

STATE WATER PLAN HEARING)
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PUBLIC HEARING
BEFORE THE IDAHO WATER RESOURCE BOARD
POCATELLO, IDAHO
JANUARY 29, 1985
2:00 P.M.

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

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



1 (Proceedings begin.)
2 MR. GRAY: This is the State Water Planning
3 Hearing, January 29, Pocatello, 2:00 p.m., Littletree Inn.
4 Good afternoon, ladies and gentlemen. It's nice
5 that you braved the weather to be here. My name is Gene
6 Gray and I'm chairman of the Idaho Water Resource Board and
7 I should explain to you the two entities we have in the
8 State. We have the Department of Water Resources which
9 deals with management of water. We have a regional office
10 over in Idaho Falls, those folks, and we're here as the
11 Water Resource Board and we're appointed by the governor
12 and passed through the senate confirmation proceedings.
13 The members with us today are Dave Rydalch on the
14 end. Dave is a farmer in the St. Anthony area. We have
15 Jim Shawver who farms in the Eden area, both board members.
16 Wayne Haas is with the Department of Water Resources out of
17 Boise. We have Don Kramer who's a farmer in the Castleford
18 area and I'm an insurance agent and small-time farmer in
19 the Payette area. We have Frank Sherman with the
20 Department of Water Resources who will be explaining some
21 of the procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 front of you. The intent of this policy is to establish
2 the minimum flows called for by the agreement at Murphy
3 Gauging Station which is just below Swan Falls Dam.

4 The existing water plan says that the year-round
5 minimum flow at Murphy shall be 3300 cfs. This is an
6 unrealistic estimate if indeed Idaho Power has a legitimate
7 right at Swan Falls greater than that number.

8 The compromise basically is you will set 3900 cfs
9 through your irrigation season, 5600 cfs during the
10 wintertime. In return for the State Water Plan saying the
11 river should never go below those flows, Idaho Power will
12 give up some of the water they claim.

13 The board has also added some minimum flows at
14 Johnson's Farm and Lime Point which are gauging stations or
15 measuring points below the Hell's Canyon Complex. The
16 existing State Water Plan recognizes that these are
17 (inaudible) licensed and called for by the license. The
18 board in this plan acknowledges that they're important
19 flows and they're necessary for the well-being of the
20 people on the river.

21 The proposed revision would incorporate those
22 (inaudible) state flows also. It gives it added
23 recognition that if for some reason there would be a change
24 in the Idaho Power license, those flows should still be
25 guaranteed by the State Water Plan.

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1 The next policy, 32A, water held in trust by the
2 state. You're going to find some references here and other
3 places to Idaho Code 42-203C or whatever. These parts of
4 the Idaho Code don't even exist yet. They're in the
5 so-called legislative package that's in the back. So you
6 can check -- if one of those things bother you, you can
7 check the back.

8 It is the policy of Idaho that water held in trust
9 by the State pursuant to blah, blah, blah of the Idaho Code
10 be reallocated to the uses only that meet certain criteria.
11 The agreement basically says that water that Idaho Power
12 has claimed to give to the State, the State can reallocate
13 that to other uses. Because it's water that has already
14 been appropriated, the new criteria for the use of that
15 water can be (inaudible). And that's basically what Policy
16 32-A says.

17 Any of the water that Idaho Power claimed that has
18 been given to the State special criteria other than the
19 normal beneficial use, non-speculative, the impact on your
20 neighbor, those kind of (inaudible) still will be in place
21 but there will be additional criteria for this water that
22 Idaho Power had claimed.

23 32B, domestic, commercial, municipal and
24 industrial. The existing water plan which talks in terms
25 of acre-feet rather than cfs set aside a certain amount of

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1 water for municipal and industrial uses.

2 The proposed revision would change that volume to a
3 flow rate and basically keep it the same. We're talking in
4 this case though rather than amounts diverted because the
5 intent now is for the State to try and manage the river
6 until we get to these magic flow numbers, the intent here
7 is to allow up to 150 cfs consumptive use. Existing
8 diversion from the basin for these kind of uses, domestic,
9 commercial, municipal and industrial. The best we can
10 estimate is an average of 404 cfs.

11 Much of that -- this is where it gets a little
12 complicated. Much of that is for non-consumptive uses. If
13 you know water budget, the water that's taken from
14 municipalities that people drink, the waste products go
15 back to the river and the water basically balances out. Or
16 it comes back to the system through whatever sewage
17 disposal there might be. We know consumptive uses in these
18 kinds of diversions but lawn watering in (inaudible)
19 community, golf courses, those kind of things, swimming
20 pool (inaudible) consumptive use. So 150 cfs of water for
21 consumptive purposes will be significantly more in terms of
22 diversion from the river.

23 (Inaudible) the State are setting this aside from
24 whatever block of water is available from Idaho Power.
25 Now, I say from whatever block of water because the

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1 examples in the discussions always revolve around the flow
2 at Murphy because that's where the court case is held
3 (inaudible).

4 Idaho Power has a claimed right in all their
5 (inaudible) facilities in the river. In many cases, it's
6 larger than the claim at Swan Falls but as part of the
7 agreement, Idaho Power has said they will not protest lack
8 of water at their upstream facilities as long as the 3900
9 and 5600 (inaudible) Murphy Gauge. They might protest if
10 something illegal is going on but as long as everybody's
11 willing to say, well, they're not getting their water at
12 some other dam, as long as the 39 and 56 are going by
13 Murphy, they're satisfied.

14 Policy 32C, agriculture. The existing water plan,
15 as I say, was first adopted in '76 and at that time, the
16 board set targets or at least hoped there would be new
17 agricultural development. There's been sort of a
18 controversy over a magic number of acres and we haven't
19 come close to reaching that number with the agricultural
20 economy at the present. There isn't (inaudible)
21 irrigation.

22 What the board proposes in this new policy is
23 basically to say those waters that they hold in trust, some
24 portion has to go for domestic, commercial, municipal and
25 industrial. The rest is available for agricultural uses.

10

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

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

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

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

25 Aquaculture. Once again, a repeat basically of

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

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

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

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

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

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

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

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

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

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

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

14

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The real problem is not within the river itself

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

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

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

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

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

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

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

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

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

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

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

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

25 Along with adjudication of water rights must come

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

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

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

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

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

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

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

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

23

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

4 MR. RYDALCH: No questions.

5 MR. GRAY: Jim?

6 MR. SHAWVER: I have no questions.

7 MR. HAAS: No questions.

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

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

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

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

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

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

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

19 MR. RYDALCH: Don't have any.

20 MR. GRAY: Mr. Shawver.

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

23 MR. GRAY: Mr. Kramer.

24 MR. KRAMER: None. Not right now.

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

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

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

12 Questions, ladies and gentlemen. Mike.

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

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

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

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

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

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

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

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

6 MR. GRAY: Yes, sir.

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

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

21 UNIDENTIFIED SPEAKER: (Inaudible.)

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

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

4 UNIDENTIFIED SPEAKER: Right.

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

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

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

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

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

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

21 UNIDENTIFIED SPEAKER: No.

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

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

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

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

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

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

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

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

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

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

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

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

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1 p.m. in the same room if you would like to join us again
2 and you're certainly welcome.

3 (Tape ends.)

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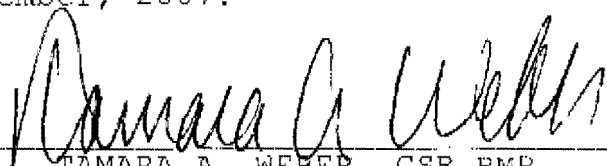


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) SS
COUNTY OF CANYON)

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

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

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


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

