

IDAHO WATER RESOURCES BOARD

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Public Information Meeting on
the Swan Falls Agreement
Boise, Idaho

TRANSCRIPT OF PROCEEDINGS

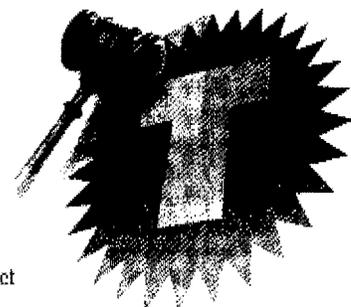
Held on November 1, 1984
before Don Kramer, Chairman

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Transcribed by
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Present:

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

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1 BOISE, IDAHO
 2 November 1, 1984 .
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 4 MR. COSTELLO: Chairman Kramer, Members of
 5 the Board, legislators, and members of the public.
 6 The governor did ask the Board to put
 7 on these meetings around the state and is very
 8 appreciative of the Board providing this
 9 opportunity to explain to you the details of the
 10 agreement that we have reached with Idaho Power
 11 Company.
 12 To give you the governor's perspective
 13 on this agreement, as I think almost all of you
 14 are aware, the governor for two years sought an
 15 enactment by the legislature of a subordination
 16 bill which would have by law imposed a
 17 subordination condition at Swan Falls. We weren't
 18 successful with that.
 19 The governor never intended by pursuing
 20 subordination to create a climate where we could
 21 take the river down to zero or down to the minimum
 22 flow or anything else. But he did feel very
 23 strongly, as he said repeatedly, that the state
 24 should be in control of making the decisions as to
 25 the allocation of a very precious and ever more

1 APPEARANCES
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 4 Present:
 5 Tom Nelson, Idaho Power Company
 6 Pat Kole, Counsel for Attorney General
 7 Pat Costello, Counsel for the Governor
 8 Frank Sherman, Department of Water
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 20 Pat Ford
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1 scarce natural resource. And that was his
 2 motivation in seeking subordination legislation.
 3 But with the help of Senator Noh and
 4 Senator Ringert and others who are here, despite
 5 that help I should say, we weren't successful in
 6 getting that done.
 7 And after the 1984 session, Idaho Power
 8 Company approached the governor again with an
 9 offer to enter into a partial settlement of the
 10 Swan Falls litigation, under the authority of
 11 legislation passed in the '83 session, called
 12 Senate Bill 1180.
 13 The governor responded with an
 14 invitation to enter into negotiations to settle
 15 all of the litigation rather than just a partial
 16 settlement. And Idaho Power Company accepted that
 17 offer in July, and we commenced negotiations.
 18 There were at least eight meetings
 19 among the three principals: Attorney General
 20 Jones, Mr. Bruce from the power company, and the
 21 governor. And in the meantime, the three of us
 22 met on virtually a daily basis trying to come to
 23 some meaning of the minds as to how we could best
 24 approximate what should be the balance between two
 25 competing uses: the need to produce hydroelectric

1 power and the need to make water available for
 2 agricultural development. And what we came up
 3 with was the approach that Frank has outlined for
 4 you.
 5 The governor, after reflecting on where
 6 we ended up with this agreement, feels that what
 7 we have done is come very close to where we would
 8 have ended up even if the legislation had been
 9 allowed to pursue its course. Had either side won
 10 a total victory in court, the political will would
 11 have been there on -- in support of either side
 12 that lost to bring the pendulum back to the middle
 13 and to strike some kind of balance.
 14 And just as I think the agricultural
 15 community wouldn't have sat still for recognizing
 16 that the power company had a right to virtually
 17 all the water in the river, neither would the
 18 ratepayers have sat still for the kind of
 19 no-strings-attached development that could have
 20 taken place had the state won the lawsuit.
 21 So either way the legislature probably
 22 would have answered this at some point down the
 23 road with something like what we've done here,
 24 which is to try to take a middle ground between
 25 the two competing interests.

1 And with that, I'd be happy to respond
 2 to questions after my two colleagues have had
 3 their chance.
 4 CHAIRMAN KRAMER: Thank you, Pat Costello,
 5 Pat Kole from the Attorney General's
 6 Office.
 7 MR. KOLE: Thank you, Mr. Chairman. I'll be
 8 brief because I think you've all been sitting down
 9 quite some time and probably want to ask some
 10 questions.
 11 The negotiation process that we went
 12 through we hope has brought Idaho water law into a
 13 new phase, and that negotiation process quite
 14 simply is to bring Idaho water law into the 21st
 15 century. Our water law in the past has served us
 16 well, but it needs to be updated and brought into
 17 some sort of fine-tuning to last us into the next
 18 century.
 19 What we have tried to do with the
 20 agreement that you have before you is to come up
 21 with a proposal that will equitably balance the
 22 competing interests for a very vital natural
 23 resource. Within that context, we tried to focus
 24 on certain absolute musts that we felt were
 25 necessary.

1 If you accept that thesis, then the
 2 question becomes, isn't it better to try to come
 3 to some approximation of a balance through
 4 negotiation and compromise, or should we go
 5 through the process of taking several years and
 6 several million dollars to reach the same --
 7 approximately the same position after years of
 8 litigation and further efforts in the political
 9 arena?
 10 The governor feels very satisfied with
 11 where we did end up. He does think that it
 12 reflects a very reasonable balance between the two
 13 uses.
 14 And he would ask that you look at it in
 15 that light and form your own conclusions on that
 16 point. But he does think that it's important for
 17 both groups to stop thinking in terms of achieving
 18 some kind of total victory either in the
 19 legislature or in the courts and begin to focus on
 20 what mechanisms we can put in place to make sure
 21 that while we leave open the opportunity for
 22 further development of our agricultural interests
 23 on the Snake River, that we do so in a way that
 24 does take into account the effect that that
 25 development has on all of us ratepayers.

1 The first one was is that a public
 2 resource such as water has to be controlled by the
 3 people of the state of Idaho. And the decisions
 4 affecting that water have to be made in the public
 5 forum as opposed to a private corporate boardroom.
 6 Now, we were very pleased to find that Idaho Power
 7 shared our concern in that regard and felt that
 8 they did not want to be the water master for the
 9 Snake River. So the agreement contemplates and is
 10 predicated upon state control through the public
 11 input process of our water resources.
 12 Secondly, we wanted to focus on
 13 protecting all of the individuals who are
 14 currently using water. I think the agreement that
 15 you have in front of you protects everybody who is
 16 currently using water.
 17 Third, we wanted to make sure that good
 18 water users who have development projects that
 19 benefit the state economically, and that includes
 20 both agricultural, municipal, industrial, and
 21 domestic uses, would be able to go forward. And I
 22 think the agreement that you have assures that
 23 good water users will be able to go forward into
 24 the future.
 25 Finally, we wanted to make sure that

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

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

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

17 Thank you, Mr. Chairman.

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

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

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

25 The power company actually, as a matter

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

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

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

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

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

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

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

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

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

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

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

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

3 (Pages 9 to 12)

1 left is a lot more important than what could be
 2 perceived as having been lost. But in any event,
 3 I'd be willing to answer questions when we get
 4 there.
 5 Thank you.
 6 CHAIRMAN KRAMER: Thank you, Tom Nelson.
 7 We're gonna take about a 3-minute
 8 break, 4-minute break. Before we break, I'd like
 9 to recognize Senator Gail Bray. Glad to have you
 10 with us this evening.
 11 Let me mention to you, this is the
 12 sixth informational meeting that we have put on in
 13 the last week or so. We've talked to
 14 approximately 300 people, so it's been quite
 15 enlightening to all of us who have traveled
 16 through the way. So Let's have about a 5-minute
 17 break, and we'll be back.
 18 (Rcccss.)
 19 CHAIRMAN KRAMER: Questions and answers. We
 20 hope that you ask the questions, and we have a
 21 team up here that can answer. When I look at this
 22 whole group, I'm sure you should get some answers.
 23 Before we start I'd like to ask, any of the Water
 24 Resource Board members have questions? Mr. Gray?
 25 MR. GRAY: I do, Mr. Chairman. I have about

1 a subcommittee appointed by the governor is just
 2 come up with a starting point.
 3 And this is a starting point.
 4 Obviously, the legislature will have their own
 5 ideas. They're much more experienced in this area
 6 than we are, and we'll defer to their judgement,
 7 obviously.
 8 CHAIRMAN KRAMER: You know, it's really fun
 9 that attorneys have disclaimers, and those of us
 10 that are not attorneys just say we don't know.
 11 (Laughter.)
 12 MR. KOLE: That's the sixth time you've used
 13 that joke.
 14 CHAIRMAN KRAMER: First time.
 15 MR. NELSON: If that's really what you say,
 16 Gene, you wouldn't say much but that.
 17 MR. GRAY: Exhibit 3. \$200,000 are to be
 18 appropriated to the general account for a
 19 technical advisory committee which the governor
 20 shall over-see.
 21 Is the \$200,000 just the first year's
 22 shot, or is this going to be an ongoing study-type
 23 thing? How do you percieve that?
 24 MR. NELSON: The technical committee
 25 estimated it would take a minimum of three years

1 five of them. Well, after six meetings they
 2 accumulate, and we'll save the best for last.
 3 Now, gentlemen, on your exhibit number
 4 2, we're talking about adjudication and the fees
 5 that will be charged. It will fall under 42-14,
 6 14B-5. And it's the additional variable water use
 7 fee for each claim filed public, \$100 per cfs.
 8 What entities fall into this public category?
 9 (Inaudible.)
 10 MR. KOLE: Yeah. Well, actually I'll take a
 11 quick stab at that. That's all the various public
 12 uses that our water is put to; for example,
 13 recreation, fish and wildlife, hunting, outdoor
 14 activities. That's meant to pick up all of those
 15 fees or all of those uses and have an appropriate
 16 contribution made by the state in the adjudication
 17 formula.
 18 MR. GRAY: But how are you going to charge
 19 that 100 cfs?
 20 MR. KOLE: It will be paid for out of the
 21 general fund or theoretically out of the general
 22 fund. I want to issue one disclaimer on this fee
 23 schedule. This fee schedule is obviously
 24 something that the legislature is going to have to
 25 take a look at, and what we've tried to do through

1 to accomplish those studies, so that would be the
 2 first fiscal year's appropriation.
 3 MR. GRAY: Okay. How will this tie in with
 4 the legislative committee, the study, the
 5 legislature committee thing that we've got going
 6 on? Will that tie in at all? Will this be
 7 separate?
 8 MR. COSTELLO: This group would pick up on
 9 the recommendations of the legislative technical
 10 advisory committee as to the things they said
 11 deserved further study. Primarily, it's to put
 12 the department in a position where they can adopt
 13 meaningful public interest criteria, for which
 14 they need more detailed information on the
 15 economic benefits to different uses, as well as
 16 the different hydrological implications of uses at
 17 a particular location and of a particular type.
 18 MR. GRAY: Okay. I notice in the -- that
 19 through the whole agreement there's an absence of
 20 mentioning of this program. Is this kind of study
 21 not needed in continuing this program after it's
 22 all put together? I mean, where do we lie with
 23 this thing?
 24 MR. NELSON: You mean, the technical study,
 25 Gene?

1 MR. GRAY: Yeah.

2 MR. NELSON: Basically, the technical
3 advisory committee to the legislative council
4 committee identified some immediate and pressing
5 deficiencies in technical information. As they
6 saw it, you should fund on-going studies.

7 But in order to ask the "what if"
8 questions that fall out of this program, what if
9 you develop land here versus what if you develop
10 it here, and so on, you had to spend that kind of
11 money to get yourself in a position to really
12 answer those questions. But hopefully the studies
13 go on afterward to make sure that what you think
14 you know is really true.

15 MR. GRAY: You know, Mr. Chairman, all week
16 we've heard Mr. Kole talk about the bang for the
17 buck or the buck for the bang, whatever it is
18 we're going to get. But it would appear to me
19 that if monies were going to appropriated for
20 studies, that they would possibly be appropriated
21 to the Department of Water Resources in lieu of a
22 technical advisory committee, because already it
23 would seem like we have a jump on the process.

24 So is there a reason that you're
25 filtering this through a technical committee in

1 lieu of taking the \$200,000 and giving it to the
2 Department of Water Resources?

3 MR. COSTELLO: Well, I don't think there's
4 any -- I'm sure that whatever we do would be in
5 consultation and cooperation with the department.
6 But by housing this advisory committee in the
7 governor's office, it was felt that it would give
8 it a higher level of visibility and also the
9 tendency if it were melded into the department's
10 budget, when it goes through the legislative
11 process, that kind of runs the risk of if you put
12 in a new 200 for that, that you might take out 200
13 somewhere else and the net wouldn't be there. And
14 we wanted this specifically earmarked to go for
15 these studies to put into place these new public
16 interest criteria.

17 MR. GRAY: Thank you.

18 Mr. Chairman.

19 CHAIRMAN KRAMER: Mr. Gray did this. He
20 knew it was his last chance to get the last word.

21 Do the Board members have any other
22 questions? Mr. Williams.

23 MR. WILLIAMS: Sure. I have one question.
24 This is the first time I've had an opportunity of
25 looking at Exhibit 7B, which is one of the

1 extensive exhibits that are attached to the
2 agreement.

3 As I read this, this appears that this
4 not only applies to the Snake River, but any other
5 river in the state. Is that true? And could one
6 of you just briefly review each of the sections
7 for the folks to explain what it is.

8 MR. COSTELLO: It would be easier to do it
9 at the blackboard in graph form. But it does
10 apply anywhere in the state where there is a --
11 either an unsubordinated hydro right or a hydro
12 right that it's not clear whether or not it's
13 subordinated.

14 And basically what we're saying here is
15 that the approach that we arrived at in settling
16 this lawsuit makes good public policy sense and is
17 -- can provide a comprehensive framework for the
18 legislature to regulate hydropower rights under
19 the authority of a 1928 constitutional amendment,
20 which said they could regulate hydropower rights
21 and that they would be treated consistently
22 throughout the state.

23 In other words, you would use the
24 minimum stream flow concept as the primary
25 mechanism for protecting in-stream uses, and that

1 any hydropower rights that exist in excess of that
2 minimum stream flow would be held in trust by the
3 state, legal title to that water right in excess
4 of a minimum flow being in the state, for the
5 benefit of the power right holder and also for the
6 benefit of the people to allocate it to up-stream
7 uses only which meet the public interest criteria.

8 In doing that you are using the
9 hydropower right to say that the river has, in
10 essence, been fully appropriated, because that
11 right exists, and it's the right to --
12 basically all the flow that gets down there.

13 And, therefore, the state is in a
14 position to impose rigorous public interest
15 criteria that it might not otherwise be able to do
16 on an unappropriated stream.

17 MR. WILLIAMS: Okay.

18 CHAIRMAN KRAMER: Any other board members?

19 UNKNOWN SPEAKER: Mr. Chairman.

20 CHAIRMAN KRAMER: First, I'd like to
21 recognize Mr. Bob Hammeth. He kind of got in here
22 without me seeing him. He's from St. Mary, and
23 he's also a board member. Mr. Hammeth.

24 MR. HAMMETH: I have a question about
25 Washington Water Power's rights in Coeur D'Alene.

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<p>1 Is there any subordination at all? 2 MR. KOLE: Well, those water rights at the 3 present time are unsubordinated. It's our intent, 4 in looking at Exhibit 7B, to provide a voluntary 5 mechanism by which Washington Water Power will 6 come in and negotiate with the state, much the 7 same as Idaho Power has, and enter into a similar 8 arrangement so that they would get the benefit of 9 this format. And at the same time, the state 10 would be able to protect people who are currently 11 using water. 12 As you might know, that facility on the 13 Spokane River really is very analogous to the 14 Swan Falls situation, and because if they were to 15 assert their water right, current water users 16 would have to shut their water use off. 17 MR. HAMMETH: How about their rights on Pend 18 Oreille? 19 MR. KOLE: I don't think that's quite the 20 same situation at the present time, though I think 21 Norm Young from the department will probably have 22 to answer that. 23 CHAIRMAN KRAMER: Mr. Young. 24 MR. YOUNG: Well, I believe there is a 25 facility on the Pend Oreille River, the Kootenai</p>	<p>1 that as he understood the agreement, it 2 subordinated a block of 600 cubic feet per second 3 of water. I heard Senator Peavey say the same 4 thing on television the other night on a report. 5 Is that true? How had much water does 6 this agreement subordinate? 7 MR. NELSON: Well, let me have a cut at it. 8 As Pat said, if we had a blackboard, it would be 9 easier to show. But the amount of water up to the 10 minimum stream flow is unsubordinated. Okay. The 11 amount of water representing current uses is 12 subordinated. 13 Now, in theory, when you squeeze those 14 together, you come to a block not addressed of 600 15 cfs. That's the difference between 4500 cfs 16 current flow that Frank talked about and 3900, the 17 new minimum flow. And if you look at that 600 18 cfs, that 600 is not immediately subordinated. It 19 is subject to subordination by state action as new 20 uses are approved. 21 So you have, as I say, kind of a 22 three-level approach: some absolutely 23 unsubordinated, some absolutely subordinated, and 24 some subject to subordination as a result of state 25 approval of new uses.</p>
Page 22	Page 24
<p>1 River, it would be Pend Oreille that is using most 2 of the water. 3 UNKNOWN SPEAKER: Speak a little louder. 4 I'm looking at you, and I can hardly hear you. 5 MR. YOUNG: I've got a frog in my throat, 6 Frank, and I'm having a little trouble with it. 7 There is a facility on the lower end of the 8 Pend Oreille, that during extreme low-flow 9 periods, can use all of the water and then some. 10 So it has somewhat the same situation. 11 CHAIRMAN KRAMER: Thank you. 12 Any other questions from the board 13 members? Any questions from the department? 14 Ladies and gentlemen, it's your turn. 15 Sir. 16 MR. FORD: Yes, sir. My name is Pat Ford. 17 I want to ask a question -- maybe it stems from my 18 own lack of knowledge, I'm not sure, but I'm not 19 clear how much water this agreement is going to 20 subordinate. I think my confusion comes from the 21 use of the average daily flow, as it's a number as 22 opposed to another measurement that had been more 23 generally used. 24 When I talked to Wayne Hoss on the 25 phone, I think it was last (inaudible), he told me</p>	<p>1 MR. HAMMETH: I guess my confusion comes 2 from I had -- most of the previous discussions, I 3 think, had been in terms of an average monthly 4 flow as opposed to daily flow. 5 MR. NELSON: No. The state water plan 6 minimum at, I think, all the gauging stations 7 where they have one on the Snake has always been 8 an average daily. 9 MR. HAMMETH: Is the 3300 an average 10 daily -- 11 MR. NELSON: Yes. We left it that way for 12 several reasons. One, of course, is that people 13 are used to it. And second, if you're looking at 14 protecting in-stream uses that an average of a 15 period longer than a day, a monthly average, for 16 example, will give you a higher number at the 17 Murphy Gauge. But the problem is zero for 15 days 18 and 10,000 for 15 days is a 5,000 cfs average, but 19 it's not a very good way to run a river. 20 So you need a narrower time period when 21 you're looking at an absolute minimum. If you're 22 looking at planning, probably the best data you 23 have is on a monthly basis. And that may be where 24 you're picking up your monthly information, is 25 that the planning numbers are usually expressed in</p>

6 (Pages 21 to 24)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MR. COSTELLO: That's the best

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

5 And that's the best number they had.

6 CHAIRMAN KRAMER: Mr. Dunn.

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

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

20 UNKNOWN SPEAKER: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 MR. NELSON: No.

21 MR. MILES: Thanks.

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

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

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

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

13 CHAIRMAN KRAMER: Does that answer you?

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

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

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

1 other person.

2 MR. COSTELLO: There would be no
3 compensation that would be due to anybody.

4 CHAIRMAN KRAMER: Mr. Director?

5 DIRECTOR: One of the other things that
6 happens with the public interest criteria adopted
7 on the back of the last sheet, in fact, if there's
8 a provision allowing the department to adopt rules
9 and regulations. And that's there so that we can
10 adopt some rules and regulations, implementing the
11 public interest criteria, and they then will be
12 reviewed by the legislature. So it sets some
13 standards by which I'll be looking at the public
14 interest criteria to determine whether I approve
15 it from there.

16 CHAIRMAN KRAMER: Mr. Jones.

17 MR. JONES: I think I'm going to ask this of
18 the director: Is there any reasons why some of
19 these additional uses that might be made of the
20 water above the minimum flow could be for a term
21 and duration rather than perpetuity?

22 DIRECTOR: Well, that's one of the
23 unanswered questions. Hydro filings that I now
24 issue, I issue them for a fixed period of time. I
25 think in the future we might look at other uses,

1 irrigation or any other use, and issue it for a
2 period of time subject to the public interest
3 criteria at that time.

4 You know, if we issue a permit for 30
5 years or 20 years, 20 years from now we might wish
6 we had done something else with it. If they were
7 all subject to that review, and as long as they
8 met it, you would continue them, I think that's
9 where we could go. And that's probably where we
10 will be, an appropriation doctrine, at least
11 sometime in the future.

12 CHAIRMAN KRAMER: Ma'am?

13 MS. HAYES: I'd like to ask Mr. Tom Nelson,
14 how much is this going to cost the consumers?

15 CHAIRMAN KRAMER: Could you give us your
16 name, please?

17 MS. HAYES: I'm Marjorie Hayes for Idaho
18 Consumer Affairs.

19 MR. NELSON: Well, Mrs. Hayes, the plan
20 doesn't cost anything. If there is --

21 MS. HAYES: I mean, the implementation of
22 the plan.

23 MR. NELSON: Oh, even the implementation
24 doesn't. The only time you get any cost is if you
25 get some substantial development, and the plan as

1 presented does not require it. It permits
2 development to proceed that meets the standards.
3 So my problem with your question is, and we have
4 wrestled with it, is to try to come to some
5 estimate of the cost. The problem is that the
6 cost goes from zero to heaven knows what depending
7 on your assumptions.

8 But the two University of Idaho
9 professors did a study for the legislature, which
10 came to a particular number. I've seen that one
11 tripled as an estimate of the cost of this thing.
12 And that is basically fairly absurd, because the
13 assumptions under which the University of Idaho
14 economists proceeded I think may well go out the
15 window under this particular plan. So I really
16 can't give you an answer.

17 My personal belief is that that
18 particular study is very much the outside
19 possibility, and that the actual cost will prove
20 to be less than that within the time period that
21 they looked at. But until we get some handle on
22 what would be a reasonable assumption for the
23 quantity and timing of development, I really don't
24 know that anybody can give you a meaningful
25 estimate of cost.

1 MS. HAYES: I'd like to pursue this further.
2 Say there's a ban on hydro, and I've been to the
3 PUC to listen to them debate this question back
4 and forth. This is something that Mr. Swisher
5 said is the most valuable (inaudible).

6 Now, assuming that you're planning to
7 bring on a great deal more agricultural
8 development, which we did all through this
9 legislature, (inaudible) the hydro flow that we
10 requires new generation. Mr. Dunn told me this
11 when we first discussed it, that it would require
12 new generation. How can you not put an economic
13 value (break in recording) the procedure.

14 MR. NELSON: Well, I think you can put --
15 you can obviously put a value on any generating
16 source. That's not the problem. It's estimating
17 the impact on generation that's the problem.
18 Because if you don't have a viable assumption as
19 to what type of development takes place, then
20 while you can estimate how much an acre foot of
21 water will generate in terms of kilowatt hours,
22 you don't know how many acre feet are going to be
23 gone or when. And the timing of those depletions
24 is critical to an economic analysis.

25 It's not enough to say how much water

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

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

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

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

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

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

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

22 MS. HAYES: Or not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 firm hydro energy. They didn't want our nuclear.
2 They wanted hydro.

3 So this is a resource that is very
4 valuable. It's like having a diamond farm. And
5 what are we going use it with, just throw it away
6 or --

7 CHAIRMAN KRAMER: One of the things you can
8 do, if it's as valuable a resource as we say it
9 is, you can build more dams and you can create
10 more hydro energy. I don't think we necessarily
11 want to do that either.

12 MS. HAYES: Well, you have to protect other
13 resources. I'm not advocating --

14 CHAIRMAN KRAMER: That's why you can't talk
15 and say hydro is the only use for that.

16 MR. NELSON: But I think, Mr. Chairman, one
17 comment that if anadromous fish require more water
18 for protection, then that interest is going to
19 have to be separately developed. You can't expect
20 the resolution of a dispute over hydropower rights
21 to try to resolve a separate controversy over fish
22 needs.

23 And if the anadromous fish require more
24 water, the interests that are supporting that are
25 going to have to come forward and make sure that

1 that interest is addressed.

2 Second, one of the reasons for
3 including the public interest criteria and one of
4 the reasons that that's so important, we think, to
5 this whole package is that, as you say, hydro
6 energy on a cheap basis is important. In theory,
7 if this program is properly administered, that
8 importance will be recognized and will itself
9 become a deterrent to the development which will
10 impinge on hydro generation.

11 So that's reason for doing this, is to
12 make sure that those kinds of concerns are
13 addressed in the process, which we don't have now
14 and no place to really address it.

15 CHAIRMAN KRAMER: Front row.

16 UNKNOWN SPEAKER: Gentlemen, I presume we
17 have 600 cfs that, in effect, more or less, is the
18 old Idaho water rights that we are going to sell
19 to whatever is the most economically feasible
20 development program that is brought forward to a
21 Board.

22 Now, the question I have, is there a
23 priority list as to what you would consider one
24 above the other? Would you consider possibly a
25 fish farm above an agricultural farm, a community

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

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

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

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

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

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

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

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

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

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

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

9 CHAIRMAN KRAMER: Mr. Chapman.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 MR. CHAPMAN: Thank you.

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

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

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

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

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

7 MR. CHAPMAN: Thank you.

8 CHAIRMAN KRAMER: Talk louder, though.

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

20 Is that an accurate reading of this?

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

1 would be if they gave away their rights.

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

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

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

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

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

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

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

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

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

1 CHAIRMAN KRAMER: Mr. Sherman.
 2 MR. SHERMAN: The lawyers are laughing at
 3 me, knowing that all the groundwater geologists
 4 don't deal with interstate commerce. One thing it
 5 does, Mr. Miles, is the state through this
 6 agreement basically is saying that there's a large
 7 chunk of water in that river that is already
 8 appropriated. It is therefore not subject to
 9 appropriation or use by other entities. This is
 10 one way that the Snake system is protected. And
 11 if the agreement goes through, the other rivers of
 12 the state are protected from the diversion of the
 13 water to California.
 14 Because we are saying we are making the
 15 beneficial use of that water in the state now if
 16 you can't take it out of the state. That's the
 17 interstate commerce aspect of it.
 18 The question of the Snake going
 19 up-river, as I said earlier, we need the money to
 20 do the hydrologic studies. 4500 is what we have
 21 reached in 1981 at Murphy. The model says we
 22 would have reached it several times in the past.
 23 If we're going to allow continued consumptive uses
 24 on the aquifer, we need to be able to predict what
 25 the effect is.

1 And I think the first constraint is the
 2 600 cfs that's identified. The second constraint
 3 is, the economics of new agricultural development
 4 certainly. And many of our small businesses and
 5 industrial people are not expanding right now. So
 6 I think if we can get the money for the studies,
 7 we've got maybe just enough time to --
 8 MR. MILES: Mr. Chairman, Mr. Sherman, can
 9 the state of Idaho fully appropriate underground
 10 water that -- in a navigable river, what about the
 11 claims that Oregon and Washington might have on
 12 this water?
 13 MR. SHERMAN: Their claim would have to go
 14 through either -- will have to go through a river
 15 compact. And we are in a position of saying,
 16 we're not satisfying a hydropower right in our own
 17 state at the moment.
 18 Are we wasting any water, then?
 19 No. Our water in that river is
 20 appropriated. Entering into a negotiation as we
 21 did with Wyoming or as we did with Wyoming and
 22 Utah on the Bear there, our position is, that
 23 water is appropriated. Some of it is appropriated
 24 as a minimum stream flow. That water would be
 25 allowed to pass to Oregon state. That water is

1 subject to demands from downstream states. But
 2 that water that you say is --
 3 MR. MILES: That's only 4500 cfs.
 4 MR. NELSON: Mr. Chairman?
 5 CHAIRMAN KRAMER: Yeah, Tom.
 6 MR. NELSON: Let me have a shot at this.
 7 Harold, if I could search your apples from your
 8 oranges for a minute, the case you're talking
 9 about involved a state's attempt to control the
 10 appropriation of groundwater in its state for use
 11 in another state. And the Supreme Court said,
 12 "Hey, state, your particular system is no good."
 13 Now, Idaho has a similar system which
 14 is not involved in what we're doing here, because
 15 we're not exporting groundwater. The Snake River
 16 intercepts the groundwater, it becomes surface
 17 water, and so far as I know, there's no thought
 18 that somebody down in Oregon is contemplating
 19 appropriating groundwater in Idaho for use in
 20 Oregon. If they want to do that, that's a
 21 separate problem, but that has nothing to do with
 22 what we're trying to do with this agreement.
 23 MR. MILES: Now, Mr. Chairman,
 24 Mr. Nelson, if you look at the water rights filed
 25 on the Oregon slope, it takes water from the

1 Snake River. And in a low water year, it looks to
 2 me like that you would have a conflict between
 3 those irrigators on the Oregon slope for some of
 4 this water in the Snake River.
 5 MR. NELSON: Well, that may be. It's below
 6 Swan Falls and not really involved here. As Frank
 7 said, there's really a couple of ways you can do
 8 that. You can handle it with a compact with
 9 Oregon whereby you would try to limit the Oregon
 10 appropriation. You could do it with an interstate
 11 stream case in the U.S. Supreme Court, which would
 12 probably get done about the year 2056.
 13 But in any event, it has nothing to do
 14 with Swan Falls. Those people can't hurt a water
 15 right at Swan Falls with anything they do in
 16 Oregon.
 17 CHAIRMAN KRAMER: Be sure to state your
 18 name, Harold Miles. Mr. Ford.
 19 MR. FORD: On page 4 of the agreement,
 20 there's just some language that I wanted to make
 21 sure I understood. Number C and D there on page
 22 4: The company's rights in paragraph 7A and 7B
 23 are also subordinate, and then subordinate is two
 24 different things in C and D.
 25 Does that language refer to the

1 unsubordinated right?

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

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

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

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

18 MR. NELSON: From the power company.

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

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

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

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

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

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

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

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

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

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

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

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

21 CHAIRMAN KRAMER: Chuck.

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

25 Under this agreement, the adjudication

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

3 MR. DUNN: Yes. We would --

4 MR. JONES: Why?

5 MR. DUNN: Pardon?

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

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

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

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

24 MR. DUNN: That's correct.

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

1 going to keep it.
 2 MR. DUNN: That's correct. And in addition,
 3 some illegitimate users may get a right because
 4 they have been using it for a long time. And you
 5 can find that they've got a right that they just
 6 never bothered to get a permit for, earlier users.
 7 You finally tie down all those rights that we just
 8 don't know about.
 9 MR. JONES: Why are you excluding the Lemhi
 10 and the Payette?
 11 MR. DUNN: Because we've recently done a
 12 general adjudication of those. The Payette is in
 13 the final throws that we've been working on for a
 14 number of years, and the Lemhi was completed about
 15 two years ago finally. We started that in about
 16 '37.
 17 MR. JONES: Are those the only two?
 18 MR. DUNN: Those are the only two general
 19 adjudications that we've done in my --
 20 MR. JONES: Have you ever done any
 21 adjudication on the Snake River?
 22 MR. DUNN: Not on the Snake River,
 23 not as a general adjudication. There's been some
 24 stipulated summary supplemental decrees issued on
 25 existing decrees, but the whole thing has never

1 been done.
 2 MR. JONES: Will they be redone?
 3 MR. DUNN: Yes. All of the water rights on
 4 the Snake River will be done and its tributaries.
 5 Whether they're decreed, licensed, or permit or
 6 whatever it is, the court will finally say, this
 7 is the water right. And that's what we don't have
 8 right now.
 9 Going into the upper Snake, the Rexburg
 10 decree, for people who live up there, you know,
 11 it's a -- it's almost a holy document. But when
 12 you look at that thing, it doesn't define the
 13 water rights. It says that somebody has got the
 14 right to 50 cfs, but it doesn't describe where to.
 15 It doesn't describe the period or point of
 16 diversion.
 17 In effect, it has a defect in it. And
 18 those things need to be clarified for the
 19 protection of that water user against some future
 20 people who might say that they don't have a water
 21 right.
 22 UNKNOWN SPEAKER: I have one more question
 23 Mr. Chairman. I guess I don't know who it goes to
 24 -- Pat, I guess, one of the Pats.
 25 Under the subordination deal, the

1 language, is it going to cover all rivers?
 2 MR. COSTELLO: Well, it would -- yeah.
 3 Prospective subordination, right. Yeah.
 4 (Simultaneous responses.)
 5 UNKNOWN SPEAKER: New water; not old water.
 6 MR. COSTELLO: Right. Except that it would
 7 cover old water to the extent that if there are
 8 un-subordinated rights out there, as there do
 9 appear to be, they would also be invited to come
 10 into this same kind of arrangement whereby in
 11 exchange for us recognizing an un-subordinated
 12 right to the level of a minimum stream flow, they
 13 would agree to place their rights above that in
 14 trust with the state to be subordinated over time.
 15 UNKNOWN SPEAKER: To follow up on that,
 16 then, say a water district has high ground, that
 17 they could re-issue some of this unused water or
 18 something when you re-adjudicate. Will they have
 19 first preference in putting it back in their own
 20 district?
 21 UNKNOWN SPEAKER: No.
 22 UNKNOWN SPEAKER: No.
 23 MR. KOLE: No preference.
 24 UNKNOWN SPEAKER: No.
 25 MR. DUNN: But let's assume that as of -- we

1 start the adjudication today, next year, whenever,
 2 at the time we're defining those rights, in the
 3 intervening time, the districts have gone back and
 4 placed some water into the irrigation to protect
 5 those rights. Because the irrigation district,
 6 and the irrigation district is pretty unique, it
 7 has a right to irrigate anything within its
 8 boundaries. Not just a specific river.
 9 MR. STRIGGER: Jack Strigger, Southwest
 10 Idaho Development Association, Sage Brush
 11 Rebellion, and I guess a couple others.
 12 My question is, well, I guess three
 13 parts here and then I'll be still. I don't see
 14 where you have really addressed, and I hope that
 15 sometime you will, upstream storage which would be
 16 beneficial to everyone. And I presume in your
 17 appropriations maybe something will be said about
 18 that.
 19 And then the groundwater rights have
 20 always been a stickler because -- and the water
 21 that has been asked for on the wells, there are --
 22 many times there are very legitimate arguments as
 23 to whether it has anything to do with what
 24 actually gets into the Snake River in a perched
 25 water table, and so forth. And just arbitrarily

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

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

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

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

17 MR. STRIGGER: Very good.

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

1 like you do now.

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

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

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

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

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

1 Snake River Basin procedures.

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

11 CHAIRMAN KRAMER: It's time to break.
12 Did you have a question?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 UNKNOWN SPEAKER: Senator?

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

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

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

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

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

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

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

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

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

17 (Break in recording.)

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

1 I thought and my predecessor thought
2 that that was carrying public interest too far
3 from my perspective -- from the director's
4 perspective. And that went to court, and the
5 court said no, it isn't, you have to consider
6 everything. You have to look at the use of the
7 land and how does that conform with other uses.
8 So the courts have said that's very broad, and
9 that's the way we've been using it.

10 MS. BRAY: I have just one last question,
11 and I promise it will be the last. If you've left
12 in place the local public infrastructure for use
13 of local public interest and you have given to the
14 director and the board the state public interest
15 criterion, it seems to me you have excluded one of
16 those interests to be considered at the state
17 level in determining your water right. And I'm
18 still curious as to how, if it was being valuable
19 at the local level, how it's not being equally as
20 valuable at the state level.

21 MR. KOLE: I really don't read it that way.
22 You know, if you look at the Snake River as a
23 whole, you know, the local public interest has
24 been defined very broadly. I just don't --

25 MS. BRAY: I know you don't. Can I hear

1 from him?

2 MR. KOLE: Sure.

3 CHAIRMAN KRAMER: Mr. Director.

4 MR. DUNN: The local public interest is not
5 the public interest of a hundred feet along the
6 stream. If that stream goes someplace, that's the
7 local public interest. Really, if it's a question
8 of impact on Snake River, I think the local public
9 interest is the effects on the Snake River. It's
10 not something that's very, very narrowly defined.

11 CHAIRMAN KRAMER: Senator?

12 MR. RINGERT: Bill Ringert, Boise.

13 Senator, I think you have to understand
14 the definition of local public interest.

15 MS. BRAY: I'm trying.

16 MR. RINGERT: Well, it says the people in
17 the area that would be affected by the use, you
18 know, and if that's the whole state, then the
19 whole state is the local public interest. That's
20 the way I read it.

21 MR. DUNN: Yeah. That's right.

22 CHAIRMAN KRAMER: Ladies and Gentlemen, it's
23 10 o'clock. We've been at it two and a half
24 hours. We've cut it off at 10 o'clock at every
25 other time.

1 These people will be up here. From now
2 on, you can walk on up and talk to them. We will
3 be back January or February for public input from
4 you. Until then, we appreciate your time and your
5 energy and your efforts to come here.

6 UNKNOWN SPEAKER: Can I ask one question of
7 the board?

8 CHAIRMAN: The board? Okay.

9 UNKNOWN SPEAKER: Does the board intend to
10 take a position on this going into the legislature
11 or on specific parts of it? Or are you guys
12 waiting until your hearings --

13 CHAIRMAN KRAMER: We will wait until we come
14 back out and have public hearings and have input
15 from the public. We have had nothing -- we're no
16 different than you are sitting up to the table
17 right now.

18
19 (End of recording.)
20

1 REPORTER'S CERTIFICATE

2

3

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

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

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

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

17

18

19

20

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

23

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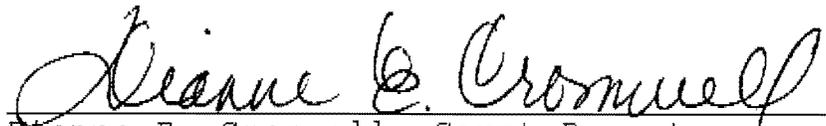
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I, Dianne E. Cromwell, Court Reporter, a Notary Public, do hereby certify:

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

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

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



Dianne E. Cromwell, Court Reporter
CSR No. 21