STATE WATER PLAN HEARING

PUBLIC HEARING
BEFORE THE IDAHO WATER RESOURCE BOARD
POCATELLO, IDAHO
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Good afternoon, ladies and gentlemen. It's nice that you braved the weather that we have in the State. We have the Department of Water Resources which deals with management of water. We have a regional office over in Idaho Falls, those folks, and we're here as the Water Resource Board and we're appointed by the governor and passed through the senate confirmation proceedings.

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

We're here today mainly to take your oral or written testimony of proposed changes to Policy 32, the State Water Plan. And since there are only 1 think two of you that will be testifying, what we're going to do is kind of give you an overview of the proposed changes to Policy 32 that we would like to do. Then we'll take the public testimony. We'll close the meeting and then we'll open it up to questions if you have any.

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

The first page kind of gives you some general information. Page 2 and page 3 are the proposed revisions that we're bringing before you today. Mr. Sherman will be covering those shortly for you.

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

No. 2, the legislative package must be passed.

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

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

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

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

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

32B, domestic, commercial, municipal and
industrial. The existing water plan which talks in terms
of acre-feet rather than cfs set aside a certain amount of
water for municipal and industrial uses.
The proposed revision would change that volume to a
flow rate and basically keep it the same. We’re talking in
this case though rather than amounts diverted because the
intent now is for the State to try and manage the river
until we get to those magic flow numbers, the intent here
is to allow up to 150 cfs consumptive use. Existing
diversion from the basin for these kind of uses, domestic,
commercial, municipal and industrial. The best we can
estimate is an average of 404 cfs.

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

(inaudible) the State are setting this aside from
whatever block of water is available from Idaho Power.

Now, I say from whatever block of water because the
examples in the discussions always revolve around the flow
at Murphy because that’s where the court case is held
(inaudible).

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

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

What the board proposes in this new policy is
basically to say those waters that they hold in trust, some
portion has to go for domestic, commercial, municipal and
industrial. The rest is available for agricultural uses.
The only magic acreage number now is the restriction saying that no more than 80,000 acres should go in a 4-year period. Over the last 8 or 10 years, the average number of new acres coming into the development (inaudible) irrigated agriculture development in the State is right about 17,000 per year. So the average of 80,000 over a 4-year period would be up to 20,000 acres per year but no more.

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

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

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

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

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

Policy 32G, fish, wildlife and recreation. This is an awkward policy. The board has done the best they can I feel. It is the policy of Idaho that the minimum flows established are sufficient and are 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. The stream flow depletion below the (Inaudible) is not (Inaudible).

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

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

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

Policy 32I, new storage. This is a very complicated sensitive issue. The negotiators of the agreement specifically asked the board to address this problem, specifically suggested language that they felt was appropriate. There are two basic criteria here or two parts to this policy.

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

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

So the negotiators wanted the board to address this question. The board has agreed to do this. They've incorporated the suggested language in this policy and they have agreed to look at some of the social and legal barriers to more efficient use of water in the system. 
There is an established water bank in the state. There is a mechanism and rules and regulations where a person who has more water than he needs can sell or lease that water to someone else. Some uses these rules and regulations made (inaudible) by the committee and I (inaudible). But it's not used to any great extent. The reasons are if a person has water stored behind a reservoir, he can only lease or sell that water on a one-year contract. Like someone who's coming in and wants to do something new is only assured water on a limited basis. He's not going to put very much money in (inaudible) financed.

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

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

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

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

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

Everybody wants to know is this a real barrier to new storage? I think to some degree maybe but certainly it's not as much of a barrier as (inaudible) lack of good downsize, the lack of water to fill the major reservoir on a year-to-year basis. It's a barrier only if the director has to make a finding. If the director were asked today to make a finding, he would probably say no because there's unappropriated water in the system. Once there's no longer unappropriated water, his finding would have to be these legal barriers prevent us from doing anything different.

There's a second part to this new storage policy and it applies only below Milner Dam. Idaho Power's wintertime operation is an important part of their whole system. There's two -- my understanding, there are two key ingredients here. One is that they have a guaranteed buyer on the west coast during the wintertime because of all the electric heating. It's getting so (inaudible) guarantee to buy in Idaho because of the cold weather we've had lately also. So they can sell power very easily at that time. The other reason of course is that the Hell's Canyon Complex and Brownlee Reservoir has to get filled and that's when it gets filled, during non-irrigation season.

As part of the trade-offs, the State agreed that anyone who wanted to divert water during the wintertime for storage purposes below Milner Dam would have to enter into some kind of an agreement with Idaho Power Company and mitigate for the company's operational losses. What the mitigation will be, no one knows. It's going to be on a case by case basis. It certainly is a barrier to new diversions below Milner Dam. It may be that you're building a few extra thousand acre-feet to let Idaho Power call when they want and that may be enough (inaudible). If you can show the timing of your releases will benefit Idaho Power rather than really hurt them, that may be mitigation. But at the moment, no one is really clear.

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

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

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

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

So from the point of view of the regulator or the
manager, while there's unappropriated water available, it
sure would be nice if we could get a hold of some of that.
Now, from the day we could get a hold of it until we made
the mistake that causes us to use it for this purpose, that
water could go to the water bank where anybody who wanted
to use it for a year or whatever could do so. It could be
sold to Idaho Power for example. But it would be sort of
an insurance policy much like an irrigator has stored water
for insurance if he doesn't get his natural flow right.

This would be an insurance policy for the Department of
Water Resources if they find they can't meet the terms of
this agreement.

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

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

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

The League of Women Voters thanks you for this
opportunity to comment on the suggested revision of Policy
32 of the State Water Plan. We recognize that changes are
necessary to implement the Swan Falls agreement between the
State of Idaho and Idaho Power Company.

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

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

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

Along with adjudication of water rights must come
complete hydrologic and economic studies of the Snake River
Basin. These studies are needed to determine the lengths
between surface and groundwater supplies. We must have
information on the physical characteristics of our
aquifers. Thousands Springs provides the Swan Falls flow.

Groundwater depletion is serious and we need geologic data.

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

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

We respectively (sic) submit that there are other
uses for Snake River water, namely, fish, wildlife and
recreation. We are concerned about the impacts on fish,
wildlife and recreation. We do not believe that these uses
can take any decreases in water rights. All beneficial
uses could be made more equal by not putting specific figures in for only one beneficial use. Putting in a quantitative target for agricultural development only means that fish, wildlife and recreation uses will be subordinated.

Policy 32G states that minimum flows 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. We would like to see economic reasons for and development targets for all beneficial uses.

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

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

Mr. Gray: Sally, might you stand for questions from the board members, please? Mr. Rydalch, any questions?

Mr. Rydalch: No questions.

Mr. Gray: Jim?

Mr. Shawver: I have no questions.

Mr. Haas: No questions.

Mr. Gray: Thank you very much. Might we get a copy of that if you have an extra? Thank you very much.

Chair calls Mike Caldwell.

Mr. Caldwell: Thank you. I'm Mike Caldwell. I live at Route 3, Box 173, Blackfoot, Idaho. I live on (inaudible) Road.

The main reason I'm here today to testify before you gentlemen is that one thing to start out to (inaudible) you a little bit and to make the point that a number of people have mentioned to me and to different meetings across the area that perhaps that the big money people, the utilities in particular, have gone around you. You gentlemen are sitting on the board seeing this thing kind of coming and then allowed yourselves to be boxed out politically away from where the decision-making was to be made. You're appointed by the governor in my opinion to kind of oversee this water thing and when the final agreement was made at Swan -- on the Swan Falls agreement, evidently you guys were -- you gentlemen were left out in the cold on how the minimum flow was going to be.

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

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

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

Mr. Gray: Mr. Rydalch, any questions?

Mr. Rydalch: Don't have any.

Mr. Gray: Mr. Shawver.

Mr. Shawver: I think I'll answer that question for you after the hearing.

Mr. Gray: Mr. Kramer.

Mr. Kramer: None. Not right now.

Mr. Gray: Okay. Thank you very much, Mike. Is there anyone else who might like to testify that we don't have indicated here? If not, we'll close the formal hearing and we'll open it up for questions and answered.

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

Questions, ladies and gentlemen. Mike.

Mr. Caldwell: Could I get an answer to the question I asked during the testimony? Where is the -- where does the individual Indian water right come into this thing?

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

One of the main purposes for the adjudication and one of the reasons it gets more widespread support than one
UNIDENTIFIED SPEAKER: This is criteria that is in
1 the agreement that has been additionally put in over and
2 above what was done before?
3 UNIDENTIFIED SPEAKER: Right.
4 UNIDENTIFIED SPEAKER: And this is the additional
5 criteria that that refers to.
6 UNIDENTIFIED SPEAKER: Right. And those will be
7 for the water that Idaho Power claimed that the State Is
8 not (inaudible).
9 UNIDENTIFIED SPEAKER: This is the 45 to 3900 cfs?
10 UNIDENTIFIED SPEAKER: That's at the Murphy Gauge.
11 It's a different number at every different dam on the
12 river. But yeah, that's true.
13 UNIDENTIFIED SPEAKER: It's not -- too, I'd like a
14 clarification or have you elaborate on your interpretation
15 of the beneficial use criteria that would have to be met by
16 say a person applying for a water right for a deep well.
17 Is this going to be -- is your understanding -- is this
18 something that's going to be similar to like EPA
19 environmental impact statements?
20 UNIDENTIFIED SPEAKER: No.
21 UNIDENTIFIED SPEAKER: Or is this going to be
22 something similar to like in the past a little bit more
23 simple that an individual farmer might be able to handle?
24 UNIDENTIFIED SPEAKER: It's going to be not that
25 different. A person who's going -- wishes to use a deep
26 well, for example, I would say (inaudible) because that
27 brings the whole thing together will have to meet the
28 criteria they have to meet right now plus they will be
29 evaluated on their impact on hydropower generation, and
30 they in the family farm tradition, and I can't remember the
31 others but they're listed in the page there what the
32 legislature's going to ask to adopt. What the legislature
33 actually adopts may be different and that (inaudible)
34 changes. But it's supposed to be a simple check-off system
35 that's going to take order, yes, it's going to hurt Idaho
36 Power directly in terms of hydropower generation because we
37 have to analyze the impact on the rate payers in the state.
38 (Inaudible), yes or no. We come up with a simple five or
39 six check-off list that the department does as part of the
40 routine process in application.
41 UNIDENTIFIED SPEAKER: Look on page 6 of this
42 "Currents" and the first column, clear at the top. This is
43 the additional criteria. It starts on the previous page,
44 the public interest determination (inaudible) being approved
45 and continues on page 6. As Mr. Sherman indicated, this
46 was the draft language. This is before the legislature --
47 what they finally end up with of course we don't know. But
48 I guess the parties to the agreement, one of their
49 stipulations was that whatever the legislature ends up with
50
is supposed be quite close to this. They said that any
major changes they would have problems with.

UNIDENTIFIED SPEAKER: Pretty well void the
agreement (inaudible). (Inaudible) considered by
(inaudible) there's any drastic changes as determined by
those -- any one of those two parties, they can avoid the
whole agreement. Is that correct?

UNIDENTIFIED SPEAKER: That's what we heard.

MR. GRAY: That's the talk on the street.

UNIDENTIFIED SPEAKER: So it's pretty well going to
have to come in line with what's been signed within pretty
close limits.

MR. GRAY: If this does not fall in line by May 15
as it's supposed to, 1985, then the negotiators will meet
again and they'll either come up with another proposal or
else it will go back in the courts.

UNIDENTIFIED SPEAKER: It will go back to step one
again.

MR. GRAY: That's correct. Mike.

UNIDENTIFIED SPEAKER: Was your gentlemen's
original thoughts on this when you was confronted with the
Swan Falls issue in itself was to condemn the dam at Swan
Falls and to have the State end up owning them and then
selling it back to Idaho Power without it's water rights?

MR. GRAY: No. The board -- the board never did
make a determination that they should purchase Swan Falls,
what we did is we requested staff to look into the
possibility or the fees --
(Tape No. 1 ends. Tape No. 2 begins.)

UNIDENTIFIED SPEAKER: The way I understood it at
the beginning there, it was one of the thoughts -- this is
(inaudible) you fellows (inaudible) to that initial
thinking.

MR. GRAY: No. We have broad shoulders and we're
back. Anymore questions? Sally.

MS. GIBSON: I think what you state the action that
must be taken by May 15 is kind of scary. Do you really
anticipate that all of this will be done by May 15?

MR. GRAY: Do I really have to answer that
question? We hope that it takes place by May 15.

UNIDENTIFIED SPEAKER: Mr. Chairman, could I add --

MR. GRAY: Yes.

UNIDENTIFIED SPEAKER: Could I add that the
principals to the agreement stated that they would sit down
on May 15 and (inaudible). There's a little leeway
(inaudible) they're not going in the right direction or
not.

MS. GIBSON: Because you're even dealing with a
different state here and I know that these things take a
long, long time to get done so, in other words, we could
best push for that.

UNIDENTIFIED SPEAKER: That's correct. Thank you.

MR. GRAY: I'd like to point out that Mr. Herman
McDevitt from Pocatello, attorney at law, is with us and
Herman is a former board member. It's nice to have you,
Herman.

MR. MCDEVITT: Thank you.

MR. GRAY: We also have Rich Hahn in the back.
Rich is with Idaho Power Company. He might be able to
field a couple questions if you have one that you'd like to
direct toward the utility.

UNIDENTIFIED SPEAKER: Do you think that there will
be any -- my thinking on the deal is that the reason why --
one of the reasons why Idaho Power's rates have been so low
for so long is the possibility in the back of their mind
the company's thinking that there was a chance they
wouldn't have any water right in the river and that if they
had the guaranteed stream flow of this 3900 cfs that there
might not be the thinking in their mind to keep the rates
low or (inaudible). He's probably not going to admit it
even if there is but --

MR. HAHN: I really can't answer that question. I
wasn't a part of the negotiating team and that would be
better responded to our representative on the negotiating
team (inaudible). I'm here simply to observe the meeting.

UNIDENTIFIED SPEAKER: Mr. Chairman.

MR. GRAY: Yes, Mr. Sherman.

MR. SHERMAN: I would -- as part of follow-up to
that question though, until the Idaho Supreme Court made
the decision that the Swan Falls claim by Idaho Power had
not been subordinated by the Hell's Canyon Drain, both the
power company and all State agencies were operating under
the assumption that the water right at Swan Falls was
(inaudible). I don't think it was until '82 that Idaho
Power realized that they really had a claim toward
(inaudible).

MR. GRAY: Yes, sir.

UNIDENTIFIED SPEAKER: As I understand it, this
4500 cubic feet per second at the Murphy Gauge, that is the
present low flow for the irrigation season and that's
why -- that's why they (inaudible) at that point and they
kind of split the difference between 45 and 33?

UNIDENTIFIED SPEAKER: Yes, that's correct. The
historical flow at Murphy is 4500 cfs for an irrigation
season. The water plan called for 3300. That was the
starting point for the State. The 45 that Idaho Power
actually had had been given was at least a reasonable
starting point from their point of view (inaudible).

UNIDENTIFIED SPEAKER: And so this pretty much
gives the State an additional 600 cfs during low flow that
Mr. McDevitt: Mr. Chairman, I'd like to carry on with the Water Resource Board discussion. We've got the authority, and the law is very well defined, so we should be able to go from there.

Mr. McDevitt: And it's important to note that the agreement that was made was, in essence, a closed-door deal. Len Jordan was supposed to have his say on the final say-so, but now the governor has taken over that role.

Mr. McDevitt: One thing I would like to address, Mike, is the Water Resources Board's role in the negotiations. One thing you have to keep in mind is that, when the governor signed the agreement, he was already party to it. The people of Idaho voted to accept SJR-117 or the legislative process.

Mr. McDevitt: Black and white. Everybody can read it and it's fine for the legislature to accept or reject the agreement. The process is outlined in the constitution, and the legislature has overview of our process or let's put it this way: Your process.

Mr. McDevitt: I realize that. He was taken into it from you gentleman supposedly when the Snake system was negotiated. The thing that probably -- if you lay it out in black and white, everybody can see how everybody's being handled and one thing another, (inaudible) but it seems like it was a closed-door deal done over a cup of coffee or if they didn't drink coffee, (inaudible). But there was -- It seems like a deal that was made -- the same kind of deal that was made with -- that Len Jordan was supposed to have made with the president of Idaho Power in the beginning when he said they were going to have this subordination.

MR. McDEVITT: Mr. Chairman, I'd like to carry on with Mike's comment not saying you guys were left out but in saying that the intent certainly to assure the agreement for more than the length of Governor Evans' term is by getting specific pieces of legislation. It's by putting it in the water plan. But quite honestly, once it's in place, the water plan gets reviewed every five years by law. It can be changed. The legislature meets yearly and can change any law they want. So there's no real guarantee.

The best you can do is make it the law of the land and that's certainly the intent.

UNIDENTIFIED SPEAKER: That could happen. Basically the process now is the board goes through. We take public hearing and we develop policy on what we think you said. That's the public process.

MR. McDEVITT: Thank you. Any other questions? Yes.

UNIDENTIFIED SPEAKER: Thank you. Any other
1 p.m., in the same room if you would like to join us again
2 and you're certainly welcome.
3 (Tape ends.)
STATE OF IDAHO
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.

[Signature]

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