

1 Official Report of Proceedings
2 Before the Idaho Water Resources Board

11 HEARING OF THE IDAHO WATER RESOURCE BOARD
12 ON STATE Water Plan POLICY 32

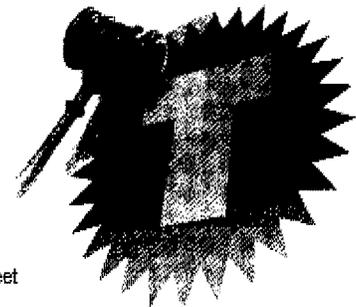
13 TRANSCRIPT OF AUDIOTAPED PROCEEDINGS

14 January 30, 1985, 7:00 p.m.

15 Burley, Idaho

16 Before Board Members:
17 GENE GRAY, Chairman
18 DON KRAMER
19 JIM SHAWVER
20 DAVE RYDALCH
21 WAYNE HAAS

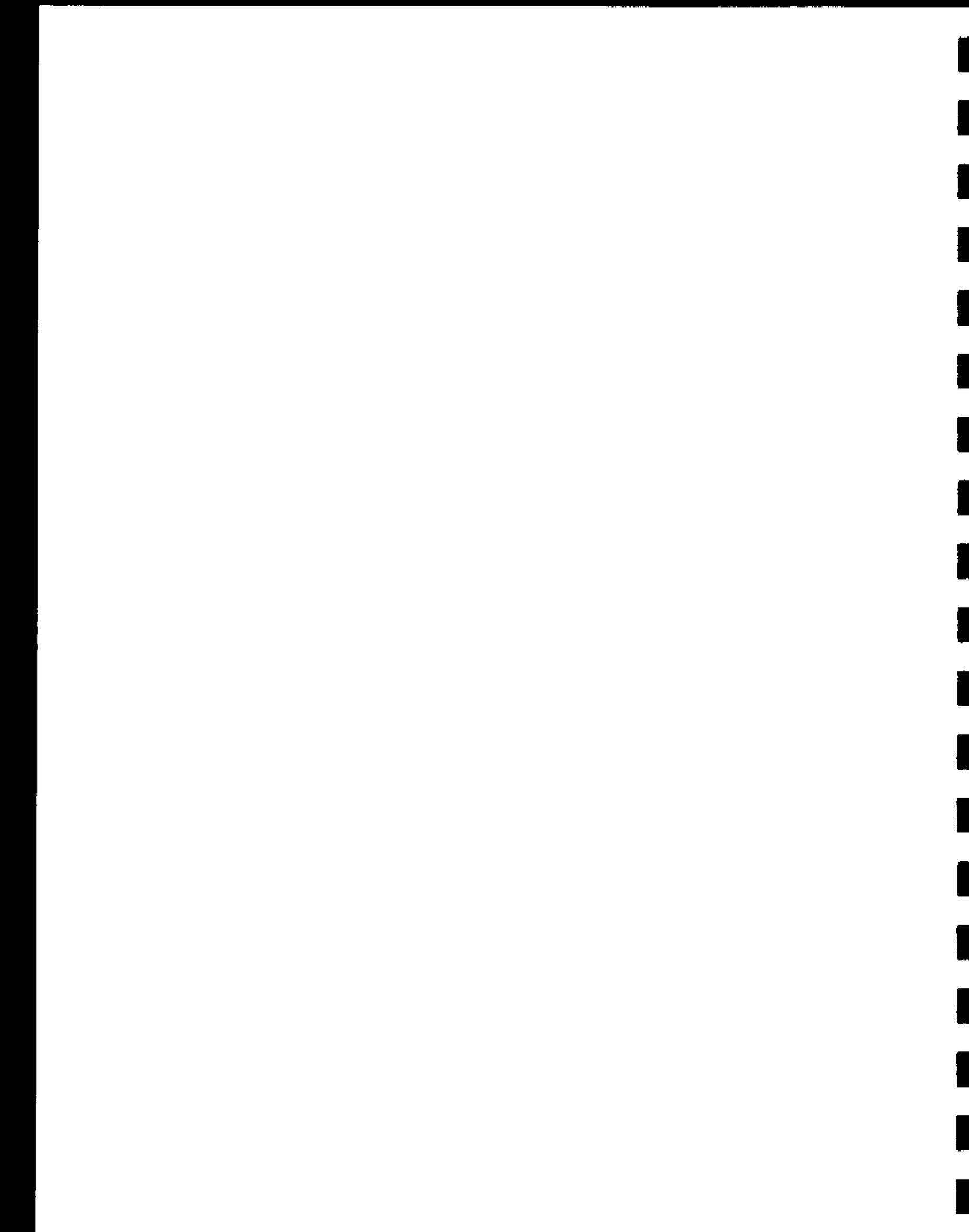
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1 Official Report of Proceedings 2 Before the Idaho Water Resources Board	1 If everyone has a copy of the Currents, you 2 might take a look at page 2 and page 3. Page 2 3 and page 3 deals with the revision of Policy 32 of 4 the Water Plan. Page 4 through 7 deal with the 5 legislative package, which I'm sure you've all 6 heard about. Policy 32 is kind of the kingpin 7 that goes into the implementation of the 8 legislative package. And it's your public input 9 that we're seeking. When we put the final touches 10 of Policy 32, we will then give it to the 11 legislature. The legislature will have final 12 review on anything that you had to say through 13 your word to us.
11 HEARING OF THE IDAHO WATER RESOURCE BOARD ON STATE Water Plan POLICY 32	14 If you look at page 7 on the right-hand 15 side, you'll see the things that are supposed to 16 occur by May 15th for implementation under the 17 entire package. Let's just kind of read down 18 through those. No. 1 is the State Water Plan is 19 to be amended. That's why we're before you 20 tonight is to get your input for the amending of 21 the Policy 32 of the State Water Plan.
12 TRANSCRIPT OF AUDIOTAPED PROCEEDINGS	22 Secondly, the legislative package is to be 23 passed. Thirdly, the appropriate action by the 24 PUC commission or legislature, as called for in 25 the agreement -- that is from page 4 to page 7 --
13 14 January 30, 1985, 7:00 p.m. 15 Burley, Idaho 16 Before Board Members: GENE GRAY, Chairman 17 DON KRAMER JIM SHAWVER 18 DAVE RYDALCH WAYNE HAAS	
19 20 21 22 23 24 Transcribed by Debora Ann Kreidler 25 CSR No. 754	
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1 ***** 2 THE CHAIRMAN: This is a recording the State 3 Water Plan hearings on January 30th at Burley, 4 7:00 p.m. 5 Good evening ladies and gentlemen. My name 6 is Gene Gray. I'm chairman of the Idaho Water 7 Resource Board, and would like to welcome all you 8 newcomers and all you recaps. Good to see 9 everybody here. 10 With me tonight is Don Kramer, board member. 11 Don is a farmer in the Castleford area. Dave 12 Rydalch. Dave is a farmer in the St. Anthony 13 area, also member of Committee 9. And Jim Shawver 14 from Eden. Jim farms over in Eden. We have Wayne 15 Haas from the Department of Water Resources. We 16 have a director of the Department of Water 17 Resources, Ken Dunn, and Frank Sherman, 18 hydrologist for the Department of Water Resources. 19 And we're here tonight to talk to you about 20 revisions of Policy 32 of the Idaho State Water 21 Plan. The function of the Idaho Water Resource 22 Board is develop water policy and keep the Idaho 23 State Water Plan up to date. So what we'll be 24 talking to you about tonight is revisions to the 25 existing Policy 32, which is the State Water Plan.	1 is to be taken. Four, there should be an 2 appropriate order from the Federal Energy 3 Regulatory Commission which is acceptable to all 4 parties. Five, the Idaho PUC must dismiss the 5 1977 lawsuit petitioned by the Idaho ratepayers. 6 And if applicable, the Oregon PUC must also 7 approve the package. And lastly, enactment of the 8 legislature of the subordination language is set 9 forth in Exhibits 7-A and 7-B. And those are also 10 found on page 4 through page 7 of the Currents. 11 What we'll do tonight is we'll have our 12 State hydrologist or our Department hydrologist -- 13 introduce yourself, Frank. Mr. Sherman will give 14 you an overview of Policy 32. The suggested 15 changes that we're bringing for you. After that, 16 we will have public input. We'll then close the 17 formal meetings with the public input and have a 18 question and answer session. 19 Mr. Sherman introduce yourself. 20 MR. SHERMAN: I'm a geologist. 21 THE CHAIRMAN: Ooh, geologist. 22 MR. SHERMAN: The current State Water Plan 23 that is in effect first adopted in 1976 the parts 24 that relate to the Snake River Basin, Policy 32 25 basically unchanged when it was readopted in 1982.

1 The text you have on pages 2 and 3 of the
2 Currents newsletter contains everything that will
3 be part of the policies directed towards the Snake
4 River Basin. Some of those policies are really
5 the same things that already appear in the
6 existing State Water Plan. I'll skim through all
7 of them very quickly and tell you which ones are
8 changes and why or how they're changed, and some
9 of it will just say it's existing language,
10 basically.

11 What we try to do is take everything that
12 was in the old policy, highlight it where it's
13 really a policy decision or statement by the
14 Board. Now, why are we changing the Policy 32 at
15 this time? Clearly because the agreement that the
16 governor and Idaho Power Company entered into
17 called for changes. They specified certain
18 changes that they wanted the Board to make. If
19 the Board can't make those changes in good faith,
20 it is conceivable that the agreement would fall
21 through.

22 One other reason that I like to cite for
23 changing the Water Plan now even though it will be
24 up for readoption in a few years is that the
25 old -- the policy as it exists today allocates

1 water to specific uses in the basin. Those
2 allocations were based on the assumption that the
3 river flow could go down to 3300 CFS. That
4 existing State Water Plan for the Snake River
5 Basin says the minimum flow at the Murphy Gage
6 below Swan Falls shall be 3300 CFS year-round.
7 That went in because at that time it's all we
8 could take Idaho Power's Water right down as low
9 as we wanted to, that it was subordinated. The
10 Idaho Supreme Court has said it's not
11 subordinated. There's a question about how far we
12 could take it down under this current plan.

13 The very first thing, it's really the
14 management criteria for the whole basin, is that
15 the policy of the State shall be at the flow at
16 the Murphy Gage during the irrigation season shall
17 be 3900 CFS. During the nonirrigation season, it
18 should be 5600 CFS. This is a change both in the
19 fact that we're raising the flow, raising the
20 minimum flow established for that point, and we're
21 splitting it between the irrigation and
22 nonirrigation season.

23 Certainly not precedent setting in that most
24 water rights hit a time least associated with
25 them. Because there's so much water going past

1 the Murphy Gage in the wintertime, particularly
2 spring, it would spell that the difference between
3 the historic minimum flow of 4500 CFS and whatever
4 the Water Plan and the State were trying to
5 negotiate about. The difference between that and,
6 say, 33 or 39 is the difference between the
7 wintertime flows that sometimes are in the tens of
8 thousands of CFS, 12,000, 15,000, 17,000 CFS. You
9 could afford to raise it a little more in the
10 wintertime. So it's length of season on the
11 minimum flow as well as raise it.

12 You'll note that, in this particular policy,
13 it talks about zero flow of Milner Dam. That's
14 in the current Water Plan, continuation of that.
15 Talks about a flow of Weiser of 4750 CFS. That's
16 in the current Water Plan. We're also adding or
17 proposed to add flows for Johnson's Bar and Lime
18 Point. These are two places in the river below
19 the Hells Canyon complex. These flows are
20 actually specified (unintelligible) license that
21 Idaho Power has to operate in Hells Canyon
22 complex.

23 In the Water Plan today, it says "these
24 flows are recognized as a valuable resource," and
25 actually lists that part of the license. Let me

1 repeat it again, saying the Board thinks that's a
2 good idea. The intent here is to make it actually
3 State policy that those flows should be
4 maintained. What it does is guarantees those
5 flows in case the license -- the operational
6 license at Hells Canyon complex will never be
7 changed.

8 That's basically Policy 32 as it states
9 here. And that's the criteria that says how
10 you're going to manage the rest of the river.

11 Now the policy 32A, Water Held in Trust by
12 the State. It's a new concept. And the language
13 is very brief here for several reasons,
14 particularly reciting things that the legislature
15 is supposed to do. You've got an existing plan.
16 You've got proposed revisions. We've got things
17 that the legislature is supposed to accomplish by
18 (unintelligible).

19 This is a policy of Idaho that water held in
20 trust by the State pursuant to Idaho code
21 42-203B -- and that's the piece of code that
22 reflects compromise agreement in Idaho Power
23 giving up part of their water right.

24 They reallocated some of the uses in
25 accordance with the criteria established by Idaho

1 code 42-203A. Those are the existing criteria the
2 Department uses for annual water right, beneficial
3 use, nonspeculative, and 42-203C.

4 The water that's being held in trust by the
5 State is that water that Idaho Power had claimed
6 and they are now, through the agreement,
7 relinquishing use of. They're giving that water
8 to the State. So that water is being held in
9 trust. We always use the Swan Falls example
10 because that's where the lawsuit started. That's
11 where the minimum flows are critical. And at Swan
12 Falls, Idaho Power claimed 8400 CFS. They
13 actually claimed more than that, but they only
14 proved beneficial use of 8400 CFS.

15 The Water Plan called for 3300 CFS.
16 Historic daily low had been 4500 CFS. In the
17 compromise agreement, the State agreed to set the
18 flow of 3900 CFS in the summertime. Idaho Power
19 would not protest any existing user as long as
20 3900 CFS were going through that gage during the
21 summertime period. The difference between
22 whatever Idaho Power claimed and this minimum flow
23 is being held by the State to be used for other
24 purposes.

25 Now, because that water had been

1 adverse the water right.

2 Policy 32B, Domestic, Commercial, Municipal
3 and Industrial. The Water Plan today talks about
4 allocating the volume of water for municipal and
5 industrial uses. Negotiators have put the
6 agreement together to find the minimum CFS. If
7 you convert the allocation that's in the Water
8 Plan from municipal and industrial, it comes out
9 to about 144 CFS. By including domestic users, it
10 was felt appropriate for us to raise that to a
11 nice even number of 150 CFS.

12 Now, any and all domestic users to the DCMI,
13 we tend to refer to it, is not particularly
14 important in that domestic users, in terms of
15 consumption, really consume a very small part of
16 the water. If you take today there are about 400
17 CFS diversion on a average day for domestic,
18 commercial, municipal and industrial uses in the
19 basin.

20 You stop and think about where the water is
21 actually used up, it comes down mostly it gets
22 used up for watering lawns in the community. Most
23 of the industries in the basin not particularly
24 water-consuming. (Unintelligible) the water
25 goes back to the river or it goes to the seepage

1 appropriated, Supreme Court recognized the valid
2 claims on at least some portion of Idaho Power.
3 The State does not have to give it out as they
4 would the unappropriated water in the State. We
5 all know that the right of the citizen to
6 appropriate the unappropriated water shall never
7 be denied. This water is water that had already
8 been appropriated, and it's being given back to
9 the State so the State can reallocate it. Idaho
10 Power can use it until somebody else starts to use
11 it. Idaho Power won't protest anybody else using
12 that water, as long as it meets existing State
13 law.

14 Part of the deal was they're going to put
15 some extra hoops to go through before you can get
16 that water to use. And those are shown in the
17 back of the agreement. I forget which exhibit
18 number it is. I think it's called public interest
19 at one time. It's basically a checkoff list that
20 the Department or someone has to go through and
21 say this is good for the economy of the state;
22 this impacts the hydropower base good or bad;
23 family farm could be impacted. Once they meet the
24 existing criteria and these new proposed criteria,
25 then the director can allocate that water or

1 pond, soaks into the ground, recharges the
2 groundwater. We're not consuming of much of that
3 water. So 150 seems like a reasonable number to
4 set aside out of this block with new water the
5 State has to allocate the new uses.

6 The other thing that's important to remember
7 about this one is that State Water Plan does get
8 reviewed and updated every five years. If this
9 number's a bad guess, and certainly
10 (unintelligible), it can be changed in the future.

11 Policy 32C, Agriculture. Policy of the
12 State, according to this, would be that we set
13 aside this water we have now to manage, we set
14 aside some for domestic, commercial, municipal and
15 industrial. You want the rest to go to
16 agriculture. But because this is water that's
17 already been claimed by Idaho Power and being
18 relinquished to the State, it will have to go
19 through the same set of criteria, the family farm
20 tradition, effect of hydropower, the benefit of
21 State economics (unintelligible).

22 In the old -- in the existing Water Plan,
23 the plan specifies that it would like to see so
24 much minimum new agriculture development. That,
25 of course, was based on driving the river down to

1 3300 CFS. What this proposed language would do is
2 say that while the water is available, encourage
3 its use for that purpose, we would not like to see
4 more than 80,000 acres in any four-year period of
5 new lands come under development.

6 It actually is constrained. Of course, it's
7 not a major constraint right now if you look at
8 the records for the United States 10 years or,
9 we're finding an average new grounds coming in of
10 only like 17,000 acres per year. So 80,000 acres
11 in a four-year period is roughly what's been
12 happening in the last few years, probably
13 something we can live with unless the agricultural
14 turns around might have to be -- you will never
15 have to worry about the 80,000 being the top
16 figure.

17 Policy 32D is Hydropower. It says that the
18 policy of Idaho shall be that hydropower use be
19 recognized as a beneficial use of water. That's
20 already the case, actually, because I'm saying the
21 depletion of flows below the minimum average daily
22 flow set forth in Policy 32 is not in the public
23 interest.

24 We all realize and recognize that the
25 agreement, per se, is a compromise. For an Idaho

1 Power to agree to relinquish certain of their
2 claims, the State agreed that the minimum flow set
3 by the Water Plan would be a firm flow. Any
4 depletion below that flow would not be in the
5 public interest. Idaho Power is, therefore,
6 assured of at least 3900 CFS in the river.

7 Now, one asked why everything is key to
8 Swan Falls. And I said earlier that was the
9 thrust of the court case. In reality, of course,
10 Idaho Power had a different claimed water right at
11 every one of their dams in the system. As part of
12 the agreement, they have said, as long as the 3900
13 goes past Murphy, we will not take action or ask
14 for our claimed rights at any of the other
15 structures. So the 3900 is really important.

16 Now, in terms of diversion from any
17 particular reach of the river, the State may, in
18 actuality, have more water held in trust than the
19 difference between 8400 and 8900. The key force
20 is at Murphy. As long as the State has 3900 CFS
21 going past Murphy, Idaho Power will not object to
22 not receiving their right to any of their other
23 dams in the system.

24 Policy 32F, Navigation. This is basically
25 the same language that's in the Water Plan. The

1 policy of Idaho shall be that water sufficient for
2 commercial and recreation navigation is provided
3 by the minimum flows in the Snake River. The
4 commercial allegation they're referring to here is
5 basically that this takes place below the Hells
6 Canyon complex by people running through Hell's
7 Canyon itself. If 3300 was a target value, by
8 raising it to 39, the Board feels there's going to
9 be enough water (unintelligible) for recreation
10 purposes.

11 Aquaculture. This really contains two
12 policies. One, first part of it, policy of Idaho
13 shall be that water necessary to process
14 aquaculture products be taken from the DCMI block
15 of water. Person wants to wash, prepare fish for
16 market or whatever, that's a commercial venture.
17 Someone wants to apply for a water right for that
18 purpose, that should come under the domestic,
19 commercial, municipal and industrial use.

20 Second part is a little more complicated,
21 but it's actually in the existing Water Plan. It
22 states that the minimum flows provided at the
23 Murphy Gaging Station should provide an adequate
24 water supply for aquaculture. However, it is
25 recognized that it may be necessary to construct

1 different diversion facilities than presently
2 exist.

3 A good portion of trout farmers in the state
4 rely on spring flows in the Hagerman reach, the
5 Thousand Springs area. With a zero flow set for
6 Milner Dam during the summertime, conceivably,
7 most of the water in the river by the time it gets
8 to Murphy Gage is going to be water that came out
9 of Thousand Springs. We have to keep 3900 going
10 down there for the Murphy Gage. It's going to be
11 a fair block of water coming out of Thousand
12 Springs because (unintelligible) gage.

13 However, a water right does not necessarily
14 guarantee a citizen the need for diversion. It
15 allows you to use the water of the State at that
16 location. Conceivably, if the spring flows
17 continue to increase as they have for the past
18 30 years, a trout farmer, for example, may have to
19 change the diversion structure (unintelligible)
20 springs. In worst case situation, might have
21 to dig a well. His priority date, his water right
22 would be unchanged, but his means of diversion
23 might have to change. As I say, it appears at
24 this time fairly unlikely because of the
25 requirement of the 3900 CFS minimum flow.

1 Policy 32G, fish, wildlife and recreation.
 2 It is the policy of the State that the minimum
 3 flows are sufficient and necessary to meet the
 4 minimum requirements for aquatic life and wildlife
 5 and to provide water for recreation in the Snake
 6 River below Milner Dam.

7 When the State Water Plan was originally
 8 adopted in 1976, that, of course, was a real
 9 sticking point about the minimum flow at Murphy
 10 Gage. It balanced future developmental uses
 11 versus fishery and wildlife situation. At the
 12 time, in '76, the Board finally gets compromised
 13 on 3300, and acknowledged that that is not the
 14 optimum flow for fish and wildlife, even for
 15 recreational purposes.

16 I think the negotiators and the Board both
 17 feel that by raising the minimum flow in the Water
 18 Plan, we are helping those values out. They
 19 would -- Board would still not claim that these
 20 are optimum values. They're better than what the
 21 Water Plan is now. And they will protect those
 22 kind of resources to some degree.

23 Policy 32H, Water Quality and Pollution
 24 Control. In a state where we have real concerns
 25 about the quantity available of water -- of water

1 storage is being made. The intent is that that
 2 determination would be made by the Director of the
 3 Department of Water Resources.

4 Why have this policy in here? I think the
 5 real reason is we're claiming to be and are, in
 6 fact -- our position in the Snake River Basin
 7 where we can't meet Idaho Power's water right.
 8 It's a legitimate claim that's been on the bill
 9 for years and we can't meet it. If we're so
 10 water-short, we should be making the best use we
 11 can out of the water that's in the system.

12 Now, we all know that, in most years,
 13 October 1st, the flow over Milner Dam increases
 14 dramatically. This happened to be a good rain
 15 year, so we went up to 12,000 CFS past Milner Dam
 16 on October 1st. That's because the water master
 17 has to make space for next year's runoff.

18 There are waters up there that sit in the
 19 reservoirs that could be used, in theory, but are
 20 not. Why aren't they? There are really some
 21 legal and social barriers to using that water.
 22 The negotiators asked the Board to put this in the
 23 Water Plan, and asked the Board to accept the
 24 responsibility to ask the questions. Is there a
 25 way we can make better use of our water. I think

1 available to the citizens, it doesn't seem like a
 2 good idea we could take good water to mix it with
 3 bad water so somebody could get rid of his waste
 4 water. The Board feels that there are enough
 5 State and Federal environmental laws on the books,
 6 that appear to be coming on the books, that water
 7 quality should not be a major problem in the
 8 State. It can be regulated by rules and laws.
 9 They do not feel it's a beneficial use of water
 10 where you take good water and mix it with bad so
 11 somebody can beat a law. There ought to be a
 12 better way to handle water quality problems than
 13 that.

14 Policy 32I, New Storage. There are two
 15 policies incorporated in what's basically one
 16 policy here. It's fairly complicated. They're
 17 required by the agreement. The water Board has
 18 already received conflicting testimony about this
 19 particular policy.

20 Let's go with the very first part of it. It
 21 is the policy of Idaho that maximum use must be
 22 made of the existing storage facilities in the
 23 basin. New storage upstream from the Murphy Gage
 24 should only be approved after it is determined
 25 that insofar as possible, maximum use of existing

1 under the laws and rules and regulations that are
 2 in place today, the director would find that we
 3 can't do much else.

4 There are some unallocated waters
 5 (unintelligible) that are available. But once
 6 that water's taken up and it's (unintelligible),
 7 there really isn't much more water in the system
 8 that's not allocated. Then why is it the excess
 9 most years? It's because a man who has water
 10 behind the federal reservoir cannot sell that
 11 water as property. State has a water bank and
 12 rules and regulations to move water around. We
 13 can sell it and buy it. Committee 9 uses it to
 14 some degree in the eastern part of the basin. But
 15 a person who can't sell his water for a profit
 16 (unintelligible).

17 There's another reason a person cannot sell
 18 or lease water from behind a federal reservoir for
 19 more than one year at a time. If he wanted to go
 20 in and start some kind of new kind of development,
 21 be it agriculture industry or whatever, you could
 22 only be assured of the water supply in a
 23 year-to-year basis, you wouldn't put much money
 24 in. I don't think any banks would back you
 25 either. So even though there's a lot of water up

1 there that sits there sometimes for year after
 2 year after year, remember, one can have a full
 3 flow right and a full stored right for the same
 4 piece of ground.
 5 An irrigator could not meet that water
 6 one year in 10, one year in 20. The City of
 7 Pocatello has water in storage for an emergency
 8 situation, provided an increase in population of
 9 Pocatello. Right now if it calls for that water,
 10 they'd have to have pumps in the river to try to
 11 catch it as it went by because there's physical
 12 way for them to get that water. But they own
 13 water that they've never called.
 14 There are barriers that the State puts up to
 15 more efficient use of this water. You don't use
 16 your water once in five years, you could lose here
 17 in Idaho. If you have water, and beneficial use
 18 is irrigation on a piece of property, you can't
 19 sell that water to another consumptive user
 20 because that's (unintelligible). Only way you
 21 could sell that water off would be to reduce the
 22 amount of water you use for proven beneficial use.
 23 Serves as a big social barrier. These
 24 one-year restrictions tend to protect the
 25 agricultural interests in the area because no

1 commercial guy can come in and buy that water out
 2 on one-year, one-year basis. And if you want to
 3 protect the agriculture economy and the basis of
 4 this portion of State, and maybe that's a good
 5 idea. So that's a social barrier to the more
 6 efficient use of the water.
 7 What the Board has agreed to do is try and
 8 ask your reclamation, congressional delegation.
 9 Some of the keys to these people, can these laws
 10 be changed so that on October 1st, a big rush of
 11 water goes into the mouth of the river, we're
 12 going to shut it off sometime. People that wanted
 13 water and couldn't get it.
 14 As I said earlier, if the director had to
 15 make a determination right or not right away, he'd
 16 probably have to say we're doing the best we can
 17 under the existing rules and regulation of the
 18 laws. If we can't change those laws, then there's
 19 still going to be a determination, I'm sure.
 20 The second part of this proposal policy --
 21 proposed policy -- I turned it around -- applies
 22 only to the reach of river below Milner Dam and
 23 above the Murphy Gage. As part of the trading off
 24 back and forth between the State and Idaho Power,
 25 Idaho Power wanted to protect their winter

1 operation system schedule. It's key to Idaho
 2 Power. Plenty of demand for power in the west
 3 coast in the wintertime because there's so much
 4 winter heating going on in that area. Nights like
 5 tonight are going to put a load on Idaho Power for
 6 electric heating in Idaho. And they can, during
 7 the wintertime, of course, fill Brownlee
 8 Reservoir, the only storage reservoir that's
 9 encumbered. So they wanted to assure themselves a
 10 continued flow during nonirrigation season.
 11 The policy reads, "approval of new storage
 12 projects that would divert water from the main
 13 stem of the Snake River between Milner and Murphy
 14 during the period November 1 to March 31st should
 15 be coupled with provisions that mitigate and
 16 impact such depletions would have on the
 17 generation of hydropower."
 18 The text that tries to explain it can't go
 19 very far for several reasons. Principally, the
 20 negotiators who put the agreement together
 21 couldn't agree on the mitigation question. They
 22 did agree that the word mitigation should be used.
 23 Mitigation being lessening the adverse impact, not
 24 necessarily compensating Idaho Power dollar for
 25 dollar or volume of water for volume of water.

1 They left this open to the Board to resolve at
 2 some future date. And I guess if the agreement
 3 comes into place, the first project the director
 4 has that he's ready to take to the Board for
 5 guidance on mitigation, they'll have to do
 6 something.
 7 Clearly, if you're going to talk about the
 8 adverse effect on Idaho Power's operation, we're
 9 going to have to look at each project as an
 10 individual project. Depends on the volume of the
 11 water, the timing of the diversion, timing of the
 12 return flows, if there are return flows. It's
 13 going to be a very complicated procedure. And
 14 it's going to go project by project. And there
 15 will never, probably, be anything more than a
 16 broad set of guidelines. But anybody who wants to
 17 divert water from that reach of river during the
 18 wintertime for storage purposes shall have to come
 19 to an agreement in terms of mitigation for Idaho
 20 Power.
 21 Someone asked a question today and asked for
 22 a simple description. I said, you'll have the
 23 director of the Department of Water Resources in
 24 the ring with the applicant Idaho Power and you'll
 25 have the Water Board acting as the judges at

1 ringside. Hopefully it won't be that bad, but it
2 could be.

3 We're on the policy, Stored Water for
4 Management Purposes. If there are at this date
5 unallocated waters in the system, and if the
6 Department of Water Resources is supposed to
7 manage this whole system down to average daily
8 flow at one point, and a certain magic number that
9 varies from summer to winter, I don't think we can
10 do it. Okay. We can do it if we're very, very
11 conservative and we hold onto all the water that's
12 in the basin and don't issue very many permits.
13 We can always be on the safe side, we think. If
14 we tend to be even part way liberal and start
15 issuing rights, particularly on the Snake,
16 Payette, now remember zero flow of Milner, high
17 flow can sometimes occur in the summertime. All
18 the water in the river is (unintelligible).

19 So the director has to look at the river
20 flow and river rights. And he has to look at the
21 aquifer and how many new applications, how much
22 (unintelligible) do you draw from up there. You
23 try and balance those so he never goes below 3900.
24 If he were to go below 3900, no one who's in place
25 and can prove beneficial use upon the signing of

1 the agreement October '84, Idaho Power cannot
2 issue a call for water against them. Idaho Power
3 can issue a call for anybody who gets a water
4 right after that date, or proves their beneficial
5 use after that date.

6 We all know that if a guy's pumping oil 30
7 or 50 miles from Thousand Springs, and the
8 director goes and shuts him off, he isn't getting
9 very much of Thousand Springs. You won't be able
10 to see it. The actual impact might not come until
11 wintertime. You can't shut off the junior river
12 man and not shut off the junior downwater pumper
13 Or it's not fair.

14 So what the Board is suggesting here is that
15 the State acquire some water so when the
16 Department gets down close to 3900, if they make a
17 mistake, they can (unintelligible) it by calling
18 for some water that they already owned in the
19 river. That water wouldn't have to sit there idly
20 year after year. It could be put through the
21 water bank. Could possibly be sold to Idaho Power
22 or some other (unintelligible). But it would be
23 nice to have it there when we get down to the 3900
24 number. And the Department says, please scoot up
25 Quite honestly, we've issued too many permits on

1 the aquifer. We can't get that water to the river
2 because the State law's going to say you have to
3 get it there.

4 In Colorado, they operate under a system
5 that I think we're going to see more and more --
6 something more like it happening in Idaho. And
7 that's called conjunctive use. And when a junior
8 groundwater person wants the right to pump
9 groundwater in that area, he has to have a
10 guaranty that he has the surface water available
11 that can be called on if the river flows well
12 below a certain number.

13 Now, if we wait until we get to that kind of
14 situation here in Idaho and this unallocated water
15 is already gone, it's going to be very hard for
16 the individual groundwater pumper to come in and
17 acquire some kind of insurance to cover up for his
18 negligent act in spring flows. The State has a
19 big block of water, the State could lease it off,
20 sell it off in small chunks.

21 So the Board is recommending that through
22 some mechanism, the State acquire some water so
23 that we don't have to be ultraconservative in
24 issuing water rights.

25 Mr. Chairman?

1 THE CHAIRMAN: Thank you, Mr. Sherman.
2 We'll now take public testimony. And the
3 Board will first call Ray Goff.

4 Ray, could you please come to the mike.
5 State your name, address and telephone number for
6 the record, please.

7 MR. GOFF: I'll waive my statement
8 (unintelligible).

9 THE CHAIRMAN: The record will show Mr. Goff
10 waives.

11 Board would call Bill McManus.
12 Bill, please give us your name, address and
13 phone number.

14 MR. McMANUS: Supposed to talk through this
15 down here? Maybe it's working, maybe it's not.
16 Just speak up loud enough everybody can hear.

17 I'm Bill McManus. I'm in Route 1 in Rupert.
18 My phone is 436-3451.

19 My first comment is in accordance with the
20 adjudication. I'm speaking for myself and not as
21 a member of the Minidoka Irrigation District as to
22 which I'm a member of, newly a member of.

23 The adjudication, to me, seems like
24 something that everybody's going to have to be
25 involved with. It's gone on for a longer period

1 of time in the groundlaying of it. It's been
2 going on longer than I've been involved in the
3 farming. So it's something that's been coming a
4 long time.

5 If anybody who's worried about their water
6 right hasn't heard about it or doesn't understand
7 it, they better get with it right away, 'cause,
8 like it's been presented to me, all you have to do
9 is go through some simple procedures and get
10 yourself down as being known that you have X
11 amount of acres water coming to you, and that you
12 have a water right for however many acres primary
13 Maybe you've bought some since then that are at
14 an -- any time up until the adjudication takes
15 place. If it's all made clear and on paper by
16 March 1st of '85 or October of '85 or whenever it
17 takes place, those people shouldn't have anything
18 to worry about. And that seems to me to have
19 something to do with Swan Falls the way it falls
20 in with the groundwater and new permits.
21 Everybody, if they have taken care of it, it seems
22 like that should go on.

23 Just from my own use, I'm for it. And what
24 I learned a couple weeks ago in Boise is it's not
25 that involvement. It's a small price for those

1 who do have to come up with the amount of money,
2 which seems to have been determined long before I
3 was on the scene.

4 As far as the Swan Falls, the number 4500 or
5 4600 acre feet -- is that right -- that continues
6 to come up as being the lowest amount of water
7 ever recorded, am I right?

8 UNIDENTIFIED VOICE: 4600 CFS.

9 MR. McMANUS: CFS, okay. And that's 50, 60,
10 70 years, basically. At 3900 feet, you got
11 600 feet or better of ice way. Or anybody who
12 doesn't look for conserving their water, from here
13 on out, water's getting squeezed pretty tight.
14 That's just going to be another thing to give
15 everybody the initiative to work towards
16 conserving that water. So even though we have
17 600 feet of barrier between 3900 and 4500, some
18 people don't like that idea. I heard quite a bit
19 of that in Boise. Everybody's opposed to going --
20 letting it come up in 3300 to 3900. That just, to
21 me, seems like there's nothing the matter with the
22 way it's been proposed.

23 I know I could probably get into a pretty
24 good battle with some local water users over that,
25 but if it's gone on for this long and it's never

1 gone below 4500, what's to worry about at 3900?
2 And like you say, there might, after the
3 adjudication, be a few permits issued, a little
4 here and a little there, and with all the things
5 that you're looking at as far as extra water in
6 storage, and if we can keep all our storage at a
7 hundred percent -- brought that up earlier, you
8 know, some of our water we've lost at Jackson is
9 down a little bit. That's for service water use,
10 but eventually, that's water that's in the whole
11 upper Snake River area. So as long as all those
12 waters are up 3900 feet, to me, seems like a good
13 figure.

14 That's really all I wanted to state.

15 THE CHAIRMAN: Well, let's see if we have
16 any questions from the Board.

17 Mr. Kramer?

18 MR. KRAMER: No.

19 THE CHAIRMAN: Mr. Rydalcch?

20 MR. RYDALCCH: No.

21 THE CHAIRMAN: Mr. Shawver?

22 MR. SHAWVER: I don't have any.

23 THE CHAIRMAN: Thank you, Bill.

24 MR. McMANUS: Frank have anything? You kind
25 of looked at me like maybe I had something I

1 missed there. Okay.

2 THE CHAIRMAN: We'll get our testimony over
3 and we'll get into some questions and answers
4 here.

5 Is there anyone else who would like to
6 testify at this time?

7 If not, we'll close the public testimony
8 portion. And I'd like to -- you might make note
9 that the Board will receive written testimony
10 until February 22nd. And that can be sent to the
11 Water Resource Board here at State House, Boise,
12 Idaho 83720.

13 So we'll now open it up to questions.

14 Yes, sir.

15 UNIDENTIFIED VOICE: You may have answered
16 this before we came, but what was the main reason
17 for raising it from 33 to 39?

18 MR. SHERMAN: That's a long drawnout answer
19 if you really start at the beginning. I guess
20 that's the best way to do it.

21 As you know, the Supreme Court of Idaho said
22 that Idaho Power Company had an unsubordinated
23 right at Swan Falls. And they sent back to
24 District Court the question of how much that water
25 right amounted to. Idaho Power had claimed 8400

1 -- well, they claimed more than that. Of course,
2 they ruled that their claim of 8400 was a
3 (unintelligible) claim. But they had not been
4 receiving water for a number of years in
5 summertime. And they sent back to District Court
6 the question of what their water right actually
7 was.

8 State was prepared to merely reargue the old
9 question. Felt that subordination had -- the
10 whole issue of subordination had totally been
11 resolved because the very narrow views of the
12 Supreme Court Judge on the agreement and the
13 language of the agreement, the original agreement
14 between the State and Idaho Power.

15 The State also felt that it had a legitimate
16 argument that they had constitutional rights to
17 regulate the river for hydropower purposes. It's
18 not clear what that exactly that means. I think
19 most people felt that they could cut the flow down
20 the river if they wanted, and they didn't have to
21 worry about its impact on hydropower purposes. So
22 it looked like we're going to go back to court to
23 start over the whole dam process and try and
24 decide how much water Idaho Power is really
25 entitled to in the river.

1 Now, the senate passed a bill called Senate
2 Bill 1180 which allowed the governor to enter into
3 an agreement with Idaho Power. It was designed to
4 release or protect those people who are existing
5 users. And when he said let's negotiate this part
6 of the deal, at least, Idaho Power and the
7 governor decided let's do the whole thing, see if
8 we can get a compromise. So they looked at the
9 State Water Plan, which said if the State had won
10 their case and Idaho Power's water right was
11 really reduced in some fashion to 3300, that was
12 going to be the flow in the river.

13 They looked at the historic flow of 4500,
14 which would probably have been the flow if Idaho
15 Power had won, totally -- nearly total victory.
16 And so, okay, we got two numbers, 4500 and 33.
17 Let's just split it in half is actually what we
18 did. The 1200 CFS difference between what the
19 historic low flow has been and what the State
20 Water Plan calls for. We split it in half.

21 Now, that may have been the starting point,
22 or that may have been at any point, because no one
23 in this room was actually a party sitting on the
24 association. So it represents a compromise on
25 both sides. Idaho power's giving up -- both

1 people would have -- many people would think Idaho
2 Power could at least have won the amount of water
3 they had that been receiving. (Unintelligible).
4 So it was a compromise. And it was a 50/50 split
5 compromise. But in order to stick with that, each
6 side gave up something (unintelligible).

7 The other thing, besides starting the court
8 case all over again, which could have been another
9 five, ten years, the Department of Water Resources
10 had declared a moratorium on issuing any permits
11 in the basin above Swan Falls until this question
12 was resolved because the Department was thrown in
13 the same awkward situation Idaho Power was. If
14 they had to go back and try and somehow find water
15 for Idaho Power's claim of 8400 CFS, the
16 Department (unintelligible) shut off
17 (unintelligible). So the Department said,
18 clearly, we can't be going around issuing new
19 permits until this thing's solved. And if it took
20 five or ten years, that was another five or
21 ten years nobody in the basin could get a new
22 water right.

23 (Whereupon, Tape 3 concludes and Tape 4
24 begins.)
25

1 THE CHAIRMAN: Yes, sir.

2 UNIDENTIFIED VOICE: All of these
3 negotiations, I suppose that there's ample
4 provisions in the plan to take care of such a
5 thing as if we diverted the Bear River over into
6 the Snake River drainage?

7 UNIDENTIFIED VOICE: The plan doesn't
8 contemplate that.

9 (Unintelligible.)

10 UNIDENTIFIED VOICE: I don't think the plan
11 should. This plan -- well, the plan should --
12 let's not say that. Plan should consider that.
13 But the changes to the Water Plan, in the
14 reflection of the agreement principally relate to
15 the amount of water that Idaho Power had claimed
16 which has been regarded as appropriated water.
17 The new criteria for issuing a water right can't
18 apply to any unappropriated water. It only
19 applies to those waters that Idaho Power had a
20 claim to. So if new water is diverted into the
21 system, they would be regarded as unappropriated
22 waters in the State of Idaho and are available for
23 appropriation uses.

24 THE CHAIRMAN: And the Board will take care
25 of that if that --

1 UNIDENTIFIED VOICE: That's a good point.
 2 MR. SHERMAN: This is just to expand on some
 3 things I said earlier that sort of relate to this.
 4 The 3900 is a magic number is all I can call it.
 5 Any user who is in place and proves the beneficial
 6 use before signing the of the agreement is safe
 7 from the water call if the flow goes below 3900.
 8 If the flow goes below 3900 at sometime in the
 9 future, Idaho Power will call upon the State to
 10 supply water and the new appropriators, those
 11 people who kept their water right after the signed
 12 agreement will be the ones who the Department
 13 determines who to supply that water.
 14 So in a real 1930's drought situation, we
 15 don't think we'll be at 3900 under existing
 16 condition, because we've taken existing
 17 development, loaded facts into the computer, put
 18 in the weather cycle in the 30's, and we come down
 19 to 4500. It matches what we've done
 20 (unintelligible).
 21 So the existing user vary in accordance to
 22 the agreement is protected from call, even if it
 23 goes below 3900. It's only the person's water
 24 right is junior to the signing of the agreement
 25 could be called upon to supply the water to meet

1 that flow.
 2 THE CHAIRMAN: Yes, sir.
 3 UNIDENTIFIED VOICE: You just made a
 4 statement there anything signed -- or before the
 5 agreement. Now what about permits that weren't
 6 completely finished during that. I'm in that boat
 7 right there.
 8 MR. SHERMAN: The language in the agreement
 9 says beneficial use has to be proven. If you
 10 could fill out a proof of use card and have enough
 11 people to back you up that you're using it, you
 12 would be okay. If you're not, you're stuck, and
 13 you're going to have to meet those new criteria
 14 and legislation (unintelligible). You would be
 15 processing first before any new applicants come
 16 in.
 17 UNIDENTIFIED VOICE: I have part of it in.
 18 permit in part. I've got a permit for two wells.
 19 One well was in service prior to this.
 20 MR. SHERMAN: Mr. Director, can you help me
 21 on that one?
 22 THE DIRECTOR: Sure.
 23 The one that was in would be covered. The
 24 other one is not in, and has not been developed,
 25 then it would not be covered. It would be subject

1 to the 3900.
 2 MR. SHERMAN: I guess the answer is whatever
 3 beneficial use you can prove you're covered.
 4 UNIDENTIFIED VOICE: Mr. Chairman, that --
 5 covering all those uses that are presently being
 6 made is an additional reason for the general
 7 adjudication of the Snake Basin, because all those
 8 uses are identified and they're proven. And the
 9 power company and everybody else will have to live
 10 with all those uses. They can't come in and say,
 11 well, that wasn't in use, because we'll have gone
 12 through the process of identifying all those, and
 13 yes, it has been. Those uses, then, would not be
 14 subjected to that 3900 CFS rule.
 15 THE CHAIRMAN: Bill, did you have questions?
 16 MR. McMANUS: Well, I was just going to ask
 17 about that adjudication and that day of October
 18 24th; is that right?
 19 UNIDENTIFIED VOICE: Which date, the signing
 20 of the framework or the signing of the agreement?
 21 MR. McMANUS: The signing of the agreement.
 22 UNIDENTIFIED VOICE: The agreement? October
 23 25th.
 24 MR. McMANUS: So anybody who has filed prior
 25 to that is going to be all right. But if the

1 adjudication, say, starts on March 1, what about
 2 anybody who falls in that time frame there?
 3 MR. SHERMAN: Let's talk a little bit about
 4 what the adjudication docs and how simple it can
 5 be and how complicated it can be.
 6 The language in the agreement specifies that
 7 users who can prove beneficial use before October
 8 25th, 1984 will be protected by the agreement and
 9 Idaho Power has agreed not to call the water from
 10 them.
 11 The mechanics of adjudication are fairly
 12 straightforward. Part of the Water Resources goes
 13 to court, and the Court directs the Department to
 14 proceed with the adjudication. Department takes
 15 its records. And in either -- through the Court
 16 sends notices to either all people in the district
 17 or the basin or water rights in the basin or
 18 landowners in the basin. Not clear yet which of
 19 those mailing techniques or forms are used. But
 20 in theory, everybody in the basin who is or could
 21 be using water is contacted by the Department.
 22 The Department has staff that goes around
 23 every little county courthouse and in other
 24 places, actually. And they have the water rights
 25 for that area with them. And they ask the

1 landowner and water user to come in and talk to
2 them about their water right. The Department
3 shows the individual what they have on record for
4 Boise and in Twin Falls (unintelligible) about
5 your water right and your use of water.

6 The key things, of course, are you want land
7 irrigated, you want water you divert, when that
8 diversion first took place, and when you proved
9 beneficial use of it. And then the farmer guy
10 sits down and says, yeah, this looks -- agrees
11 with what we have. And if you're happy, we're
12 happy, and this is how we're going to file with
13 the Court, providing you're not using twice as
14 much water as you're legally entitled to or
15 something like that.

16 The Department compiles all this information
17 that's been checked with the individual people.
18 In some cases a field staff will actually go out
19 and verify the amount of acreage their irrigating
20 (unintelligible), make sure the work is completed
21 and as accurate as can be. And then give it to
22 the Board and to the Court, and they are listed in
23 chronological order so that once the water
24 master -- or if a water master were ever in place
25 you'd know your shutoff as a junior user in the

1 area.

2 Payette river system is just ending up in
3 adjudication. And there were 9,000 some water
4 users in that system. And we're down now to about
5 11 people who have not agreed or compromised with
6 the department about their water right. Anybody
7 who objects to what the Board finds tells the
8 Court this is a bunch of nonsense, and I claim
9 something different. And it ends up being decided
10 by the Court. Like I said, we had 9,000. We're
11 down to some handful yet which are not satisfied.

12 And that's what's theoretically going to
13 happen in the whole Snake basin. Things that are
14 different from Snake basin from previous
15 adjudication the Department has done is, one,
16 adjudications have always been paid for out of the
17 State general fund. But when we're talking about
18 doing something that's massive as the Snake Basin
19 with an estimated cost of \$28 million. State's
20 took (unintelligible). More the reason it takes
21 ten years to do an adjudication on a single small
22 river like the Lowell (phonetic) is because the
23 general fund gives the Department enough money for
24 one or two people per year to work on the project.
25 We're going to get the whole Snake Basin done at

1 any reasonable time, it's going to take more than
2 one or two people.

3 So proposed legislation would provide that
4 those water users in the area being adjudicated
5 would have to pay some fee to help fund the
6 adjudication. The other thing that's different
7 about the Snake Basin is that it's one of the
8 first steps the State is going to seriously take
9 in forcing the federal government to quantify
10 those so-called reserve rights.

11 The Water Plan asks that the Federal
12 government and Indian tribes quantify the amount
13 of water they claim. (Unintelligible) in '76 even
14 provides that the Department of Water Resources
15 will provide technical assistance to the Indian
16 tribes. Never been asked for. If I recall, they
17 have been for the last two years trying to
18 determine their own water needs. But the only
19 way you can force them to participate in State
20 adjudication in State Court is to do what's called
21 system adjudication, a general systems
22 adjudication.

23 There is a law which was passed in '52 or
24 '54, Federal law that says as long as the State is
25 doing a system's adjudication, the Indians and the

1 Federal government participate. Now, you realize
2 that the federal government claims they have a
3 reserved water right for all the national forests
4 in the basin (unintelligible) and Indian
5 reservation itself. Federal government claims
6 they had a water claim. They have not yet told
7 the State what it is for those lands. Priority in
8 that claim in general in all court cases has been
9 settled as the date that land was withdrawn from
10 the public domain. For a formal Indian
11 reservation that's 1860's. That's a pretty good
12 priority date.

13 What we've got to do now is find out how
14 much water they claim. We've never had to do
15 that. (Unintelligible) river for the max on to
16 the point that the Department would surely like to
17 see (unintelligible) access water we can call on
18 when we make a mistake. We'd like to know how
19 much water would fit in the Indian Swan. If we
20 start at Lewiston as the proposed adjudication
21 does, we're including the Salmon and Clear Water
22 and all the Snake range from where it basically
23 leaves the State. That, to us, is the system
24 water adjudication.

25 And we think the Feds have to participate in

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<p>1 our forum under those stipulations. Now, if 2 they'll agree to participate, and we can start at 3 Weiser, or we can start at Swan Falls itself, the 4 Murphy Gage, so much the better. I don't -- I can 5 agree with somebody who using the Salmon River 6 drainage, the Clear Water drainage, that the water 7 rights problems at Swan Falls Dam doesn't have 8 much to do with that. And why should we 9 participate? And why should we have to pay? If 10 we can get the Swan Falls Dam, fine.</p>	<p>1 Canyon. 2 In part of the agreement, in trying to 3 reach a compromise, the negotiators introduced the 4 word subordinator. I think it was a bad decision 5 on their part. But as lawyers, it just didn't 6 necessarily make good sense. So they introduced 7 this new term. And what the agreement, I think, 8 basically testifies -- let's start at Swan Falls, 9 first of all. It says that the 3900 and 5600 are 10 going to be protected by the State Water Plan. 11 Therefore, Idaho Power's water right is not 12 subordinated below that level. That means that 13 Idaho Power will be assured those flows forever.</p>
<p>11 But I think that the adjudication is going 12 to be really valuable. And if we're going to try 13 to manage the river down to some minuscule amount 14 of water, we have to know what the Feds want out 15 of that system, because they may put a claim in at 16 some later date. And it would be really nice if 17 we could resolve this in State Court rather than 18 Federal Court.</p>	<p>14 Now, negotiators introduced the term 15 subordinatable with anything Idaho Power claimed 16 above the agreed flows. And what that is intended 17 to mean is the State holds this water in trust. 18 It's still Idaho Power's water. When the State 19 wants to give it to somebody else and subordinate 20 it, and that person has the right to that water, 21 no cost to him in terms of the fact it used to 22 belong to Idaho Power or no cost to the State in 23 terms of the fact it used to belong to Idaho 24 Power.</p>
<p>19 So that's why the adjudication, at least, is 20 proposed to start at Lewiston. Because it's so 21 big, that's why we really need help to pay for it.</p>	<p>25 Now, in terms of Idaho Power's claim at</p>
<p>22 THE CHAIRMAN: Next question.</p>	
<p>23 UNIDENTIFIED VOICE: I think we ought to 24 have a little more clarification on these 25 two words insubordination as subordinate between</p>	
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<p>1 Idaho Power and agriculture. 2 UNIDENTIFIED VOICE: Okay. I'll try. What 3 the present picture is -- what is it? Has there 4 been any consensus reached in that? 5 MR. SHERMAN: Okay. I don't think you can 6 get three different water lawyers that agree what 7 the word subordination means. I don't pretend to 8 give you a legal definition. But I will say that 9 the general population in Idaho assumes that 10 subordination means you can take away someone's 11 water right to another specified use and not 12 compensate him for it. That's the general 13 understanding of most people of what subordination 14 means.</p>	<p>1 other structures up the river, at some of the 2 dams, their water rights were clearly 3 subordinated. No question in the State's mind, 4 and probably in the legal sense, that those dams, 5 they were not guaranteed their flow, and they 6 couldn't do much about it. But at a couple of the 7 other structures, they had nonsubordinated rights 8 still.</p>
<p>15 Now, Idaho Power had subordinated the right 16 at Hells Canyon. They agreed that they would not 17 protest upstream development in agricultural, 18 municipal, whatever against the -- their water 19 right at Hells Canyon complex. And for 25 some 20 years, both Idaho Power and the State of Idaho 21 operated under the assumption that that 22 subordinated their right to own a structure 23 upstream. Now, Supreme Court said, no, they 24 didn't subordinate it. They only subordinated 25 their right at those specific dams in Hell's</p>	<p>9 And the agreement says that as long as 3900 10 CFS goes past the gage at Murphy in the 11 summertime, Idaho Power won't complain about how 12 much water we're getting at any of the other 13 structures. So in essence, what it's done is 14 taken some unsubordinated rights instructions and 15 subordinated them.</p>
	<p>16 Now, I know that didn't answer your 17 question. I can tell just by looking.</p>
	<p>18 UNIDENTIFIED VOICE: As I understood it, 19 that was brought up because of the drought areas 20 or the drought years that might come along when 21 maybe all of us would have to give up a little 22 bit.</p>
	<p>23 MR. SHERMAN: No.</p>
	<p>24 UNIDENTIFIED VOICE: The argument, as I 25 heard it sometime ago, was that we had to</p>

1 guarantee that 33 -- the figure 33 going over Swan
2 Falls, if that's all there was in the river, that
3 would be delivered that way.

4 MR. SHERMAN: No. That's an incom- -- oh,
5 whoever was telling you that story was totally
6 wrong. For example -- I'm trying to think of a
7 good way to deal with it. I guess the best way to
8 deal with it is to say that the agreement clearly
9 specifies that Idaho Power will take no action
10 against anybody who has a water right older than
11 October 25th, 1984. If the flow goes below 3900,
12 they will only come after the new people who come
13 after them. I mean, juniors to the signing of the
14 agreement. Because, what the State is basically
15 doing is saying as of the signing of the
16 agreement, we will protect that flow of 3900.
17 It's not against people who are senior in time.

18 I think that was the same thing that was
19 true with the State Water Plan when it was
20 originally put in place. They said 3300 minimum
21 flow year-round. If it came to a water shutoff
22 problem and we weren't meeting the 3300, the
23 priority date of the (unintelligible) flow would
24 only have been '76. People who were in place with
25 an older water right probably would have been

1 protected. Certainly under the agreement, they
2 would be.

3 And that is really, I think, fairly serious
4 consideration for a person who has got one well he
5 has to do that's going to be under the new system.
6 If at some future date we have a long drought
7 period, and if the Department's wrong in the rest
8 of this, they're going to be one of the people
9 that could be called to be shut off. Whereas,
10 anybody in place before the agreement's signed
11 won't be called, no matter how low the plan goes.

12 UNIDENTIFIED VOICE: How come some of these
13 here claims can still exist on the river and they
14 never have to show beneficial use? What can you
15 do about it?

16 (Unintelligible).

17 MR. SHERMAN: I'll get in trouble here, but
18 I'll say that the Department of Water Resources
19 doesn't have enough staff to go around and really
20 check out every beneficial use claim. They're
21 given a piece of paper when you file for a water
22 right nowadays. And you put down the benefits for
23 the water use, and hopefully, someone of our
24 people comes out and checks on it.

25 UNIDENTIFIED VOICE: I mean claims of the

1 Federal government.

2 MR. SHERMAN: Oh, you mean the reserve water
3 right claims?

4 UNIDENTIFIED VOICE: Mm-hmm.

5 MR. SHERMAN: Oh, boy. Okay. That's a
6 complicated problem. And what part of the problem
7 has been is that this has been decided in Federal
8 Court. And Federal government has said that when
9 we withdrew this land from the public domain, we
10 had some special use in mind for that land. And
11 at that time we, therefore, assumed and claimed
12 that we had the water for (unintelligible).

13 Now, Indian tribes have been back and forth
14 in court a good many times. And the Federal
15 Courts have ruled that when an Indian reservation
16 is withdrawn, waters sufficient to irrigate all of
17 these irrigable lands on their reservation taken
18 up at the same time. INEL is a good example.
19 That reservation was withdrawn to test nuclear
20 reactors. And maybe come in and keep showing they
21 were testing nuclear reactors. I suppose they
22 have to have some kind of claim for water for that
23 purpose.

24 They have refused to quantify those rights
25 unless they get called into the system's

1 adjudication, general adjudication

2 (unintelligible). And as I said, we've asked
3 them, since the Water Plan was first put in place,
4 and we've asked them through different forums, to
5 quantify their water right for years and years and
6 years. And I think this is one of the only the
7 ways I can see it happening -- well,
8 (unintelligible).

9 For a long time it looked like they were
10 never going to quantify. And we were going to try
11 and manage the water in the State without knowing
12 what they might take at some future date. This
13 adjudication is one way to force them. It's the
14 only way to force them into our State Court
15 system. That's no guaranty we're going to like
16 the results of the adjudication in terms of what
17 they claim and get. But I think it's better that
18 a State judge does it than a Federal judge.

19 I think the threat is hanging over Idaho
20 right now that the Indians, for example, of the
21 forest service, because I know the
22 (unintelligible) people look at theirs. I know
23 that the forest service, at least in some of the
24 forest areas, has looked at the amount of water
25 that they actually need for management of the

1 forest. And there, the threat hangs over us the
2 (unintelligible) of the Federal Court and heads of
3 the Federal government sent the supply in the
4 water here in Idaho. And that, to me, is one of
5 the big reasons to try and go with this
6 adjudication as proposed here.

7 THE CHAIRMAN: Yes, sir.

8 UNIDENTIFIED VOICE: I don't know whether to
9 put this in the form of a question or a statement.
10 These directions, if one of these situations -- if
11 the water could be held up river, we know that,
12 like, last spring we had a horrendous runoff that
13 just went right on through everything.

14 Has there been any design or maybe diversion
15 of some of this water upstream, like recharging
16 the aquifer? Looks like, to me, figure out a way
17 of holding this water upstream, and it helps
18 everybody.

19 MR. SHERMAN: Yes. The answer to that is
20 yes. And let me expound upon that.

21 Yes, there have been studies made on
22 industry storage and aquifer storage. Now, let's
23 talk about the industry storage, because the
24 Board's going to be at the maximum --
25 determination of the maximum use in the industry

1 storage now. One of the few good dam sites left
2 in the upper Snake is the Lynn Crandall site, for
3 example. The Department suggests on analyzing
4 flow data there that might fill once in
5 seven years or less.

6 The cost for a new construction stored water
7 is such that agricultural interests can't afford
8 it. Federal government is now reducing the amount
9 that they contribute to a new kind of project. If
10 there's unallocated water in the Ryrice (phonetic)
11 which is for sale for \$8 an acre foot
12 (unintelligible), it costs some \$40 an acre foot
13 or more to be involved in new river storage
14 (unintelligible).

15 The Board, through the Department, is
16 looking at a new storage structure on the Weiser
17 River. And the only way they can adequately come
18 up with enough money to do that piece of
19 construction is if some of that water is paid for
20 by the Federal government to provide water for
21 (unintelligible). Flood control, recreation and
22 irrigation won't pay for it.

23 The idea of artificial recharge, yes, we've
24 done some. The Department, in conjunction with
25 some of the people over at St. Anthony, have done

1 some experiments over there. It seemed to work.
2 The local people were happy. But the only good
3 ground to dump this excess water out on is BLM
4 ground. And they objected to the wet spring,
5 blood bank summer, and wouldn't want the land to
6 be used for that purpose.

7 There is some artificial recharge going on
8 in the Rupert or Jerome area. And all the
9 interest from the trout farmers who were concerned
10 about the volume of the flow coming out of
11 Thousand Springs. They tried to form -- they had
12 the authority to form an artificial recharge
13 district. This past spring is the first time they
14 tried to put water in the ground there. It
15 worked. We can assume there will be a continuing
16 of it this spring for more water in the ground.

17 Folks down in Oakley are looking at
18 artificial recharge project. They ran one of our
19 critical groundwater release and have drawn the
20 water tables so low already, they're concerned
21 that they'll be going out of business in ten days.
22 So they're looking at maybe seeing poured water
23 into the area. One of the potential ways to store
24 it would be through artificial recharge. So
25 people are looking at it.

1 Let's talk about some of the problems with
2 artificial recharge. As soon as the water goes
3 into the ground, you basically lose control of it.
4 It's the property of the State. Trout farmers
5 don't care because they're concerned about what
6 comes out of Thousand Springs. Any water they can
7 get in the ground that meets at least as much or
8 more might be found (unintelligible). So they're
9 willing to put up some money. The average farmer
10 doesn't even want to put up a lot of money. He'll
11 probably never see (unintelligible).

12 Another real problem is water quality
13 problems. Probably most of you know the EPA was
14 considering making this (unintelligible). It is,
15 in most technicians' mind, easily contaminated.
16 And then you've areas of raw salt out there where
17 anything you get in the ground goes down to the
18 water table and doesn't get filled very much.

19 If you want to put any kind of line in the
20 water in the ground at all, you got to have some
21 place like raw salt so you can get a lot of it in
22 in a heck of a real hurry. So you've got a real
23 water quality problem. On this particular
24 experiment, one last spring, and will be followed
25 on again this year, State asked for water samples

1 to be taken of the water going out to the recharge
2 area as well as from wells in here. It's a real
3 concern then.
4 You know what, anybody who wants to pay for
5 irrigation artificial recharge will be involved in
6 it. Certainly doesn't want to be liable if
7 somebody gets sick drinking water down from the
8 aquifer (unintelligible). It's expensive to get
9 the water out there. You're not sure you're going
10 to get all the benefits out of it. And you're
11 liable for anything that's wrong.

12 The only way we're going to see any big
13 artificial recharge will probably be at the State
14 or one of the major districts (unintelligible).
15 And if you can't use existing facilities, you
16 probably can't justify it. Certainly can't
17 justify, well, you could go by a well for \$2.50,
18 and you're putting out at the water bank.

19 Well, I think -- Swan Falls thing did
20 nothing else but forced us to recognize we're
21 running out of water. We've got to be more
22 careful about how we use it. We better use it
23 better if we can. I think it also says that
24 things aren't going to get any better down the
25 road. We may be entering into one of these

1 climatic cycles. And the people at Mud Lake are
2 going to get more and more water. And we may have
3 lots of water available in the reservoir
4 (unintelligible). That would be really nice in
5 terms of what things are going to be like for a
6 few years. I don't think we can count on that.
7 We certainly can't count on it for the next 50 or
8 60 years. Sometime we're going to be water short.
9 And sometime the water's worth more money than it
10 should. Artificial recharge probably should get
11 more consideration.

12 UNIDENTIFIED VOICE: Just suggest another
13 thought or idea. Who's paying the bill to
14 recharge all of these oil reservoirs underground,
15 aquifers to -- with all this oil we're buying up
16 and storing underground in the old basins of oil?
17 The taxpayers is doing that, right? Taxpayers are
18 doing that.

19 MR. SHERMAN: Two different situations. In
20 the so-called neighbor petroleum reserves,
21 taxpayers are doing it. In some instances, it's
22 conceivable that an oil company could be doing it.
23 But I don't know of any case that's going on. The
24 only ones that I have out are (unintelligible)
25 that land service and put back in the ground so

1 the Federal government is stockpiling these
2 prices.

3 UNIDENTIFIED VOICE: We've got enough --
4 we've almost got enough storage -- oil storage
5 there to last us, what, 90 days? We buy in
6 reserve. Now, what I'm saying, what I'm looking
7 at is this. If that's being paid by the
8 taxpayers, then the taxpayers could help recharge
9 these aquifers.

10 MR. SHERMAN: And that's a good point. You
11 bring up two points. One, all this Federal money
12 can only put 90 days worth of oil in there. It
13 shows the problems with trying to recharge water
14 also in terms of volumes of water.

15 UNIDENTIFIED VOICE: Sure, there's problems
16 there, but --

17 MR. SHERMAN: But the other point is
18 legitimate. I think -- I think at some point in
19 the future the State may want to take general fund
20 monies for artificial recharge of the water.
21 Certainly, they won't do it today. They won't
22 fund (unintelligible) resources today for
23 artificial recharge.

24 But the federal government is interested in
25 this problem. And it's not because of the

1 situation in Idaho, or I guess you can't say any
2 specific state, because they get in trouble when
3 they pump dollars into one state and all the other
4 states want their share of pie. The overall
5 aquifer was structured (unintelligible) in Texas
6 is the one that's been going down in terms of
7 hundreds of feet over the last ten years or so.
8 And there are farmers in Texas going out of
9 business. Farmers in other areas along that whole
10 geologic formation are concerned among others.

11 The federal government's appropriated I
12 think it's \$5 million to take a look at is
13 artificial recharge feasible. I would certainly
14 hope that the Water Board and the legislature can
15 do a better job of planning than we're in that
16 situation in the near future. I could see
17 (unintelligible) when water gets more expensive
18 and its benefits are recognized more and more, the
19 State may well take it out of general funds,
20 either contribute towards these artificial
21 recharge projects or do them. And I know the
22 Water Board has given grants (unintelligible).

23 THE CHAIRMAN: Yes, sir.

24 UNIDENTIFIED VOICE: Question on the Oakley
25 project. Now, if that's going down, and which we

1 all know it is constantly, what -- is there any
2 cutoff? Is there any protection for anyone above
3 the other? What's going to happen if that keeps
4 going down where those wells go dry? Because,
5 used to be, when we drilled those wells, there was
6 a date on there. And they took the log of it and
7 so forth. Is there anything now to protect the
8 early drillers, or so to speak?

9 MR. SHERMAN: Yes, there is. It's not a
10 very nice thing. It's very likely to happen. The
11 Department has met with the people down there and
12 said, basically, we had a recent US geological
13 survey study, our own records indicate the water
14 levels continuing to decline. We'll give you more
15 grace period. But if you can't get this
16 artificial recharge, some kind of a water
17 importation in place in the next couple years,
18 then problem's going to (unintelligible) and
19 that's going to be adjudication.

20 The numbers in that USGS report really scare
21 us in terms of overdraft that's going on. And if
22 that happens, the Courts are probably going to
23 order over half the users in the basin to be shut
24 off. And it will be strictly in a time priority
25 date.

1 close together, cones and depressions overlap.
2 And the effect in the overlap area is to add the
3 two together and it goes down like gangbusters.

4 So the ideal way to develop any aquifer is
5 to have what's called well spacing regulations to
6 keep the wells spread out as far apart as you can
7 (unintelligible) aquifer. It's the little I
8 know -- and I've not worked directly in the area
9 except when I first came to work for the
10 Department, head of omissions and observation, I
11 worked on it a couple of times. The geologist is
12 fairly new to the problem. Don't see too many
13 geological things controlling it within the area
14 that's been identified. I think one well is as
15 bad as another. The problem is that we get them
16 too close together. And you really see the
17 dramatic decline because they interfere with one
18 another.

19 UNIDENTIFIED VOICE: It doesn't seem to me
20 that in my -- in referring to those in the tests
21 that they've taken, it's only a short distance
22 from some of those wells to the other. And
23 there's really a difference in the level of the
24 water.

25 MR. SHERMAN: I don't know what you're

1 Speaking as the groundwater geologist,
2 there's not a found good way to do it. I'd love
3 to see them shut off so that I spread out my
4 existing pumpers over the whole area, so I kind of
5 balance out the declining aquifer. The Idaho law
6 provides, and the directors have said, talk with
7 the people. Seriously concerned about asking for
8 adjudication, specifically in that area
9 (unintelligible).

10 UNIDENTIFIED VOICE: Question. Is there any
11 way in your geology study that tells whether one
12 area in that area is particularly source on that
13 more than another? Could you govern any by your
14 study of that and tell which ones are the ones
15 that are the major ones for doing this?

16 MR. SHERMAN: No, I don't think that I can
17 do that. I think it's a very obvious problem when
18 you put three or four wells within a mile of each
19 other and the next well is three miles away. He's
20 not doing as much damage as these guys close
21 together. What actually happens when you pump an
22 individual well and get the cones and depression,
23 because you're trying to lower the pressure head
24 or the water in the system in the extra circle
25 around the individual well. If to get two wells

1 talking about. I can say that there's an actual
2 boundary between the Cottonwood area, for example,
3 and the West Oakley fence we call it where there
4 appears to be no intercommunication at all between
5 the two. And a function of water level in a well
6 depends, to some degree, upon well construction
7 and the actual depth of two wells adjacent to each
8 other. So that -- well construction -- even if
9 two wells are constructed the same depth and
10 perforated against the same portion of the
11 aquifer, if the one does a better job on one than
12 the other, you get more water and less decline.

13 THE CHAIRMAN: Any more questions?

14 We'd like to stress once again that we will
15 take written testimony until February 22nd. And
16 the testimony should be sent to the Idaho Water
17 Resource Board, State House, Boise, Idaho, zip
18 83720.

19 And we thank you very much for coming. We
20 thank you very much for your questions and your
21 testimony.

22 (Whereupon, Tape 4 concludes.)
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24
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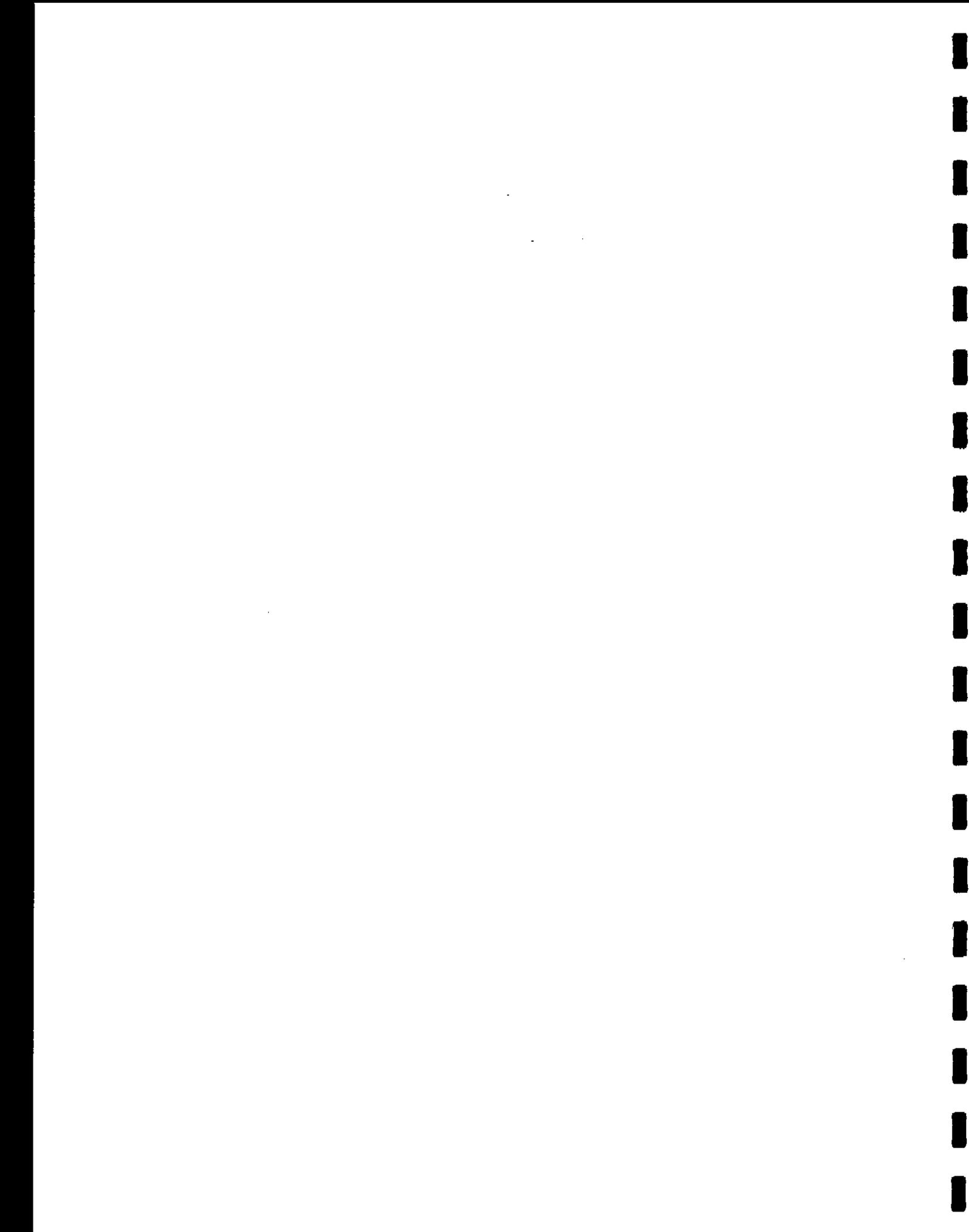
1 AUTHENTICATION

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This is to certify that the attached transcription of audio recording of proceedings before the Idaho Water Resource Board, in the matter of State Water Plan Policy 32, were held as herein appears, and that this is the original transcript thereof.

IN WITNESS WHEREOF, I have hereunto set my hand November 15, 2007.

Debora Ann Kreidler, Court Reporter
CSR No. 754



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I, Debora Ann Kreidler, Court Reporter Pro Tempore, County of Ada, State of Idaho, hereby certify:

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this *19th* of *November*, 2007.

Debora Ann Kreidler

Debora Kreidler, Court Reporter Pro Tempore
CSR No. 274

