STATE WATER PLAN HEARING

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BEFORE THE IDAHO WATER RESOURCE BOARD
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APPARENCES:

Gene Gray
Dave Rydulch
Jim Shawver
Wayne Haas
Don Kramer
Frank Sherman
Richard L. Hahn
Lynn Ruby
Charles Pace
Dan Daley
Mack Gamblin
James Osborn
Tom Stroschein
Gordon Toes
Harold Funk
Ritchey Tocus
Ben Cavoness
Gary Gohring
UNIDENTIFIED SPEAKER: This is a recording of the State Water Plan hearings in Pocatello on January 29 at 7:00 p.m.

MR. GRAY: -- Resource Board's public hearings on the revisions of Policy 32 of the State Water Plan. With me tonight is Dave Rydalch. Dave's a farmer in the St. Anthony area and he's also a member of (inaudible). And Wayne Haas with the Department of Water Resources; Don Kramer who's handling the sign-in sheet back there is a farmer from Castleford, board member; J.D. Williams, attorney at law from Preston. We have Ken Dunn, director of the Department of Water Resource with us tonight. Frank Sherman from the Department of Water Resources will be talking to you and we have Tom Stroscio is congressman Sherman's agricultural fieldman.

So with that, we'll kind of get started. If you kind of grab your "Currents" and take a look at the front page, the front page will give you a general rundown of what has transpired to this point as far as the board is concerned. The board is charged with making water policy for the State of Idaho. The State Water Plan was developed by the Idaho Water Resource Board. What we're going to be talking about tonight is revisions to Policy 32 and we accepted some revision language in December of 1984 and that's what we have with us tonight and that's what we would like you to testify on.

If you take a look at page 2 and page 3 inside your paper, you'll find the language and proposed revisions for Policy No. 32. Page 4 through 7 is the legislative package that our legislature is working on at the State capital present.

Now, in order of representation, if you'll look at the right-hand side of page 7, you'll see actions that must take place for this thing to be in place and that must all be done by May 15, 1985. No. 1, the State Water Plan is to be amended and that's what we're here in front of you for this evening is to get your input on that portion of it.

No. 2, the legislative package must be passed.

No. 3, the appropriate action by the PUC or legislature as called for in agreement is taken. 4, an appropriate order by the Federal Energy Regulatory Commission acceptable to the parties to the agreement must be issued. The Idaho PUC must dismiss the 1977 petition by the Idaho rate payers.

No. 6, if required, the Oregon PUC must also approve the package. No. 7, enactment by the legislature of subordination language as set forth in Exhibit 7A and 7B which you find on pages 4 through 7.

So with that, we'll have Mr. Sherman briefly give you an overview of the changes that we're contemplating in Policy 32. We'll follow that by public -- your public response. We'll close the public response and then we'll open it up for questions and answered. Mr. Sherman.

MR. SHERMAN: The existing State Water Plan is a policy that's directed towards water use in the Snake River Basin. It needs to be changed for two reasons. When this plan was first drawn up, the idea about managing water in the basin was to allocate the water in the system for specific uses.

When the Idaho Supreme Court in 1982 decided that the water right at Swan Falls Dam held by Idaho Power was an unsubordinated water right, (inaudible) water year, it made these allocations inaccurate. When this plan was put together, it was assumed that the Idaho Power water rights at Swan Falls was subordinated and the State could take that water away from the power company.

So allocations that are (inaudible) how much water's available. The other and more pressing (inaudible) is that, as Mr. Gray explained, the State and Idaho Power reached an agreement and compromised to resolve the conflict. They specified certain changes that they felt had to be made to the plan.

Proposed language addresses those changes very specifically (inaudible) incorporate (inaudible) into the State Water Plan. The old policy was just a general statement saying that it is the policy of the State that the water shall be allocated to the public with the following criteria or uses.

What we've attempted to do in the revised version is spell out this policy of the State of the waters and how they will be used and what the board feels about the different uses (inaudible).

So let's start right off with Policy 32. It's a key policy. The intent of the agreement and certainly the way the agreement can be implemented in terms of water -- managing the water in the system is treat the groundwater and surface water as an entry to try and manage all the waters in the basin.

The agreement says that because of the conflict at Swan Falls and the Murphy Gauging Station that's the nearest U.S. Geological Gauging Station on the river to Swan Falls, there is a controversy around that and the fact that the existing State Water Plan specifies a year-round flow of 3300 cfs. The key change right away has to be we're going to change those flows.

Idaho Power had claimed -- has a claimed water right in the Swan Falls Dam of 8400 cfs. The river has been as low as 4500 cfs in the summertime. This is a...
The negotiators in trying to implement some kind of compromise said, "Well, we've already been down to 45. The State Water Plan calls for 33. Let's split the (inaudible)." We came up with 3900 in the summertime because a significantly larger (inaudible) water goes past that point, the (inaudible).

The compromise (inaudible) 5600 cfs (inaudible).

It's a compromise. Why is it a compromise? Because Idaho Power says as long as that volume of water flows past that gauge, they will not take action through the State against anyone for (inaudible) water rights providing those people are making beneficial use of that water right prior to the signing of agreement. The whole intent of the agreement is to rationally split up the water that's left; protect the existing user.

You'll note that the proposed policy discusses minimum flows of (inaudible). In the existing water plan, the plan recognizes these flows because they are part of Idaho Power's license to operate (inaudible) hydropower complex.

It was felt that by incorporating these officially into the State Water Plan, they would assure those flows no matter what might happen to the (inaudible). So the draft language suggests that two additional (inaudible) would be appropriate. There are two other flows in the existing water plain which will remain unchanged. One at Milner Dam. (Inaudible) has to be fixed because if water shortage -- all the water's appropriated above that plan. That (inaudible) should stay the same. It's the minimum flow established by the gauging station in Weiser set for 4750 cfs. That flow will remain unchanged.

Policy 32A, water held in trust by the State. In trying to effect the compromise, what happened to the water that Idaho Power claimed that they were no longer going to get guaranteed to them? The decision was made that that water should be held in trust fund (inaudible). The State could allocate it to the uses.

The problem that comes into the matter is that these (inaudible) had already been appropriated. We're not talking about the unappropriated waters of the State. We're talking about water that we generally and is now available for reallocation to other uses.

The agreement that was reached says you can reallocate the water. Idaho Power has the use of that water until it is reallocated. Because it's sort of special water, the State can and will put special criteria upon people who want to use it.

You'll notice at the end of the draft language, it talks about Idaho Code 42-203C. There is no such piece in the Idaho Code today. This is what the legislature has to do. The board is recognizing that because it has been appropriated or claimed at one time, new criteria can be put on people who want to use it. It's up to the legislature to establish those criteria. The suggested language for those criteria is contained in the back pages of the (inaudible).

Policy 32B, domestic, commercial, municipal and industrial. Existing water plan has an allocation of water that's based on mistaken assumptions about no water being available (inaudible) for municipal and industrial uses. It's given in acre-feet. The existing water plan is volume. The negotiators talked always in terms of rate of flow. If you convert the volume it set aside and the water plans to date from municipal, industrial uses, you come out to about 144 cfs. The proposed language suggests setting aside 150 cfs for consumptive uses (inaudible).

We're still talking about how much water (inaudible). How much water is (inaudible). The department is going to be charged with managing this block of water and how much water is consumed.

If you do water budget analysis for a community, consumptive losses are basically (inaudible) watering grass. People who drink the water, it goes on through to the treatment plant and back to the river, back on the land. It's not lost in the system. So consumptive uses for new industry (inaudible) consumptive use for standard population is very low. Many of the new industries who come in (inaudible) irrigated. Therefore, they may even get a net increase if the water is available to the State to use. We set aside 150 cfs.

As you probably know, the water plan has to be reevaluated and readopted every five years. If this number was off by a major factor, it would be changed.

Policy 32C, agriculture. The existing plan said that it was the policy of the State to try and maintain Idaho's position in the nation in terms of food and (inaudible) production. Based on that, estimates of what the agricultural growth in the nation would be and the plan hoped for specific months of new irrigation.

Recognizing that now there's not as much water available as we thought there was, this particular policy would only state that of those waters held by the State what used to be Idaho (inaudible), after we satisfy all the DCMI uses, the remaining water be would be available to (inaudible).

32D, hydropower. This is so short, I can read it. "It is the policy of Idaho that hydropower use be recognized as a beneficial use of water." (Inaudible.) And that depletion of flows below the minimum average daily flow set forth in Policy 32 is not in the public interest.
The part of the country where we're concerned about the amount of water available are the people who use any water. All implemented, we don't have a real major water problem, but they are the minimum value in the state to commercial and navigation (inaudible) navigation purposes.

Aquaculture. There's two basic statements. The first one is that anyone in the aquaculture business who wants to get a water right to process (inaudible) that water should be counted against the DCMI reservation. Second part which is really already in the water plan is that because of the minimum flows and because of the fact that for most of the summer, the water in the river where aquaculture occurs, water comes out of Thousand Springs. That water will hopefully be -- certainly enough would have to be here to satisfy (inaudible) gauge. So there should be water available for aquaculture purposes.

Because some of these people rely on discharge from the aquifer itself at Thousand Springs for their water use, the State cannot guarantee that their need for diversion is protected. The water right in the State of Idaho guarantees you access to water. It does not necessarily protect how you get it. If you continue (inaudible), a trout farm might have to change it's diversion (inaudible) in extreme cases (inaudible) and dig a well. It takes priority (inaudible).

Policy 32G. Fish, wildlife and recreation. This is basically the language that's in the existing water plan and realize that the language that's in there was based on a year-round flow of 3300 (inaudible); not the 39 (inaudible). It's a policy of Idaho and the board that these minimal flows satisfy the minimum requirement of fish and wildlife and aquaculture and aquatic life and recreational purposes.

The board does not pretend that these are optimum (inaudible) but they are the minimum values in the state to serve sort of outdoor recreation (inaudible) come to accept being available to us in Idaho.

Water quality and pollution control, Policy 32H. The part of the country where we're concerned about the amount of water available are the people who use any water. It seems inappropriate to take good water and mix it with bad to cover up a pollution problem. The board feels that there are enough laws about water quality that if they're all implemented, we don't have a real major water problem.
The board has accepted the charge of negotiators to try and look at these kinds of problems. The State has their own problems. If you have water and you want to sell it to another user, that user better not be a consumptive user or you’re (inaudible) your water right if you continue with your own operation. That’s a real problem. You have to hope to find a non-consumptive user and (inaudible).

The second part of this policy is directed specifically to that (inaudible) of the river below Milner Dam. Idaho Power Company and their systems operation relies on wintertime flows for two purposes. One, they can sell to the west coast for using (inaudible). The last few winters, there have been plenty of demand for electricity for heating in Idaho itself.

The second reason is that gas (inaudible) reservoir. (Inaudible) storage reservoir in the (inaudible). So they are concerned that they did not want to see a lot of water taken out in the wintertime when it would impact on their operation (inaudible). They couldn’t (inaudible) work out (inaudible) but below Milner to the Murphy Gauge, the negotiators compromised and said, “Okay.

Anybody who wants to divert from that (inaudible) of the river during the wintertime for storage purposes, some kind of analysis and mitigation must be supplied to the power company if there’s a negative loss or negative effect on their operations.

The word “mitigation” is carefully used. It implies a lessening of the impact. Compensation was avoided because that generally (inaudible). Certainly if someone wanted to use some of that water and store it during the wintertime, they had to replace its value on a dollar for dollar basis because (inaudible). Mitigate means lessen the impact in some way. Maybe by storing some of that water in your own facility which you would like (inaudible). It may be that your releases will be timed so that they (inaudible). It may be economics (inaudible).

How is mitigation calculated? Something the water board has to face when the time comes. The negotiators couldn’t agree amongst themselves (inaudible) what they feel is an adequate resolution. The whole composition of the river shouldn’t be held up by (inaudible). If and when we get a general proposal, the water board is charged (inaudible).

Policy 32J. The last one. It says “Stored water for management purposes.” As I said earlier, it is available perhaps. There are at least unappropriated waters in the system. If the State is charged with managing the river so it never goes below (inaudible) in the sumertime, 5600 in the wintertime, we can hire the best technicians you want for that job and sooner or later someday probably somebody’s going to mess up.

If they don’t mess up, they have been so conservative that we’re not taking full advantage of the water that’s available. But if they try and issue water rights and try and manage the river now to this magic number, (inaudible), the State should have some (inaudible) call for (inaudible).

Many of the junior users are probably going to be out on the (inaudible). We (inaudible) with the effect of shutting them off in flow the Murphy Gauge, it’s not going to show up for six months or it might be so subtle, you never see it. Therefore, to meet that flow, we’re thinking in terms of water available to (inaudible).

It seems appropriate to try and get the water now while there are unappropriated waters rather than to wait 10 or 15 years and realize we may need that water and not be able to find it; at least not be able to find it as cheap as we may find it now. There’s no (inaudible) if the State could acquire some water, it will probably go to the water bank. It could be sold to Idaho Power or be put to use but it will be there in case the problem would develop.

I think Mr. Chairman, I’d like to stop.

MR. GRAY: Thank you, Mr. Sherman. We will now start taking public testimony and the chair would call first Dan Daley.

MR. DALEY: Mr. Chairman, members of the board. My name is Dan Daley. I’m a fisheries biologist for the Shoshone Bannock Tribes.

MR. GRAY: Dan, would you give us your address and telephone number so we could reach you if we need to?

MR. DALEY: Sure. Post Office Box 306, Fort Hall, Idaho, 83203. And the telephone number is (208) 238-3900.

MR. GRAY: Thank you.

MR. DALEY: The tribes are concerned about the new State Water Plan for the Snake River Basin and also can only view the State Water Plan in light of the Swan Falls agreement and the later general adjudication in the Snake River Basin.

We think the State Water Plan is being modified in view of those -- of the Swan Falls agreement and in view of the later general adjudication and therefore must be viewed in concert with those -- with those two actions.

We have two general concerns, two basic concerns. One of those is that we’re concerned that the changes in the State Water Plan and the Swan Falls agreement are being viewed as a local level decision and being viewed as having
impacts only on a local basis.

This Is just untrue. Any changes we make in water use in the Snake River Plain in the Snake River Basin will have a regional impact, not just throughout Idaho but throughout the Columbia River Basin.

One of the reasons this is true is because any agreement at Swan Falls and any change in water use can potentially affect the water budget and for the benefit of anybody in the room who's unfamiliar with the water budget, I'll briefly describe it. It's a plan that was initiated by the Columbia Basin -- or by the Northwest Power Planning Council in their Columbia Basin Fish and Wildlife Program.

It's implemented through Bonneville Power Administration largely at the expense of the rate payers.

And the plan itself is designed to guarantee flows and storage within the Columbia River Basin, including the Snake River to -- or moderate flows throughout those basins to guarantee passage flows during anadromous fish, fish both migrating upriver to spawn and (inaudible) migrating downriver to the ocean.

This plan requires certain storage within the Snake River so that storage can be moderated and allowed to spillover at the critical times when fish are migrating upriver and migrating downriver. Any agreement at Swan Falls could have impact on Idaho Power's ability to comply with the water budget.

Non-compliance with the water budget on Idaho Power's part could have an impact all the way down the Columbia River Basin but more importantly, it's certainly going to have an impact on fish reaching the Salmon River Drainage and the Clearwater Drainage, anadromous fish reaching those areas. That in turn will have an impact on aboriginal treaty rights that the Shoshone-Bannocks hold and that the Nez Perce hold and also on Idaho sportmen in general.

A decline in the number of fish reaching either the Salmon River or the Clearwater River will be felt throughout Idaho and probably throughout the Columbia River Basin. That's one of our concerns and that's one reason why the State Water Plan should be viewed in light of any impacts it might have on a regional basis.

The other concern we have is that we see very little indication that water quality impacts are being considered either in the State Water Plan or in the Swan Falls agreement or later in the general adjudication. Whenever you change the priority use of water, in this case from hydropower to irrigation, and if you open up new lands for irrigation, you're going to have a definite water quality impact.

In other words, when water is used for irrigation and returns to the river as surface flows, it brings with it certain amounts of dissolved salts, suspended sediment, the changes in temperature, normally an increase in temperature and that has a water quality impact throughout the Snake River and below Swan Falls; not just in the general area of irrigation or the general area of new development.

Our concern in this light is that at the present time, we have very little idea how water -- how much water returns to the Snake River as groundwater flow, how much water recharges the Snake River as surface flow and in fact, we have -- we have only a vague idea of how much water is being diverted at each point along the system.

Without these kinds of information, we cannot develop a detailed comprehensive river model. Without a detailed comprehensive river model, we should be very cautious in accepting any kind of State Water Plan or Snake River water plan and any kind of agreement at Swan Falls.

In other words, the kind of information we need to gather is once water is diverted from the Snake River and it's either spread over the land through a sprinkler system or flood irrigation, we need to know how much water is lost through evaporation, How much water is lost through transpiration? How much water returns in groundwater flow since -- if it recharges the Snake River as groundwater, it has a chance to filter out some of the impurities and how much is returned as surface flow.

Our main concern is the larger point of the water that's going to return as surface flow because that's the water that's going to contain the higher quantities of dissolved salts, higher suspended solids and probably increase the temperature.

An example of the lack of interest in the Snake water plan in this regard is Policy 32H, water quality and pollution control. And this policy -- this part of the Policy 32 states that it is a policy of Idaho that the use of water to provide pollution diminution is not a beneficial use of water. If we increase the amount of water diverted through irrigation and if the amount of water that returns to the Snake River increases or it returns to the Snake River by surface flow increases, this is going to have a definite impact on water quality in the Snake River. It's going to degrade the water quality.

Lack of mention that increasing the amount of water that stays in the river could dilute this impact is either an oversight or it's -- it's ignoring the fact that we're going to have water quality impacts. These water quality impacts are going to be detrimental to irrigators farther downstream and they're going to be detrimental to fish and wildlife.

One last concern is that although Policy 32 states...
that the minimum flow set in the policy should provide for
the protection of fish and wildlife habitat -- aquatic
life, recreation, aesthetic beauty, transportation and
navigation values and water quality, it becomes apparent
that these minimum flows, particularly the minimum flow of
3900 cfs during the irrigation season in Swan Falls will
not provide for the protection of fish and wildlife.

This is based on the fact that in 1977, Idaho Fish
and Game prepared a report that stated or recommended
minimum stream flows below Swan Falls at 5500 cfs for
rearing -- for rearing of fish alone. Okay. Generally,
that rearing time occurs right during irrigation season,
exactly when we're guaranteeing only 3900 cfs over Swan
Falls in this water plain.

So it's the Shoshone Bannock Tribe's policy or at
least concern that we are not adequately studying the
impacts of this water plan. We are not adequately studying
the ramifications -- regional and local ramifications of
the Swan Falls agreement and we cannot adequately predict
what impacts this water plan and the agreement is going to
have on the Snake River Basin without first development of
a detailed comprehensive water plan of the type that I just
described a few minutes ago.

Thanks very much for your time.

Mr. Gray: Thank you, Dan. We might have a

question for you here if we could. Mr. Rydalch, any
questions?

Mr. Rydalch: I don't believe I do.

Mr. Gray: Mr. Williams.

Mr. Williams: I do. Mr. Daley, on the water
budget concept (inaudible), do you have any particular
recommendations (inaudible) in our planning to assist with
that program (inaudible)?

Mr. Daley: Yeah. Well, one of the most direct and
immediate things we can do is request Idaho Power to
project -- they have the information available and they can
project whether they're going to be able to comply with the
water budget.

(Tape No. 2 ends. Tape No. 3 begins.)

Mr. Daley: The Swan Falls agreement will put a
further constraint on their compliance. What we're
primarily concerned on a political level is that the Swan
Falls agreement will give Idaho Power an out. They'll say
we can't comply with the water budget and with the State
Water Plan and the Swan Falls agreement all at the same
time. Therefore, the water budget will go down the tubes
and we still have the Swan Falls agreement. Without the
water budget, we cannot assure anadromous fish runs in the
Salmon and Clearwater Basin. Plain and simple.

We know for a fact that the guaranteed 3900 cfs at
Swan Falls during low water years will interfere with the
storage capacity of Brownlee Dam. That storage behind
Brownlee is primarily going to be responsible for
compliance with the water budget.

Now, whether -- whether Idaho Power can alleviate
that or not is -- needs to be determined at some future
date, but I would suggest that we request Idaho Power to
lay their cards on the table as far as water budget goes.

Mr. Williams: Anything else? Any other ideas?

Mr. Daley: As far as Idaho Power --

Mr. Williams: The water --

Unidentified Speaker: Affecting the water budget

Mr. Daley: Well, there's actually a group of
experts involved with the water budget called the water
budget managers. Those people need to be contacted by the
State. I've already talked to them and they've described
in general what kind of impacts they think will occur and
they could supply very detailed information, very detailed
predictions or at least projections as to what kind of
problems or lack of problems they're going to have with the
Swan Falls agreement and the water budget.

The other people who can probably give technical
advice is the Northwest Power Planning Council -- the staff
of the Northwest Power Planning Council and I would sugges
to contact them.
MR. DALEY: Vaguely. Vaguely.

MR. DALEY: And after that feasibility study is complete, you can be sure you'll be hearing from Shoshone Bannock Tribes on the issue also.

MR. GRAY: Fantastic. Thank you.

MR. DALEY: Sure.

MR. GRAY: The board would call Charles Pace. I live here in Pocatello. No. 7 Dartmouth. I’m an economist at Idaho State University and Idaho State of course doesn’t necessarily endorse the views that I’m advocating.

I think there’s a number of good things about the Swan Falls agreement. One of course is the recognition -- explicit recognition of the interaction of surface and groundwater with all the accompanying hydrological and economic implications that are location-specific. The other thing that I think is probably good about the agreement is that it sort of diffuses the situation in that it’s worked out any time you can work out or negotiate, work out a deal, it’s probably preferred to ending up in court. The question is whether that activity can be extended.

If we start looking though at the economic implications, one of the things that the agreement does is it contains language in there that says priority will be given to future allocations of water that promote the family farming tradition and so on. And economically, there’s a lot of uncertainty in Idaho. Where are we going to be in 20 years? If you the present situation and extend it in the future, I think the consensus among most people is that the water probably has its greatest value left in the river in terms of its ability to just simply generate revenues. I mention there the Hamilton Lyman (phonetic) Study on the loss of power concept and so on. But there’s no reason to think that that’s going to be the situation forever. And I think it’s probably a mistake to get locked into public interest criteria that tend to favor one particular approach.

There’s also the question of how we define the secondary and tertiary values generated by consumptive uses and often those have substantial economic values.

But those things are already placed on the agenda.

The things that are sort of lacking here are the things that Dan Daley was bringing out. What will be the impacts on fish and wildlife if in-stream flows decline? You have to consider also the Lower Snake River, the (inaudible) and then the lower -- hydropower generation on the Lower Columbia: The Dales, Bonnerville, John Day, McNary. All of those will be affected by depletions of in-stream flows in terms of loss to evaporation and transpiration and also other types of losses of water with diversions.

So I think you have to look at the loss of hydroelectric capability not just at Swan Falls but all the way downstream. You also are going to have to consider the primary -- or in the public interest criteria the primary, hydroelectric power.

But if we cut down on the minimum -- on the minimal flows from 4500 to 3900 and from 65 or the 2800 that’s going to be cut off in the winter and it has the kind of biological impacts that we’re talked about, what we mean there is irreversible changes in the amount of genetic information and just because things like resident fisheries are not exchanged in the marketplace doesn’t mean that they don’t have economic value. It may be that that is the long-term effect here in terms of how we’re going to be looking back at this say 50 or 100 years from now. This is when we add some irreparable damage to the resident fisheries.

It’s also significant that you have an endangered...
1 population of white sturgeon in the upper river. In the
2 lower river where this -- where this fish isn't endangered
3 provides significant fishery. People spend literally
4 hundreds of dollars on equipment and very valuable fishery
5 on the lower river and it's possible that the sturgeon
6 might thrive in the upper river.
7 Another issue that was brought out with this whole
8 question of the water budget and one of the other things
9 besides the question of fish and wildlife in-stream that
10 was neglected here was the whole question of out of region
11 import -- out of state but within the region impacts on
12 fish and wildlife. And the water budge is an obvious
13 concern there but there's also a lot more to the Northwest
14 Power Planning Council's activities. There's a whole area
15 of restricted development, protected areas and a focus also
16 not just on anadromous fish but also on resident fish so I
17 think that has to be taken into account here too and it's
18 obviously not being taken into account.
19 I think that's probably the greatest thing -- the
greatest flaw in this agreement is that it was worked out
20 by two of a number of interests -- of a number of groups
21 that have interest in water policy in the Snake River. The
22 new agreement neglects fish and wildlife, it neglects
23 federal reserve rights and interests outside of the State
24 of Idaho.

As it was pointed out before, the whole agreement
2 is also intimately bound up with the whole question of
3 adjudication of the Snake River and here the potential I
4 think for negotiation of federal reserve rights is enormous
5 as are the dangers of not negotiating, of ending up in
6 court and settling those with litigation. The last thing
7 in the world I think that anybody wants is to have enormous
8 amounts expended on legal fees so there's -- I'm not sure
9 of this but I would guess that there is a very large
10 possibility, a great deal of room for negotiation when it
11 comes to the whole question of federal reserve rights. Not
12 just the Shoshone Bannock rights but also the INEL
13 questions and so on.
14 I've already mentioned the impacts on fish and
15 wildlife throughout the Columbia River Basin. Another
16 thing that the agreement calls for is the design of
17 efficient water markets so that water can be provided
18 outside of an appriate -- or an appropriation process.
19 This, as you pointed out, is going to require changes in
20 Idaho water law. But there's another question here and
21 that's how should the market be organized and one principle
22 here is that you should have limit -- as few limitations on
23 entry as possible; that the State should use water price --
24 the price of water to allocate between different uses
25 rather than restricting the participation of different

1 groups in the water market. That will tend to guarantee a
2 greater efficiency in the allocation decision than it will
3 if you simply bar individuals from participating in the
4 market.
5 As you mentioned before, there's a possibility for
6 purchasing unallocated water storage, primarily from the
7 Federal Bureau of Reclamation and the Corps of Engineers.
8 I'll close on this because I was at a conference not too
9 long ago in Portland and a man from the Yakima Indian
10 Nation, Bill Yellup (phonetic), stood up and gave a speech
11 and he went through a lot of different things but what he
12 had to say basically was, look, this is a wet year now.
13 Okay, When this comes to a dry year, what we're going to
14 do is we're going to end up in court.
15 And that -- I think that's probably something to remember. While that water is out there now, it may be a
16 good time to get an agreement, but at the same time, you
17 want to get that agreement in terms of not just -- not just
18 the wet water years but also nail it down in terms of what
19 happens during the years when there's not enough to go
20 around to be allocated to a fully allocated system. I
21 think that's a real difficult question.
22 MR. GRAY: Thank you, Mr. Pace. Mr. Rydalch, any
23 questions?
24 MR. RYDALCH: Are you in favor of Policy 32J on the
25 stored water for management purposes? You're kind of vague
1 on that.
2 MR. PACE: The question of storage I think has to
3 have a full accounting of costs. There's several things
4 that you hear in Idaho about -- it's almost as if we could
5 dewater the river at the Idaho border and that would not
6 necessarily be bad for Idaho. I certainly don't think that
7 that we need to hold back every bit of water. The water in
8 the stream flowing down the river has uses; not just
9 hydroelectric.
10 In terms of additional water storage, I'm not
11 necessarily opposed to additional water storage but
12 additional water storage that doesn't account for severe
13 impacts on fish and wildlife I think would probably be a
14 mistake. So the question on the Galloway Project for
15 example in Weiser, I'm not sure it's in the -- or the power
16 planning council is going to see it as a contribution to
17 their efforts to budget water for downstream migration if
18 you have significant detrimental impacts on upstream
19 fisheries.
20 So I think there's -- you know, as long as you have
21 a full accounting of costs in the question of water
22 storage, I don't see any problem with that.
23 MR. RYDALCH: Thank you.
24 MR. GRAY: Could we -- could we request you send us
a copy of your testimony?

MR. PACE: Sure.

MR. GRAY: By February 22.

MR. PACE: You bet.

MR. GRAY: Okay. Thank you. Is there anyone else who would like to testify at this time? We will close testimony and open it up for questions and answers.

Questions, anybody?

UNIDENTIFIED SPEAKER: I have one question.

Possibly readjudication I guess (inaudible). The concern of some of the people with some of the old established rights (inaudible) groundwater system -- we end up with two rights. You got an underground water right on the piece of ground and also a right on the land that is under Reclamation property (inaudible). Is there going to be some latitude (inaudible). Is that one -- is that person going to have to decide which right that he's going to have or (inaudible) there going to be some latitude to release it (inaudible)?

MR. GRAY: Frank, would you like to respond to that?

MR. SHERMAN: (Inaudible.) If a person has a claim or a water right of surface and groundwater, the value of his right is only for the amount of water he can put to beneficial use. (Inaudible) is the water right to be recorded (inaudible). It's no different than Idaho Power's right. They claim some large water right in Swan Falls in excess of (inaudible). Certainly a latitude for which right the person will have to sell in terms of surface right (inaudible) property if he indeed wants to sell. (Inaudible.) In fact, he could assume (Inaudible), he could change his point of diversion and use one or the other (inaudible).

UNIDENTIFIED SPEAKER: My concern is that really it's going to be hard (inaudible) understand that (Inaudible). See, that's my concern. Under the (inaudible) system, it's tied to the land and the (inaudible) release it for some period of time but it would be up to the (inaudible) director himself (inaudible).

UNIDENTIFIED SPEAKER: So a determination is going to have to be made though because only so much water's going to be indicated for that piece of land, right?

MR. SHERMAN: Right. (Inaudible.)

UNIDENTIFIED SPEAKER: Tell me about the adjudication in general. People are terribly concerned about what the adjudication does (inaudible).

MR. SHERMAN: In addition to quantifying what's happening out there, it really provides a court order saying this man is entitled to this much water and it sets the priority date (inaudible) shut off in terms of managing the water for the local area (inaudible) system. So we've done adjudication in this part of the state (inaudible) thousands of water rights gone on for years and years have (inaudible).

MR. GRAY: Sixteen.

MR. SHERMAN: Sixteen people (inaudible). So it ends up getting resolved. People have (inaudible) claims of this rights (inaudible) and they sell their property, the buyer knows what he's getting. Anyways (inaudible) individual. The problem with this adjudication (inaudible) that for the first (inaudible) past adjudications that they have (inaudible). In other words, it's take 10 to 15 years to do (inaudible). What was different is that we're talking about big dollars because we're talking about a big land area. Hopefully there will be enough dollars (inaudible).

The agreement itself specifies that any person who was making beneficial use of the water including in terms of when (inaudible) shall be protected. (Inaudible) a natural cause, (Inaudible), those people will be protected. Even if the flow at Murphy goes below 3900 through natural causes, those people will be protected. If the flow were to go below 3900 in a natural drought disaster, only people who have appropriated water and approved (inaudible) uses after the signing is (inaudible).

MR. GRAY: Yes, Dan.

MR. DAILY: One of the problems there, the tribes ask (inaudible). And that being the case, we really hate to see the State rush into (inaudible) water rights for a couple of reasons. First, the (inaudible) require trying to quantify his water rights. We hate to see our water rights appropriated above us.

The other problem is that since we're dealing with the Snake River Adjudication of the Snake River Basin, we're also involving the Shoshone Paiute and (inaudible). And we're going to be -- it looks like we're going to be adjudicating all the way up the Salmon River and the Clearwater River also. These guys have never been involved in any of the discussions and we're already anticipating this (inaudible). We're still going to require some (Inaudible) administration of the Shoshone Paiute (Inaudible).

So as far as federal reserve water rights go, the only adjudication we can do is (inaudible) to gather more information (inaudible) Water Resources need to gather more information than just how much the water (inaudible).

UNIDENTIFIED SPEAKER: You've raised several key points, Dan, and I don't disagree with any of them. (Inaudible) what I think is the (inaudible) negotiator
| MR. SHERMAN: | 1 | Takes (inaudible). The reason for improving the Salmon |
| 2 | (inaudible) is to assure (inaudible). |
| 3 | UNIDENTIFIED SPEAKER: (Inaudible.) |
| 4 | UNIDENTIFIED SPEAKER: (Inaudible.) |
| 5 | UNIDENTIFIED SPEAKER: Yeah, but I think in the compromised position (inaudible). The second point is that I know you've (inaudible). We're not ready to (inaudible). The estimate we're making now is ten years. It's going to be (inaudible). It goes into (inaudible) that really struck me is it may not be (inaudible) but we have (inaudible) take the position that we (inaudible) terms of how does that protect you, Idaho Power's (inaudible) 8400 and (inaudible). |
| 6 | MR. GRAY: Dan, one question. When was the reservation created? What was the date? |
| 7 | MR. DALEY: '67 (inaudible). |
| 8 | MR. GRAY: 1967? |
| 9 | MR. DALEY: Yes. |
| 10 | MR. GRAY: Any other questions? Yes, sir. |
| 11 | UNIDENTIFIED SPEAKER: Where is the actual process (inaudible) applications? At what point in the State Water Plan do you have to make that decision and is that in here someplace or is that (inaudible)? |
| 12 | MR. SHERMAN: In terms of future applications, we're talking about a general application for appropriated water? |
| 13 | UNIDENTIFIED SPEAKER: Consumptive use. |
| 14 | MR. SHERMAN: As long as it's not wintertime diversion below Minner Dam, (inaudible). The agreement specifies as part of the agreement (inaudible) enable the governor to enter into (inaudible). That's being done. 7500 (inaudible). The agreement would provide that anybody who had not proven beneficial use (inaudible) but had an application filed with the department, they would be reviewed in terms of do they meet the new criteria. (Inaudible) file -- new filing would be behind the applications on hand in terms of (inaudible). Certainly nothing can be done till the legislature (inaudible). (Inaudible) is obligated to process those ones they've been holding for (inaudible). |
| 15 | UNIDENTIFIED SPEAKER: Are they doing that now? Is that -- |
| 16 | MR. SHERMAN: They have to wait until the legislature (inaudible). |
| 17 | UNIDENTIFIED SPEAKER: But the department is (inaudible) the legislature, are they going to do it after the rule setting (inaudible)? |
| 18 | MR. SHERMAN: The legislature will adopt the language which directs (inaudible). They would have to probably (inaudible). But people have been asking me should they file (inaudible). I had one guy (inaudible). |
| 19 | I think the date of your application is still key (inaudible). |
| 20 | UNIDENTIFIED SPEAKER: (Inaudible). |
| 21 | MR. DALEY: Yes, sir. |
| 22 | MR. GRAY: Yes, sir. |
| 23 | MR. GRAY: The reason I ask is if that's what those figures are based on, why is there any reason (inaudible) fish and wildlife and recreation and necessarily be -- not be subject to (inaudible) impact? In other words, because of the (inaudible) minimum flows established (inaudible) are sufficient to meet the minimum requirements but I guess what I'm thinking is that my understanding is that those minimum flows were set (inaudible) and not for fish and wildlife. Is there a (inaudible) sort of study of fish and wildlife that |
| 24 | UNIDENTIFIED SPEAKER: The reason we're making now is ten years. It's going to the rule setting (inaudible)? Probably (inaudible). But people have been asking me should they file (inaudible). I had one guy (inaudible). |
| 25 | I think the date of your application is still key (inaudible). |
| 26 | UNIDENTIFIED SPEAKER: (Inaudible). |
| 27 | MR. DALEY: Yes, sir. |
| 28 | MR. GRAY: Yes, sir. |
| 29 | MR. GRAY: The reason I ask is if that's what those figures are based on, why is there any reason (inaudible) fish and wildlife and recreation and necessarily be -- not be subject to (inaudible) impact? In other words, because of the (inaudible) minimum flows established (inaudible) are sufficient to meet the minimum requirements but I guess what I'm thinking is that my understanding is that those minimum flows were set (inaudible) and not for fish and wildlife. Is there a (inaudible) sort of study of fish and wildlife that |
| 30 | UNIDENTIFIED SPEAKER: My understanding is that the 3900 is sufficient (inaudible). |
| 31 | MR. SHERMAN: The legislature will adopt the 3900 (inaudible) (inaudible). |
| 32 | UNIDENTIFIED SPEAKER: The reason we're making now is ten years. It's going to the rule setting (inaudible)? Probably (inaudible). But people have been asking me should they file (inaudible). I had one guy (inaudible). |
| 33 | I think the date of your application is still key (inaudible). |
| 34 | UNIDENTIFIED SPEAKER: (Inaudible). |
| 35 | MR. DALEY: Yes, sir. |
| 36 | MR. GRAY: Yes, sir. |
| 37 | MR. GRAY: The reason I ask is if that's what those figures are based on, why is there any reason (inaudible) fish and wildlife and recreation and necessarily be -- not be subject to (inaudible) impact? In other words, because of the (inaudible) minimum flows established (inaudible) are sufficient to meet the minimum requirements but I guess what I'm thinking is that my understanding is that those minimum flows were set (inaudible) and not for fish and wildlife. Is there a (inaudible) sort of study of fish and wildlife that |
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| 41 | I think the date of your application is still key (inaudible). |
| 42 | UNIDENTIFIED SPEAKER: (Inaudible). |
| 43 | MR. DALEY: Yes, sir. |
| 44 | MR. GRAY: Yes, sir. |
| 45 | MR. GRAY: The reason I ask is if that's what those figures are based on, why is there any reason (inaudible) fish and wildlife and recreation and necessarily be -- not be subject to (inaudible) impact? In other words, because of the (inaudible) minimum flows established (inaudible) are sufficient to meet the minimum requirements but I guess what I'm thinking is that my understanding is that those minimum flows were set (inaudible) and not for fish and wildlife. Is there a (inaudible) sort of study of fish and wildlife that |
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| 49 | I think the date of your application is still key (inaudible). |
| 50 | UNIDENTIFIED SPEAKER: (Inaudible). |
| 51 | MR. DALEY: Yes, sir. |
| 52 | MR. GRAY: Yes, sir. |
(Inaudible) down to the system. So it gives you -- to
guarantee the 39 can't be (Inaudible).

MR. GRAY: Dan.

MR. DALEY: There's also a disadvantage to that
because it is a vested water right and you can't raise it
either (Inaudible).

(Inaudible discussion had.)

UNIDENTIFIED SPEAKER: The only thing that -- the
only thing behind it was if the power company allows us --
puts in play -- it allows us to go down to 3900,
(Inaudible), through the agreement, they won't have any
recourse when that one day flow is 3900. If the decision
(Inaudible) whether is to raise it (Inaudible). But you
can never go below that amount.

UNIDENTIFIED SPEAKER: (Inaudible) the fact that
the 3900 was arrived at by three lawyers essentially
negotiating (Inaudible) based on these lawyers who have
very little expertise in (Inaudible) flows and (Inaudible)
minimal (Inaudible). There's nothing you can do about it
except say that we're not going to repeat that mistake.
(Inaudible). It really scares me that (Inaudible) regional
impact and negotiate an entity such as the Swan Falls
agreement based on the three lawyers (Inaudible).

MR. GRAY: Dan, let's let Mr. Caveness say
something. I think he might have something --

MR. CAVENESS: (Inaudible.) One of the things that
I think you have to keep in mind is that when our state was
formed and our laws were set up, they were set up strictly
(Inaudible) orientation. Either mining, manufacturing or
agriculture with no reservation whatsoever for (Inaudible).
What they were -- and our laws to this day are designed for
(Inaudible). It doesn't matter what happens it the fish.
If there are enough farmers on the creek to dry the creek
up, the creek is dead and the fish are dead and nothing's
left. And it was that concept of the law framework that
those parties were negotiating from.

The scenario that was faced by the negotiators was
one if Idaho Power proposed (Inaudible) they would be
entitled not to change the water plan. It was draw down to
the 3300 feet both winter and summer that they would be
entitled to receive compensation for hydropower losses
only. There would be no (Inaudible) under our existing law
other than (Inaudible) minimal stream flow protection under
the recently enacted provisions of the Idaho Code which
relate to public interest and trying to establish stream
flows.

They could possibly (Inaudible). But otherwise,
the power company would give compensation to rate payers
(Inaudible) because they would receive compensation for the
losses. Idaho Power would (Inaudible) 3300. The fish and

used for irrigation (Inaudible). I guess it's a legal
(inaudible) reason they acted the way they did is because
of the archaic laws which stressed consumptive use over all
other issues in the river.

MR. GRAY: Thank you.

MR. CAVENESS: (Inaudible.)

MR. GRAY: I knew you would though. Are there any
other questions? Yes, sir.

UNIDENTIFIED SPEAKER: I'm a little confused about
the distinction that's drawn between man-caused reduction
in the flow and (Inaudible). I had the impression that
water users' rights were protected under a certain
(Inaudible) and the river could then be gone down below
that minimum flow established (Inaudible).

MR. SHERMAN: That's correct. The person whose use
is in place will be protected even if it went below that
(Inaudible).

UNIDENTIFIED SPEAKER: So we're not talking about
(Inaudible).

UNIDENTIFIED SPEAKER: Except in order to go below
3900 (Inaudible), you have to have a situation that is
substantially more than that (Inaudible). With the
existing development and the (Inaudible), you still don't
get (Inaudible).
UNIDENTIFIED SPEAKER: (Inaudible.)
UNIDENTIFIED SPEAKER: That's what we're trying to do is the increased use would be limited so we didn't violate that. That's what we aim for is taking the dryest period (inaudible).
UNIDENTIFIED SPEAKER: (Inaudible.)
UNIDENTIFIED SPEAKER: I'd like to see some water available if we get down to 3900 and it turns out (inaudible).
MR. GRAY: Anymore questions? Okay. We'll call the meeting adjourned.
(Tape ends.)
[STAT. OF IDAHO ]

COUNTY OF CANYON )

I, TAMARA A. WEBER, State-certificd 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, 7:00 p.m.,
Pocatello, Idaho; that the foregoing pages 1 through 47 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
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