IN RE: IDAHO WATER RESOURCE BOARD
STATE WATER PLAN HEARING ON POLICY 32
TWIN FALLS, IDAHO

JANUARY 31, 1985
2:00 P.M. and 7:00 P.M.
STATE WATER PLAN HEARING ON POLICY 32 TAKEN 1-31-85

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Suzanne Gribbin

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1 UNIDENTIFIED SPEAKER: This is a recording of the
2 state water plan hearing on Policy 32 in Twin Falls,
3 Idaho, at 2:00 p.m. on January 31st.
4 MR. GRAY: Good afternoon, ladies and gentlemen.
5 My name is Gene Gray. I'm chairman of the Idaho Water
6 Resource Board, and with me today I have a Dave
7 Ridulph, [phonetic], Dave is a farmer from the Saint
8 Anthony area and also a member of the Committee of
9 Nine, Jim Shauver [phonetic] from the Eaton area, Jim
10 farms over there, Don Kramer from the Castleford area.
11 From the Department of Water Resources, we have Wayne
12 Hawes and a geologist with the Department, Frank
13 Sherman. I got it right, didn't I, Frank?
14 What we're here to speak to you about today is
15 Policy 32, a revision thereof of the state water plan.
16 If you have a copy of your current, the front page will
17 kind of give you a general rundown on exactly the
18 position of the Water Resource Board. December of 1984
19 we accepted some draft language for a revision of
20 Policy 32 of the existing state water plan. That's
21 what we're here for today, to take your testimony on
22 the revisions of that plan. If you look on page 2
23 and page 3 of your copy of the current, you will find
24 the draft language of Policy 32. Mr. Sherman will be
25 going over that briefly for you to give you kind of an

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PAGE 3
1 overview of exactly how the thing lays out.
2 Pages 4 through pages 7 is the legislative package
3 you've all been hearing about and reading about that
4 our legislature is presently working on. Policy 32 is
5 an integral part of that legislative package. It's
6 very important to the Board that we get your public
7 input so that we know how you feel about the draft
8 language. We want you to constructively take it apart
9 for us. We want your criticism. We want your
10 recommendations. The Board will be accepting written
11 testimony at the Boise office until February 22nd, and
12 you might write that down. If you're not going to
13 testify this afternoon, but would prefer to send us
14 written testimony, we would certainly be honored and
15 glad to receive that from you.
16 If you'll take a look on page 7 on the right-hand
17 side; you'll see some actions that must be taken by May
18 15th to implement the entire package. The first one on
19 the list shows amendment to the state water plan, and
20 that's why we're here today, to get the information so
21 the Board can then go back and put this information
22 together. Secondly, the legislative package must be
23 passed, and it must be passed pretty much the way it is
24 right now, or all three parties that negotiated this
25 particular package may not go for it.

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1 Thirdly, the appropriate action by the Public:
2 Utility Commission or the legislature, as called for in
3 pages 4 through pages 7, must be accepted. There must
4 be an order from the Federal Energy Regulatory
5 Commission agreeing to the package that the parties are
6 going to accept.
7 Fifth, the Idaho PUC must dismiss the 1977 lawsuit
8 by the rate payers. And, sixth, if required because
9 Idaho Power has some dams in Hells Canyon which border
10 our neighboring state of Oregon, the Oregon PUC may
11 also have to okay the package, if necessary. And,
12 seven, the enactment by the legislature of
13 subordination language as set forth in 7A and 7B, and
14 you'll find that on pages 6 and 7, and it is again part
15 of the package.
16 What we'd like to do right now is have Mr. Sherman
17 give you an overview of Policy 32. We will follow that
18 by the public testimony, and we have some people who
19 will give formal testimony to us this afternoon. We
20 will close the formal testimony, and then we'll open it
21 for questions and answers. So anything you might have
22 we've got staff with us to help answer those questions.
23 Mr. Sherman.
24 MR. SHERMAN: It gets a little complicated to know
25 what's really happening here. There are three things

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people really have to be aware of. There's the water plan that's in place. There's the proposed revisions to one of the policies in the plan, copies of which you have in your hands, and then there's the agreement itself. Most of the changes in the water plan, proposed changes, are really reflections of the agreement, the agreement that the State and Idaho Power entered to specify certain changes that the negotiators felt had to make this thing work.

Take a look at the very first one. It talks about Policy 32, the Snake River basin. In the existing water plan, the whole idea of the policy that governed the Snake River basin was that the Water Board was allocating the unappropriated waters within the basin. That got to be offered when the Supreme Court ruled in 1982 that the Idaho Power company had an unsubordinated right at Swan Falls. They had some legitimate claim to certain amounts of water there. That was sent back to District Court, and that's when the State and Idaho Power decided that enough with the courts and let's try and make a deal.

The numbers in the existing plan were based on the concept that all of Idaho Power's water right in that facility was subordinated and the State had the authority to allocate all that water to other uses, so

the numbers in here have to be high. It's a concern of the Board already that it needed to be changed with the agreement specifically saying they wanted changes made to it. The Board then looked at the revised language, and it's (inaudible) to hear your comments on it.

The one thing that's slightly different about this version than that which is already in the water plan is that we tried to highlight all the different things that seem to be policy. We just have some accompanying text to try and explain the whys and wherefores of the policy. The very key one, (inaudible) the whole agreement gives policy of how the Snake River basin should be managed is the concept that the minimum stream flow the Murphy gauge will be raised. The existing water plan says 3300 CFS year-round. They're going to raise it to 3900 CFS in the summertime and 5600 in the wintertime. It's not at least unusual to have different flows or different periods for a water right. That's not a new idea. We try to negotiate a compromise between two competing interests. There's just flat more water going past that gauge in the wintertime, therefore the negotiators set it higher in the winter than in the summer. The proposed condition repeats minimum.

flows that are already in the water plan for discharges on the dam that can be zero for periods of overflow. It also repeats a flow at Welser of 4750 CFS. Those are unchanged. They have gone through the whole hearing process already.

The Board is getting or proposes to get under this particular policy minimum average daily flow at Johnson's Bar and Rhine Point. These are two flows that are part of the federal license that Idaho Power has for the Hells Canyon complex. There are points downstream of those dams, and they are there to assure to protect fish and wildlife and navigation on the river. The existing plan recognizes the importance of those flows by citing them and actually quoting the language. The thought is by adding them to the water plan and making it a state policy that they should be minimum flows at those points. No matter what the federal government and Idaho Power might do in regards to the license of those places, these flows then should be protected by the State as part of the state water plan.

Policy 32A, water held in trust by the State. The policy doesn't say very much, and it's cryptic as to what it does say because part of the agreement was the so-called legislative package. And these sections of

Idaho Code that are referred to in Policy 32A, 42-203, needs to be made don't actually exist. They're before the legislature right now. (Inaudible) 42-203(c), and that's the one that's been referred to in the (Inaudible). Let's back up to a point before we really talk about the public interest criteria. The whole deal as it's called as the compromise to the agreement revolves around the Swan Falls dam and the gauge right below it because that's where the suits (inaudible) in court specific for the water right at that point.

The negotiators, looking at it rather unrealistically and saying we (inaudible), the first point that was really important was what's the historic low flow, how low has it gotten, how far below Idaho Power's (inaudible) CFS? The historic low flow at that gauge is 4500 CFS, quite a bit below what Idaho Power claimed and yet still well above the 3300 that the existing water plan specified. So I'm trying to compromise and sort of just (inaudible). The existing plan calls for 3300, 4500. It's as low as it's gotten. You cut it in half, and you come out with 600 on each side of a dividing point, so they chose 3900 for the summertime flow.

Now, everybody thinks about that meaning there's 600 more CFS that's got to go past that gauge, 600 more...
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1. CFS that's available for allocation, and that's true.
2. The thing one has to remember is that Idaho Power has a different claim to the right in every one of its upstream facilities from Swan Falls. They use the Swan Falls case because it's the critical one on the river.
3. It's the one where the flows have gotten down close to what the water plan called for. It's the one that the court case revolved around. But, in actual fact now at any gauge in the river, Idaho Power's water right is being held in trust by the State.
4. Idaho Power has agreed that as long as 3900 CFS will pass the Murphy gauge in the summertime and 5600 in the wintertime that they will not take action on any of their upstream facilities if they're not getting the water at the water right they claim they're entitled to. That's the importance of the Murphy gauge. It doesn't matter how much water (inaudible) or whatever as long as 3900 isn't going past the Murphy gauge anymore. What happens to this water that's held in trust by the State? It represents water that Idaho Power claimed. The Idaho Supreme Court recognizes there's some validity to that claim. They have said you can take part of it and reallocate the water to try to reduce this.
5. Because that water is not the unappropriated waters of the State, they already have been claimed by someone else, the State can put additional criteria for use on that water. Policy 32A says water to be reallocated can only be done in accordance with the criteria established by Idaho Code 42-203(a). Well, that's the existing requirements that the Department of Water Resources has to check off before they can give you a water right. (Inaudible) beneficial use (inaudible) prove your beneficial use, those kinds of things, they're already in place. But 42-203(c) is the idea that, because it is appropriating water, we're going to give it to somebody else for a different use, we're going to put some additional criteria on it.
6. These are the ones that talk about what's its impact on the overall economics of the state, what its impact on Idaho policy. Generation capacity (inaudible) is it farm tradition, designed to be a central checkoff list. When someone applies for some of this water, the Department tallies up the pluses and minuses there and has to make a decision whether that water can be allocated or not. Remember, we're talking about water that's already been appropriated. It's not the unappropriated water of the state that can be taken by any citizen.
7. Policy 32B, domestic, commercial, municipal, industrial. The existing water plan sets aside -- and in the old days we used acre feet, and the negotiators chose to go to CFS, so it gets a little confusing. But the old plan allocated water for municipal industrial uses. Convert the acre feet in here to some kind of average CFS, and it comes out to 144 CFS per day.
8. Average flow shall be diverted or allocated for expansion for municipal and industrial uses. The policy is written out to 150 CFS. More of the reasons for making it larger is that we're including domestic users. It turns out that's not a very important reason. In terms of trying to manage the river, we're not particularly concerned about consumptive use. The amount of diversion, while it has to be recorded, it's not the key any longer. It's how much of that water you divert is actually consumed; how much gets out of the basin one way or another.
9. The real reason for raising it a little bit is because the old plan discusses the possibility of thermal power plants within the state, and they allocated a lot of water for that purpose. We don't see the likelihood of new thermal power plants in the state in the near future. But if they were to come in, we would try -- in accounting for this appropriated water that we are reallocating, we would consider

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number of new acres per year is something like 17,000.
2. We have therefore chosen to say, well, if that's the number that's been happening let's use that as sort of a target number or a cap number.
3. Certainly under current conditions, we don't expect large acreages to come in as new ground. But rather than just trying to limit it to 20,000 or
4. 17,000 per year, we said let's put a cap of 80,000 acres and then a four-year period. That way a big project can go in and not be stopped because of some artificial barrier or the State doesn't like to see more than 20,000 new acres every year because of the problem to try to reallocate the water.

Policy 32D, hydropower. It says the policy of Idaho shall be that hydropower be recognized as a beneficial use. That's already in the law. Certainly electrical generation is recognized as beneficial use of water. It further goes on to say that depletion of flows below the minimum average daily flows set forth in Policy 32 is not in the public interest. There are a lot of people who argue that the rate payer is being hurt because they're taking away water that belonged to Idaho Power while Idaho Power is in fact giving up water that belongs to them. That is probably a legitimate point of view the negotiators and the Board have to look at.

The thing that Idaho Power gets by this agreement in this particular statement is that the 3900 and the 5600 is now a State policy. The water level should never go below that. When subordination bills were introduced in the legislature, the intent certainly wasn't to take away all of Idaho Power's water and try to get it down to 3300. That did not (inaudible).

Compromises were made. We won't go quite that low, and we'll guarantee you State policy needs shall be at minimum flows.

Policy 32E, navigation. It just basically says that minimum flows that are set by the water plan provide enough water for commercial and recreational uses on the river. The only commercial boating on the river with any significance takes place below the Hells Canyon complex and in the Hells Canyon area itself. 3900 in the summertime probably will provide adequate water in the river for recreational uses. Certainly, it's more than the existing plan provides for so the Board (inaudible) they're on safe ground with that.

Policy 32G, fish, wildlife and recreation. The policy is sort of the same language that's in the existing plan except of course it's referring to higher established minimum flows. It's the policy of Idaho that the minimum flows established under Policy 32 are sufficient and necessary to meet the minimum requirements for aquatic life, fish (inaudible) to provide water for recreation in the Snake River and below Milner Dam. Stream flow depletion with all the minimum flows is not in the public interest. The below minimum (inaudible). (Inaudible) in order to satisfy the rights on the upper Snake could be set at zero. (Inaudible) The flow below that is one where Board (Inaudible). That's where the 3900 CFS impacts. If you stop and think a minute, if for some reason Milner Dam were shut off and there were no water going by, where's the water in the river coming from, obviously, from the Thousand Springs area. That's the water that makes up the flow for the Murphy gauge in the low flow parts of the year. If we're going to guarantee 3900 in Murphy gauge, most of that discharge has to go down the river (inaudible) least enough to make up the 3900 or whatever return flows might be recorded.

The Board is comfortable here because they're raising the amount of water that has to be in the river at any given time. The Board also feels comfortable, they feel - thinking for myself, the Board has another authority to guarantee water for these kind of uses, and that's their in-stream flow program. The Board is the only entity in the state that can appropriate the unappropriated waters in the state and leave that water in the river. (Inaudible) protecting fish and wildlife in the whole basin, tributary trees. Trees, in some cases, are as important (inaudible).

Policy 32E, water quality and pollution control. This is a very terse version of what's already in the water plan, and that simply is to provide that, To take good water and mix it with bad water so someone can meet a wastewater discharge requirement is not a beneficial use of water. There are existing laws on the books, both state and federal, which should serve to protect our water quality. If we're in such a terrible water-short condition that we can't meet Idaho Power's water right, we've got to enter some kind of compromise with them, we shouldn't be taking good water and using it to make bad water more tolerable.

Policy 32I, new storage. This is fairly complex. Hopefully it won't work out that way, but it seems complex at the moment, and this particular policy includes two different policies. The first one is probably easiest to explain in that it states that: It is the policy of Idaho that maximum use must be made of the existing storage facilities in the basin. New storage upstream from the Murphy gauge should only be...
Most of us here know that a person can have a
full natural flow right and a full stored water right
for the same piece of ground with the stored water
being held (inaudible) water. A person who has got a
really old natural flow right never has to call for a
stored water right or very rarely, once in ten or once
in twenty. There are extreme examples. The city of
Pocatello, for example, has a block of storage. They
have never called for it. It's there for an extreme
emergency. If Pocatello would double in size
double in size (inaudible), they might have to call for it.
Physically, they can only get it if they put pumps in
the river and try to nail it when it went on downstream
past them.

There's water up there that doesn't get used. So
if the negotiators ask the Board to include this policy
in the water plan, they can ask the Board to proceed
and make the necessary contacts to try, one, change
the law, federal law, federal rules and regulations
and state rules and regulations in terms of can we
better use the water that's held in storage in the
basin. We all know that on October 1st, in any good
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25
the system, why don't we use up some of the water we hold back every year (inaudible). The second part of this very sensitive topic and much more appropriate in this area, the second part states that approval of new storage projects that will divert water from the main stem of the Snake River between Milner and Murphy during the period November 1 to March 31 should be coupled with provisions that mitigate the impact such depletions would have on the generation of hydropower. You've got two competing interests sitting down and trying to work (inaudible) and do tradeoffs. This is one of the tradeoffs.

Idaho Power's concern, particularly about the wintertime operation, used to be a big part of their scheme of things in selling water to the West Coast during the winter season to balance the irrigation in Idaho in the summertime. What's getting to be, with more and more urban development in Idaho, it seems like colder winters lately, that they have a pretty good market in Idaho for electric power for heating purposes, also. That's part of their operation scheme.

The other key factor, of course, is that (inaudible) during this period. It's the only storage reservoir in the Hells Canyon complex (inaudible) river dam so they -- It's the tradeoff. They wanted to make sure that there was water coming down in the wintertime to generate power where they needed it and store it if they didn't.

Now, it says mitigation. What does that mean? It's very carefully explained in the text that mitigation means lessening the impact of. It doesn't mean compensation. You don't give them a dollar or a volume of water that you think is the one you're taking away necessarily. It means you lessen the negative impact of. I said it's a sensitive topic because the three negotiators couldn't agree to as how this should be handled, and they sort of brought it to Water Board saying, "we want the Board in conjunction with the Department to deal with this mitigation question."

Well, if you start thinking about making up general rules, it's pretty clear that each individual project is going to have a different kind of impact, a time of impact (inaudible). It may be necessary. It will be different for each one. It's been pointed out in public testimony and, probably, we'll point it out again that the very few (inaudible) language about no current proposal for storage (inaudible) is incorrect. That's one of the advantages of going out to a public hearing and ensuring that will be changed.
Robert Reichert. I reside on a farm near Filer, Idaho.

I'm the chairman of the Committee of Nine and now also a member of the Twin Falls Canal Company. At the present time, I am secretary-treasurer of that board. I appear here at the request of the Twin Falls Canal Company board of directors. As you know, the Twin Falls Canal Company delivers irrigated water, too, in excess of 200,000 acres. We have followed the Swan Falls controversy and its suggested solution closely. In our opinion, the only major impact on the existing rights of the company and its landowners is that we must now participate in adjudication. Today, the president of our company is appearing at a legislative hearing in Boise in support of the Snake River basin adjudication.

As to the proposed changes to the state water plan that this Board is asked to endorse, we have reviewed the same and encourage you to implement those provisions. While a compromise sometimes hurts everybody a little, it is a reasonable compromise that's being considered. We encourage your support of it and further encourage the changes in the state water plan to facilitate that accord. I thank you for the opportunity to appear here. I request that a copy of this statement be made a part of the official hearing record. Thank you, Mr. Chairman.

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The other reason that I think it would be nice to have this flow available is that, if it's only the junior guy who's going to get called on, who's going to get shut off if the flow were to go below 3900? And a lot of them are going to be groundwater users. Most states where they get into that situation -- Colorado is a good example -- require the groundwater user to have surface water available (inaudible) in the river. There's then a likelihood that he's going to be asked to be shut off.

Now, the unallocated water (inaudible) may not last that long. Even if it were an individual groundwater user, it's very cumbersome for him to go to the board of directors of the Twin Falls Canal Company to get the whole thing in place, if the Committee of Nine and member of the board, Del Hiatt. We'll now call Del Hiatt.

I'm just like to thank you, Bob, for coming and giving your testimony and thank the canal company board members for doing so.

Mr. REICHERT: It's our pleasure.

Mr. GRAY: Thank you very much. The Board will now call Del Hiatt.

Mr. HIATT: My name is Del Hiatt. My address is 1746 Nora Drive North, Twin Falls. My telephone number is 733-6925. I've studied this plan for a few days, I haven't had it very long, this agreement. I'm fortunately familiar with your responsibilities and with the water organization. But as I go over this plan, it seems to me we've sold out to Idaho Power. It seems to me that the water users is the one on the short end and you're giving Idaho Power everything that they've asked for, and so on those points -- I could go over these one by one, but you even go here to giving them the right to buy, sell, lease and prior rights to...
1 this agreement, refer to Exhibit A, power generation,
2 in the feasibility study that would be produced as well
3 as using the water for consumptive use in our
4 particular plan with the reservoir and the hydroplant
5 built into the system.
6 Hopefully, the farm economy will improve in the
7 near future, hopefully. If this happens the Little
8 Pilgrim Project could furnish a mountain of benefits
9 for the Magic Valley. We fully support the changes in
10 the minimum stream flows, both winter and summer, in
11 the state water plan. We also support the Swan Falls
12 agreement the State and Idaho Power has negotiated.
13 The last paragraph: The BLM is ready to transfer the
14 land as soon as they can be assurred that we're
15 going to have something to irrigate (inaudible). Thank
16 you very much.
17 MR. GRAY: Thank you, Mr. Martin. You might have
18 some questions from the board. Mr. Ridulch.
19 MR. RIDULCH: Do you have any problem with Policy
20 32 I considering the mitigation and how the Board is
21 affected with it? Do you recommend any changes in
22 that?
23 MR. MARTIN: I sincerely believe that when down
24 the road, maybe it's tomorrow, whenever I think if it
25 is weighed properly and the -- I hate to be selfish,

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reduce in peak-demand period to accommodate Idaho Power
2 very likely down to, maybe, 50 cubic feet a second when
3 their peak-demand period, if it takes that, to make the
4 measuring station where they want it.
5 The same -- and then due to what is on the water
6 applications and what is on record there now is 200
7 cubic feet per second. Well, they're living with that
8 river and watching it means something to me, high
9 flows, whatever, and what's to the bottom level.
10 There will be months of this 12-month pumping schedule
11 that we could probably pump, it takes a little more
12 equipment to pump more water and a little more pipe
13 size, but that we would probably be able to pump
14 upwards toward 200 cubic feet per second of which would
15 then go to re-balance, more or less taking the water
16 when it's there.
17 MR. GRAY: Thanks.
18 MR. MARTIN: Thank you.
19 MR. GRAY: Any other questions, Mr. Ridulph?
20 MR. RIDULCH: No, I don't have any more questions.
21 MR. GRAY: Mr. Shauver.
22 MR. SHAUVER: I haven't any.
23 MR. GRAY: Mr. Kramer.
24 MR. KRAMER: I haven't any.
25 MR. GRAY: Thank you, Mr. Martin. The Board will

now call Charles E. Harris.
2 MR. HARRIS: I'm Charles Harris, Route 2, Box
3 5223, Twin Falls. My telephone number is 733-3655. I
4 am a farmer, I grew up in Kansas during the dust
5 storms, and I'm real concerned about the natural
6 resources of Idaho. I am not completely pleased with
7 the division of expenses in the water plan, I think
8 that agriculture and our industry are paying too great
9 a share in view of the fact that they come back in with
10 the appropriation from the legislature and help pick
11 that up. But I would not oppose the plan on that
12 issue.
13 My issue is that Idaho is being irresponsible in
14 the development of their natural resources. There's
15 already been suggestion from the federal level that the
16 State help the federal government in developing water
17 projects. I think that the State of Idaho can and
18 should develop their own natural resources for the
19 State of Idaho, and I proposed at the Twin Falls Canal
20 Company stockholders meeting this same proposal. I
21 proposed it in the form of a motion. The chairman
22 ruled it lost for want of a second without calling for
23 a second. But I have gotten several favorable comments
24 since then. In fact, one individual told me that if I
25 hadn't hit them so cold he thought that it would've

been approved.
2 But I think the state water plan, since water is a
3 principal natural resource and since it takes water to
4 develop almost any natural resource that we have, that
5 the state water plan should be amended to provide to
6 raise money to develop the natural resources of Idaho.
7 I propose that the legislature levy a tax of one-tenth
8 of one percent on the gross income of every Idahoan,
9 that this fund be set aside and kept invested on
10 interest, and then we build up a fund to develop the
11 resources of Idaho without going in debt.
12 I further think that the federal government is a
13 poor place to expect money from as they've proven by
14 the fact that in 49 of the last 52 years they've spent
15 more than they took in to the tune of a federal deficit
16 of about a trillion and a half dollars, that we can't
17 expect much from Washington. I think this should
18 eventually come -- I know it's going to take a lot of
19 planning, a lot of time to get the bugs out of it. I
20 think it should eventually come as a constitutional
21 amendment so that the legislature couldn't louse it up
22 between here and there. I'm 70 years old. I don't
23 expect to see much benefit from it, but I think Idaho
24 will. Thank you for the opportunity to testify.
25 MR. GRAY: Thank you, Mr. Harris. Will you stand

for questions if the board members have one.
2 Mr. Ridulch.
3 MR. RIDULCH: I have no questions.
4 MR. GRAY: Mr. Shauver.
5 MR. SHAUVER: I haven't any questions.
6 MR. GRAY: Mr. Kramer.
7 MR. KRAMER: I have no questions.
8 MR. GRAY: Thank you very much. Is there anyone
9 else who would like to testify at this time?
10 MR. BERKS: Members of the Water Resource Board,
11 ladies and gentlemen, my name is Bob Berks. I'm a
12 director from the Northside Canal Company. I'm also a
13 director from the Idaho Water Users. Both
14 organizations have gone on record as approving this
15 Swan Falls agreement. We have a bit of a problem with
16 the adjudication. Actually, you might say from Milner
17 upstream the water has been pretty well decreed by
18 court. The reason we are still saying we'll go along
19 with it is because of adjudicating federal water
20 rights, Indians and the Forest Service and so forth, we
21 think this should be done. It should be done in the
22 state and not wait until it is taken to the federal
23 government.
24 We have a bit of a problem with the funding of it.
25 It's to be charged off to the users, the water users,
irrigation people, power people. No problem with the
power people. All they do is pass it on to the
consumer. So as we all use electricity, we'll all be
paying some through the use of electricity while the
farmers will be charged so much an acre foot as to what
storage and what CFS is to how much flow rights they
get. It isn't a big item but any item now in a
farmer's budget is too much.

I notice the State proposes going along with the
funding over a period of years. Let's split this up
for the farmer and say quarterly payments. It wouldn't
be any big bookkeeping problem at all. It could
come aside for domestic and commercial and municipal
industrial purposes, we've had some criticism on it.

Thank you for the privilege

of appearing.

MR. GRAY: Thank you, Mr. Berks. You might stand
for a question. Mr. Ridulch.

MR. RIDULCH: I haven't any questions.

MR. GRAY: Mr. Shawver.

MR. SHAWVER: Yes, Bob, I've got a couple of
questions. I know you haven't had time probably to
study those. But along the way, the 150 CFS that we're
setting aside for domestic and commercial and municipal
industrial purposes, we've had some criticism on it.

Have you had a chance to look at that, and could you

represent over 2 million acres in the state of Idaho.

MR. GRAY: Excellent. I can bring you up to speed
on the Weiser project. It's referred to as the
Galloway Dam Project. It would store 1.2 million acre
feet of water. Basically there are -- there's nothing
environmentally that would be unacceptable. Fish &
Game has looked at it; they think it's a pretty good
project. The Corps of Engineers should have their
feasibility study completed by July, so then we'll know
a little bit more about it. But that is a board
project, and it's been going on for several years.

Thank you for mentioning it because we are pushing that
project.

MR. BERKS: May I ask you a question? Will that
allow any additional agriculture ground to be put in?

MR. GRAY: There are some acres that they think
they can do some exchanges with up there and, yes,
put it (inaudible).

MR. BERKS: You know, it's pretty close to the
border, and I just wondered if -- would that be
strictly in Idaho on this side?

MR. GRAY: That would be strictly in Idaho at this
time. Thank you.

MR. BERKS: Thank you.

MR. GRAY: Is there anyone else who might like to

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1 I testify at this time? We'll be back again this evening
2 at 7:00 p.m. And again I'd like to mention that the
3 Board will accept written testimony until February
4 22nd, and you can send your written testimony to the
5 Idaho Water Resource Board in care of the Statehouse,
6 Boise, Idaho 83720. Mr. Hawes will close the public
7 hearing testimony, and we will open it up for questions
8 and answers. If Mr. Sherman man will step forward and
9 join the table, please.
10 While he's doing that, I would like to say I
11 forgot two very important guests to me. I was raised
12 south of Hanson in the Rock Creek area. My mother and
13 father, Jack and Lucy Gray, are with us this afternoon.
14 I'm very pleased to have you.
15 MR. SHERMAN: Could I start? One of the comments
16 earlier mentioned a claim period, a water right claim
17 period. That's been a concern of the Department. It's
18 had an extension. They've raised the fees to try to
19 force people to not take advantage of the extension to
20 get this stuff done. It is a concern but I would point
21 out that there are two different what are commonly
22 referred to as amnesty bills before the legislature
23 right now trying to extend that period, trying to
24 protect the person who might get trapped because
25 (inaudible). Most every one else has (inaudible)

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1 claim. (Inaudible).
2 MR. GRAY: Thank you, Mr. Sherman. We will now
3 accept questions. Who will be first? Yes, sir.
4 UNIDENTIFIED SPEAKER: I have a question on this
5 $500,000 that you want to charge us for this work
6 that's been done. How is it that you want to put that
7 bill on the water users? Is that right?
8 MR. SHERMAN: I think the gentleman is referring
9 to the money that's to be set aside and called for in
10 the agreement for hydrologic and economic studies
11 in the Snake River basin. It will not be put upon the
12 water user. It's not designed to come out of the
13 adjudication funds. As I understand it, the original
14 proposal calls for it to come from state general funds.
15 What the legislature and joint finance appropriation
16 committee does I don't know. The intent for that money
17 was (inaudible) general fund money. It's not work that
18 has been done. It's work that most people feel needs
19 to be done.
20 You can remember about a year ago the technical
21 advisory committee on the Swan Falls matter for the
22 legislature, and they said that $4 million needed to be
23 spent roughly in the next four years just to get data
24 needed to try to manage the aquifer and the river, if
25 you're going to try to understand it, let alone try to

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1 hit some magic flow at some point. That money, of
2 course, was not forthcoming.
3 The agreement and the criteria that we expect the
4 legislature to establish for re-allocating these waters
5 calls for assessing the economic impact. The general
6 state economy, the hydroelectric generation, that's almost
7 impossible to do right now. In terms of if the State
8 permits a well at some distance away from Thousand
9 Springs what's the timing of that impact? That's
10 almost impossible. So those -- the $50,000, $500,000
11 that's been talked about was to go for economic and
12 hydrologic studies.
13 MR. GRAY: Mr. Sherman, that shows in these
14 papers, too, $200,000; does it not?
15 MR. SHERMAN: Correct.
16 MR. GRAY: You might explain that.
17 MR. SHERMAN: The original agreement listed
18 $250,000. It was pointed out very quickly, in
19 referring to the (inaudible) advisory committee report,
20 that that wouldn't even take care of what the
21 specialists in this large committee of lawyers, water
22 users identified as just the very basic data that we
23 need to collect, so it's been raised --
24 UNIDENTIFIED SPEAKER: Are you sure that this or
25 some of it don't go to Idaho Power's attorneys? I've

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1 been told from people out of Boise that this $500,000
2 bill was put again the water users to pay Idaho Power's
3 attorneys.
4 MR. GRAY: I'll answer that question. That's a
5 question you should direct to the governor's office
6 because that's where the direction for the spending of
7 it will come from.
8 UNIDENTIFIED SPEAKER: Beg your pardon?
9 MR. GRAY: You should direct that question to the
10 governor's office because that is where the direction
11 for the spending of those funds will come from, not to
12 be part of the Water Resources --
13 UNIDENTIFIED SPEAKER: Isn't that part of this
14 deal? Isn't that part of this whole agreement?
15 MR. SHERMAN: It's part of the whole agreement.
16 Someone decided that it would be inappropriate perhaps
17 for the Department of Water Resources to have this
18 windfall of money to do studies that they wanted to do
19 for years. The decision was made that any money set
20 aside, and I'd like to repeat again, from the general
21 fund for hydrologic or economic studies should be
22 passed through the governor's office. The governor is
23 going to establish an advisory group, and they will
24 determine where the money for these studies goes.
25 It's quite likely that the U.S. Geological Survey

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1 will get the bulk of the money. Water and Power
2 Research Institute of the University of Idaho is also a
3 prime candidate because of the expertise they have
4 (inaudible). The governor will say how that money is
5 spent.
6 
7 MR. GRAY: Mr. Berks.
8 MR. BERKS: Is what he's saying is that the water
9 that will be - I mean the fee that will be charged for
10 adjudication will not be used to study hydrology for
11 groundwater? Is that what you're saying?
12 MR. SHERMAN: That's correct.
13 MR. BERKS: In other words, $500,000 will be used
14 to make a study of the groundwater?
15 MR. SHERMAN: And the economics of how the water
16 is used throughout the system.
17 MR. GRAY: Other questions? Art.
18 MR. MARTIN: While it's fresh on my mind, one
19 thing brings another, let's assume--I'll have to go
20 back and (inaudible).
21 MR. GRAY: Don't do that to us, Art. Don't be
22 selfish.
23 MR. MARTIN: That winter flow --I think it was
24 mentioned yesterday the average or was that the low
25 flow, 6100?
26 MR. SHERMAN: 6100 CFS is the approximate low flow

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at Murphy gauge historically during the wintertime.
2 MR. MARTIN: Okay, 6100, right? Okay, Now, then
3 the minimum stream flow set in the agreement for winter
4 flow is 5600. Now, does that leave any room to
5 negotiate a small quantity of that, or have we got to
6 keep our fingers crossed and look at the average years
7 and high flow years in order to be able to use
8 something above that 5600 in the winter flow?
9 MR. SHERMAN: Okay. Two different parts to
10 Mr. Martin's question: The first is certainly that
11 water is available for allocation by the State to
12 whatever uses can meet the criteria established by the
13 Idaho Code. The other part --
14 MR. MARTIN: Above the 5600?
15 MR. SHERMAN: Above the 5600. The other part of
16 that question, of course is because your project
17 involves wintertime diversion that whole question of
18 mitigation arises. Now, I would point out, in using
19 Mr. Martin's project as an example, because they have
20 not put water to beneficial use, they will be subject
21 to whatever new criteria the Idaho legislature
22 establishes for the re-allocation of this water that
23 formerly was claimed by Idaho Power and still is
24 claimed by Idaho Power.
25 The second part that that project faces is that is

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the wintertime diversion below Milner Dam they will be
2 subject to the mitigation criteria. Now, it's up to
3 the Water Board to establish those criteria. The Board
4 could conceivably set a date and say "mitigation will
5 be required only after this point." But this is all
6 could do, could do, because the Board has taken no
7 action on this particular topic at this time.
8 The very fact that Mr. Martin's project could
9 store some additional water, which they could make
10 available to Idaho Power, might be considered
11 mitigation. If they had wastewater return to the
12 river, the timing of that might be counted in as a part
13 of any mitigation scheme for the project.
14 MR. GRAY: Next question, please. In the back.
15 UNIDENTIFIED SPEAKER: How is the Board going to
16 adjudicate water that was not allowed to be put
17 to beneficial use during the moratorium period that
18 Idaho Power (inaudible), yet their permits would be
19 ahead of those and maybe they got their pumps in and
20 running and established beneficial use by other
21 means beside electrical power?
22 MR. SHERMAN: I can't really answer that question
23 except by saying, one, the Board is not responsible for
24 adjudication. But in terms of the Department, that's
25 one of those terrible traps that people have fallen

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1 minimum flow of the river.
2 Now, he may be in a system where there are enough
3 people using the water upstream from him where he gets
4 shut off but it wouldn't be because of the minimum stream
5 flow established at Murphy Dam or Murphy gauge.
6 Anybody -- and these are people that got caught in the
7 problem that there's no power available to (inaudible)
8 the pump, their proof of beneficial use will come after
9 the October 1st signing of the framework for the
10 agreement. They're subject to new criteria in the
11 legislature (inaudible), and they're subject to a call
12 if the water ever goes below 3900.
13 I think they're relatively safe in that even using
14 the Swan Falls example, there's 600 CFS of water before
15 we have to call anybody to be shut off. The people who
16 are in place by October 1st, if we had a repeat of the
17 '30s, would not be impacted by any water shortage at
18 Swan Falls.
19 MR. GRAY: Mr. Berks.
20 MR. BERKS: What about -- in our irrigation
21 company people didn't realize it until 20 years ago
22 that groundwater could be pumped so easily. So they
23 put in a pump, and they were geographically located
24 where they could expand their acreage, and they used
25 that water or even their surface water, either one, to

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1 commingle, we'll say. Are they going to be protected?
2 MR. SHERMAN: Two comments here: One, under the
3 claims program, the mandatory claims program, they
4 clearly could have protected themselves by going under
5 (inaudible). Under the agreement the answer is still
6 yes, if they were making beneficial use of that water
7 prior to the signing of the agreement.
8 The person who gets into some confusion and
9 trouble perhaps in adjudication would be a person who
10 has an overlapping filing where he claims surface water
11 use and groundwater use on the same piece of property.
12 You're only entitled to a water right for the amount of
13 water you can beneficially put to use. If the two
14 overlap the filing date up to more than the three- or
15 four-acre feet per acre that's allowed in this area,
16 then paper right would be lost. I say paper right
17 advisedly because, no matter what your claimed paper
18 right is, your water right is really only legitimate
19 for the amount of water you're putting to beneficial
20 use.
21 MR. BERKS: Can I ask a further question?
22 MR. SHERMAN: I don't think anybody in the state
23 irrigation project as a project expand?
24 MR. BERKS: Now let me ask you another question.
25 MR. SHERMAN: I have to finally give up. I really
26 can't answer that question.
27 MR. BERKS: The State says yeah, you can improve

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1 ground, originally that water was appurtenant to
2 the ground. Now where does he stand?
3 MR. SHERMAN: If he took advantage of the
4 mandatory claims program that's okay. The amnesty
5 bill that's in front of the legislature now still
6 protects him. The agreement would not. Quite
7 honestly, one of the reasons for the year extension in
8 the mandatory claims program was not so much because we
9 were disappointed in how many people came forward but
10 because there were some legislators who had expanded
11 their water right and needed the time to get their
12 paperwork in order.
13 MR. BERKS: There is a bill now?
14 MR. SHERMAN: Yes. There are two different
15 amnesty bills before the legislature right now. One
16 would protect anybody who had, well, it should be
17 considered an illegal expansion up to the date of the
18 signing of the agreement. I think that one has a fair
19 chance of passing.
20 MR. BERKS: Now let me ask you another question.
21 If they are on Bureau projects, is the Bureau going to
22 accept this?
23 MR. SHERMAN: I have to finally give up. I really
24 can't answer that question.
25 MR. BERKS: The company's ability to purchase

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1 (inaudible) all or otherwise acquire water pumps,
2 (inaudible) and convey it to and past its power plants
3 below Milner Dam shall not be limited by this
4 agreement. Such flow shall be considered fluctuations
5 resulting from the operation of the company's
6 facilities.
7 MR. GRAY: What's the question, Mr. Hiatt?
8 MR. HIATT: The question I have is you give this
9 kind of approval to Idaho Power and what's the
10 limitations? This is the thing I'm -- this is just one
11 of the things that I'm concerned about in this
12 agreement. There are several others, but this is one
13 I'm very concerned about.
14 MR. SHERMAN: My first response to this particular
15 objection is that it's not giving Idaho Power anything
16 because they already have that right. Idaho Power can
17 purchase water anywhere in the system they want and
18 move it where they wish to. Concern to where it could
19 lead to is not so much Idaho Power but economics.
20 Conceivably, if Idaho Power would offer a farmer enough
21 money for his water right, they'd buy his water right.
22 Is Idaho Power to blame for that? Or is the farmer who
23 sells his water right away to blame for that? That's a
24 social question.
25 I think there are plenty of provisions in the
26 agreement in the public interest criteria that we hope
27 the legislature will adopt that encourages the farming
28 tradition. But I think the State would be wrong to say
29 the farmer can't sell his water if the opportunity
30 arises (inaudible).
31 MR. GRAY: This also covers what Idaho Power
32 Company has been doing on buying water from the water
33 bank and just simply specifies that this agreement is
34 not going to disallow them to do what they have been
35 doing. It does not give them additional water rights.
36 UNIDENTIFIED SPEAKER: (Inaudible) on this
37 minimum-maximum flow, what they buy up there, will that
38 be included in it? That is over and above if they buy
39 other water?
40 MR. SHERMAN: Yes. If they buy water and move it
41 down, that will not count toward the flow going past
42 the gauge. But it's a two-sided coin. If we shut off
43 the gauge at CJ Strike, for example, the natural flow
44 that should have been going through there is added to
45 the flow going past the Milner gauge so it balances out
46 in terms of (inaudible).
47 MR. GRAY: Frank, he said anybody else can buy
48 water, too. Point that out.
49 MR. SHERMAN: The thing that Mr. Gray asked me
50 to point out that Idaho Power is not the only person
51 that can buy water. It's an opportunity available to
52 all of us, theoretically. This was just to point out
53 the fact that if they were buying water and moving it
54 downstream it shouldn't count towards what the natural
55 flow at any gauge would be.
56 UNIDENTIFIED SPEAKER: It sure beats farming right
57 now.
58 MR. GRAY: Yes, sir, right in front.
59 UNIDENTIFIED SPEAKER: Could that ultimately lead
60 to an inter-transfer, an inter-basin transfer of that
61 water once that interest purchased that?
62 MR. SHERMAN: That's a very good question: Could
63 outside interests purchase the water and move it out of
64 state? Conceivably, yes, but under the criteria to
65 allocate these waters that the State now has in trust,
66 it talks about the impact on Idaho's economy. An
67 inter-basin transfer, if the State of Idaho doesn't
68 receive the water, the money for it, it's not going to
69 be a good impact on Idaho's economy. And almost
70 automatically such a transfer would not be approved.
71 MR. GRAY: Other questions, please. Yes, sir.
72 UNIDENTIFIED SPEAKER: I'm on the (inaudible)
73 south of Twin, and we don't run no water in the river.
74 (Inaudible) But now if we got that water, are you
75 going to try to head us into this Swan Falls deal, or
76 we're separated from that? We never let any water go
77 into the river. (Inaudible) we ain't got water that
78 goes there. Now we're going to have to pay some of
79 these costs and things like that because we ain't got
80 nothing to do with it.
81 MR. SHERMAN: Yeah. Any water user and perhaps
82 any landowner in the basin, it's not clear just -- we
83 have to notify everybody in the basin. And, clearly,
84 every water user would want to protect his own water
85 right, and he would be under the proposed legislation
86 required to pay a fee. Let me address the specific
87 question. I'm not personally familiar with that tract
88 but --
89 UNIDENTIFIED SPEAKER: If Nevada water comes out
90 of Nevada and it's a tributary to the Snake River but
91 never no water ever got there but last year is the
92 first time it ever got there.
93 MR. GRAY: It's got there.
94 MR. SHERMAN: If it were not being used, it would
95 either get there as surface water or it would seep into
96 the ground and (inaudible) to the river. Therefore,
97 it's water that's part of the system and would be --
98 any water user in that area would be part of
99 adjudication.
100 MR. GRAY: Two exceptions you might point out, the
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1 1 area, plus we have Wayne Hawes from the Department of
2 2 Water Resources and Frank Sherman, a geologist from the
3 3 Department of Water Resources.
4 4 What we're here for is to take public testimony on
5 5 Policy 32, the revised Policy 32, the state water plan.
6 6 We don't have anyone signed up to give testimony so
7 7 we'll alter course a little bit. We'll have Mr.
8 Sherman get up and give you a brief overview of Policy
9 9. Then we'll open it up for questions and answers.
10 10 First, Mr. Hawes, I think, will open it up. Is
11 11 there anyone who will give testimony for the changes in
12 12 Policy 32, the state water plan, at the present time?
13 13 If not, we'll close the hearing. Mr. Sherman, please
14 14 brief us on Policy 32, and we'll follow that with
15 15 questions and answers.
16 16 MR. SHERMAN: Okay. It's really hard to
17 17 understand perhaps what's happening. We have the
18 18 existing water plan, the proposed revisions, and a copy
19 19 of the current you have in your hands, the proposed
20 20 revisions that are on page 2 and 3. We also have the
21 21 agreement that the State signed with Idaho Power
22 22 Company that's in the back of the current (inaudible).
23 23 As part of those agreements, specific exhibits as they
24 24 were called at that time, a package of proposed
25 25 legislation that's (inaudible). So when people start

1 1 said, I wasn't familiar with this gentleman's
2 2 particular situation. If they bought a water right in
3 3 Nevada, that water right is still valid, and we may be
4 4 able to exclude that part.
5 5 UNIDENTIFIED SPEAKER: It's transferred title now,
6 6 but it used (inaudible).
7 7 UNIDENTIFIED SPEAKER: It's in a dam in Idaho.
8 8 MR. SHERMAN: Then it will probably almost
9 9 certainly be part of the adjudication.
10 10 UNIDENTIFIED SPEAKER: It will be.
11 11 MR. GRAY: We have a question back over here
12 12 someplace, I think. Other questions, ladies and
13 13 gentlemen? If not, we will close the meeting until
14 14 7:00 p.m. this evening. We'd love to have you back and
15 15 thank you very much for braving the cold and coming.
16 16 (End of side 1 of tape 2.)
17 17 UNIDENTIFIED SPEAKER: This is a recording of the
18 18 state water plan hearing on January 31st in Twin Falls,
19 19 Idaho, 7:00 p.m.
20 20 MR. GRAY: We'll call our meeting to order for
21 21 this evening. I'm Gene Gray, chairman of the Idaho
22 22 Water Resource Board. With me tonight is Dave Ridulch,
23 23 a farmer from Saint Anthony and a member of the
24 24 Committee of Nine, Jim Shauver from Eaton, a farmer,
25 25 Don Kramer, in the back, a farmer from the Castleford

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1. wanted. The current water plan says 3300 CFS at Swan Falls.
2. As you all know, the Idaho State Supreme Court
3. said that's not the case, that Idaho Power had an
4. unsubordinate right at that particular dam. What the
5. amount of that right was was still subject to
6. litigation in that Idaho Power had (inaudible) 8400 CFS
7. for a number of years (inaudible) they were not
8. receiving their 8400 CFS. It has gone back to District
9. Court to try to resolve just how much water Idaho Power
10. really had a legitimate claim to,
11. The State and the company both felt that in
12. another five years of litigation that it was clear that
13. whenever the District Court resolved it would likely be
14. challenged, if not by one of the principals by someone
15. else, and it would go back to the State Supreme Court.
16. To prevent this continual litigation, both the
17. State and Idaho Power agreed to sit down and see if
18. they could work out a compromised agreement. In
19. October, when the Water Board came around and discussed
20. the agreement per se, they talked about the framework
21. agreement. On October 1st the governor and the
22. company and the attorney general signed an agreement
23. which basically laid out the stipulation of things
24. they thought had to be taken care of in order to reach

1. a final agreement. The lawyers for the party spent
2. most of that on legal fees, and that's what you had
3. (inaudible), and that was signed on October 25th.
4. The Board is charged with changing the water
5. plan. There are certain specific things they have to
6. address in those changes. There are some other things
7. that, as long as you're going to revise and modify the
8. plan, they sort of crept in. If you turn back to page
9. 2, let's just go very quickly through the proposed
10. revision and (inaudible) contrast of the existing water
11. plan point out there's no contrast, and they're trying
12. to explain (inaudible). The main Policy 32 - and what
13. we've done is take out everything that relates to the
14. basin, and where it's strictly policy we bold-faced it
15. and then we (inaudible) in attempt to explain
16. (inaudible) for that policy.
17. The key change here, of course, is that we've
18. raised the minimum flow at the Murphy gauge from 3300
19. year-round. We propose to raise it from 3900 in the
20. irrigation season, 5600 CFS in the non-irrigation
21. season. The compromised value was basically reached at
22. by saying "what's the historic low flow at that gauge?"
23. And it has to be 4500 CFS. The water plan and the
24. State's position was 3300. It's a 1200 CFS difference.
25. You add 6 and take 6 away, what do you have? You come

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The water plan was based on 23 because from '75 to '77 what we've done is convert 21 stands today is based on allocating water for new uses 21 negotiators gave us some choices here but this is 20 industrial. The 24 (inaudible) acre fee. Negotiators (inaudible) CFS, 24 new irrigation acreage of about 17,500 acres per year 17 to hold that water in trust and to reallocate it for 19 Policy 32B, domestic 18 other use that we think of logically would 15 allocated 150 for any other water rights at any hydropower 13 water that's now being held 11 has to reallocate. The legislature 10 based on projections in 1975 that called for an 80,000 number gives us 20,000 in 7 (inaudible) dam. If you follow the 6 (inaudible) facility. But the State has the authority 5 to meet their claimed right providing the 4 and has to buy land, the odds are it's going to be land that's already irrigated, the amount of new 3 consumptive use in Idaho is agriculture. The policy of 2 consumptive use in Idaho is agriculture. The policy of 1 the State will be that the remaining volume of water

1 or the flow rate is available for agricultural uses.
2 These agricultural uses (inaudible) have to meet these
3 new criteria that are to be established by the 4 legislature because this is not to be unappropriated
5 water. It's Idaho Power's water that's now being held
6 by the State.
7 The existing water plan had target acreages that 8 they hoped to see in order for Idaho to maintain its
9 position in the food and fiber industry in the nation
10 based on projections in 1975 that called for an
11 expansion (inaudible) Idaho. We have not seen that
12 expansion. It's been a bone of contention that it was
13 outdated shortly after it was adopted because the
14 projections that were used were Idaho's numbers.
15 The plan now says that these waters can be
16 allocated to new agriculture development but no more
17 than 80,000 acres in any four-year period of new
18 irrigation development should take place. (Inaudible)
19 target number to shoot at is actually going to cap now.
20 What we really did is look at the -- well, the
21 negotiators gave us some choices here but this is
22 basically their number. I think it can be justified
23 because from '75 to '83 it says in there an average of
24 new irrigation acreage of about 17,500 acres per year
25 (inaudible). So this 80,000 number gives us 20,000 in

us and we use the same example here (inaudible) 600
2 CFS is now available for reallocation. That's true
3 when you reach immediately above Swan Falls. Idaho
4 Power's claimed right and other structures on up the
5 river is not (inaudible). No matter what that claimed
6 right is, they have agreed they will not call for water
7 to meet their claimed right providing the 3900 and 5600
8 (inaudible) dam.
9 What does Idaho Power really get from this? Well,
10 it depends who would have won in court. What the State
11 is really agreeing to here is that 3900 is the magic
12 flow. The question about subordinating that, the power
13 company has always guaranteed that. The same is
14 true of 5600 in the wintertime. Idaho Power retains
15 the right to use the water as long as it's available
16 (inaudible) facility. But the State has the authority
17 to hold that water in trust and to reallocate it for
18 other use.
19 Policy 32B, domestic, commercial, municipal and
20 industrial. The water plan, as I said earlier, as it
21 stands today is based on allocating water for new uses
22 (inaudible). One of the allocations was for municipal,
23 industrial uses. The water plan was based on
24 (inaudible) acre fee. Negotiators (inaudible) CFS,
25 what we've done is convert the acre-foot allocation for

municipal and industrial uses. Converted to CFS
2 (inaudible), increased it a little bit because we're
3 talking about domestic commercial, municipal and
4 industrial in saying this is our target guess.
5 Of those waters the State holds in trust, at
6 least of all Idaho Power, 150 CFS will be maintained as
7 a reserve for these kinds of new developments. As I
8 said, it's our best guess. We think it's a relatively
9 conservative one. Most new development is not going to
10 be particularly consumptive. A new industry comes in
11 and has to buy land, the odds are it's going to be land
12 that's already irrigated, the amount of new
13 consumption, because here the key words are 150 CFS of
14 water for consumptive purposes, not just in terms of
15 diversion but in terms of actual consumption. Because
16 the water plan is revised or re-adopted at least every
17 five years, if this is a really bad guess it can be
18 changed, but I feel as the staff person it's a very
19 good starting point.
20 Policy 32C, agriculture. The State holds so much
21 water in trust and they're going to allocate 150 for
22 domestic, commercial, municipal, industrial, the only
23 other use that we think of logically would be
24 consumptive use in Idaho is agriculture. The policy of
25 the State is that the remaining volume of water

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that's already in the plan. The idea is that if we're
specifying 3900 CFS as the minimum flow at the Murphy
gauge and the minimum gauge (inaudible) can be put at
zero, what water is in the river will satisfy the
requirement (inaudible).

Those aquiculturists who rely on Thousand Springs
for their water have that back-up protection behind the
river that can never go below 3900. But if it's anyone
who holds a water right in Idaho has to realize the
water right guarantees you water; it does not protect
(inaudible) diversion. If the spring discharge
continues to decline, some of the trout farmers will
probably have to change the way they divert water from
the little channels including (inaudible). This is
true that the same requirement applies to any other
kind of farmer in the state who also holds (inaudible).

In an extreme situation we'd be in real trouble.

At Murphy, I don't know if it's a good example, but in
extreme situations a person might be required to build
a well. If the water rights stay the same and the same
for every occasion, it just means the diversion will be
changed.

Policy 32G, fish, wildlife and recreation. It is
the policy in Idaho that the minimum flows established
under Policy 32 are sufficient and necessary to meet
the minimum requirements for aquatic (inaudible)
recreation in the Snake River below Milner Dam. Stream
flow depletion below the minimum flow is not in the
public interest. It kept several different competing
uses. In no case does it make good sense to the Board
that the flow at Murphy should go below 3900,
conceivably down to 3300, but everybody suffers the
tower the flow gets. I say conceivably 3300. That's

what it is today with the water plan. (Inaudible) is
good because they're raising the flow. They guarantee
more water in the river for these fish, wildlife and
recreational interests, the Board has specified in the
Policy that's below Milner Dam, but you have to realize
that the Board has another way to protect these kinds
of interests and that's through the in-stream flow
program.

The Board is the only entity in the state that can
appropriate water according to stream (inaudible). The
only people that can appropriate the water in Idaho
(inaudible) the power generators (inaudible). The
Board, above Milner Dam on any tributary stream if
there are unappropriated waters available, can
appropriate that water for fish, wildlife and
recreation, esthetic and a whole bunch of other

Policy 32F is aquiculture. This is where they got
two parts to it. The first part is if an aquiculturist
or a fish or trout or catfish farmer wants to
appropriate water the process is (inaudible). It's
probably not a significant issue (inaudible) washing
fish is not too consumptive in terms of the depletion
of the BCMI allocation. It goes on to state -- and
this language is really from the existing plan -- that
the minimum flows established at the Murphy gauge
station provide an adequate water supply for
aquiculture. However, it is recognized that it may
be necessary (inaudible). This is the (inaudible)

power generation to the state. Now, the thrust does
not seem to be towards thermal power generation at this
time. We think we can handle it at 150 CFS or BCMI at
least for the near future, so that's a small change
that relates to the allocation for hydropower.

Under navigation, it's basically the same language
that already appears in the State water plan. The
Board feels that when the minimum flow is established
there's ample water for -- well, ample -- there is
enough water to protect the recreational interests and
those commercial navigators below the Hells Canyon
desire, those guys who (inaudible). There should be
enough water to satisfy their use.

Policy 32F is aquiculture. This is where they got

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<td>6. program and the rules and regulations associated with</td>
<td>7. What kind of users you could sell that water to are</td>
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<td>7. it. The things that the negotiators want the Board to</td>
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<td>10. water in a federal reservoir behind a federal dam you</td>
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<td>11. cannot sell that water at a profit. What is the</td>
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<td>15. if he can't make a profit by selling it?</td>
<td>16. incentive? It means the water stays there all</td>
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<td>16. Federal rules and regulations further provide that</td>
<td>summer-long and (inaudible). That's the first part of</td>
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<td>17. you can only lease or sell that water for one year at</td>
<td>the policy.</td>
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<td>18. a time. Even if you were willing to go out and find a</td>
<td>19. I have to admit that if someone came in with a new</td>
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<td>19. buyer or work through the water bank and fill out all</td>
<td>(inaudible) project today the director would probably</td>
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<td>20. the forms to protect your right to let somebody else</td>
<td>21. have to find that, no, we're not making maximum use of</td>
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<td>21. use it, you can always lease it or sell it to that guy</td>
<td>the system because there is unallocated water</td>
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<td>22. one year at a time. If a new industry or a new</td>
<td>23. (inaudible). You can't sell water behind the dam</td>
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<td>23. irrigator or a potential irrigator came in, the</td>
<td>24. that's already constructed. Just given inflation,</td>
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<td>24. financing to keep (inaudible) of a water guarantee on</td>
<td>it seems unlikely that you'd want to deal with a dam.</td>
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<td>1. The State has what's called a water bank program.</td>
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<td>2. that most years, on October 1st when the irrigation</td>
<td>2. There are rules and regulations. The water can be</td>
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<td>3. season is over, the flow is increased dramatically as</td>
<td>3. exchanged between (inaudible) users and sellers or</td>
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<td>4. the water master tries to make room for next year's</td>
<td>4. buyers and sellers. The Committee of Nine moved some</td>
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<td>5. runoff. There's water held in that system (inaudible).</td>
<td>water around in the upper basin using the water bank</td>
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<td>6. Why does that happen? Well, state law provides that an</td>
<td>6. program and the rules and regulations associated with</td>
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<td>7. individual can have a full, normal stream flow right to</td>
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<td>8. irrigate his land, and on top of that as insurance he can</td>
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<td>9. have a full storage (inaudible) on the same piece</td>
<td>9. address are the federal regulation that if you store</td>
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<td>10. of land. In good years he's got enough water to</td>
<td>10. water in a federal reservoir behind a federal dam you</td>
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<td>11. irrigate his property twice so he only uses</td>
<td>11. cannot sell that water at a profit. What is the</td>
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<td>12. (inaudible). That water sets there and gets dumped.</td>
<td>12. incentive for one of these persons who has water</td>
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<td>13. The city of Pocatello, for example, (inaudible) an</td>
<td>13. equal (inaudible) perhaps. If you have a natural</td>
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<td>14. appropriation for water (inaudible) storage space in</td>
<td>15. that water to another consumptive user you'd be</td>
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<td>15. one of the reservoirs. (Inaudible) Its insurance. If</td>
<td>expanding your water right. It's against a state law.</td>
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<td>16. the community were to expand dramatically or attract a</td>
<td>17. What kind of users you could sell that water to are</td>
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<td>17. new industry and they wanted water available, they</td>
<td>18. basically nonconsumptive. State law provides if you</td>
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<td>18. never called for that water, today they have no need to</td>
<td>19. don't use your water once in five years you lose it</td>
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<td>19. divert it. If they had a call for it, they'd have to</td>
<td>20. except for stored water. If you want to try and move</td>
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<td>20. put pumps in the river and try and catch it when it</td>
<td>21. water around, there are both state and federal barriers</td>
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<td>21. passed. Those kind of things happen in the upper basin</td>
<td>22. to do it very effectively. The negotiators ask the</td>
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<td>22. where there's water there that a person doesn't really</td>
<td>Board to see is there any way to streamline the water</td>
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<td>23. need and he has a legal right to it. The problem is he</td>
<td>bank? Can we approach the federal government and see</td>
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<td>23. has no really good way to do anything about the</td>
<td>if they'll recognize the fact that no profit means no</td>
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<td>24. (inaudible) water. He's letting someone else use it.</td>
<td>25. incentive? It means the water stays there all</td>
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<td>25. Why did the negotiators think it was important?</td>
<td>26. summer-long and (inaudible). That's the first part of</td>
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One storage facility that allows them to control what

The second part is really directly (inaudible)
Twin Falls and down river. The second part of this
particular policy says that approval of new storage
projects to divert water from the main stem of the
Snake River between Milner and Murphy during the period
November 1 to March 31 should be coupled with
provisions that mitigate the impact such depletions
would have on the generation of hydropower. We all
realize that the State and the power company's
negotiators sit down and there were tradeoffs. This is
one where the power company feels strongly about coming
to Brownlee Reservoir in the wintertime. It's the main
storage facility that allows them to control what
happens in the Hells Canyon complex (inaudible).
Part of the tradeoff for giving up their claim to
8400 CFS and going down to 39, they ask that there be

Also, because each individual proposed project is
a separate entity in and of itself, when they divert
the water and how much, when their return flows would
come back, those kinds of questions have got to be
addressed before any kind of real mediation period is

 calculated. So the negotiators want the Board to
address that. They didn't want the Board to try and do
it now. In fact, the Board proposed a different
language, and the negotiators said, no, that's too
specific, let's let this one sit awhile.
The last part of the text that's been pointed out
is incorrect. There are projects on file that would
propose a new (inaudible) diversion for storage
purposes (inaudible) reach the river. So the Board
will not be able to put this question off too long,
you'll find. They're going to have to address it
fairly soon, but it is not resolved at this time. If
it becomes a matter of state policy or a series of

rules and regulations, the Board and the Department are
required to come out for a public hearing (inaudible).
The very last one, Policy 32, stored water
for management purposes. It is not specified
(inaudible), a totally new concept perhaps, it's
to require new diversions only in that region below
the Department to say we're going to manage this river
(inaudible).

Now, law provides that junior appropriators can be
cut off, but cutting off a junior appropriator on the
Snake Plain doesn't do any good in terms of days or
months, even, perhaps for the flow at Murphy. Ideally,
the Department, if they make a mistake, would likely
have someplace where they could call for water and have
it to come down the river and cover up their mistake.
I'm not really talking about their mistake but
satisfying the agreement, satisfying Idaho Power's
right, satisfying the needs for the fishery and

"mitigation" is chosen very carefully. If you lessen
the impact, there is nothing you or Idaho Power dollar
for dollar (inaudible). It's a real stumbling block,
and the negotiators couldn't agree to set a criteria or
project rules and regulations to calculate mitigation
for a variety of reasons, certainly different ways of
looking at the problem.

Also, because each individual proposed project is
a separate entity in and of itself, when they divert
the water and how much, when their return flows would
come back, those kinds of questions have got to be
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will not be able to put this question off too long,
you'll find. They're going to have to address it
fairly soon, but it is not resolved at this time. If
it becomes a matter of state policy or a series of

wildlife and recreation and all the rest.
As I said earlier, there are unallocated waters
in (inaudible), for example. If the State could
acquire some of those now while it's easy to get water,
they would have a cushion, and they would feel more
comfortable without issuing new permits for new water
users if they knew there was always this cushion to
protect them from the possibility of a mistake. The
water wouldn't have to sit there idle. That's the
whole thrust of the agreement (inaudible) maximum
utilization. We probably (inaudible) water bank.
(inaudible)

If we ever get to the point where we really start
drawing down those reservoirs because we're
consumptively using that water or turning it out for
some reason, I think we might see the day when the
recreational user would be advised to acquire the right
to some of that water, and it may be that one potential
buyer (inaudible) recreational interest. They have
been using the water at no cost basically, but the
water rights holders that more effectively use that
water (inaudible) in the summertime.
The other thing that the Department has in the
back of their mind is that we're going to have to
manage this whole basin much more carefully and we're
STATE WATER PLAN HEARING ON POLICY 32 TAKEN 1-31-85

1. MR. SHERMAN: About the agreement.
2. MR. GRAY: About the agreement, about anything we

1. Idaho Power nor the State will not call upon them
2. simply on the basis of not meeting the 3900 or 5600.
3. If he's in a place where he could shut off two or three
4. years in ten, anyhow, he's going to get shut off long
5. before we get down to the 3900 (inaudible) if not more
6. water than that is available.
7. But if in an extended drought period and the river
8. flow got down below 3900, a person who's in place prior
9. to this agreement would not be called upon for water.
10. (Inaudible) Anybody who appropriates water after the
11. date of the agreement, anybody who gets some of that
12. water that the State is holding in trust, they are the
13. ones who's going to get shut off if the flows are not
14. there.
15. I think with that, Mr. Gray, I will conclude.
16. MR. GRAY: Thank you, Mr. Sherman. You might make
17. a note, if you didn't testify this evening, that the
18. Board will accept written testimony until February
19. 22nd, 1985, and you can send that written testimony to
20. the Idaho Water Resource Board, Statehouse, Boise,
21. Idaho 83720. Now we would open it for questions. One
22. more time, any questions about your own water rights,
23. about your own situation?
24. MR. SHERMAN: About the agreement.
25. MR. GRAY: About the agreement, about anything we

1. going to have to work with the groundwater and surface
2. water as a single unit if the groundwater is
3. discharged at Thousand Springs to control the river
4. flow for part of the year. The states that have tried
5. this kind of management approach, the problem with who
6. do you shut off first in a water-short period, it can
7. get pretty unmanageable. In Colorado, for example, in
8. some of their basins, whenever they issue a new
9. groundwater right, they require that that groundwater
10. user have back-up surface water available to meet any
11. future (inaudible).
12. If, down the road, Idaho would get in that
13. position, I personally and the Department feel that it
14. would be much more convenient if they could go to the
15. State when they ask (inaudible) and have a place to
16. keep that water to meet any future river call
17. rather than have to go out and try to buy it when
18. there may be no unallocated water available.
19. This business of meeting that river flow brings me
20. to the last point I'm trying to make tonight, and
21. that's not directly a part of the Water Board's
22. responsibilities here. It comes out of the agreement.
23. The agreement specifically specifies that anyone who
24. can show beneficial use prior to October 1st, 1984,
25. including his beneficial use of the water by that date,

1. that piece of ground, it would be an expansion of a
2. water right unless you stopped irrigating on the ground
3. if that's what the agreement specified for. Now, 4. what you may be able to do where you've got a situation
5. where wells are going dry on you may be able to use
6. that water to replace your groundwater right and say
7. it's a different point of diversion (inaudible).
8. I think you might have something (inaudible).
9. MR. GRAY: Any questions back there?
10. MR. SHERMAN: Can I make one statement?
11. MR. GRAY: Certainly.
12. MR. SHERMAN: Don't - if you're comfortable with
13. Policy 32, fine. If you're not, please send them in
14. and comment. Those other things that are in the back,
15. the exhibits for the proposed legislation, some of
16. those have already been changed, but your legislator
17. is the right person to contact in that regard. If when
18. the Board takes action or if you can perceive that the
19. Board is going to go in the direction of Policy 32 you
20. don't like, I suggest you contact your legislator, once
21. again.
22. You probably are aware that on the November ballot
23. there was an initiative which gave the legislature the
24. authority to amend, change, disagree with whatever the
25. Water Board does. It gave the legislature the final

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authority on the state water plan. So you still have a
chance to get at these guys (inaudible) the back door
if they do something you don't like. Why is the Board,
if they don't have (inaudible) do this, the Board feels
somebody is going to come in (inaudible) and try and
get public opinion.
We think that if we do that kind of work and we
propose something to the legislature and we say we went
out and talked to the people and they talked to us
that you have a lot better chance of getting through.
MR. GRAY: Any other questions? Well, thank you
very much for coming, and we'll close the meeting at
this time.

(End of side 1 of tape 3.)

REPORTER'S CERTIFICATE

I, SUZANNE GRIEBIN, CSR No. 706, Certified
Shorthand Reporter, certify:
That the foregoing is a tape-recording
which was transcribed by me to the best of my
ability.
That I am not a relative or employee of
any attorney or of any of the parties, nor
financially interested in the action.
I declare that the foregoing is true
and correct.

IN WITNESS WHEREOF, I set my hand and
seal this 30th day of October, 2007.

SUZANNE GRIEBIN, CSR No. 706
Notary Public in and for the
State of Idaho
My Commission Expires 12/1/2012
REPORTER'S CERTIFICATE

I, SUZANNE GRIFFIN, CSR No. 706, Certified Shorthand Reporter, certify:

That the foregoing is a tape-recording which was transcribed by me to the best of my ability.

That I am not a relative or employee of any attorney or of any of the parties, nor financially interested in the action.

I declare that the foregoing is true and correct.

IN WITNESS WHEREOF, I set my hand and seal this 30th day of October, 2007.

SUZANNE GRIFFIN, CSR No. 706
Notary Public in and for the State of Idaho
My Commission Expires 12/7/2012
STATE WATER PLAN HEARING ON POLICY 32 TAKEN 1-31-85

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The text seems to be a page from a document containing various words and numbers, possibly extracted from a larger context. Without a specific question or context, it's challenging to provide a meaningful interpretation of the natural text. The page contains numerous words such as "flows," "food," "formal," "forest," and "four-year," among others, suggesting a diverse range of topics or elements. The text also includes some numbers and references, possibly indicating statistical data or citations. Without additional context or a specific question, it's difficult to derive coherent information from the page.
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