REPORTER'S TRANSCRIPTION

OF TAPED STATE WATER PLAN HEARING

ON POLICY 32

IDAHO FALLS

JANUARY 28, 1985

Reported by: Mary Jeana Reiner, CSR#711
Pages 1 - 51
UNIDENTIFIED SPEAKER: Testing one, two, three.

This is a recording of the state water plan hearing on January 28th in Idaho Falls at 2:00 p.m.

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

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

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

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

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

On page 2 and 3, you'll find a proposed revision of Policy 32 of the state water plan, which of course deals with the Snake River system. This is a proposed
revision, and this is what we plan on taking testimony on
in the six meetings ahead of us.

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

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

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

So with that, I'll call Dale Rockwood.

Dale.

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

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

And I would like to rise in support of the proposed
changes going from 3,900 in the summer to 5,600 in the
winter. I like the legislators. I guess I would like to have a green and a red button and then a gray one, and we endorse this just in the wet years, Mr. Chairman.

MR. CHAIRMAN: Thank you very much, Dale.

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

UNIDENTIFIED SPEAKER: Mr. Chairman.

MR. CHAIRMAN: Yes, sir.

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

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

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

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

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

MR. CHAIRMAN: Yes, I will close the official hearing as of now.
UNIDENTIFIED SPEAKER: Go ahead, Mr. Sherman (sic).

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

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

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

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

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

The first two pages would be page 2 and page 3 deal with the revisions that we have proposed that you comment on this evening. In a few minutes I'm going to have
Frank Sherman briefly go over those with you, and we'll
go right over the top of them fairly rapidly to kind of
get it in your mind exactly how they fit the overall
package.

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

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

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

Frank.

MR. SHERMAN: The original state water plan,
the existing state water plan first -- well, first we
we're talking 1976. Under Policy 32, Snake River Basin
basically says the available unappropriated water to the 
Snake River Basin are allocated to satisfy existing uses 
(inaudible) for future growth and development and protect 
the environment. The allocation is recognized under the 
protective water system rights. The water allocations 
are made by large regions to allow the widest possible 
direction of application.

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

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

So if you look at page 2 in the Currents, you'll see 
that it starts out with, "Policy 32 Snake River Basin. 
It is the policy of Idaho that the ground water and 
surface water of the basin be managed to meet or exceed a
minimum average daily flow of zero measured at the Milner
gauging station, 3,900 cfs from April 1 to October 31 and
5,600 cfs from November 1 to March 31 measured at the
Murphy gauging station, and 4750 cfs measured at the
Weiser gauging station. A minimum average daily flow of
5,000 cfs at Johnson's Bar shall be maintained at Lime
Point (river mile 172) a minimum of 95 percent of the
time. Lower flows may be permitted at Lime Point only
during the months of July, August, and September.

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

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

What the legislature is being asked to do is
contained in the Currents issue on pages 4 and 5, is my
guess. And we, the board, is assuming that they'll get
their job done if we can get our job done. If they don't
get their job done, we won't do our part. So it's sort
of a mutual let's see if we can all get it done. So
(inaudible) that are not -- that don't even exist,

(inaudible) proposed legislative package.

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

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

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

Now, we talked about waters not held in trust by the
State. Idaho Power has a claim of 8,400 at the Swan
Falls. It has larger claims at some of the other dams
upstream. Those waters within that claim of Idaho Power are to be held in trust by the State for reallocation of other uses.

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

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

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

This is the section that discusses the effect on hydropower. It's the family farm interest. The whole series of criteria have been suggested to the legislative
"32B - Domestic Commercial and Municipal and Industrial. It is the policy of Idaho that 150 cfs of water for consumptive purposes held in trust by the State pursuant to Policy 32A be reallocated to meet future domestic, commercial, municipal and industrial uses in accordance with state law."

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

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

In terms of actual consumptive use, this probably is
close to doubling the amount, increasing by the same
amount of (inaudible), the amount of water and use for
this in this part of the state now.

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

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

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

"Policy 32D - Hydropower. It is the policy of Idaho
that hydropower use be recognized as a beneficial use of
water, and that depletion of flows below the minimum average daily flows set forth in Policy 32 is not in the public interest."

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

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

Idaho Power has stated in the agreement they will not object to those people making beneficial uses of the water at the time the agreement is signed, but they will take action against new users, those users particularly if they are using their water if the flow (inaudible).

And the state agrees by signing the agreement. (inaudible) water plan, but they have a legitimate complaint if we ever get below those numbers.

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

It says basically the language in the existing plan, the flows provide that the people (inaudible) below
(inaudible) Canyon are satisfied. There should be enough water for recreational uses in the (inaudible).

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

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

But as I say, no change in the existing water plan.

"Policy 32H - Water Quality and Pollution Control. It is the policy of Idaho that the use of water to provide pollution delusion is not a beneficial use of water."
There is really no change from the existing state water plan. The attitude of the water board is that there are enough laws to protect water quality. You don't need to take good water (inaudible).

UNIDENTIFIED SPEAKER: You skipped G.

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

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

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

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

The board is the only authority in the state that can allocate or appropriate water for in-stream flow purposes. They can do it by specific designation in the
water plan, or they can go out and appropriate water from
the unappropriated waters of the state on any region of
any stream within the state. Between the two, they feel
that minimum water is available for these purposes. They
don't -- I'm not going to suggest that optimum value for
fish (inaudible) for example, but minimum water will be
available to keep things more or less on an even keel as
they are (inaudible).

Water quality and pollution control we'll skip.

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

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

The text explains it in two parts: First of all,
maximum use of existing storage facilities. We all know
that there are people who have a full natural flow right,
and they also have a full reservoir stored water right.

How many times they use their reservoir water? It may be
once every 10 years. It may be once in 20 years. The
city of Pocatello has never used theirs, for example.

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

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

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

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

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

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

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

Once that water's not allocated, there are no longer unallocated waters in the system, hopefully by that time the board will have at least been able to ask the Bureau of Reclamation, ask about changing the state laws that
They are working on simplifying the rules and regulations for the water bank as it exists today so the (inaudible) a lot easier.

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

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

Now, the other one is a different condition in the sense that luckily it only applies for the wintertime diversions below Milner Dam. In this case, because of its impact on Idaho Power's operational scheme in two ways, Idaho Power has a ready market on the West Coast for electricity during the wintertime, because it's used for heating out there. The other way it approaches is that Brownlee Reservoir at the head of the three dam
Hells Canyon complex is they are making storage for runoff, except where they dump water above stream. So they like to (inaudible) reservoir, and they like to generate power so they can sell it while we're filling the reservoir.

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

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

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

But people below Milner, above Murphy, wintertime diversions for storage, if you come with a legitimate use in the wintertime where you are going to consume that water, or use it right then, that's fine. For storage
purposes, we have to work out a deal with Idaho Power through the Department of Water Resources to try and mitigate the impact on Idaho Power's operation.

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

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

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

That's the intent of this particular thing, the last policy. (Inaudible.) If there is unallocated water (inaudible) why shouldn't the State get -- (inaudible)
they could sell from Idaho Power on a yearly basis. But the State ought to have someplace to call for water if the State messes up and can't (inaudible). I can't shut off the (inaudible), because the impact of shutting it off might not show up for six months. I can't call for water from (inaudible) to get it here (inaudible).

THE COURT: Thank you, Mr. Sherman.

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

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

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

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

The two comments are, one, the definition of industrial uses as explained in the text appears to be restrictive. That is, it says to process agricultural,
forest, mineral and other products. At least it may be just a clarification, but we're quite concerned, we're trying to attract all types of industry. And in here we're not that, you know, may not be mining or timber, and we're after high-tech industry, you know, electronics and other areas. And the way the text is written, it seems to exclude or potentially exclude broader uses of the water.

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

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

The previous -- the 1982 plan had 480 cubic feet per second allocated to these two uses, the thermal
generation and DCM1. What's now proposed, 150 cubic feet per second for both represents a 70 percent reduction in this utilization, which seems a lot more than the reduction in the general agreement.

And that concludes our statement.

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

MR. WARNER: Sure.

MR. CHAIRMAN: Any questions down below?

J. D.: I do.

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

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

MR. CHAIRMAN: Mr. Rydalch, any questions?

MR. RYDALCH: No.

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

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

MR. WARNER: Okay.

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

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

Thank you.

MR. CHAIRMAN: Thank you very much.

Mr. Lee.

MR. LEE: My name is Eldred Lee. I'm the secretary of the Great Feeder Canal Company. It doesn't own specifically any water. However, it takes water out of the South Fork of the Snake River and is efficient in, I call it, fighting the river in order for 14 different major canals, plus about 25 or 30 other individuals to take water from the South Fork. There are very few diversions on the south side of the river from Heise on down that do not take out of the Great Feeder Canal.
And I asked Ron Carlson what we were running last, a year ago last spring. And our head at that time was 450,000 second feet. So it's not a small operation.

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

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

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

Now, up to that point we're talking about the minimum flows. However, it is the policy of Idaho that hydropower used to be recognized as a beneficial use of water, period, seems to put anything above the minimum flows in an equal category with anything, any other type of development.
Now, it's conceivable -- if my reasoning is correct, it's conceivable then that hydropower in the administration of it could take precedence under certain conditions of industrial development, agricultural development or other development depending upon how it's administered; is that correct?

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

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

Okay. Let's go on to 32I. New storage. It's our opinion that the legal language in this particular section would cause difficulties if there should be a need and a desire to build a new dam. In our opinion Teton Dam is essential. There are other areas on the South Fork of the Snake River, which could be utilized in storing water. If there is to be any large development and use of water over the next many years in the state of
Idaho, the only way that you're going to get sufficient water to take care of it is to have some storage. If there is any impediment put in the way so that new storage cannot be built, then you're going to delay and restrict the development of anything that comes under the jurisdiction -- under the Snake River where water is essential.

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

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

Now, last year I understand that 6,800,000 feet went over Milner -- second -- acre feet went over Milner. Now, that's enough water to take care of all of the water needs in the entire state of Idaho for a year, so I'm told. No verification. But it's a lot of water.
The only way that that's going to be captured and utilized to any large extent, because it comes through in such a large quantity and at such a time that it can be spread out, the only way that's going to be utilized is to have some new storage. I think that we should encourage new storage rather than to put anything in it that restricts it.

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

I don't know whether I make myself quite clear, but
the legislature right now is battling over where they are
going to get sufficient money to supply the needs of the
various agencies in the state.

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

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

--- TAPE 2 ---

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

I have one other item that I want to comment on, and
I don't think that's in this proposed revision, but then
I think it's something that should be considered. And I
think if we don't get a chance to go over to the
legislature to get testimony, why maybe you can carry it over there.

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

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

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

I think those are most of my comments.

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

Mr. Williams?
MR. WILLIAMS: No.

MR. CHAIRMAN: Mr. Rydalch?

MR. RYDALCH: No.

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

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

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

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

Is that right?

MR. CHAIRMAN: As soon as we get our public
testimony over, we'll try to have question and answer.
MR. LEE: Okay. Thank you.

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

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

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

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

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

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

I certainly support the establishment of an
effective water marketing system where a willing seller could sell to a buyer a water right. And probably the hydrologic and economic studies in the Snake Basin are worthwhile, too, even though they may be slightly expensive.

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

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

These criteria, again, are biased -- or the proposed criteria are biased very much in favor of new irrigation development at hydropower development. There is no mention whatsoever of fish, wildlife, and recreational
values. And I think frankly the governor and the attorney general of Idaho Power sold us all down the river there on fish and wildlife values.

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

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

Taking the mid point and giving 600 cfs to a future development, much of which would go for probably new irrigation development or whatever is proposing not to compromise but to take away significant fraction of the flow, the actual low flow there now. And this would be
quite detrimental to fisheries, not to mention Idaho Power customers.

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

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

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

I wanted to comment also on the subsidy, which is now offered to new irrigation development, especially the
large-scale ones. It's been documented that it costs something over $400 an acre per year to open new irrigated land in the lower Snake Basin. For electrical energy, this is primarily a replacement cost as well as the high pumping costs. And the thing that is the kicker in this, is that the new developer, the developer of the new land doesn't pay much of this. The Idaho Power customers, of course, would.

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

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

Thank you.


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

MR. JAYNE: Sure.

MR. CHAIRMAN: Take 32G and expand it for us a little bit.
MR. JAYNE: I don't think that mentions the criteria proposal at all, does it? That's why I wasn't sure you were going to listen to comments about it tonight and why I hadn't prepared very well on that. But apparently you are going to be making comments on the proposal.

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

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

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

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

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

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

MR. CHAIRMAN: Thank you.

MR. JAYNE: Sure.

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

Yes, sir.

MR. STORER: Claude Storer is my name. I'm a member of the committee of nine. I also farm in the area, and I run a fairly large cattle operation in the area.
I'm concerned mainly about the water marketing plan.
You mentioned a while ago that the State could buy
(inaudible) water and use it to fill this. Well, right
now, my understanding is that (inaudible) water cost
about $5.00 an acre foot. And not only $5.00 an acre
foot, but by the time it gets to the river through that
fancy channel they've built, it loses 50 percent of that.

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

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

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

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

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

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

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

Thank you.

MR. CHAIRMAN: Any questions.

Anyone else would like to testify?

How many members on the committee of nine?

UNIDENTIFIED SPEAKER: Nine.
MR. CHAIRMAN: We will close the testimony, and we will stand ready to answer some of your questions if we might.

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

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

UNIDENTIFIED SPEAKER: Are you picking it up?

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

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

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

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

The concern here is that when you're talking about
such a large portion of the state where you've got a major Indian reservation, those federal reserved rights become important if you're going to try and manage the river down to some magic number like 3,900 cfs in the summertime.

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

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

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

MR. CHAIRMAN: Mr. Gray.

UNIDENTIFIED SPEAKER: Mr. Sherman, I think one of
the questions was asked also, this agreement is not to stop new storage. It's just to find out what we have in the storage; isn't that correct?

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

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

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

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

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

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

MR. CHAIRMAN: Mr. Lee.

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

And instead of running them right straight on down the Snake River, we just as well put them in the dam and
spread them over the year so that they can be utilized in some manner, perhaps it might be advisable in our use of it. Spread it over the year so that they can be used. But we're putting restrictions (inaudible) that can be used in court on building or putting in new dairies. And why have it there at all. And there are lots of places up above Burley (sic) that are suitable and yet we say that this pertains -- their plan pertains principally or I've heard solely (inaudible), and that's not true.

MR. CHAIRMAN: Mr. Sherman.

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

Mr. Chairman.

MR. CHAIRMAN: Mr. Haus.

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

In the October 25th agreement and in the (inaudible), they said that this is part of the
agreement. So the draft state water plan, since it was
drafted to reflect what would be needed in the state
water plan to reflect that agreement, that's the reason
it's in this state water plan.

MR. CHAIRMAN: Mr. Lee.

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

MR. CHAIRMAN: Mr. Darrington.

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

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

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

MR. DARRINGTON: Yes, Water Resource Board.

MR. CHAIRMAN: I don't think the Water Resource
Board is comfortable at all. We have ten more meetings after tonight to go to the public with before we can form any kind of an opinion.

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

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

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

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

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

Five, the Idaho PUC dismisses the 1977 petition by
the Idaho ratepayers.

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

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

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

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

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

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

MR. CHAIRMAN: Or decide that negotiations have ceased.

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

MR. CHAIRMAN: I don't think we can really make that determination until we've had all of our public hearings, because we want to hear what the people of Idaho -- we're
representing you. So we want to know what you have to say, which brings me to the point that tomorrow evening we'll be in Pocatello, following evening Burley, and the evening after that Twin Falls, if you wish to attend those meetings.

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

Written testimony will be accepted until February 22nd.

Yes.

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

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

UNIDENTIFIED SPEAKER: How about the public interest criteria? Are you going to be making recommendations on
MR. CHAIRMAN: We will be making some recommendations on that, yes. Hopefully we'll be picking up some ideas as we go through our 12 meetings.

MR. KRAMER: Legislature makes that decision.

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

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

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

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

Any other questions, ladies and gentlemen?

Okay. We'll adjourn the meeting.

Thank you for coming.

(Conclusion of hearing.)
REPORTER'S CERTIFICATE

STATE OF IDAHO 
COUNTY OF ADA

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

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

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

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

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

My Commission Expires: 10-24-2013