IDAHO WATER RESOURCES BOARD

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Public Information Meeting on
Proposed Policy 32 Revisions
Boise, Idaho

TRANSCRIPT OF PROCEEDINGS

Held on February 5, 1985
before Gene Gray, Chairman

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Transcribed by:
Sue Wolf, RPR
CSR No. 728
APPEARANCES

Present:

Governor J. V. Evans
Sherl Chapmann, IWUA
Harold C. Miles, Idaho Wildlife Federation
Marjorie Geddes Hayes, Idaho Consumer Affairs, Inc.
Ronald L. Fahn, IRC
John W. Keys, Bureau of Reclamation
Alan D. Jensen
Roy M. Watson
Fred Stewart
Ed Ghen, Bureau of Land Management
Jim Nee, U.S. Fish and Wildlife Service, Boise
Michael D. Crapo, U.S. Senator
Jack Streeter, SWIDH, Mountain Home
John H. Brandt
Richard Haumann, Nampa and Meridian Irrigation Dist.
T.G. Nelson, Idaho Power Company
M. Reed Hansler
John Hatch, IFCF
CHAIRMAN GRAY: Ladies and gentlemen, we would like to welcome you to the 9th public hearing that the Idaho Water Resources Board is having on the policy changes for the Idaho State Water Plan and Policy 32.

I'd like to introduce some of the people with me. I have J.D. Williams on my left. J.D. is an attorney from Preston, Idaho, and is also the mayor of Preston. Jim Shawver, next to me. Jim is Secretary of the Idaho Water Resources Board and also farms in the Fenton area. On my right is Jim Riddle -- or Dave Riddle. Sorry Dave. A member of the committee tonight and farms over in the St. Anthony area. Don Kramer, past Chairman of the Idaho Water Resources Board, farms in the Castleford area. And Wayne Haus, Department of Water Resources.

Does everyone have a copy of the Currents magazine, the paper we have?

UNKNOWN SPEAKER: No. Do you have some extra copies?

CHAIRMAN GRAY: We do.

Governor Evans, I'll --

UNKNOWN SPEAKER: Thank you.

CHAIRMAN GRAY: Part of the ongoing job of the Board is to amend, from time to time, the State Water Plan and, of course, every five years, to review and totally update the State Water Plan. And what we're here before you for today is to go over pro -- proposed revisions of Policy 32 of the Water Plan. It has not been adopted by the Idaho Water Resources Board, but we have accepted draft language.

If you'll turn to page two and page three of that document, you'll find that which we have accepted to take to the public for public review, and that is what we wish you to testify today on.

Page four and page five is the agreement that was reached between the Governor's office, the Attorney General's office, and Idaho Power Company.

Half of page five, page six, and page seven is part of the legislative agreement. Policy 32 falls into, and makes up, or will make up, part of that agreement.

If you'll look at the edge of page seven, on the right-hand side, you'll see seven items that must happen, by May 15, to validate the agreement between the three acting parties.

No. 1 is to amend the State Water Plan.

Again, that's why we're before you today, to review Policy 32, to get your input, your criticism, your
I want to thank the Board for its cooperation in implementing the Swan Falls Compromise Agreement. The Water Plan revisions you are considering are consistent with both the letter and the spirit of that agreement.

I come before you today to urge your approval of these proposed revisions, in order to resolve the complex and urgent problems associated with the Swan Falls water rights controversy.

I will now offer some brief comments on some of the specific issues - revisions that are before you.

I am convinced that the new minimum stream flows at Murphy gage will provide needed additional protection to fish and wildlife interests, as well as an adequate hydropower base. The Board acknowledged, in the original plan, that three -- 3,300 cfs was not a sufficient level to provide for fish and wildlife needs.

By raising the summer minimum flow to 3,900 cfs, the Department will be able to manage the river in a manner which should enhance our Snake River fisheries.

By raising the winter flow to 5,600 cfs, the Board will be recognizing the greater value placed on hydropower generation at that time. It is appropriate to dedicate a greater quantity of water to hydropower generation during the nonirrigation season. This new winter flow reflects a reasonable level for our state to try to protect.

The new flows at the -- the Murphy gage, coupled with the retention of a zero flow at Milner dam, will allow for significant new agricultural development without threatening minimum flows. It is important to the future of Idaho that we allow for some additional development. With wise and careful stewardship, we will make that water -- we will make what water remains available sufficient for all of our society's needs well into the next century.

Agricultural uses. It is important to emphasize, as your proposed Policy 32C does, that we scrutinize carefully any proposed new uses for the limited water which remains for allocation to agricultural uses. By choosing wisely -- those new projects should go -- those new projects that should go forward in the public interest, we should be able to meet new agricultural needs for many decades to come.

But if we were -- but if we were to continue to insist -- approve new uses on a first come, first serve basis, we would soon exhaust the available water supply and reduce the opportunity for modest expansions for our many small, family farms **in Idaho.

I also support the proposed reservation of 150 cfs for new domestic, commercial, municipal, and industrial uses. While these uses are largely nonconsumptive, it would be very shortsighted if we did not make provision for a reasonable amount of future depletion which these new uses can be anticipated to demand.

DCMI uses are vital to the potential growth of our economy and our communities. By reserving this block of water, we can assure new businesses they will have an adequate supply of water to meet their needs if they decide to locate here in Idaho. This will greatly assist us in our effort to create new jobs for Idahoans.

Finally, I would like to comment on the one proposed revision which was not specifically mentioned in the Swan Falls Agreement. That is the new policy on stored water, for management purposes, contained in Policy 32J.

This represents an innovative solution to the problem of protecting minimum flows established by the State. By acquiring stored water, the State will be in a position to raise the public's confidence that we can effectively protect in-stream flows. Coupled with the proposed general adjudication of the Snake River Basin, this policy will give the Department an opportunity and important tool to manage this vital resource.
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1 In closing, I want to stress how important it
2 is to the state of Idaho and to its water users, our
3 farmers and electrical ratepayers alike, to establish a
4 balance between in-stream values and out-stream
5 depletions. I strongly believe the revisions before you
6 strike a balance that will serve our citizens well for
7 many years to come.
8 Thank you for the opportunity to comment on
9 ** this important issue. And, of course, I'll be very
10 happy to respond to any of your questions.
11 CHAIRMAN GRAY: Thank you, Governor Evans.
12 Mr. Williams, questions for the Governor?
13 MR. WILLIAMS: None.
14 CHAIRMAN GRAY: Mr. Dunn?
15 MR. DUNN: I have none.
16 CHAIRMAN GRAY: Mr. Rydalch?
17 MR. RYDALCH: (Unintelligible.)
18 CHAIRMAN GRAY: Mr. Kramer?
19 MR. KRAMER: Thank you, Governor, for your words.
20 I have none.
21 CHAIRMAN GRAY: I would like to thank you and your
22 staff, Governor, for the many, many hours and effort that
23 have been put into this. It is exemplary of the
24 leadership we have in this state. Thank you very much.
25 GOVERNOR EVANS: Thank you very much, Mr. Gray.

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1 I might add that I've been most pleased to see how the
2 Water Resources Board and the Department of Water Resources
3 staff have done, particularly Ken Dunn, your director.
4 He has worked very hard to -- to work with us during the
5 entire summer, to make sure that you had input
6 constantly.
7 We had the advisory committee working very
8 closely with you and, of course, your Chairman served on
9 that advisory committee, as well as Mr. Williams. And we
10 appreciated -- we're appreciative of the efforts that all of
11 you put forth. It has meant that we've been able to go
12 to the legislature and what it looks like right now,
13 we're receiving a -- very strong and -- and close to
14 unanimous support for the adoption of the necessary
15 legislation to implement the Swan Falls Agreement. And,
16 of course, all of us are very happy about that.
17 Thank you very much.
18 CHAIRMAN GRAY: Thank you very much.
19 The Board would call Sheri Chapman, Idaho
20 Water Users Association.
21 MR. CHAPMAN: Mr. Chairman, members of the Board,
22 my name is Sheri Chapman. I represent the Idaho Water
23 Users Association, with offices at 410 South Orchard, in
25 I, too, am pleased to stand here today and

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1 bring you the testimony that I have been authorized to
2 give to you today. But before I do that, I would like to
3 commend the Board.
4 As you well know, I testify before many
5 agencies and many boards in a year's time, and it's very
6 few boards that I see that will take the time to attend a
7 hearing such as this, so that the Board members
8 themselves get the input from the public, rather than
9 having just a Hearing Officer and then reading a
10 transcript at some later date.
11 And so, I want you to know that our water
12 users appreciate your interest and your involvement in
13 these hearings throughout the state of Idaho.
14 Our association, which represents some 150
15 irrigation districts and canal companies throughout the
16 state of Idaho, both in and outside of the Snake River
17 Basin, have almost unanimously supported the changes to
18 Policy 32.
19 We have a few who are concerned about some
20 provisions in the legislation, but very few people are
21 reluctant to adopt that. **
22 The Policy 32 that relates to the minimum
23 stream flow, the 3,900 cfs in the summer and the
24 5,600 cfs in the winter; but we feel our are adequate to
25 protect the hydropower base, fish and wildlife, and other

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1 values in the stream. I'm sure that you have received
2 criticism in the past, in past hearings, and I know that
3 it has occurred in the legislature that the 3,900 cfs
4 level and the 5,600 are too low to protect fish and
5 wildlife and, in fact, they will cost millions of dollars
6 insofar as -- as Idaho's ratepayers go.
7 There was a study published some time back
8 that indicated that lost power generation would cost the
9 Idaho Power ratepayers some $52 million per year. That
10 study was flawed in several areas, particularly when
11 discussing the elasticity of electrical energy demand.
12 And another analysis of that investigation showed that,
13 in fact, the cost might be something like $29 million per
14 year with a -- an increase to the state, in added value,
15 of some $78 million a year, which was in direct
16 contradiction to the earlier study.
17 I think that points out the breadth of error
18 in assumptions that can be made in economic analyses, and
19 I would stand before you today just saying that,
20 certainly, we have food surprises at this point in time.
21 We know, from past history, that that will not continue.
22 that we must protect our options for the future.
23 With regard to the DCMI flows and
24 aquaculture, our association had some reservations
25 initially, when we understood that the Water Board was

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1 going to reserve, or wanted to reserve, some 150 cfs out
2 of the potential 600 cfs that might be allocated for
3 consumptive uses in the future.
4 However, with the inclusion of aquaculture in
5 there, and the realization that continued economic
6 development outside the agricultural sector was as in
7 much of Idaho's interest as agricultural development, we
8 agreed to support that provision also.
9 Again, the fish and wildlife considerations.
10 We feel the minimum flows do protect fish and wildlife.
11 We're talking about the addition of 600 cfs, or about
12 270,000 gallons per minute, added to the existing minimum,
13 stream flow. Now, that's a big slug of water. And it's
14 going to help those fish, it's going to help the
15 wildlife.
16 I was raised in the southwestern Idaho area.
17 I've seen the Snake River since I first traveled there
18 when I was a youth to fish and hunt, and I know that we
19 have additional needs there. But at the same time, I
20 feel personally, and our association feels, that the 600
21 cfs will be more than adequate to take care of those
22 concerns.
23 We had concerns over the Policy 321 that
24 related to full utilization of existing storage prior to
25 new storage developments. We are still concerned about

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1 that. We do not understand what, quote, full utilization
2 of storage might be. But we have received assurances
3 from Board members and from the Department of Water
4 Resources that whatever application of that terminology
5 occurs, that it will be reasonable and take into account
6 existing uses, as well as the other policies within the
7 proposed revisions. And that is satisfactory to us.
8 We -- we trust the Board, we trust the
9 Department of Water Resources, and we believe that
10 they'll be fair in carrying these out.
11 Mr. Chairman, members of the Board, as I say,
12 I'm pleased to hear -- to be here before you today to
13 support the revisions to Policy 32. Thank you.
14 CHAIRMAN GRAY: Thank you, Mr. Chapman.
15 Mr. Williams, any questions?
16 MR. WILLIAMS: Yes, just briefly. Sheri, going
17 back to the -- what you mentioned about this cost to
18 ratepayer study.
19 MR. CHAPMAN: Yes.
20 MR. WILLIAMS: Where you said -- you're saying
21 that the original estimate of the $52 million loss was
22 flawed. Can you explain -- you talked about elasticity
23 of demand there.
24 MR. CHAPMAN: Yes. The original study, done by
25 Hamilton and Lyman, indicated that with development of

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1 new lands within the Snake River Basin, that water would
2 be taken from the Snake River, from the source of
3 hydropower generation. And because of that development,
4 that a cost to the ratepayers of about $52 million per
5 year could be anticipated, with an added value of the
6 development of only about $49 to $50 million, or a net
7 loss.
8 One of the assumptions that I'm most familiar
9 with, was that the demand for energy would not change if
10 the price of energy increased, which we know to be false.
11 And the McGrath Study, which was a critique and an
12 analysis of the Hamilton study, went through that
13 analysis, reviewed those assumptions in light of what are
14 more realistic assumptions, and -- and what has happened
15 historically.
16 And their estimate, or his estimate, of what
17 might be the annual cost, due to decrease in consumption
18 of energy and the -- the modification of the uses of
19 water, and the methods of irrigation, that the impact
20 might approach a maximum of $29 million per year but
21 that, in fact, the added value, because of growing
22 population and growing demands in the future, would be
23 more like $78 million.
24 And so, based on that and other
25 considerations, we felt that the 3,900 and the 5,600 was

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1 adequate because, of course, our water users are
2 ratepayers, just as well as anybody else. And they're
3 not anxious to double or triple their power bills, just
4 in the name of saying that we need more development.
5 They took a close look at that. They feel more
6 comfortable with the McGrath Study than they do with the
7 Hamilton Lyman study.
8 MR. WILLIAMS: Thank you.
9 CHAIRMAN GRAY: Mr. Dunn.
10 MR. DUNN: I have none.
11 CHAIRMAN GRAY: Mr. Rydals?
12 MR. RYDALS: I have none.
13 CHAIRMAN GRAY: Mr. Kramer.
14 MR. KRAMER: I have none.
15 CHAIRMAN GRAY: Sheri, I have a couple, if I
16 might.
17 The way Policy 321 is -- is set right now, it
18 will be up to the Director of the Department of Water
19 Resources to determine when maximum utilization is set.
20 Could you, or your group, possibly define it as you see
21 it? How would you define maximum utilization of upstream
22 storage? Have you thought about that?
23 MR. CHAPMAN: Mr. Gray, yes we have. Our -- our
24 considerations of full utilization of storage, at this
25 point in time, would be that the storage he utilized as

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It was originally allocated and contracted for in the congressional authorization -- authorization because, of course, most of those up stream reservoirs are federal reservoirs. That would also require some coordination and discussion with the Bureau of Reclamation and Corps of Engineers.

CHAIRMAN GRAY: Mitigation -- the term mitigation is defined under 321, about eight sentences up, just above Policy 321. Do you have any thoughts the way mitigation is defined? Would you -- would you expand it, or might you otherwise define it, than the way it appears?

MR. CHAPMAN: I think that the -- that the definition of mitigation is going to take an awful lot of thought, and I wouldn't have any -- any words of wisdom for you at this point in time.

CHAIRMAN GRAY: Thank you very much.

CHAIRMAN GRAY: The Board would call John Keys please.

MR. KEYS: Mr. Chairman, I'm John Keys, with the Bureau of Reclamation. Address is 550 West Fort Street. Telephone number is 334-1930.

As I started out with Mr. Chairman, I was reminded that one time I stood up before a group where the chairman was a chairperson. And I fumbled around with chairperson for a while, and then I came up with chairmanship. And that went fine until I got kind of flustered later on, and it came out Mudan Creature.

So, I'll promise not to do that today.

CHAIRMAN GRAY: We've been called worse in all cases.

MR. KEYS: Okay. Mr. Chairman, the Bureau of Reclamation supports the proposed settlement of the Swan Falls water right issue and it will work with the Idaho Department of Water Resources and the Water Resources Board to implement its articles and proposed implementation.

We believe that the settlement is fair and equitable, and it will allow necessary growth in the Snake River Basin of Idaho. Additionally, we are glad to see this settlement handled within the framework of Idaho's water law and water rights.

The subject at hand today is proposed revisions to Policy 32. In general, we think the language, in Policy 32, that's been proposed is good. We like the spirit and intent of that. It's good to see the policy spelled out for the different users; the domestic, the M and I, the agriculture, and all of them. We also think the minimum flows that have been set are reasonable and probably achievable.

We do have some questions and concerns about Policy 321 and Policy 321. We support the concepts behind those two, but we do have some questions and concerns.

In addition, we would encourage that the explanatory language that's included in Currents, the latest issue of Currents, be included in the State Water Plan and be expanded, with some further definition and explanatory comments. And I hope what -- my comments now will tell you what I mean.

Now, I'll start out with 321. The basic intent of Policy 32 is to better use existing reservoir storage and to make more efficient and effective use of the water in storage in the Basin.

We believe that these objectives could better be achieved without getting into an argument of what maximum use is. We think that if you went through an inventory of water uses in the Basin, after you get through with the adjudication process, and then look at an expansion of the -- of the water bank concept, that those objectives could be met better than getting into a maximum use argument.

The expansion of the water bank program could be tailored such that you could make it worth a person's while to put his water or storage in such a bank.

Now, if the current -- if the current concept of maximum use is included in 321, we feel that it should be defined. In reading through the explanatory material, it causes us some real problems, and let me give you some examples.

We have currently, in the Snake River Basin, about 5 million acre feet of storage. A lot of that storage space has been built and depended on for supplemental supply. Is a supplemental supply storage a max use of reservoir space?

Storage space that's being held for expected drought periods. We have carry over periods of up to seven or ten years in some of our reservoirs. In other words, we're having -- holding that water there for a drought that would only occur once in every seven to ten years. And does max use cover that storage there?

Storage space that's been built and reserved for future uses. An example there, City of Pocatello holds space in Palsales Reservoir for unexpected future use beyond what their supply is now. Is that max use of reservoir space?

And minimum pools that have been set aside for recreation, fish, and wildlife purposes. I know that the use of water in the Snake River Basin has been justified...
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1. For recreation, fish, and wildlife, but who says how much? A good example is the current case that we have in Cascade Reservoir, where we're trying to designate about 300,000 acre feet a minimum pool for recreation, fish, and wildlife. Is that max use of reservoir space?

2. We have some other concerns. Federal storage space involves a Congressional authorization. If it's determined that that space is not being used for maximum use, how do we get the change there? Do we have to go back to Congress for such a change in the allocation of storage in the reservoir?

3. Now, somewhat, the Water Resources Board would have to deal with the spaceholders to get their trust, so that they could really identify their use and the availability of surplus storage. And we think, probably, an inventory, at first, would be more than necessary to start that process out.

4. It might take long periods of time to get those authorities and contract changes necessary to get that done. It might also take quite a while to get through your current water rights set up, to get the change of nature of use, change of place of use, and that sort of thing taken care of.

5. We're wondering also, do the proposed changes apply to private storage? There are only a few private reservoirs on the system. But if a private reservoir owner refused to give up his storage, do you hold up the development of other storage in the Basin because of that?

6. In other words, the proposed policy says that unless you have max use, you can't build new storage. If a private reservoir owner refused to give that up, do you hold up the -- the development of new storage in the Basin?

7. And then, what -- what right would the Water Resources Department have in taking that storage? In other words, would you use eminent domain or what?

8. Basically, these are some of the problems that we have with the maximum use concept. We think that those problems could be overcome with the proper definitions, implementation procedures, and so forth.

9. What we would like to suggest is, if possible, the policy in 321 be stated in terms of the intent of Policy 32 overall, rather than in terms of maximum use. If not, the term maximum use should be defined and expanded to show its accomplishment of the intent of Policy 32.

10. Policy 321 should contain a water or storage marketing plan for the entire Snake River Basin, similar to the current water bank or rental pool in eastern Idaho. The Bureau of Reclamation and Idaho Department of Water Resources should jointly prepare a report addressing how better water utilization in the Snake River Basin could be achieved.

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1. This study should include an inventory of water needs of the existing spaceholders, the steps necessary to get needed flexibility for new water supply from existing storage, possibilities for a water or storage marketing plan similar to the rental pool, and other steps necessary to meet Policy 32.

2. Language should probably be included to require the Department of Water Resources to show the intent of the use of the surplus storage before release is actually required by the Department of Water Resources. Spaceholders would not then be arbitrarily called upon to give up their space without knowing what its intended use is.

3. Now, basically, I think we're talking intended use as -- as to meet a minimum stream flow. But what if it's replacing upstream? Is it replacing a ground water withdrawal, is it replacing a withdraw for irrigation, that sort of thing. Here again, you get back to better definition of what the water's being used for.

4. Policy 321. In its current form, 321 is confusing because -- and let me tell you what I mean. If the minimum flow at Milner is zero, then storage acquired would have to be found between Milner and Swan Falls, if you use the language that's there now.

5. It should also -- we should also remember that the review of 321 would have to be done before 321 would be implemented, just a progression there. It's not spelled out that you would have to do that inventory of available space, but it probably would have to go that way.

6. It should also be clarified if new storage would be built or existing storage would be obtained.

7. Also, how would you get the existing storage? Would the Water Resources Board buy it and hold title to it? If so, what funds would you use for that? Could the storage be condemned for pur -- for purchase? In other words, would you have to use eminent domain? Or would it be expected that the storage would be donated? I kind of doubt it, but just some questions on how you get it.

8. The question of water use priority and authorized uses may become involved. Should the water be purchased for augmentation or should it be used for domestic purposes above? In other words, if you have to buy storage above Milner to release to make the minimum flows at Swan Falls, why not buy it and supply the use in

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1 the first place? If -- if you've got someone going to
2 take the water out above for a municipal supply, why not
3 have them buy that supply from the rental pool or from
4 that storage, rather than buying the storage and
5 releasing it to minimum flow at Swan Falls. Which use
6 would have the higher priority?
7 The last question is probably the biggest one
8 of all. Will ground water be part of the adjudication
9 process? The language in 32J indicates that it would.
10 Is the connection here indicative that all ground water
11 permits will be adjudicated, as well as surface rights?
12 With that, we're happy to be able to give you
13 our -- our ideas on the proposed changes in Policy 32.
14 The Bureau of Reclamation stands ready to cooperate in
15 any way that we can to help you implement that policy and
16 the Swan Falls agreement.
17 And with that, I'd answer any questions that
18 you might have.
19 CHAIRMAN GRAY: Mr. Williams?
20 MR. WILLIAMS: Have one question, John, on the
21 expansion of the water bank. I believe, if I recall
22 correctly, as we've been going across the state with
23 similar hearings, some of the individuals have testified
24 that there's some impediments, federal law impediments,
25 to that.

1 fee and so forth. The current mood of the administration
2 is that those prices could be expanded.
3 MR. RYDALCH: Another question. That's been some
4 interest, in my area, of fish and wildlife groups renting
5 water out of **rental pool and ** keep it in the
6 reservoirs. Do you have any problems with that?
7 MR. KEYS: The problems that we have are mostly
8 authorization problems or -- or allocation of the
9 original water. Basically, right now, we're limited to
10 using that water on its federal authorized allocation.
11 Now, what I mean by that is, if the reservoir
12 was built 100 percent for irrigation, we wouldn't have
13 any problem renting the water for use for irrigation. We
14 would have to seek a change in our allocation and -- and
15 authorization to allow that. But we have talked with our
16 people and don't see a great problem.
17 Part of that hurdle was crossed when we --
18 when water was rented to the Idaho Power, out of the
19 rental pool, a couple of years ago.
20 CHAIRMAN GRAY: Mr. Kramer?
21 MR. KRAMER: Thank you, John, for your comments.
22 I don't have any.
23 CHAIRMAN GRAY: Mr. Keys, we'll have a Board
24 Meeting on March 1st. Might we ask you, or possibly one
25 of your officers, to briefly address the Board on some of

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1 the federal constraints that the Bureau has in moving
2 some of these waters around? Just a 15 minute thing.
3 MR. KEYS: Sure.
4 CHAIRMAN GRAY: Because I think it would enlighten
5 us a lot if we -- if we know some of those problems and
6 were aware of them.
7 I thank you very much for your excellent
8 testimony, and if you come up with any of the answers to
9 some of the questions you’ve raised, please let us know.
10 MR. KEYS: Okay. March 1st, in Boise or in --
11 CHAIRMAN GRAY: In Boise.
12 MR. KEYS: In Boise.
13 CHAIRMAN GRAY: Thank you very much.
14 Ladies and gentlemen, before we go any
15 farther, I’d like to say that the Water Resource Board
16 will accept written testimony until February 22nd. That
17 written testimony can be sent to the Idaho Water Resource
18 Board, Statehouse, Boise, Idaho, zip 83720.
19 The Board, now, would call Marjorie Hayes.
20 MS. HAYES: I wonder -- I -- I'm giving my report
21 in conjunction with Harold Miles and I would like him to
22 come first, if you don’t mind. It establishes the -- the
23 basis for mine.
24 CHAIRMAN GRAY: Let the record show that Mr. Miles
25 will precede Mrs. Hayes.

1 MS. HAYES: Thank you.
2 CHAIRMAN GRAY: Harold, before you get started,
3 I’d like to point out to you that I followed you into
4 town today. And before the police get you, your left
5 headlight is out.
6 MR. MILES: Okay. When I go home, they’ll
7 probably both be out. (Unintelligible) -- for myself.
8 Guess I better go back and get it.
9 Here are two copies of the studies I refer
10 to.
11 CHAIRMAN GRAY: Very good.
12 MR. MILES: Chairman Gray and members of the Idaho
13 Water Resource Board, my name is Harold C. Miles, reside
14 in Nampa, Idaho. Phone number is 466-4152.
15 The Idaho Water Right Federation, Idaho
16 Consumer Affairs, Inc., and the Golden Eagle Audubon
17 Society -- Golden Eagle Audubon Chapter of the National
18 Audubon Society desire to submit the following statement
19 for the official record of the -- of these proceedings,
20 and has authorized Mr. Harold C. Miles, of Nampa, Idaho,
21 to do so.
22 We cannot help but notice this Board has
23 offered public input regarding the revision of Policy No.
24 32 of the current Idaho State Water Plan by all affected
25 and innocent groups, and parties resident in the state of

1 Idaho, as well as the opportunity to make their positions
2 known.
3 This is in marked contrast **the opportunity
4 the public, especially the conservation groups and
5 organizations representing utility ratepayers, had to
6 make input relative to the nefarious agreement entered
7 into by Idaho’s Governor, Attorney General, and the
8 Chairman of the Board of the Idaho Power Company.
9 We both accept and oppose some of the
10 proposed revisions and amendments of -- to Policy 32 of
11 the Idaho State Water Plan that have been supplied to us.
12 Policy 32, Snake River Basin. The narrative
does not offer any scientific or logical basis for
13 setting the average daily flow -- minimum flow at the
14 U.S.G.S. gage at Murphy for 3,900 cfs from April 1st to
15 October 31st, and 5,600 cfs from November 1st to March
16 31st, and 4,750 at the Welser gage, or 5,000 cfs at
17 Johnson’s Bar, or 13,000 cfs at Lime Point for 95 percent
18 of the time, which is stated for -- that for Lime Point,
19 reduced flows may be for the months of July, August, and
20 September. And no support data in the November 1984
21 special Swan Falls Agreement edition of Currents.
22 So we have no choice but to take the position
23 that these aforementioned minimum flows decisions were
24 purely political and are arbitrary and capricious, also

1 could be in violation of prior court dec -- decrees and
2 decisions. As such, we strongly oppose this agreement.
3 This is not to say we would not support on
4 agreement adequately protecting the fish and wildlife in
5 the Snake River Basin and the hydro generating capacity
6 of Idaho Power Company’s generating plants if the water
7 flows and cfs were set at the levels of the Snake River
8 Stream Resource Maintenance Studies of 1975/1976, as
9 outlined on page 45 of Policy 32, the current Idaho State
10 Water Plan, as well as protecting the fish species from
11 becoming threatened or endangered, with due consideration
12 for the species of special concern now ranging in the
13 Snake River, below Swan Falls Dam, as outlined in the
15 Department of Fish and Game.
16 Also, if sufficient water flows are
17 maintained in the Snake River below Swan Falls to protect
18 the waterfowl and upland game birds’ habitat occupying
19 the islands in the Snake River, some of which are part of
20 the Deer Flat National Bird Refuge, from animal predation
21 and human molestation and disturbance due to land bridges
22 created by low water to these Snake River islands.
23 We base our concerns on data published in the
24 two above-mentioned studies and the River Basin Studies,
25 Bureau of Sport Fisheries and Wildlife Streambed
We have no problem with this portion of the policy, since these uses are so little Snake River or well water. In fact, we would support an even larger amount than 150 cfs, if doing so would not impair the Snake River fishery.

Policy No. 32C, agriculture. We have grave problems with this section, and we feel a reduction of 20,000 cfs, by virtue of purchase of this dam with its decreased water right of April 2, 1907, from the Trade Dollar Mining Company, and Idaho Power Company. 4,000 cfs water right granted on July 29, 1919, by the State of Idaho, Water License No. 14362, is certainly not in the public interest. We respectfully call the Board’s attention to the fact that in 1984, six hundred and seven acres of water right were granted on July 29, 1919, by the Trade Dollar Mining Company for the purchase and use of 3,900 cfs in the irrigation months, and 5,600 cfs in the remaining five months of the year. Thus, it makes no economic sense to pump irrigation water from the Snake River. We certainly agree that reducing the Snake River flow below 3,900 cfs in the seven irrigation months, and 5,600 cfs in the remaining five months of the year, is not in the public interest and that hydropower use be recognized as a beneficial use of water. However, we very strongly disagree with the premise that reducing the 8,400 cfs flows of Idaho Power Company for the Swan Falls Dam to 3,900 cfs is in the public interest.

Furthermore, in light of the present gigantic federal deficit, all Americans, whether engaged in agriculture or not, should be content with making a living, and a profit on their investment, by selling their products on the open market. Thus, it makes absolutely no economic sense to put more public lands, or private dry lands, into production by way of irrigation using Snake River water, or water from the Snake River Plain aquifer, during a period of depressed agricultural conditions.

Thus, it should be the policy of the Board to protect the present family farmers from the economic pressures which will be caused by more surplus farm crops and much higher pump irrigation electrical rates.

And there is testimony on record now, at the office of Idaho Public Utilities Commission, to the effect that an increase in electrical pumping rates will have a severe financial impact on the profitability of many, many farmers in Idaho Power Company’s Idaho territory. Nearly a quarter million taxpayers, who have little or no vested interest in Idaho agricultural enterprises, will be adversely affected by increased electrical rates from the time this legislation is implemented to eternity. See our Exhibit No. 8.

Policy 32D, hydropower. We certainly agree that reducing the Snake River flow below 3,900 cfs in the seven irrigation months, and 5,600 cfs in the remaining five months of the year, is not in the public interest and that hydropower use be recognized as a beneficial use of water. However, we very strongly disagree with the premise that reducing the 8,400 cfs flows of Idaho Power Company for the Swan Falls Dam to 3,900 cfs is in the public interest.

Furthermore, we offer our Exhibits No. 1 and 2 to support our position that the minimum flow appropriate for any month of the year should not be set lower than 6,065 cfs, as this is the average minimum daily flow for 1961 through 1983. To pick out a single, solitary day out of the entire time since water records have been kept for Murphy, beginning in August, 1913, is manifestly unfair.

It also substantiates the position of many, including us, that irrigation pumping was pumping water from the Snake River for which they had no valid water right, according to our (unintelligible) regarding the 1983 Idaho Supreme Court Decision No. 49, upholding Idaho Power Company’s water right for 8,400 cfs at
21 Snake River below Swan Falls and wildlif 20 and 20 habitat in the reach of the loss of 19 July 1, 1977, only 3,111 cfs would have entered 18 Brownlee Reservoir if the Snake River tributaries below 17 Swan Falls had comparable flows -- inflows into the Snake 16 as they did on July 1, 1977. 15 The boating and fishing on Brownlee Reservoir 14 will be severely impacted if the reservoir is drawn down 13 to generate electrical power. Also, under this condition, we feel the Hells Canyon Recreational Area, 12 as well as the wild and scenic river reach of the 11 Swan Falls, 10 In addition, we offer our Exhibit No. 23 as 9 showing that the average instantaneous flow of the Snake 8 at Murphy, for 1961 through 1984, on July the 1st, was 7 9,208 cfs, or 2.3 times the 3,900 cfs proposed during 6 this same period of time. Even with this same reduction in 5 flow, at any time of year, averaged from 1961 through 1833, was 5,616 cfs at Murphy, which is 1.44 times the 14 3,900 cfs proposed during the seven summer, or 13 irrigation, months and slightly over the proposed 12 5,600 cfs proposed for the other five months of the year. 11 See our Exhibit No. 6. 10 Snake River from Hells Canyon Dam to Lewiston, will be 9 severely impacted because the outflow of the Snake River 8 at Hells Canyon Dam, on July 29, 1977, was only 7 5,560 cfs, whereas the flow at Murphy was 5,790 cfs. Thus, reducing the flow at Hells Canyon another 1,890 6 cfs, the difference between 5,790 and 3,900 cfs, will not meet the 5,000 cfs minimum flow requirement at 5 Johnson's Bar. 4 Policy 32F, ago -- aquaculture. We realize 3 that aquaculture is a growing industry in Idaho and this is 2 one reason we previously stated that the 150 cfs 1 additional for DCM1 use should be increased. However, we believe that some control over the water quality of the 1 water discharged in the fish farms should be made. 15 Policy 32G, fish, wildlife, recreation. This is a section of the changes in Policy 32 in which we are in very strong disagreement with the proposed 3,900 cfs minimum flow at Murphy. As previously stated, there is no scientific evidence that 3,900 cfs will maintain the fish and wildlife habitat in the reaches of the Snake River below Swan Falls to Brownlee Reservoir. We expressly call the board's attention to the 1975/1976 Snake River Stream Resource Management -- Maintenance 24 Flow Studies, pages 12 through 14, which state that the minimum flow requirements for maintaining riverine flows are for fish food production are as follows: 21 Swan Falls Dam to Bernard's Ferry, for all months of the year, 5,500 cfs. Also, there is 20 White Sturgeon in the reach and this species in now one of special concern to the Idaho Department of Fish and Game. Hence, a drastic reduction to 3,900 cfs, or 19 1,600 cfs reduction, will undoubtedly place this species on the threatened species list for this reach of the Snake River. 18 Bernard's Ferry to Boise River Mouth, for all months of the year, 5,100 cfs. This reach of this river also contained White Sturgeon, which would become a threatened species in this reach. In addition, the reduced flows will make possible land bridges to the islands in this reach. The same applies to the Swan Falls to Bernard's Ferry reach, and the Canada geese and other waterfowl, as well as upland game birds, will suffer animal predation and human harassment and disturbance. 15 Boise River Mouth to Payette River Mouth, for all months of the year, 5,850 cfs. The waterfall -- waterfowl, upland game birds, and animal wildlife in this reach, such as mink, beaver, and muskrat, will suffer animal predation and human harassment and disturbance. 14 Payette River Mouth to Brownlee flowline, all months of the year, 5,850 cfs. Consequently, a reduction in river flows of Murphy to 3,900 cfs will severely impact the fish, wildlife, and waterfowl, as well as upland game birds in this Snake River reach, as well. The Board's attention is respectfully called to the attention the Snake River has been known as a very valuable fishing stream for nearly 100 years, and not the least known fish is the White Sturgeon, which would become threatened if these proposed reductions in the Snake River flows take place. We are submitting our Exhibit No. 3, which is an official list of Idaho's record fish, as well as a narration regarding the sturgeon story, by Marshall Edison, Exhibit No. 4, of two pages, which will substantiate our statement. Also, we are submitting a document of two pages, our Exhibit No. 5, two pages, which is a copy of a document submitted by Director A. Kenneth Dunn to the January, 1984 meeting of the Idaho Water Resource Board, which states at the bottom of page one, quote, effect on fishery. Quote, loss of nearly all the sturgeon habitat upstream from Hells Canyon, end quote. In addition, in Item 6a, last line, quote, 55.3 million capital and fixed O and M, plus 213.3 million fuel cost, plus 28 million hydropower losses, minus three -- minus 43.8 million power plant sales for new irrigation lands equal 65.8 million
We propose that this new policy since a very large part of the anadromous fish runs of the Pacific Northwest, including Idaho, have been badly depleted. In fact, anadromous fish runs have been totally eliminated in the Snake River upstream from Idaho Power Company’s Hell’s Canyon Dams.


Thank you, Mr. Chairman.

Chairman Gray: Thank you, Mr. Miles.

Mr. Williams, questions?

MR. WILLIAMS: None.

MR. KRAMER: I have none.

CHAIRMAN GRAY: Thank you, Mr. Miles.

Now the Board will call Mrs. Hayes.

MS. HAYES: Gentlemen, I would like to thank you for the opportunity of appearing before you this afternoon. I'm speaking -- I'm Murjorie Geddes Hayes, at 7440 Manorwood Drive, and I'm speaking to you on behalf of the consumer at this hearing.

My testimony is adjunct to that of Mr. Harold Miles, whose research has clearly demonstrated the validity of Idaho Power's right to Swan Falls.

We do not feel that it is in the public interest for the 3,900 cfs to be established at Swan Falls from April 1st to October 31st, or the 5,600 cfs from November 1st to March 31st. Our reason for this conclusion was established by my great-grandfather, William Geddes, and is on file in the Weber County Courthouse, in Utah. It is called the Geddes Law and pertains to first in line, last in use.

This law protects the first established water claims from the taking process by those who file at a later date than their claims. It is our contention that the Idaho Power Company has a valid right to the full 6,065 cfs which has been established as the average, minimum daily discharge at the gaging station at Murphy, under this old, accepted Western law.

It is also, in our opinion, decided in the best interest of the general public for this right to be maintained for the protection of the healthy hydropower system at Brownlee. For without this hydro base, our rules will soar. This has been clearly established by the very fine study that was done by the University of Idaho's economists, Lyman and Hamilton, with which you're all familiar, and many others. The Corps of Army Engineers did a study that -- that, in essence, validates...
the Hamilton -- the Lyman Hamilton study.

There is another excellent reason that this water right should not be aborted, which would be given your full attention before taking any action whatsoever. This is the exciting new concept that is being considered by the Bonneville Power Administration at this time. The Bonneville Power Administration, under Peter Johnson, Administrator, has presented us with a plan that will release preference power, this is the cheaper power, from BPA, to the industrial utilities. Idaho Power Company is one. This preference power will be used by the investor-owned utilities to meet their own firm loads.

In other words, they would use the Bonneville power for us consumers, the irrigators, et cetera, whom they are now servicing. They will, then, be able to sell their own power to California on a firm contract basis.

To protect the continuation of the cheap BPA power to the Idaho consumer, I have suggested that the firm power contract with California be of the same duration as the BPA preference power contracts with the investor-owned utilities.

A condition of the exchange of power would be that the money realized from the firm -- firm contract sales to California, 5 cents to 9 cents a kilowatt-hour, will be used to superinsulate every house and mobile home in the northwest. It is the opinion of the BPA Consumer Affairs, Incorporated that this should be done at a rate of, for the preference power that will be used to make this plan possible has already been purchased with the tax dollars used to build the generating resource.

The insulation program will not only supply a source of new energy, it will do a good-neighbor turn for California, for they can then mothball their oil-fired plants and replace the lost energy with our clean, nonpolluting hydropower. In doing this, it can also revitalize our own economy.

A report released by the Northwest Conservation Act Coalition shows the result of a study by the A. Bainbridge Island, Washington firm of H. Glen Simm and Associates. They show that over the lifetime of houses built in a ten-year study period, the region would increase its employment by more than 180,000 job years. Building the better insulated homes would provide more jobs than building thermal plants. So would production and sale of the products that go into the homes. The money saved by the homeowners, as spent for other purposes, would also generate more jobs, according to the study.

This study estimates that the model homes built to conservation standards would save the region's ratepayers over $1.26 billion, because the energy costs less to conserve than to produce. Bear in mind that this does not take into account what will be realized from the superinsulation of older homes, houses, and mobile homes, as is planned with the preference power from Bonneville Power Administration.

A study is now underway at Hood River, Oregon, that will show the extent of the savings from this plan. Both frontal attacks to superinsulate old and future houses will give us the needed capital to pay for our schools, our social programs, our roads, our fire departments, and our service organizations, for the plan is to use materials purchased in the Pacific Northwest. To pursue this plan, we will need hydropower, for a California energy commissioner, whom I listened to at a meeting in Seattle, specifically requested hydropower, not thermal, for this exchange with the investor-owned utilities. It is, therefore, imperative that we do not jeopardize our hydro base with the passage of the Swan Falls Agreement and diminish our prospects to bring scarce capital into a region that is struggling, at the legislature, to make too little capital go too far.

I thank you.
I starving to death. Farmers are going broke every day.
2 We experienced a spiral in inflation here, where land
3 went from 2 to 4 to 6 to 12 to $2,400 an acre. Bankers
4 lent money on the spiral of inflation. And, now, we're
5 going through a depression, or a deflation and this
6 ground is going out of production. Now, that would leave
7 you to believe that maybe we should give our water away,
8 but that is definitely wrong.
9 There will come a time, and there are energy
10 sources available today, to make some of these things
11 more feasible, and they will become more feasible when
12 the demand exists.
13 The farmer used to buy fuel at 21 cents, a
14 good tractor for 15,000, and he used to sell his crops at
15 a profit. I used to pay $18 for lifting water, that now
16 costs about $60.
17 The utilization of all energy sources have
18 to be considered. We have the technology, today, to
19 help us **do this in lots of manners. First of all, the
20 Pacific Northwest, the West in general, and Idaho most
21 particularly, is rich in the development of
22 hydroelectric energy and upstream storage for generations
23 that will need it. And that will come a lot faster than
24 you think. We should be planning for that.
25 I feel that Idaho Power has a right to a fair

Page 50

1 share of water. But, in my opinion, it is a use right
2 and not a consumptive right. I feel sure that the only
3 reason we have been able, with the help of you gentlemen,
4 to hammer out some sort of a compromise is because that
5 Idaho Power knows that the old mining contract that they
6 had for the water right is pretty shaky. And I'm sure
7 their lawyers have told them, if you take it to the
8 highest court of the land, you will lose.
9 So this compromise is definitely in their
10 best interest, and not necessarily in the best interest
11 of the people. You and I both know that when your plan
12 goes in front of this legislature, the lobbyists will
13 chip away at it just as hard as they can. And what
14 lobbyists are I talking about? Idaho Power's lobbyists.
15 I want to give you this, and I hope you will
16 put it in your records, to show you that there are energy
17 sources available. That little piece of paper came from
18 a restricted government report that's about 27 pages
19 long. And here, in Idaho, we have hot water that is
20 superheated steam. It would run an awful lot of
21 generators, and Idaho Power is trying to break the law
22 where they have to buy generation, brought to their lines
23 by individuals.
24 If we would slurry coal -- and there's
25 several ways to do that -- and it's here in the west,
2 MR. STEWART: Mr. Chairman, members of the Board,
3 my name is Fred Stewart. I live on the Hunt Project,
4 north of Eden, a few miles north of the member,
5 Mr. Shawver, there.
6 I hope you'll forgive me for my cold, as at
7 night I can wear my nightcap that my wife makes, in the
8 daytime I can wear my cap, but I -- when you come in a
9 drafty building, I'm going to have to adopt Jim's formula
10 for keeping my head warm.
11 By god, it's real rough. So, I've really had
12 a terrible head cold.
13 CHAIRMAN GRAY: May the record show Mr. Shawver is
14 blushing.
15 MR. STEWART: I wasn't aware of that. I
16 complimented Jim that he looked a lot younger than his
17 father did in the picture, here, a couple weeks ago, and
18 wondering how he kept looking so young.
19 And he says, well, you can purchase any --
20 any look you want. So I'm gonna look for his same -- the
21 same vendor. If I can get rid of the glasses, and put
22 one of them on, and get some false teeth, maybe I could
23 appear to be 20 years younger. I don't know.
24 MR. SHAWVER: Well, could we get to Policy 32,
25 Mr. Stewart?

1 dwelling and a half acre. And so, how many you got
2 between the 34,000 and the 200,000, probably be a lot, a
3 yes, by anybody.
4 But in any event, you this is a real serious
5 matter that really has to be there. You're gonna have
6 50 -- 25,000 people that could all of a sudden -- or will
7 be chopped off. Because when adjudication starts,
8 they'll start with the recorded water rights. And -- and
9 so, certainly, it hasn't been a success. Because of
10 34,000, you've only had that many people.
11 But -- and so that -- that addresses your
12 adjut -- your adjudication part of it, which is your 70
13 and 71.
14 Now, in response to my comments at a
15 Water Resource meeting two weeks ago, and they brought in
16 bill -- House Bill 71, which allows for expansion and
17 which would meet some of those. And what I warned the
18 people there, all the irrigators there, is that some of
19 the people maybe had 80 acres, with 80 shares of water,
20 and another 50 shares -- or another 50 acres adjoining of
21 dry ground, and they had put a sprinkler on. So they had
22 expanded their right, but they hadn't recorded it.
23 So the following Monday, Pat Kloe and Pat
24 Costello had -- had Bill 71 there, before the House
25 Resource Committee. And I think it's a good hill,
1 because it allows for expansion on these rights. But I
2 think that they should also have a bill in there that
3 allows, somehow -- now, the State Water Board, this is
4 how the State Water Board -- State Water Plan, the
5 verbiage was.
6 Now, in the correction that the House
7 Concurrent Bill 48 gave it, it gave some -- some relief
8 in there, so that a person would not be cut out. And --
9 and something has got to be done, or we're going to change
10 in the state come the first of July.
11 But the drop back there to the other -- to my
12 handout there, gentlemen, is a -- there is -- insofar as
13 the agreement is, I would -- made it as clear as I could
14 in there. And you can pursue (sic) my written statement,
15 there, at your leisure, as it -- that I think this
16 agreement should be scrapped, because it would tend to
17 allow the exportation of every drop of the Snake --
18 Snake River water above the Hells Canyon reach.
19 And -- and you have to pursue, through the
20 State Water Plan, the Swan Falls one, the House
21 Concurrent Resolution 48, the contract and the
22 agreement. It's like you walk into a friend's house and
23 the kids are on the floor. If they've got a thousand
24 piece jigsaw puzzle, and you look at that forever and not
25 see it unless it's put together. And that's -- but it's

1 real simple.
2 And I've got -- in this handout, I've got a
3 little chart here. It's -- has a map showing the hydro --
4 the hydro plants of Idaho Power. The three -- the three
5 lower dams are subordinate, and there I'd like to refer
6 to the single-page handout that I -- that I gave each one
7 of the Board members.
8 And that's a -- the final, conclusionary
9 remark of Justice Shepherd -- that's the single-page
10 handout, gentleman -- in Swan Falls I. And he's gone on
11 for several -- several pages in this opinion there, to
12 point out that the FPC, along with the State, that
13 insisted on subordination of these three lower dams.
14 Now, in his conclusionary, he's speaking
15 about utilities oversee of these lower dams, and I've
16 underlined there. It says, with respect to the status
17 requiring Public Utilities Commission approval of
18 transfer of utility property, we hold that the statutes
19 do not apply to water right subordinated when acquired,
20 not do they apply to water rights which have been
21 abandoned or forfeited.
22 Now, that's -- that's your three lower dams
23 down there. That's -- that's the -- over three-quarters
24 of their hydrogenation, 1,340,000 Kw. All the other
25 hydro plants comes to 446,000 Kw. Now, by the terms of

1 the agreement, all them plans, including Swan Falls and
2 up above, will be unsubordinated. That's part of the
3 agreement, the works in there already to subordinate
4 4,C. Striker, in particular, in Twin Falls.
5 There's a -- in Senate Bill 1005 -- do -- you
6 gentlemen don't have -- I've been working with the
7 legislature, so I refer more to the bills that's
8 implementing these policies there. 1005 is the -- the
9 bill that -- that is before the Senate right now, that
10 says, we, the legislature, approve of the contract, which
11 the contract then approves the agreement. Once that's --
12 once that's approved, then this thing is locked in.
13 The second part of 1005 refers to the Public
14 Utilities Commission's jurisdiction. That's speaking of
15 their jurisdiction from -- from Swan Falls up. Now, when
16 you've just read where they have no jurisdiction. No
17 utility will have any jurisdiction at Brownlee Dam.
18 That's -- that's the conclusionary statement of
19 Justice Shepherd.
20 Now, the Public Utility Commission, the Idaho
21 Public Utility Commission, will also not have any
22 jurisdiction from Swan Falls up. It's part of this
23 agreement. The -- the agreement said that they had --
24 the Public Utilities Commission would either do it
25 voluntarily, or they'd be directed to by the utilities.

1 This bottom part of your 1005, as -- is addressing that,
2 is taking their jurisdiction away from Idaho Power.
3 Now, your Bill 1008 is your Policy 32, in --
4 in the bill form. You know, you make these policies --
5 and I've seen that over the years, the policies in the
6 State Water -- the Board has made. And then -- then they
7 go to the legislature, and -- and they verbalize it, and
8 sometimes the meaning changes in there.
9 But out on page -- on section -- Section 2,
10 it says the legislature finds and declares that it is in
11 the public interest to specifically implement the State's
12 power to regulate and limit the use of water for power
13 purposes. Now, that does not apply to Idaho Power. That
14 does not apply to Idaho Power.
15 Idaho Power submitted to the -- a statement
16 to the Senate Resource and Environment Committee, on
17 January the 25th, and that's what they say. That
18 Idaho Power Company is not required, by the Swan Falls
19 Agreement, to support Section 2 of Senate Bill 1008,
20 found on that page that I just read.
21 Their rights are unsubordinated with the
22 implementation of 1005, and they don't have any --
23 anybody saying hey, you've got to do like you've done
24 for, you might say, for John Peavey, to protect their
25 hydroflow.

15 (Pages 57 to 60)
Now, in your agreement, if you can turn to your agreement there. It's found on either -- either -- either -- either issue of the Current there. It's -- it's under the Swan Falls Agreement, it's under paragraph 6(e). You can find it in either paper there, the Agreement. And that's at the bottom of the second column, 6(e) or 7(e). Pardon me, gentlemen, 7(e). It says, company's ability to purchase, lease, own or otherwise acquire water from sources upstream of its power plants, and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuation resulting from operation of Company facilities.

Then drop back up to the bottom of 7(b), the last paragraph there, or the last sentence there, next to the last. It says, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily streamflows set forth herein.

And what this does, gentlemen, is it opens the door to taking every drop of Idaho's water out of the Snake River Basin above Hells Canyon. In my handout there is a copy of what's known as a Modified Snake River Plan to convey water from the backwaters of the

Brownlee, down to Owens Valley, and also into Lake Mead.

It gives the hydrology on it. And they've got a Bill before the Congress, right now, to terminate the last four years of the Church 40-year moratorium.

"77, they sent to the legislature, California did, a resolution to attach the Snake River now. It is -- the Central Arizona Project is going to be completed next year. At that time, Arizona is going to take half of California's adjudicated right in the Colorado. They have an empty tube at Owens Valley.

As you know, at the turn of the century, they devastated Owens Valley and took all the water out of the valley, the surface water. And 15 years ago, they poked another hole through and drilled a whole series of wells up and down the valley and -- and sucked the subwater out. And in doing so, they started killing a lot of the vegetation on the surrounding public ground. And so the Sierra Club stopped them. So they got an empty tube there.

The large group of people, a consortium, that got the water out of Owens River Valley now own 99 percent of all the valley. It's become a vacation mecca. If they could replace that water, it'd be worth multi-billions to them. You're talking money down there.

Neighbor of mine, his brother is down the road from

16 (Pages 61 to 64)
1. water down in that country, and between Arizona and Southern California, they can lose ever drop of the Snake River water. And -- and if anybody can show me how you -- once this thing is implemented, how you can stop them.

2. They got the Owens River water by buying up mortgages ahead of time, before they ever anybody knew. And Reno only spent -- you know, we all know how you know, you put an ad in the paper right now and -- and offer 27 cents on the dollar on a lot of mortgage contracts, I submit you're gonna have your door broke down. And who knows, see. That's exactly how they obtained that, is -- is, we can face catastrophe -- is they want the water. If anybody can show me any way you can prevent them, if this is implemented, I've asked anybody and nobody can.

3. So, I guess that's the sum and substance, gentlemen. I think these bills ought to be held up in the House until you people have it, until those things can be -- I think we've been mesmerized on this whole thing. We had a lawsuit, and I was recipient of four of them, four of them, as a defendant. And -- and I begged the Governor not to sign this, and I begged Jim Jones -- I've -- I've seen Jim grow up. Jim can testify to that.

4. Known him all his life, known his father -- is -- is not to sign that thing, to let me appear in court.
5. Because Idaho Power didn't have a license until December of 1982. Their license expired in 1970, and all my permits were prior to that. So, the proponents -- in fact, I'd say over 95 percent of them, should never have been enjoined. And just consider what that's cost the people of the state of Idaho.

6. I submit that not one of those defendants have got by for less than $200. So if they've dismissed 5,000 -- I don't know how many they had. They said 75 to begin with, and as you hold the two deals up, you -- you certainly got the most of them dismissed. Well, just 13,000 times 200, that's a million dollars that this company has cost, plus all the meetings and everything that's happened. Just the time a person spent. And they never should have been enjoined. This is to create this terrible turmoil in the state, the -- the consumptive use against the power usage.

7. I've never taken a stand whether there should be so much for hydroflow for cheap power generation, or so much more ground go under. My stand has always been, let's save our water for Idaho. Then decide, within our own family, who gets what. But the way this thing is going, they're not going to get their cheap hydroflow, because when that water heads out in that 4,750 -- now, nobody's made any motion to change the minimum streamflow at Weiser. It's 4,750. You can raise your minimum flow and that doesn't bother anybody, because whoever set the 3,300 was underestimating. Maybe it should be 39. I have no problem with that.

8. But what do I do have a problem with, they can do exactly as they did in Owens Valley, and it's the same people, or their sons, doing it. The very same few.

9. 25 Corporations, in California, have 68 percent of all the irrigation. 25. And that's a huge power, gentlemen. And that's what we're facing.

10. Now, everybody got excited back in 1964 about our water going to California. And now, here the implement -- the way to implement it going is here, and nobody's getting excited, gentlemen. We can -- we can absolutely devastate this state, if we don't stop this thing.

11. CHAIRMAN GRAY: Any questions of Mr. Stewart?

12. Mr. Williams?

13. MR. WILLIAMS: None.

14. CHAIRMAN GRAY: Mr. Shawver?

15. MR. SHAWVER: None.

16. CHAIRMAN GRAY: Mr. Rydalsch?

17. MR. RYDALCH: None.

18. CHAIRMAN GRAY: Mr. Kramer?
Idaho Water Resources Board
2/5/1985

1. MR. KRAMER: None.
2. CHAIRMAN GRAY: Thank you.
3. MR. STEWART: Thank you.
4. CHAIRMAN GRAY: We will adjourn until 7:00 p.m.
5. this evening.
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MR. NELSON: Mr. Chairman, members of the Board,
my name is Thomas G. Nelson, from Twin Falls. I'm here
on behalf of Idaho Power Company, one of the signatories
to the agreement of October 25, 1984.

I think there are a couple of things that
should be said, for the record, in view of one of the
comments that have been made before the Board on -- in
previous hearings.

As the Governor said, this agreement was
arrived at between the State and the Idaho Power Company.
It's an attempt to -- to resolve certain pending
litigation. That pending litigation can be resolved only
by certain adjustments in State policy. But also, that
the parties were negotiating that settlement. Therefore,
this view of State policy is a little narrower, perhaps,
than it might otherwise be.

As far as the minimum flow itself is
concerned, I believe in -- in earlier meetings we've
discussed how that was arrived at. But I would like to say,
for the record, what that flow is and what it isn't.

You heard some discussions today about
averages. The State Water Plan is now couched in terms
of an average daily flow. The proposed amendments that
are before you are also couched in terms of an average
daily flow.

What we have done is put the State in a
position to have a different planning number to -- to
shoot for in -- in allowing new permits and allowing new
development. This is now the new target.

So I suggest to you, given -- given what
you've said in your previous plan, and the way that it
physically worked, this is really two things. It's both
the flow and it's an enforcement mechanism.

Because if you'll recall, when that number
was chosen, the 3,300 cfs at Murphy in 1976, the Board
acknowledged that there were -- that number was chosen
because you had existing permits outstanding. At that
time, which would reduce the flow to that level. If they
all developed. Well, we've had a great deal of failure.
development since 1976, and at no time has the Water Plan
2. Minimum at the Murphy gage been a factor in what happened
3. to any of those applications.
4. This agreement, if implemented, now puts the
5. State in a position where it has to recognize that
6. minimum flow as a part of its planning process. Not only
7. has to plan for it, but has to take steps to implement
8. it. So I think what we've really done is put some teeth
9. in the State Water Plan. And I'm not being critical of
10. the Board for not having done that before, because that
11. really wasn't your function. And I'm not critical of the
12. Department, because it didn't really have the tools to do
13. it.
14. But now I think that -- that we have the
15. tools to -- to make the State Water Plan really work to
16. the level selected, and I commend the 3,900 to you. If
17. you look at it in a vacuum, I think it can be argued it's
18. inadequate from one side, or you can argue it's too high
19. from the other side. I think -- I think it's a
20. relatively realistic number, both physically and
21. politically.
22. I don't think a number that's based on an
23. absolute freezing of further development in this state is
24. ever going to fly. I think people who want that, who
25. think that -- that they can sell an absolute freeze on

1. further development should go try and sell it. But I
2. don't think the way to do that is to kick this agreement
3. in the head by rejecting it and going back to war in the
courts, because I'm not sure you're going to end up with
4. an absolute freeze on further development as a result of
5. any court action that you can file.
6. The other comment I would make would be
7. relative to good faith. And there was a comment made
8. this afternoon that you need to -- you need to put your
9. paranoid hat on, because the Idaho Power Company's going
10. to be over at the legislator -- legislature chipping away
11. at everything you do here relative to the State Water
13. I'd like to refer you to paragraph 4 of the
14. October agreement. The bullet, or caption, is entitled
15. Good Faith. And the second paragraph says, the State
16. shall enforce the State Water Plan and shall assert the
17. existence of water rights held in trust by the State and
18. that the Snake River is fully appropriated as needed to
19. enforce the State Water Plan. State and Company shall
20. not take any position before the legislature or any
21. court, board, or agency which is inconsistent with the
22. terms of this agreement.
23. And so far as I know, and I think I'm in a
24. position to know, the State of Idaho, through the
25. government, has taken an absolute freeze on the plans.

1. Governor and the Attorney General, have been consistently
2. in support of the agreement, as written, and so has the
3. Idaho Power Company. So I suggest that that paranoia is
4. badly misplaced. That without the good faith support of
5. the parties, I don't think we would be as far as we are
6. in the legislature, and probably wouldn't have a - - a
7. chance of getting it passed. So the parties have arrived
8. at the agreement. To my knowledge, they are -- are in
9. total good faith in trying to get it implemented.
10. With that, Mr. Chairman, if you have any
11. questions, I'd be delighted to try to answer them.
12. CHAIRMAN GRAY: Thank you, Mr. Nelson.
13. Mr. Williams?
14. MR. WILLIAMS: Mr. Chairman.
15. Mr. Nelson, I'm intrigued by this term
16. average daily flow from April 1st to October 31st. Now
17. average, does that mean that whole period, you average
18. the number of days and the water flows, you have to come
19. to 39 or is 3,900 a minimum flow on any one day during
20. that period? Because if you average it, couldn't some
21. days you could be considerably lower than that, if it's
22. compensated for by days that have a higher flow?
23. MR. NELSON: Mr. Chairman, my understanding -- and
24. we have some technical people here -- but as explained to
25. me by the G.S., the way they use average daily flow is,

1. take for example, you had a gage where you read it every
2. hour; all right? So you would go down and you would have
3. a reading every hour and you would average those 24
4. flows, and that would be the average --
5. MR. WILLIAMS: For that.
6. MR. NELSON: -- daily flow.
7. MR. WILLIAMS: Okay. So it is --
8. MR. NELSON: And -- but it's within that day.
9. Now, the average -- or the lowest instantaneous flow
10. at -- at the Murphy gage, by way of example, I think is
11. in the area of 3,600, whereas the lowest average daily
12. flow is 4,500.
13. MR. WILLIAMS: I see.
14. MR. NELSON: See --
15. MR. WILLIAMS: By average all the measurements for
16. that particular day?
17. MR. NELSON: Yeah. That's my understanding of the
18. way the G.S. uses average daily flow, as the Board has
19. used it in the Water Plan.
20. MR. WILLIAMS: Some of those fluctuations may be
21. because of discharges from dams and hydro --
22. MR. NELSON: Whether or not certain irrigation
23. pumps are on or off and that sort of thing, whether you
24. had rain on a particular tributary that day and that sort
25. of thing.
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<td>MR. WILLIAMS: Okay. That answered it. Thank you.</td>
<td>1 agreement. And we are working, of course, in the legislature to try and implement the legislative end of it.</td>
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<td>MR. NELSON: I assume we'll hear from the technical people if that's not an accurate explanation.</td>
<td>4 In regard to the proposed amendments to the State Water Plan, I don't have too many quarrels with -- with the amendments. I would only possibly make some wording recommendation changes in a couple of areas.</td>
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<td>MR. WILLIAMS: No; that's fine.</td>
<td>7 Don't know how amenable you might be to making changes in the wording that has been presented.</td>
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<td>CHAIRMAN GRAY: Mr. Shawver?</td>
<td>9 But on Policy 32H, where you're recommending a little bit different wording, from current policy, on water quality and pollution control, I would prefer that you use a little bit closer to the wording that was in the original Water Plan, if you might be amenable to the idea of going back -- that's on page 119 of -- of the Water Plan.</td>
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<td>MR. SHAWVER: No.</td>
<td></td>
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<td>CHAIRMAN GRAY: Thank you very much.</td>
<td>12 And we would urge, maybe, that the Water Board stick a little closer to that wording and just say, it is the policy of Idaho that the instream flow program is directed towards meeting fish and wildlife -- fish, wildlife, and recreation needs, not to dilution of pollution.</td>
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<td>MR. NEILSON: Thank you, Mr. Chairman.</td>
<td>15 And the last line of that portion of the -- Policy 32, that deals with water quality and pollution control, says, the instream flow program is directed towards meeting fish and wildlife -- fish, wildlife, and recreation needs, not to dilution of pollution.</td>
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<td>CHAIRMAN GRAY: Did Representative Hansen want to testify?</td>
<td>17 And I would urge, maybe, that the Water Board stick a little closer to that wording and just say, it is the policy of Idaho that the instream flow program is directed towards meeting fish and wildlife and recreation needs, not to dilution of pollution.</td>
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<td>MR. HATCH: Mr. Chairman, members of the Water Resources Board, you just about didn't have to hear anything out of me. I just about couldn't find you.</td>
<td>19 I don't know exactly why, but I just don't like, as a -- the wording that dilution of pollution is a beneficial use. I -- I just don't -- I would just prefer not to use that -- that wording, it is not a beneficial use of water, if we can avoid it and just go back to that original wording. It's a -- it's kind of a nebulous thing, perhaps, but I feel that there's some potential problems down the road somewhere if we -- if we say it quite that direct, in quite that manner.</td>
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<td>The guy upstairs was pretty sure there wasn't anything going on down here. And I said well, I've never been to the conference room of the -- of the Supreme Court building. Would you just show me an idea where it was at, and what it was like, for future reference. So he brought me down here, and low and behold, here you -- here you were.</td>
<td>21 The other policy that I would offer the possibilities of a little bit different wording would be on Policy 32, I guess that's 1. Yeah, 321, on new storage. And I know -- I know at least one of the principal parties to the agreement might be fairly adamant on the way this is -- this is worded, but I would prefer to see if at a little more positive light, myself.</td>
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<td>I thought maybe, because of the weather and everything, that maybe you had cancelled this evening's session, knowing that you had a pretty good turn out this afternoon. So I was prepared to -- to just submit some written comments, in case I didn't find you. But -- and I won't take very much of your time.</td>
<td>22 I -- I don't like the terms maximums, for one thing. I would prefer that we stay away from the utilization of the terms maximum and use -- use optimum.</td>
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<td>I would just like to say I really don't know the nature of exactly what -- what it was you were looking for. I -- I took it that we were mainly commenting on the proposed changes and amendments to the state -- to the State Water Plan, as was outlined in the issue of the Currents.</td>
<td>23 But I would just mainly like to see that -- that policy on new storage turned a little more on the positive note, rather than being kind of couched in -- in a little more negative terms in the proposed policy.</td>
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<td>I guess you are interested in -- in people's position's on the overall Swan Falls Agreement.</td>
<td>24 I would -- I would offer the possibility --</td>
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<td>And I will just state, for those of you might not be aware, that Idaho Farm Bureau did take a position, at their annual meeting, in support of the negotiated settlement, the compromise agreement that has been negotiated between the State of Idaho and Idaho Power.</td>
<td>25</td>
</tr>
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<td>That policy that we adopted speaks to the -- the establishment of the minimum flows that are being set in the amendments to the Water Plan, at Murphy, and to an adjudication of the Snake River Basin and so forth. So, from that standpoint, we are on record in support of the</td>
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20 (Pages 77 to 80)

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and this is, being it is, probably, one of the longer  
2 policies, if you don't -- aren't going to be able to take  
3 this all down, I can certainly submit my testimony, in  
4 writing, at -- at a later time, although I'm not prepared  
5 to give it to you right now, unless you want my hen  
6 scratching.

7 But I would prefer it -- if you might say, it  
8 is the policy of Idaho that optimum use be made of the  
9 existing storage facilities in the basin. That's just a  
10 little bit different on using optimum instead of maximum.  
11 New store -- and then I'd go on to say, new storage  
12 upstream from the Murphy gage should be developed when it  
13 is determined that it is needed to meet new applications  
14 for the beneficial use of water in the public interest  
15 and optimum use of exiting storage is being made.  
16 The State of Idaho will advocate new storage,  
17 paid for by the federal government, to provide for  
18 federal and Indian reserve rights quantified through a  
19 general adjudication of the Snake River Basin.  
20 Just put us in a little bit more of a  
21 positive note on the possibilities and prospects for  
22 future, additional storage on the upper reaches of the  
23 Snake River, for additional, future beneficial use  
24 through the appropriation process and through the  
25 possibilities of needing to provide additional storage  

1 for taking care of Indian reserved rights, in the  
2 evenhanded that we quantify those rights.  
3 And we'd be better off if we were in a  
4 position to go to the federal government and say, we have  
5 quantified the Indian water rights. Now you have some  
6 responsibility to provide water and a mechanism for  
7 fulfilling those rights. And there is ample precedent  
8 for the Congress of the United States taking a -- a  
9 responsible position and providing, through storage or  
10 some other mechanism, for providing the water necessary  
11 to meet those quantified Indian reserve water rights.  
12 Mr. Chairman, members of the Board, that  
13 would be, I guess, the nature and extent of my comments  
14 this evening. And I'd be willing to stand for any  
15 questions you might have.  
16 CHAIRMAN GRAY: Thank you, Mr. Hatch.  
17 Mr. Williams?
18 MR. WILLIAMS: Mr. Hatch, we added the words, in  
19 this Policy 321, down -- let's see, one, two, three,  
20 four, five, the seventh line, if you have it in front of  
21 you there, on page three, inssofar as possible.  
22 The original proposal says, after it -- after  
23 it is determined that maximum use of existing storage is  
24 being made, we add the phrase, after it is determined  
25 that inssofar as possible, maximum use of exiting storage  

1 is being made to try to take care of that problem that  
2 you --  
3 MR. HATCH: Oh, I see it.  
4 MR. WILLIAMS: -- that you've brought up.  
5 MR. HATCH: Excuse me, Mr. Chairman and -- and  
6 Mr. Williams. And it isn't reflected in this that I have  
7 before me, I take it then.  
8 MR. WILLIAMS: We have -- we have two versions?  
9 MR. HATCH: No, no. It -- yes. I'm sorry. It --  
10 it does say insolar as possible, maximum use of storage  
11 is being made. I just -- I still, Mr. Chairman and  
12 Mr. Mur -- Mr. Williams, excuse me, I -- I don't like  
13 the -- the utilization of maximums, is part of my  
14 problem. I prefer the word optimum to maximum.  
15 But I understand that -- that it is the  
16 intention that it is a decision that rests largely with  
17 the Director to determine when optimum, or maximum,  
18 utilization is made and that it isn't necessarily to  
19 squeeze every drop of water out of a facility before you  
20 determine that maximum utilization is made.  
21 Again, I just go back to the idea that -- my  
22 feeling is that -- that I would like to see the policy  
23 couched in more positive terms towards -- towards future  
24 upstream development, where my feeling is the -- the  
25 policy wording is -- is a little bit on the negative side  

1 towards future development and future upstream storage.  
2 MR. WILLIAMS: Thank you.  
3 CHAIRMAN GRAY: Mr. Shawver?  
4 MR. SHAWVER: Mr. Chairman.  
5 Mr. Hatch, I don't want to put you on the  
6 spot, if you haven't had a chance to study it.  
7 but on the second part of that 321 is the part about  
8 mitigation on off-stream storage from north of  
9 Swan Falls. Have you had a chance to give that any  
10 thought? What are -- if you have, what are they; if you  
11 haven't, why we appreciate the fact that you haven't  
12 looked at them.  
13 MR. HATCH: Well, Mr. Chairman, Mr. Shawver, I --  
14 I guess I have some concerns about the terminology and  
15 the idea of -- of attempting to mitigate. Mitigate's  
16 a -- quite an open term.  
17 I guess I feel a little bit more comfortable  
18 than I would otherwise in the -- because of the language  
19 in the text below that kind of tries to define what they  
20 mean by the term mitigate, and that it isn't a direct  
21 compensation concept. That -- that you just try to go  
22 about your development of additional storage in a manner  
23 that would have the least impact possible on -- on  
24 hydropower production. And in that light, I can live  
25 with it, I guess.

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1 I -- it -- it does kind of make you nervous,

2 the idea of mitigating impacts, because I guess you --

3 you think immediately of some of the things that you've

4 heard about on anadromous fishery mitigation projects, of

5 the costs involved, and there's a -- there's a lot of

6 things that come to your mind when -- when you talk

7 about, or use the term, or think of the term mitigate.

8 But I -- I felt like that the text made it

9 clear enough what was meant, that I didn't feel like I

10 needed to comment on it. I felt, I guess, comfortable

11 enough with it.

12 MR. SHAFFER: I appreciate it. This is the 10th

13 hearing and we've had quite a bit of comment about that,

14 and I appreciate your comments. Thank you very much.

15 MR. MATCH: Well, I contemplated commenting on it

16 but felt like that it's -- if it's looked at in the

17 right context, and in a reasonable manner, that -- that

18 maybe isn't unreasonable to try, at least, to minimize

19 the impacts, if that's what you're talking about by

20 mitigating. If you're gonna try and just minimize, to

21 the extent possible, the impacts on hydroelectric

22 generation, then I -- I really don't see, I guess,

23 anything wrong with that.

24 MR. SHAFFER: Thank you for your comments.

25 CHAIRMAN GRAY: Mr. Rydalch?

1 like, it is not the intent to prove maximum or to obtain

2 maximum or something like that. I would have -- I guess

3 I would have flip-flopped maximum in one -- where they

4 use optimum, and I would have been using optimum where

5 they were using maximum, so.

6 I can -- I guess I could stab -- make a stab

7 at what I -- what I think those terms mean in -- in what

8 I submit to you in written -- in written testimony.

9 CHAIRMAN GRAY: We'd appreciate that, if you

10 would. Thank you very much.

11 MR. HATCH: You bet. Thank you.

12 CHAIRMAN GRAY: Is there anyone else who would

13 like to testify at this time? If not, we will close the

14 hearing and open it up to questions.

15 We only have one person that hasn't been

16 working on this, in one form or the other. Dick, could

17 we answer some questions for you?

18 MR. HAUFFMANN: My only question is, how can the

19 Snake River -- how are you approaching the Snake River

20 adjudication -- Basin adjudication from -- around the

21 area of Oregon, where it leaves Idaho and then comes back

22 in Idaho? Is -- is there any -- any control the State

23 has over the Snake River in that area?

24 CHAIRMAN GRAY: Mr. Dunn?

25 MR. DUNN: No. The only -- State of Idaho only
1. Chairman Gray: Thank you.
2. Yes, sir?
3. Unknown speaker: Mr. Chairman, I think one of the proponents -- that we heard tonight about optimization and maximization (unintelligible) technical people involved in some of the optimization techniques (unintelligible). I think that might bear out some more research on our part, to determine exactly what that definition is, and also might be interpreted as (unintelligible) reversed it.

In school, we were taught to write linear (unintelligible) equations to optimize certain factors. And that's a fancy way of -- of trying to get the best use out of your water. Well, I really think you're saying the same thing, I think, to be fair, you probably (unintelligible), do you want to maximize it? But do we really want to optimize it? And those definitions (unintelligible) do have a difference (unintelligible).

Chairman Gray: I think, maybe, one of the problems the Board may be having is when you consider optimum on one hand and maximum on the other. What might be maximum, or optimum, for an agricultural situation? May not, in the same hand, be maximum or optimum, for recreation, or wildlife, or hydropower. So this is something that -- that we're trying to get a feeling for, and it's -- it's pretty darn tough when you have that many disciplines to work with. And I thank you for your comments.

Any other comments? Mr. Dunn?

Gray: Thank you.

Chairman Gray: Well, there are certainly times when a lay person must (unintelligible) from those returning to that particular discipline also. And I think that's why the State pays people like them. And when it comes to the point that the State doesn't put their trust and confidence in those people that we have hired, then it's time to get someone new.

Mr. Hatch: (Unintelligible). If we're not the intent or the (unintelligible) point you may wish to make though, the -- in the thing, some way, that we are using technical terms and not just lay terms.

Chairman Gray: Thank you.

Mr. Sherman?

Mr. Sherman: (Unintelligible) point you may wish to drop (unintelligible). The point that I really did want to make though, is that, this afternoon, Mr. Keys was (unintelligible) point, and he expressed some concerns about this maximization (unintelligible) allocation. And I think that the Board should consider (unintelligible) pointing out it is not the intent of the Board to make (unintelligible). That may help.

Chairman Gray: Thank you.

Mr. Nelson?

Mr. Nelson: Mr. Chairman, though I hesitate to
suggestion changes in what you've done, because of the --
the problem of moving away from what the negotiators
negotiated, and I honestly can't speak for the -- for the
parties, the negotiators used the term full utilization
or fully utilized, and your staff selected maximum as --
as more definitive of what we intended.

But do you remember the discussions we had at
the information hearing. What -- what we were getting at
was a policy review that the State should go back, look
at how water is used, what constraints exist on that
water use, and is that what we want? It wasn't the idea
that you force people to do anything with their water.
Merely to identify the constraints, identify the uses
that you may (unintelligible) as much as Mr. Keys
testified about federal constraints on leasing, that you
can't make a profit. Well, I've heard the Bureau say you
can make a profit, maybe, if you put -- give the profit
back to the United States in terms of early pay out of
your obligation on that (unintelligible).
All we wanted to do was force them to review.
So, to me, the concept that is -- is missing, from what
people read and what we have, is reasonable. In other
words, there are no absolutes, either in what we intended
or what you've written, except the concept of
reasonableness.

And I don't think we can go through and say,
well by golly, the federal government has a constraints
here, and it keeps us from making the best use of the
water. I think you might have to make one step further
and fight the changes.
So if, at some point, you've done all those
things and you've finally realized your pick is about as
far in that ground as it's going to go, and you say okay,
that's it. That's all we can reasonably do, to make the
existing system fit our needs. Now let's go build
something else.
But it was our perception that those
questions ought to be asked. They, frankly, didn't know
what the answers would be when you did answer them, but
somebody should go ask the questions.
CHAIRMAN GRAY: Is that sort of like semantics
give attorneys jobs?
MR. NELSON: Something like that.
CHAIRMAN GRAY: Which is good.
UNKNOWN SPEAKER: Mr. Chairman, I think we've
solved it over this end. The Director supports the
good use and opposes the bad use of water, you've got it
made,
(End of Tape 3.)

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