,20 49:4,7 50:16 54:23 55:4 56:12 58:20 59:1,3,11,15,17 60:8 61:8,16,19 66:14 66:16 67:3,3,13,17,21 67:24 68:23 71:6,15 72:1 73:3,10 74:5,14,16 76:10,24 78:15 79:9,12 80:5,22,25 81:12 82:25 83:4,15,25 86:20 87:13 88:13,18,23 89:6,12,21 89:24 90:3,24 92:24 93:2,4,16,19 94:15,21 95:2,15,18,19,20,22 97:18 Statehouse 50:7,8 57:21 98:4 statement 42:11 60:17 state's 86:16 station 41:6 statute 13:22 steam 69:9 step 37:15 steps 80:7 stick 65:3 sticky 74:11 stop 16:5 23:23 91:6 stopped 8:14 storage 23:4,12,13,20 24:3,5,17 25:8 29:8,25 38:14 40:16,22 64:25 75:18 76:1,4,19 77:24 78:8 81:15 83:18 98:24 store 44:22 58:9 77:16 stored 25:24 26:16 28:17 31:3 76:12 78:19 79:14 82:21 story 60:21 stream 9:3 13:22 24:12 48:21 94:15 98:9 streams 74:18 street 45:13 stretch 48:3 strictly 29:12 structures 13:12 21:2 studies 21:15 50:24 62:4 stuff 62:21 stumbling 90:20 subdivisions 38:9 subject 34:9 submit 57:2 98:17 submitted 51:11 subordinate 10:1 subordinated 14:19 61:23 62:7 subordinating 14:18 subordination 5:24	sufficient 73:23 suggest 50:19 suggestions 5:2 summer 41:6 43:2 45:25 94:18 summers 45:6 61:25 summertime 10:21 12:20 13:10 18:16 20:18 24:6 64:4 65:4 68:10 70:22 83:3,20 84:4 supervision 100:10 supplementary 46:8 supplied 81:18 supply 19:2 30:2 69:6 77:24 supplying 19:9 support 26:13 38:21 48:15,16 supporting 47:3 48:11 suppose 27:1 45:23 supposed 28:8 63:18 77:12 Supreme 7:13,19 8:6,12 13:15 14:19 31:5 61:12 61:14,21 68:7 sure 42:4 50:11 57:3 83:6 85:7 surface 16:13 31:23 32:1 55:11 85:2 86:8 Swan 4:13 6:25 7:15,20 7:23 8:15 9:9 12:24 13:1,3,14 20:15 21:18 21:22 47:10 56:6 61:21 62:6,9 63:24 70:16 71:1 71:3 81:4 89:2 91:18,24 94:10,20 97:7 synthesize 98:15 system 3:11 7:7 8:10 23:7 24:2 27:23 28:12,17 32:25 33:17 34:17,22 35:7 36:8 69:13 74:15 76:5,12 77:5,19 78:15 79:20 80:17 83:2 94:2 98:24 systems 35:18 system-wide 52:3 system's 30:3 system-wide 35:22 88:14 88:22 T T 100:1,1,1 take 3:21 4:1,21 7:17 10:8 10:13,13,24,25 12:22 17:3,12,13 18:19 24:1 20:23 34:5 35:2 41:19 47:16 49:15 59:18 61:14 62:7 64:2 65:3 68:3,9 79:23 82:19 85:13,17 88:2,9 92:21 94:14 98:14	taken 4:23 5:10 8:5 47:25 53:20 57:7 59:21 90:15 takes 72:10,13 talk 9:20 12:8 47:21 51:22 52:20 58:18 59:16 60:23 70:4 talked 38:22 talking 13:1 16:1,6,14 31:22 32:6 44:10,11,16 44:17 46:23 47:18 49:6 95:4 talks 11:13 15:14 18:5 49:7 63:1 67:20 70:16 81:3 tape 37:22 72:24 73:1,1 99:9 task 56:13 taxpayers 90:3 technical 35:13 46:20 telephone 37:16 96:3 tell 45:20 70:8 temperature 55:6 ten 8:6,21 9:17 24:21 43:6 44:11,17 47:22,25 48:3,6 78:21 90:12,15 92:21,25 98:12 ten-percent 44:18 term 40:25 terms 9:21 11:5 15:23 16:15 19:6 22:19 36:15 36:16 47:15 52:7 54:18 61:17 62:21 64:22 68:4 73:20 75:23 testified 2:8 50:14 51:24 testify 4:3 37:14 38:11 42:16 46:15 50:15 96:21 testimony 3:22 4:1,2,3,11 37:13 46:17 47:3 48:9 48:11 50:6,15,21 51:13 54:10 57:20 72:25 96:25 97:24 text 66:24 81:19 thank 37:23 42:1,14 44:3 46:13,14 57:24 91:9 94:5,10 96:10,18,19,23 theirs 85:7 theory 28:4 thermal 68:18 they'd 89:2 thing 4:24 16:19 39:5 43:13 45:21 50:4 51:9 53:16 56:1,6 57:13 62:25 64:6 68:21 74:2 74:10 85:4 86:4 89:7 92:14 94:11 95:8 96:1 98:8,19 things 7:1 9:3 13:21 29:10 30:19 33:23 41:10 53:19 61:5,7 63:2 63:4,10,14,21 66:11,25	79:18 82:11 91:7 97:20 think 16:5 25:20 36:17 37:11 39:8 40:2 42:12 43:19 45:15 46:4,23 47:5,11,12 48:24 50:10 52:16 53:2 54:4,17 65:24 69:5,21 82:16 83:16 84:21 88:25 89:22 91:6,24 92:15 93:8,20 94:13,20 95:10 97:18 98:16 thinking 11:5 19:6 thinks 17:24 thought 21:25 24:24 68:3 91:7 93:12 thousand 8:19 19:24 20:5 20:15,18,19 21:1 31:19 32:8 72:16 84:7,19 three 5:18 16:11 38:11,14 48:2 60:21 90:15,17 thrust 94:13 95:23 thumb 58:22 thunderstorms 9:19 tighten 75:15 time 6:22 14:7 27:1,11 30:9 31:11 37:9 40:21 42:16 45:19 46:16 47:20 54:4 56:22 60:22 63:5,19 65:10 77:18,22 78:1 82:13,22 84:6,18 89:24 90:13,22 91:8 98:9 timed 91:5 times 41:9 60:22 timing 30:14 82:9 title 17:13 today 3:6,18,21 5:1 7:21 28:19 38:11 48:14 50:14 56:22 57:15 61:16 63:8 64:9 67:9 72:4 86:3 88:15 told 58:4 62:22 tomorrow 86:3 tone 95:11 tonight 57:22 94:13 95:24 total 69:2,6 totally 24:5 31:18 touch 33:23 track 27:22 89:8 trade 41:9 tradeoff 13:9 18:13 81:11 tradition 15:16 67:22 training 3:23 transcribed 1:24 100:6 transcript 1:11 100:11 transitioning 72:25 treatment 55:10 tribe 91:23 tribes 35:1,10,13 51:17 tributaries 35:21 tributary 74:18	tried 85:25 89:25 trips 45:6 trout 19:16 20:19 21:1,11 72:13,14,20 73:7 true 56:25 71:2 100:12 trunkline 41:17 trust 12:9,18 15:7 17:8 74:15 try 7:1 12:13 25:5 29:7 30:25 31:21,25 46:23 49:10 61:10 63:22 66:18 69:3 77:20 83:1 87:17 98:15 trying 8:1 21:22 25:15 27:11,22 28:14 29:21 31:22 43:8 47:1 55:24 63:11,15 84:1 85:4 91:19 92:4 97:20 turned 14:20 62:18 turning 67:2 turns 11:2 16:2 17:4 Tutcher 2:10 42:18,18 44:13 46:14 49:19 50:12 twice 60:21 Twin 19:15 20:8 72:12 two 6:12 8:5 9:5 23:8 34:18 38:12 40:14 45:6 51:21 56:5 60:23,24,25 62:15 64:20 65:9 74:23 83:8 87:15 92:2 97:16 two-pronged 75:25 typewriting 100:9 typically 9:15 11:7 28:9 U unallocated 28:22 32:24 80:18 82:22 83:1 86:14 unappropriated 7:7 12:9 14:8,11 61:19 74:12,13 74:20 underground 55:21 underlying 50:24 underneath 81:19 understood 54:2 95:14 unexposed 49:13 unintelligible 6:25 9:20 10:14 13:7 19:15 20:1 21:7 23:14 26:8,14 27:7 28:23 32:19 34:9,17 35:8 36:8 47:8,19 51:24 51:25 52:4,5,6 55:3 56:10,11 64:7 69:22,23 70:6 71:3,22 73:6,7,8 76:7 77:25 80:12,13,20 81:6 87:20 90:3,19 93:10 unit 32:2 UNKNOWN 46:10 47:18 51:2,4,11,18 52:9,25 54:2,9,13,15 56:16,18
---	---	---	--	--

2/6/1985

57:10 93:11,12 96:16 96:22 97:4,5,10,12 98:6 98:20 99:6 unrealistic 7:22 26:20 unsubordinated 7:14 unusual 64:6 66:1 updated 7:11,12 upper 3:11 20:9 23:6 32:25 35:6 58:11 65:15 upstream 10:14 12:25 13:12 21:24 31:13 35:22 38:14 40:16 62:6 70:19 71:3 75:24 urge 94:14 use 7:18 8:18 9:16 12:3 13:20 14:10,15,18 16:11,14 17:15,24 18:6 18:7,23 22:6,20,21 23:1 23:12 25:8 27:17,20,21 28:3,5,6,8,11,16 29:4 33:1 39:21 40:6,9,15 41:3,7,8,14,21 43:8 44:1,23 49:24 52:17 54:19 55:3 64:7 67:2,8 67:14,18,24 69:5,7 70:7 70:11 71:7,12,12 73:4,9 74:4 75:14,16 76:11,11 76:23 77:6 78:16,22,25 79:13,16,19 80:5 81:2 84:11,13 85:14,21 98:24 user 12:23 18:22 34:6 69:10 79:5,11 86:1,15 87:2 92:16 users 9:24 10:4 33:14 34:23 38:16,20 40:3 67:3 uses 7:8 11:2,6 14:23 15:24 16:6 17:19 19:20 20:10 22:10 25:19 27:12 34:21 40:15 41:23 54:25 55:1 68:6 68:11,13,24 69:1,8,19 usually 38:2 48:2 utilities 5:15,22 59:22 60:2 utility 5:9 38:6,18 utilize 40:21 U.S. 51:18	violating 50:1 vital 41:17 volume 15:22 vote 36:17 voted 38:20 W Wagner 57:15,17 wait 8:20,24 86:13 wall 45:11 want 10:3 19:17 28:16 32:9 38:11 39:16 50:14 62:7 69:14 74:4 75:15 75:16 77:17 81:24 88:9 wanted 8:23 23:25 26:3 29:23 62:21 64:23,24 65:2 wants 15:8 30:16 52:17 67:14 72:18 76:23 81:13 86:16 87:3 wash 69:12 wasn't 45:8 waste 23:1 25:12 54:20 55:11,16,19 wastes 68:16 wastewater 75:9 wastewaters 16:21 82:10 watching 43:14 water 1:1,7,13 3:6,11,13 3:15,16,18 4:7,25 5:3 6:3,11,21 7:3,15,16,17 8:9,9,14,14,16,18 9:7 9:10,23 10:1,6,20 11:4 11:5,6,9,16,21 12:1,5 12:13,16,18,23,23,25 13:12,18,20,24 14:1,6 14:21,22 15:2,6,8,11,18 15:21,22 16:4,7,8,12,15 16:16,17,23,24 17:1,5,7 17:20,25 18:6,7,21,24 19:2,4,9,18,20,25,25 20:2,4,9,12,17,20,22,23 20:24 21:6,8,10,14,17 21:21 22:2,11,13,14,14 22:19,20,20,20,21,23 22:25 23:1,2,12,17,25 24:1,9,12,15,17,21,22 24:25 25:2,4,8,9,11,16 25:16,18,19,24 26:4,5,6 26:12,16,21,23,25 27:2 27:5,8,10,12,16,17,19 27:20,22,24,25 28:3,4,8 28:9,11,17,19,21,22,24 29:4,19,24 30:9,16,23 31:3,9,10,13,21,23,24 32:1,1,8,15,20,22,25 33:12,15,17,18 34:4,8,8 34:11,13,23 35:2,6,10 35:12,14,17 36:5,8,14 36:19,23 37:6,9,9 38:6 38:16,20,21 40:15 41:4	41:9,11,14,17 43:1,3,4 43:17,21 44:22 45:12 47:12 48:13,22 49:4,7 49:21,23 50:8 51:6,7 52:7,12,17 53:5,13,17 53:25 54:16,20,21,25 55:1,2,7,12,13,14,18,25 56:9,13 57:14 58:7,14 58:16,17,20,25 59:1,3 59:15,17 60:25 61:16 61:18,22,23 62:2,8,23 63:1,13,18 64:7,8,13,17 64:21 65:5,11,15,15,17 65:18 66:4,6,13,16 67:1 67:7,13,15,23 68:2,8,10 68:15,16 69:6,10,12,13 69:17,21 70:11,10,18,23 70:25 71:7,12,12,14,22 71:23,25 72:4,7,8,18,21 72:22 73:1,3,4,9,12,16 73:25 74:7,9,14,25 75:1 75:4,5,6,7,8,12,13,14 75:16,17 76:11,15,16 76:20,24 77:1,4,11,16 77:20,24 78:1,4,6,10,12 78:14,16,17,19,20,21 78:25 79:1,1,8,10,13,15 79:20,22,23,25 80:4,6,7 80:12,17,18,20 81:2,13 82:3,3,21 83:7,10,12,15 83:21,21 84:6,7,11,14 85:2,6,21,24 86:1,8,11 86:14,17,19,21,22,24 87:3,4,5,8,11,17,19,21 87:25 88:1,5,9 89:1 90:23 91:1,20,22 92:4,5 92:7,11,16,18,22 93:1,3 93:24 94:15,21 95:18 98:3 99:3 watering 69:9 waters 7:7 12:8,10,10 14:2,4,7,8,11,15 17:16 18:2,2 26:7 32:24 40:6 61:19 63:16,17 65:8 74:12,13,20 76:21 77:14 82:22 83:1 84:20 Waterworks 38:17 way 5:13,14 8:2 9:23 25:4 25:18 27:3 35:8,16 37:24 39:23 40:14,17 41:2 61:4,15 79:10 88:11,20 95:17,21 Wayne 2:7 3:14 58:15 ways 28:14 83:18 84:10 95:16 weakness 56:24 weaknesses 57:1 weeks 32:12 weighed 31:14 Weiser 65:22 Welfare 53:4 54:7	wells 55:16,19 went 25:6 weren't 13:17 West 40:14 wet 85:10 we'll 46:17 47:16 50:6 60:14,16 94:6 96:24 98:14 we're 29:1 39:24 41:25 42:13 49:5 55:22 56:6,8 58:18 59:14,16 62:24 63:11 67:9 70:23 76:3 79:21 80:23 81:20,22 83:18 86:13 88:6 92:21 we've 4:9 46:2 47:4 50:5 58:15 61:11 88:7 97:15 98:12,16 whatsoever 51:5,19 WHEREOF 100:16 whichever 61:13 85:11 whip 97:2 wide 32:7 93:11 wildlife 21:13,16 22:3,10 51:19,23,23 52:5 62:4 66:11 73:15,18,20,24 75:2 77:12 85:8 92:9 willing 62:17 77:1,2 80:14 89:7 windfall 78:10 winter 41:6 45:24 94:19 wintertime 10:21 11:2,3 12:31 18:17 23:18 29:25 30:10,17,24 64:5 64:22 65:2,6 81:14 83:3 94:17 wish 4:2 46:15 50:20 wishes 6:21 withdrawal 72:21 WITNESS 100:16 won 61:13 wording 81:25 95:11 words 43:2 49:25 work 26:9 29:21 40:12 91:19 working 4:20 59:11 worst 21:3 worth 26:22 78:12 wouldn't 11:24 25:19 40:4 86:21 write 97:25 98:3 writing 57:2 written 4:11 50:6,15 57:20 97:24 wrong 61:20 94:22 Y yeah 47:21 54:6 93:14,14 year 6:13 26:25 27:10 30:9 31:11,16 59:19 76:15,17,20 77:18,21 78:1 85:10,11 88:7	years 7:12 8:6,21 13:20 24:21,21,23 28:9 40:14 47:23,25 48:4,6 56:5 60:23 65:15 70:2 78:22 79:13,16 90:12,15 91:20 92:2,21,25 97:19 year's 25:10 76:16 year-round 9:8 11:4 41:4 64:4 year-to-year 86:20 yellow 54:13 yesterday 51:14 Z zero 20:8 65:14 84:3 \$ \$28 47:22 90:12,18 1 1 4:25 10:1 37:22 58:24 59:15 1st 11:7 25:9 62:15 76:15 76:18 79:24 85:15 87:3 87:5 100 32:6 68:25 84:24 11 70:20 12 44:19 12th 97:9,10 12,000 70:20 76:17 79:24 1200 10:8 1411 2:10 42:19 144 16:3 68:5 15 4:23 44:13 59:19 150 16:3 17:7 19:22 68:13 69:23 99:2 17,000 39:17 1860s 92:13 1870 24:14 1880 24:14 1976 7:5 21:15 1977 5:16 60:4 1982 7:12 1983 3:19 1985 1:12 3:2 58:2 2 2 2:9,10 4:8 5:5 6:6 10:1 49:15,16 59:2,18,19 72:24 73:1 98:13 2,000 45:25 2:00 1:12 3:2 97:16 210 84:24 2007 100:17 203B 15:5 208 53:1,3,7,11 54:3 55:9 96:9 22nd 50:7,16 57:3,20 97:25 24 9:17 24-hour 45:3
---	---	--	--	--

25th 62:19	6
3	6 1:12 3:2 4:17,18 5:18
3 4:8 5:8 6:6 59:2 73:1	58:2 60:5
98:13 99:9	600 10:10 83:19 88:8
30th 11:8	600-or-so 84:21
32 1:7 3:18,20 4:1,9 10:17	696 1:25 100:22
12:2 18:11 50:10,17	7
53:15 58:19,19 59:1,3	72:12 4:18,21 5:23,25
59:15,17 60:16 61:17	53:18 59:9,12
73:22 98:12	7A 5:24,25 60:12
32A 12:18 14:25 66:22	7B 5:24,25 60:12
32B 15:20 68:1	7:00 1:12 57:22 58:2
32C 17:15 70:4	97:17
32D 18:5 71:11	70 32:7
32E 19:3 72:3	70,000 45:24
32F 72:11	743-6271 42:20
32G 21:13 73:15	76 19:5 21:22 35:9 65:24
32H 22:11 56:24 75:4	68:20
32I 23:4 29:11 75:18	773-5285 96:9
33,000(sic) 41:6	8
3300 7:18 9:9 19:7 21:20	8 53:21
21:25 62:8 64:3,17 68:4	82 19:5
73:17	83720 50:8 57:21 98:4
3500 10:8	8400 9:10 13:7 61:24
3900 10:7,16 11:1 12:20	71:21
13:10 14:2,21 18:16	8500 45:20
19:11 20:3,16 21:20	
32:18 33:3,8 34:2,7	
64:4,10,11,18 65:3,4	
68:9 70:21 71:10,16	
72:1 73:19 83:2,11,14	
83:19,24 85:8 86:10	
94:16,18	
3900/5600 12:4 31:10	
4	
4 4:12 5:11 59:4	
4,000 38:8	
400 68:25	
42-1805 53:22 54:1	
42-203A 14:24 15:4	
42-203C 15:7	
4340 2:12 96:7	
45-degree 44:16	
4500 9:15,22 10:8 62:1	
64:15	
4750 65:22	
5	
5 4:13,18 5:15 53:23 59:5	
59:9 60:2	
5,000 45:22 46:2	
50 32:7,8 44:19 84:24	
521 37:20	
5500 62:5	
56,000(sic) 41:5	
5600 12:21 18:17 64:4,20	
65:5 71:16 83:3 94:18	
94:18	

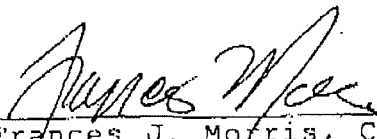
1 R E P O R T E R ' S C E R T I F I C A T E

2
3 I, Frances J. Morris Court Reporter, a
4 Notary Public, do hereby certify:

5 That I am the reporter who transcribed
6 the recordings in the above-entitled action to the
7 extent its contents were audible and intelligible;
8 and

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

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand this 19th day of November 2007.

15
16
17 
18 Frances J. Morris, Court Reporter
19 CSR No. 696

