IDAHO WATER RESOURCES BOARD

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Public Information Meeting
regarding changes to State Water Plan - Policy 32

TRANSCRIPT OF PROCEEDINGS

Held on February 6, 1985, at 2:00 and 7:00 p.m.
before Gene Gray, Chairman Idaho Water Resource Board

Lewiston, Idaho

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Transcribed by
Frances J. Morris
CSR No. 696
Present:
GENE GRAY - Chairman of IWRB
ROBERT HAMMES
DAVE RYDALCH
JIM SHAWVER
WAYNE HAAS
FRANK SHERMAN

Audience members who testified:
MALCOLM CRAWFORD (2 p.m.) - Lewiston Orchards
Irrigation District

PAUL TUTCHER (2 p.m.) - 1411 Prospect Avenue,
Lewiston

DONALD SATCHWELL (7 p.m.) - North 4340 Idaho Road,
Post Falls

* * * * * *
CHAIRMAN GRAY: Good evening, Ladies and Gentlemen. My name is Gene Gray. I'm chairman of the Idaho Water Resource Board. With me today, we have Robert Hammes, who is a Board member from St. Maries, in the newspaper business and the book business; Dave Rydalch from St. Anthony who is a farmer and also from Committee of Nine which is a water organization on the Upper Snake system; we have Jim Shawver from Eden, Idaho who is secretary of the Idaho Water Resource Board and a farmer in the Eden area; and Wayne Haas from the Department of Water Resources; and Frank Sherman, geologist from the Department of Water Resources.

And what we are here to speak to you about today is Policy 32, the existing state water plan. In December of 1983 the Board accepted some draft language for a proposed change to Policy 32. So what we are here today is to take your testimony. Since we don't have too many people, we are going to kind of break training here a little bit and do this a little different. I will have Mr. Sherman give you a brief overview of Policy 32. After that, we will take testimony, oral testimony, from those of you who wish to testify. We will close the testimony, then we will open it for questions and answers.

Now, if you kind of follow through The Currents, the first page kind of gives you an overview of the state Water Resource Board, what our function is. Page 2 and page 3 will give you Policy 32 as we've accepted the draft language. And that's what we would like you to critique for us, or at least give us written testimony on.

Going on over, you will see page 4, page 5 is the Swan Falls agreement that was put together and agreed upon by the governor's office; the office of the attorney general, state of Idaho; and Idaho Power Company.

Going on over to Page 6, basically the right-hand side of page 5 and page 6 and 7 is the legislative package which our legislators are now working on at the State Capitol. If you take a look on page 7 to the far right-hand column, you will notice actions that must be taken by May 15 for the implementation of this whole thing.

No. 1, the state water plan is to be...

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amended. That's why we are before you today is to get your suggestions, your fears, whatever you might have, as far as the Water Board revising this and then passing it on to our state legislature.

No. 2. legislative package must be passed, and it's going to have to be passed pretty much intact as you will find it in The Currents.

No. 3. appropriate action by the Public Utility Commission or the legislature, as required an agreement must be taken.

No. 4. there must be an appropriate order by the Federal Energy Regulatory Commission pretty much okaying the way the package is and the way the legislature may go ahead and pass it.

No. 5. the Idaho Public Utilities Commission must dismiss the lawsuit from 1977 which was filed by the Idaho ratepayers.

No. 6. since we have three dams in the state of Idaho which border our neighboring state of Oregon, the Hells Canyon Complex, if required it may also have to be okayed by the Oregon Public Utilities Commission.

No. 7. enactment by the legislature of subordination language as set forth in 7A and 7B. You will find 7A and 7B on page 7 just to the left of the box we are looking at.

So what we will do now is, we will have Mr. Frank Sherman from the Department of Water Resources give you an overview. And if you like, you can kind of follow what he's discussing on page 2 and page 3.

Mr. Sherman?

MR. SHERMAN: Unless you live with that whole situation almost on a day-to-day basis, it gets a little bit complicated in that there is in place the Idaho state water plan.

Signed in October of last year; one, an agreement to agree, and one, a legal document using legal language specifying what the state and Idaho Power agreed to. They are the exhibits as in The Currents for proposed legislative changes. Some of those have been amended already or modified as they proceed through the legislature.

And then there are the proposed changes to the water plan that the Board wishes to address at this time. It does get a little bit complicated. Since I assume most people here aren't particularly interested in what happens above Swan Falls and Murphy Gage (unintelligible),

I will try and emphasize those things that might be important to the local area.

The existing water plan has policies for the Snake Basin, the Bear River, the Panhandle region. And the intent back in 1976, when this plan was first adopted, was to allocate the remaining unappropriated waters in the system or in that particular basin for specific new uses.

The agreement that the state and Idaho Power entered into called for specific changes to that. It needed to be updated anyhow. It is updated every five years. But in 1982, when the Idaho Supreme Court ruled that the power company had a legitimate and valid unsubordinated claim at Swan Falls Dam for water, all the allocations in the existing water plan were based on the premise that the state could take Idaho Power's water and use it for their purposes in the 3300 minimum the Supreme Court established for Murphy Gage just below Swan Falls.

This plan, as it stands today, specifies probably an unrealistic number given Idaho Power's claim in Swan Falls Dam.

Now, we got into litigation, and it finally came down to the point where both the power company and the state felt that trying to resolve these complex issues in the courts was not the way to go. It was back in district court. Certainly any decision reached in district court, one of the two parties would have taken it back to the Idaho Supreme Court. It may have been five or ten years before something was put in place by the courts which would have then directed the Department of Water Resources, particularly, on how water was to be used in the system.

Part of the problem, of course, was they assumed, as did the Supreme Court, recognized the valid right of Idaho Power. The Department of Water Resources stopped issuing new water rights above Swan Falls Dam. Now, if we couldn't satisfy Idaho Power's water right and it was legitimate, we certainly couldn't be issuing new permits for the use of water (inaudible) and declare a moratorium.

We have several thousand permits on file that have not been ruled on. If we had to wait another five or ten years, clearly it would be more (inaudible). People in the basin were being done a disservice in that they wanted to do something, and they had to wait and see what would happen.

Everything is sort of at a standstill. The state
and Idaho Power agreed to the compromise, and the compromise itself speaks to several different things. It speaks to new stream flows at the Murphy Gage. If you're going to have a compromise, we have two different positions somewhere in between the compromise.

Now, the state water plan calls for a minimum year-round flow at the Murphy Gage just below Swan Falls Dam at 3300 cfs. Idaho Power had a claimed water right of 8400 cfs, quite a discrepancy if indeed we had to satisfy their right.

Even in the negotiation process, Idaho Power recognized that the minimum flow had already been down to 4500 cfs. Typically, for management purposes, we use the average daily flow: Four readings, ten readings, 24 readings in one day averaged together because of the influences of minor thunderstorms, pumps on and off, Idaho Power's (unintelligible) operations. So we talk in terms of the daily average.

It had already been up to 4500 cfs. The only way we could guarantee more water than that was to shut off current users in the basin. The legislature has clearly shown in several efforts, to subordinate Idaho Power's water right; 2, to allow the governor to enter into a contract with the power companies, that they did not want to see existing users shut off.

So the compromise was affected between the historic low flow and what the state water plan called for. And that's where 3900 comes from. If you take 4500 and 3500, the difference is 1200 cfs, and you compromise and cut that number in half, you get 600.

The power company basically is saying, "We are going to split what's available, and you take this part and we will take the other part," to satisfy upstream development (unintelligible) additional depletion.

So the 3900 which is specified in the agreement in Policy 32 of the Snake River Basin speaks to what was reached by the negotiators. And in discussing the idea of compromise, there is certainly a lot more water going past that gage in the wintertime than in the summertime so they just chose a higher number.

There are several legitimate reasons for this number. Principally, if you take and project the kind of development that might take the Snake River down to 3900 cfs, plug that back in the wintertime uses, it turns out (inaudible) for the wintertime season. But change from the existing water plan in that it specified a year-round flow is not a change in terms of water law or thinking because most water uses in the state (inaudible), typically irrigation, from April 1st to September 30th.

The existing water plan recognizes the importance -- and this is the most important for the people in this area, particularly -- recognizes the importance of the FERC license of the Hells Canyon Complex. It talks about minimum flows at Lime Point and Johnson's Bar (inaudible). In order to assure those flows, the intent of the Board is to add those flows as a state water policy.

While we recognize that those flows would be desirable, if the federal government and Idaho Power reach some different compromise (inaudible), those flows could go away. The intent of the Board is to add them to the state water plan specifically as state policy so that, if for some reason the federal government and Idaho Power change the license so that it wouldn't have to be those numbers, they would still be guaranteed by the state water plan.

So that really is all Policy 32, as identified here, docs. It proposes to use the 3900/5600 cfs at Murphy as specified by the agreement and to add, as far as the state water plan, minimum flows at Lime Point and Johnson's Bar.

It goes on to talk about waters not held in trust by the state are considered unappropriated waters, and those waters held by the state shall be issued under certain criteria. Now, what this proposed revision does is to break out of the old water plan every one of those allocations and try and identify them as a specific policy. And in doing that, the whole question of what happens to the water that Idaho Power claimed becomes policy in and of itself, really.

So Police 32A, Water Held in Trust By the State. What Idaho Power and the state agreed to was that, as long as 3900 cfs in the summertime and 5600 cfs wintertime goes past the Murphy Gage, Idaho Power will not take action against any other water user in the basin and call for water based on their current right at Swan Falls, nor will they call for water at any of their upstream facilities.
There are existing criteria that have to be satisfied before you can get a water right from the state, and those are basically listed in the Idaho Code as 42-203A.

Policy 32A specifies that, yes, Idaho Power, or any kind of power water right, can be held in trust by the state. And 42-203C says that, if the state wants to reallocate water that had been claimed by a hydropower company, they may impose special criteria upon anyone who applies for that water.

Now, the special criteria as proposed by the negotiators as part of the legislative package talks about the effect upon the economy of the state, the effect upon the hydropower rate base, the effect upon the family farm tradition. There are five or six new criteria that, before you can get some of this water that used to belong to Idaho Power, you have to satisfy this new criteria.

Policy 32B, Domestic, Commercial, Municipal, and Industrial. The existing water plan sets aside a volume of water -- because when this was first drawn up, it was in terms of acre feet -- for new municipal and industrial uses. They converted that figure to cubic feet per second.

Our water right provided us you assure us it will never go below 3900. Those waters, then, that Idaho Power is saying "we are giving up" were actually appropriated waters of the state. They filed the proper claim. The paperwork is on file with the Department of Water Resources. Because those waters were claimed at one time, they are not considered the unappropriated waters of the state.

Most of you realize that the citizen in Idaho is guarantied the right to appropriate, use the appropriated waters of the state. Now, that right shall never be denied, according to the Constitution.

But because Idaho Power had already appropriated those waters, put it to beneficial use by running it through their generators, they are not available for the ordinary citizen to rely upon or to use. So, so much for the subordinating Supreme Court ruling that it's not subordinated.

So Idaho Power turned over, basically, all their water rights above 3900 cfs to the state.

The state says, "We will reallocate that water for other uses provided you meet certain criteria."

And that's Idaho Code 42-203A, B, C, as listed on Policy 32A.
I.

1. water that's used by the human population of the area is not a significant factor. In fact, if you take a look at the numbers the department has, it turns out that those municipal diversions which are used to water lawns, golf courses, city parks, are probably the biggest consumers in the whole basin. This amount, 150 cfs, of this water that the state now owns in trust is set aside for consumptive purposes. It will probably allow for the doubling of the population and industry of the whole basin.

2. If you take -- it's a fairly inclusive title -- if you take domestic, commercial, municipal, industrial, probably the only other consumptive use is agriculture. So Policy 32C specifically says that those waters now held by Idaho, less the amount reserved for DCMI, shall be available for new agricultural development or agricultural uses in general. It specifies that, if you are applying for that water that Idaho Power formerly claimed, you have to meet new additional criteria. Conceivable, and certainly the intent of the negotiators, was the idea that the first applicant who thinks he can put it to beneficial use automatically has the right to the water. That's no longer going to be the case.

3. These waters are special waters. They belong to somebody else. They have been returned to the state for a new allocation, new criteria. Policy 32D, talks about hydropower.

4. Specifically the use of water for hydropower is a beneficial use. That's already in the state water plan, the Constitution -- not the Constitution -- the Idaho Code, and points out that the depletion of flows below the minimum average daily flow as set forth in Policy 32 is not in the public interest.

5. As part of the tradeoff from the power company to the state, the power company had to be guaranteed something. And what they have been guaranteed is 3900 cfs in the summertime and 5600 cfs in the wintertime. If the flows were ever to go below that point, Idaho Power should, would, and will take action through the state against any new appropriator of water. The intent of this agreement is to protect the existing user. For anybody who can prove, can only show beneficial use of water after the signing of the agreement, if the flows ever get below those specified, Idaho Power has legal grounds to demand he be shut off or he supply them with water somehow.

6. Policy 32E, Navigation. This is basically no change from the existing state water plan except that in '76 and '82, when it was re-adopted, the Board was thinking in terms of 3300 cfs at the Murphy Gage coupled with the federal licenses for the Idaho Power Complex supplying enough water for recreational purposes and commercial navigation below the Hells Canyon Complex. They now have raised it to over 3900; they feel, therefore, even better about the fact that there is enough for recreation and navigation.

Aquaculture. The major factor, particularly in Twin Falls (unintelligible) of the river, trout farming, catfish farming, this specifies clearly that, in aquaculture if you want to process fish, any water for that purpose has to come out of the commercial, municipal, and industrial uses. It's not a very water consumptive commercial operation, but it should be counted against that 150 cfs set aside for those purposes.

7. It points out that many of those fish farmers rely on the discharge from Thousand Springs for their water flow, divert the water from the springs discharge through the (unintelligible), they have a water right. Ford and the department feels that, by having 3900 at Murphy, they are going to probably always have water coming out at Thousand Springs.

8. The plan as it exists -- and it's proposed to revise it or not change -- calls for a zero minimum flow at Milner Dam near Twin Falls.

9. All the water in the Upper Snake above that point is basically allocated to existing uses. It is legal, and has happened on rare occasions, that there is no water coming past the Milner Dam. The only major recharge to the river, then, between Milner Dam and the Murphy Gage below Swan Falls is the Thousand Springs discharge.

10. So if you are going to specify 3900 at the Murphy Gage, and most of that water in the summertime is coming from Thousand Springs, those trout farmers relying on the Thousand Springs should have water available to them.

11. But state law does not provide that a water right guarantees your needs of diversion. It provides only that you have access to water, the priority date associated with that water right. Conceivably, if the flow sent to

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right to use water just to dilute their waste
(inaudible) rather than acquire water for that
purpose.

Policy 32I, New Storage, one that may
not be particularly significant in this part of the
state. It's a key factor in the upper basin in the
whole Snake system above Murphy.

This particular policy has two specific
parts, both parts mandated by the agreement. The
first part basically says that, unless some kind of
determination is made that we are making maximum
use of the water storage facilities in the basin,
no new storage should be created.

(Unintelligible) for several different
competing interests. Certainly there is a large
segment of the population that says we have enough
dams. Idaho Power likes to see as much water
coming down the river in the wintertime as
possible. It chose the Brownlee Reservoir which is
the only storage facility of the Hells Canyon
Complex -- or in the Hells Canyon Complex, at
least.

If you stop and look at what the
negotiators were really asking, in this case they
were asking the Water Board, wanted it included in

the water plan, to take some action. Most of the
reservoirs in the system were built for irrigation
storage. Some minor benefits for flood control and
recreation in some cases. Some would have it
constructed totally for irrigation storage, and yet
they seem to be partially full in the summertime,
in some cases quite full. And that's probably
because of a number of reasons.

In Idaho, water law provides that you
can have a full natural flow right for a
consumptive purpose. Using irrigation, for
example, you may have as many water from a stream
as is necessary to irrigate so much acres. And you
may have an 1870 or 1880 priority right.

That water is almost always going to be
guaranteed for you. But law provides that you may
have an additional full water right in storage as
an assurance point.

Some of the farmers in Eastern Idaho
with early priority rights on natural flows used
their water once in five years, once in ten years,
or less. The city folk felt, for example, a water
right in a reservoir which they required years ago,
they thought Pocatello was going to increase in
amount and size, and water and consumptive needs

a reasonable compromise. They recognized in the
existing water plan that is not the best number
that flows for fish, wildlife, and recreation, but
it is one they felt would afford some protection
for those resources and form a basis for continued
use of it. By raising the minimum flow, the Board
had at least the feeling it was moving in the right
direction, and, while still not optimum by any
means, it does afford some protection for fish,
wildlife, and recreational uses.

Policy 32G, Fish, Wildlife and
Recreation. Back when the original water plan was
adopted in 1976, there were a number of studies
conducted about the need of fish and wildlife, for
water for recreational purposes in the basin
particularly at the Swan Falls (inaudible).

The numbers are significantly higher
than 3300, and they're higher than 3900. The
water plan represents a compromise just like the
Swan Falls agreement does. And in '76, by trying
to balance the fish/wildlife interests against the
interests of new consumptive upstream development,
the Board reached 3300. It's what they thought was

a reasonable compromise. They recognized in the
existing water plan that is not the best number
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direction, and, while still not optimum by any
means, it does afford some protection for fish,
wildlife, and recreational uses.

Policy 32H, Water Quality, Pollution,
and Control, in an area of the state where we are
so water short that you can't satisfy the existing
water rights, it seems to be a misuse of water to
allow it to be used for simple dilution of
pollution.

The Board proposes to adopt this
policy -- and it's spelled out in slightly
different terms in the existing water plan -- that
to use water, good water, to dilute bad water is
not a beneficial use for water. The Board feels
there are enough existing state and federal laws on
the books if properly enforced that water quality
in Idaho shall be maintained at a fairly high
level. Certainly no one should be able get a water

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1. would increase.
2. They never called for that water. They
3. had no means to divert it. If they called for that
4. water, the only way they could get it would be to
5. put pumps in the river and try and catch it when it
6. went past.
7. So there are lots of examples one can
8. use about water held in storage that's never used.
9. And on October 1st, when the water master in that
10. area has to create new space for the next year's
11. runoff, he just dumps the water down the river.
12. It's not necessarily going to waste.
13. You get Idaho Power, you get downstream hydropower
14. generation facilities. But in late fall, even
15. Idaho Power is not trying to fill Brownlee
16. Reservoir. So this water is basically water that
17. has sat around, has not been used. If there were
18. some way that this water could be exchanged for new
19. uses, maybe we wouldn't be as short of water as we
20. think we are.
21. Now, federal law provides -- and these
22. are some of the kinds of areas: First of all, the
23. dam was built for a specific purpose all brought by
24. Congress. The water stored behind that dam can
25. only be used for those purposes. It might be only

time. The intent of that, I suppose, is to protect
the irrigator, the person who holds the water.
2. There is no way that big business or even new
farmers can come in, and if all they are guaranteed
is water at a one-year-at-a-time basis, well,
then they'll not finance that kind of operation.
3. All you have to do is (unintelligible)
the people in the area, and there would be no water
available when you have business. So you can't
lease or sell your water for more than one year at
a time. There is certainly a barrier for trying to
move this water around so that newer uses can be
satisfied.

The state has a number of laws which
apply to this situation, and they are equally
restrictive. You can't expand a water right. You
have water, and its beneficial use is to be used to
irrigate these certain number of acres described in
a water right and the certification. The law
provides that you cannot use that water for a
consumptive use at any other point. It makes
sense, in trying to keep track of the water in the
system in that you would never have any idea how
much water was going to actually be consumed if
these people could actually sell their water to

someone else who were going to consume a portion of
it. So -- but it certainly provides a barrier
because the only use a person with excess water,
even if he does put the water back in theory, the
only use that can be made of it is for a
non-consumptive use.

It's the argument, then, if you don't
use your water, you're not supposed to use it once
in five years; typically you lose your water
rights. So there are both state and federal
barriers to state a more efficient use of water in
the system.

The Board has been asked and has agreed
to trying to find out, are there ways to get around
both state and federal restrictions on optimum,
maximum, whatever you want to define it, better use
of the water that is stored already in the system.
If you had to ask the director of the
Department of Water Resources today to make a
decision on it, are we doing the best we can on our
water, he would probably have to say no because
there is some unallocated water behind the
reservoir (unintelligible) to the Snake.
Once that water is allocated, the
director has to make a decision and would probably
There is no question about that, the amount of water and reservoir is so important that anybody who wanted to start talking about trying to manage groundwater and surface water, that's the intent of these changes in the water plan; that's the intent of the agreement that you're going to try and manage all the water, ground and surface water, within the basin as a unit, or at least manage them so that you're always concerned about the minimum flow at Murphy.

It gets very complicated when we are talking about an aquifer that's sort of 100 miles long and 50 to 70 miles wide. And someone who is pumping water 50 miles from Thousand Springs, if the flow gets low at Murphy Gage and you want to shut him off, it would do no good to the flow at Murphy Gage because the effects of his pumping groundwater out there might not show up for weeks, months, (inaudible). So if the department is going to be allowed to issue new water rights, particularly for groundwater purposes, they are going to have to either, one, be very conservative because there is no magic cutoff when you get close to 3900 because you're shutting off at (inaudible), or they have to have some water someplace they can call from to cover up the mistake they might make, like over-appropriating water. And that's the intent of this.

There are unallocated waters. There is water available in the Upper Snake system that...
1. The agreement specifies that, if the
flow of Murphy goes below 3900 and it's the cause
of natural consequences, not some mistake on the
part of the Department of Water Resources, Idaho
Power will not protest. They will take no action
against the nexus of the user. If the flow goes
below 3900, any new appropriator, anyone who has
got some of this water or is using water to
formally (unintelligible), they will be subject to
call. They would have to shut off so the
department could get their water.

The agreement speaks to establishing the
criteria for the reallocation of this water, and
the Board is merely saying that in this case it
will recognize whatever the legislature does. The
agreement speaks to the so-called general
adjudications of the system, and (unintelligible)
requirements for two purposes. One, if the state
is going to finally manage the river and the
aquifer together so that it always maintains flow
on the river, they need to know what uses are there
(inaudible). They need to get a priority system so
that in a water shortage, certain users can be shut
called off. That's part of it.

The other part, of course, is that the

1. package specifies an adjudication beginning at
Lewiston. Its sole intent in starting at Lewiston
is to force the Indians and the federal government
to participate in the adjudication. In the state
court, it specifies how much water they feel they
need for the purposes of (inaudible) regulation,
and once and for all we will have a list of all the
water (unintelligible) in the Snake system.

Now, they had a piece of legislation
introduced this session which would provide that
the Indians not participate in the adjudication,
for the Fort Hall group particularly, not
participate in the adjudication, but that they
negotiate their water rights with the state.
What that means in terms of what it
could pass, what that means in terms of how they
vote the adjudication is handled, I don't think
it's important because the adjudication is
basically a negotiation between an individual water
right holder and the state. If an adjudication is
done and this area is included, what happens is,
the department comes out with their records and
sits down with every water right holder in the area
and says, "This is what we show. What do you
claim? Let's discuss it. If we can reach an
agreement, fine, that's it; otherwise the private individual has the right to go to court. (inaudible)

Once everybody compromises or goes to court, the court issues a decree and places all the water rights into whatever basin -- and in this case, let's say from Lewiston above -- in order of priority. It establishes the mechanism so the water master in a time of water shortage can

Mr. Gray, I think that's enough.

Chairman Gray: Excellent. We will now open up the meeting for public testimony, and we have one person to testify. Malcolm Crawford.

Malcolm, would you please step forward, state your name, address, and telephone number for the record, please.

Mr. Crawford: My name is Malcolm Crawford, I'm manager of Lewiston Orchards Irrigation District. I reside at 521 Karen Avenue in Lewiston.

(End tape 1)

Mr. Crawford: I'd like to thank the Board for coming all the way up here to Lewiston to participate with us. We appreciate some attention here on this end because we realize that the big lag is usually on the agricultural end. Even though I'm manager of an irrigation district, under Reclamation law, it's not what you guys are used to down at St. Anthony's or along the Snake.

It's a water utility company, essentially. We no longer have any commercial agricultural interests at all. It's 4,000 acres of subdivisions, and it's really the bedroom for Lewiston up on the hill.

I want to testify today in three areas: One, the need for adjudication; two, the need for the beneficiaries to pay for the adjudication; and three, the need for upstream and off-stream storage in the state of Idaho.

I'm a member of the Idaho Water Users Association. I'm also the American Waterworks Association which has to do with our utility affiliations. I'm glad to say that the convention in Boise last month, the Idaho Water Users voted to support the water plan as -- pretty much as presented. And as I circulated there and talked to people, mostly farmers, who were at that convention, there was very little opposition to the plan in its entirety.

There was some opposition to it in regard to the fees, the apportionment of who was going to pay for it, and how it was -- how those fees were going to be collected, and this sort of thing. But in general, the people who were objecting on the score of, say, a dollar per acre for an adjudication fee, in my opinion are extremely short-sighted. I think they are not taking into account the real need for an adjudication process in the state of Idaho in order to clarify the appropriations on the Snake Basin. It's just got to be done in order to -- so that we aren't constantly in the courts.

It's all been explained here, and you're all more aware than I of the ramifications of it. But I want you to know that, you know, representing about 17,000 people here in my irrigation district, we can see the benefits of adjudication. And we are in favor of adjudication. We are in favor of paying a fair share acreage-wise based on our area up there for consumptive use for our M&I consumption.

Either way it's something that we feel is necessary. It has to be done, and we're very glad to see the state of Idaho moving in that direction. And I believe that all the people who benefit need to pay for it. I think there has to be a look at methods of other users that you wouldn't normally be able to put your finger on, like the recreational people, and all of those who benefit from the use of the waters in the state.

That's the most difficult area, of course, is to collect fees, but maybe through licensing or use fees, or something like that, that could be done.

I've been -- well, I started out as a mining engineer, and I've been in this kind of work in Oregon and California and now Idaho for the last two years all over the West. And the real way to get more water to use for beneficial uses is through upstream and off-stream storage. That's the only way that you can help nature to provide more of this resource.

And we just had a good, long dissertation about the reasons why we aren't even able, at this point in time, to utilize all the storage resources that we have on the Snake. And that's really a shame. Those rules, those laws, were made by men, and they can be corrected -- well, maybe that's not the right term. I don't
Idaho Water Resources Board

1. I know enough about it to say whether they should be corrected, amended. But some way that pathway should be eased so that beneficial use can be made of that water on the year-round.
2. Why have 56,000(cubic) feet at the gaging station in the winter and 33,000(cubic) feet in the summer, if the best use of it were otherwise than that, if you can save that spring runoff and use it at other times and trade off through the water bank, or whatever. And those things have to be pursued by the state, the legislature and the Water Board as well.

1. I know it's being done on the Columbia with centralized computer use of the water. It's being done on the Central Valley Project in California. And where the Snake River is the trunkline, the vital water passageway, through the whole state of Idaho, essentially, it seems to me that it's within our grasp to take control and to increase our development of that resource and make a better use of it.

1. The situation isn't going to get better as we get more populated and more M&I uses, and so forth. It's just going to get more complicated, and we're going to be in court more often.

1. Thank you very much.
2. CHAIRMAN GRAY: Mr. Crawford, why don't you stand for questions if the Board members have one.
3. MR. CRAWFORD: Sure.

1. CHAIRMAN GRAY: Mr. Hammers, do you have a question for Mr. Crawford?
2. MR. HAMMERS: I have no questions.
3. CHAIRMAN GRAY: Mr. Rydalch?
4. MR. RYDALCH: I have none.
5. CHAIRMAN GRAY: It was a pretty general statement.

1. CHAIRMAN GRAY: I think pretty much what you had to say is what we're hearing all up and down the river. And we thank you very much.
2. CHAIRMAN GRAY: Is there anyone else who would like to testify at this time?
3. MR. TUTCHER: I'm Paul Tucker. I live at 1411 Prospect in Lewiston. My phone number is 743-6271.
4. I have some concern with the minimum flow restrictions. Idaho Power doesn't really give a damn what the minimum flow is down here below Hells Canyon Dam because it's of no benefit to them.

1. What they do is, they cut the water off in the summer. In other words, you're out there in a boat or in a raft, and you don't have any water.
2. You're -- they drop the water a foot, foot-and-a-half an hour, and you're sitting up on the beach, you're ten feet from the river.
3. It's inconvenient for people who are trying to use the river, and it's destroyed the fishing on the river. I've lived here all my life and been on the river all my life. And I've seen the bass fishing up there, just it's been devastated. The beaches are gone.

1. The thing is, the minimum average is not -- you know, it's not -- nobody is watching it.
2. If they regulate themselves at Lime Point and at Johnson's Bar, it doesn't matter to them how much water comes by there because they've generated their power at Hells Canyon Dam.
3. I think there should be more concern, you know, as to what goes on down here. It's great that you have plenty of water in Southern Idaho, but I live -- I have a lot right across from Lime Point, and I can see how fast it drops every night and how much it comes up every day. And it makes it, you know, very difficult to use the river for anything down here. I know it's a concern that I have.

1. Thank you.
2. CHAIRMAN GRAY: Mr. Hammers?
3. MR. HAMMERS: I'll pass the question just --
4. CHAIRMAN GRAY: Mr. Rydalch?
5. MR. RYDALCH: I have no questions.
6. CHAIRMAN GRAY: Mr. Shaver?
7. MR. SHAVER: I have nothing.
8. CHAIRMAN GRAY: What are you talking about fluctuations as far as elevations? Talking ten feet? Five feet?
9. MR. TUTCHER: I've seen it as much as 15 feet, for example, at Lower Granite. It's a fairly -- let's face it. When you drop it a foot, are you talking about the bank at a 45-degree angle from the river? Are you talking about ten percent? At a ten-percent angle, I've seen at Salt Creek you can lose 50 feet. At Lower Granite you can lose 12 feet. That happens every day. I mean, it isn't something that happens once in a while.

1. MR. TUTCHER: What happens is, they store the water, and during peak use during the day, they start dropping the river. At night it comes back up.

1. It's pretty well known that bass, when
CHAIRMAN GRAY: Mr. Shawver's question, I was about to ask him, and I don't think that -- I don't know who runs the gages at Lime Point and at Johnson's Bar, and I certainly don't have the means to measure the river myself. But I find it hard to believe that, if I get in at a certain time and they tell me, okay, the river is running at 8500 feet and I see the thing cut in half that it's been maintained at 5,000. I don't believe that.

And I just don't -- you know, I suppose with averages, if there's 70,000 coming down in the winter and 20,000 coming down in the summer, they can average 5,000, but I don't think that -- I don't think there's a [ol of concern about -- the estimate is $28 million over ten years. All the department really did was to extrapolate the increase in size in this one and say, "Okay, if you get it done in ten years (inaudible)."

As a non-Board member, I didn't ask a question, but the last testimony was quite interesting. And quite honestly, it's the only testimony supporting even the inclusion of the Lime Point and Johnson's Bar flow. As far as the state water plan -- and I judge, and I don't know if the gentleman will correct me today -- he not only would support giving those flows any more authority than they might have; he would support more in looking at fluctuations and perhaps (inaudible). I would point out that in speaking of funding an adjudication, recreational interests, they are hard to pin down. But the state, where the Board has specified a minimum stream flow, has to pay on that water as part of the adjudication process. One of the concerns (inaudible). I think, Mr. Gray, with that, I'll be seated.
I
day-to-day basis at these points.

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1. CHAIRMAN GRAY: Mr. Haas?
2. MR. HAAS: The concern over the river fluctuations, it's in the license which you're adding to the state water plan. And I just call your attention to the fact that we're used to talking about cfs, but there is, in this material adding to the state water plan, it talks about the maximum variation in river stage at the Johnson's Bar not to exceed one foot per hour. There is nothing in this language which you've put in to try out concerning Lime Point. And, of course, the one-foot-per-hour, how much riverbank is exposed or unexposed is different.

3. CHAIRMAN GRAY: If you look at the bottom of page 2, take your Currents and look at the bottom of page 2 on the left-hand side and go up, gosh, let's see, about five or six lines, now that's on Idaho Power's federal power license, that language.

4. MR. TUTCHER: That's what I'm getting at.

5. Above the dam, Idaho Power's concern was to maintain minimum flows because they need the water to generate the power. Once it goes over Hells Canyon Dam, that's water that's lost to them and they have no more use for it. They don't care what -- in other words, what I'm saying is that, I guess in essence, if they're violating that, nobody's doing anything about that.

6. CHAIRMAN GRAY: Could we ask you to do one thing? We can't change the federal verbage in the federal license as we've indicated it here. But we'll be accepting written testimony until February 22nd. And you can send that to the Statehouse, the Water Resource Board, Statehouse, 83720. If you might, just draft some language up for us of how you think it might fit or dovetail into Policy 32, we'd sure appreciate it.

7. MR. TUTCHER: All right.

8. CHAIRMAN GRAY: And anyone else here who hasn't testified today, if you don't want to testify up here, we will accept written testimony from everyone in the state until February 22nd regarding Policy 32.

9. Mr. Sherman?

10. MR. SHERMAN: I suggest, Mr. Chairman, that the Board might wish to entertain, or it may appear in different testimony, that at least one of these specified points (inaudible) at all, and that the Board should encourage the department to seek, as part of the underlying studies, better gages on a day-to-day basis at these points.

11. CHAIRMAN GRAY: That's a good idea.

12. UNKNOWN SPEAKER: I have a question.

13. CHAIRMAN GRAY: Yes.

14. UNKNOWN SPEAKER: How does your plan fit, or have you had any comment whatsoever from the federal people about whether or not your water plan actually meets the requirements for water quality standards?

15. CHAIRMAN GRAY: Okay. The first thing that you have to realize, it is your plan, our plan.

16. UNKNOWN SPEAKER: Has it been submitted to the federal government?

17. CHAIRMAN GRAY: Oh, yes. We had testimony yesterday from the Bureau of Reclamation. We have not heard from the Forest Service; we have not heard from the Bureau of Land Management; we have not heard from any of the tribes.

18. UNKNOWN SPEAKER: Does the U.S. Fish and Wildlife Service have any jurisdiction whatsoever?

19. CHAIRMAN GRAY: Go ahead.

20. MR. SHERMAN: I guess I'll answer this in two parts. One, let me talk about the Fish and Wildlife Service. The Fish and Wildlife Service has not testified (inaudible). They -- I have spoken to them (inaudible). And they are pleased with the idea that the minimum flow is set by the plan to be raised. They are considering, if there is a systems-wide adjudication, participating in the (inaudible) of the Snake, for example, without jurisdiction (inaudible) for wildlife purposes and (inaudible) much higher.

21. In terms of water quality, the Nez Perce people -- not the Nez Perce.


23. MR. SHERMAN: -- the Sho-Bans, the Shoshone/Bannock people from Fort Hall, came to represent their (inaudible) water quality questions (inaudible). The Environmental Protection Agency has not commented principally (inaudible).

24. The concern over the existing language, there is really only one concern. I don't think anybody wants to see us use good water to dilute pollution (inaudible).

25. The Board and most of the people who talk to the issue feel that discharge should be part of the (inaudible) plan. There is some concern, however, that if the flows in the river were to be (inaudible) -- the intent is still to put the burden of any obligation (inaudible).

26. UNKNOWN SPEAKER: Well, I saw nothing in here...
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1. that mentions the 208 code. And I found that --
2. MR. SHERMAN: -- hard to believe? I think
3. it's -- the 208 program in Idaho, it's been run by
4. the Health and Welfare department. And in the
5. existing water plan, it's just not (inaudible).
6. CHAIRMAN GRAY: Mr. Sherman, excuse me.
7. Would you briefly just describe 208 for those of us
8. that are here that are not familiar with it?
9. MR. SHERMAN: Maybe the lady could do it
10. better than I can. Coming from my point of view,
11. 208 is a national effort funded by the
12. Environmental Protection Agency to address and plan
13. for water quality policy.
14. In Idaho it has principally been
15. (inaudible) Policy 32.
16. CHAIRMAN GRAY: Now, one other thing. The
17. governor has just established a water quality
18. Board. And if you look on page 7 under -- right
19. next to the box where we looked at all the things
20. that must be taken into account, it shows as
21. Exhibit 8. And if you go, it will appear -- if
22. it's codified, it will appear as 42-1805. And drop
23. down to paragraph 5. And that's about the only
24. place in here that you'll find anything dealing
25. with water quality. But it will be codified as

1. industrial uses where it is used as cooling water
2. or processed water and returned to the river and
3. frequent use of (unintelligible). That's a major
4. concern, but the position of the state is that they
5. have to meet the existing discharge standards in
6. order to do that or perhaps change the temperature.
7. I don't see major water quality changes in that
8. regard.
9. Now, the 208 program, except for some
10. areas like sewage treatment lagoons and land
11. surface disposal of industrial waste does not
12. really address quality of water in the aquifer.
13. The principal authority for that is the Water
14. Board, the Department of Water Resources. And as I
15. said, it's the principal in that they regulate
16. waste disposal and injection wells. Those make a
17. difference (inaudible).
18. The Water Board has rules and
19. regulations for waste disposal and injection wells.
20. They have applied to the EPA for primacy of the
21. underground injection control program. We should
22. hear this month, actually, whether we're going to
23. get it or not.
24. The Board, in trying to add groundwater
25. to the policies for the existing water plan, the

1. 42-1805.
2. UNKNOWN SPEAKER: I understood the specific
3. plan of the 208 program was mandated to have been
4. completed at a certain time, which I think may have
5. already passed.
6. MR. SHERMAN: Yeah, it has. The existing
7. Department of Health and Welfare rules and
8. regulations (inaudible).
9. UNKNOWN SPEAKER: Well, I was particularly
10. interested in your testimony about the aquifer and
11. how that was -- but the fact was, that was the area
12. that was most affected.
13. UNKNOWN SPEAKER: (inaudible) yellow plumes.
14. (Laughter)
15. UNKNOWN SPEAKER: Well, it will definitely
16. affect for many the taking of water.
17. MR. SHERMAN: Yes, I think the main concern
18. in terms of reduced flow of the river because of
19. increased consumptive use is that there is less
20. good water in the river; therefore a waste
21. discharger has less water to mix his effluent in to
22. meet whatever standards. The intent of (inaudible)
23. and the state Board is to require (inaudible).
24. The other concern, of course, is, if you
25. defer water for agricultural uses, particularly, or

1. nice blue colored thing I have up, they have been
2. criticizing because it does not address groundwater
3. in any fashion.
4. Had someone arbitrarily said, okay, when
5. we started this process two years ago, before the
6. whole Swan Falls thing broke out in our face, we're
7. going to adopt groundwater quantity standards and
8. then we're going to come right back with
9. (inaudible). It's all involved with water quality.
10. (unintelligible), sole source distribution,
11. (unintelligible) aquifer, EPA not backing off of
12. that and the state. Mr. Gray had mentioned they
13. set up a special water quality task force or
14. committee, advisory group, and they're going to
15. address rules and regulations in the aquifer.
16. UNKNOWN SPEAKER: Is anyone from the group,
17. may I ask, involved?
18. UNKNOWN SPEAKER: I'm just positive there is,
19. but who it is, I don't know.
20. MR. SHERMAN: It's a fairly large committee,
21. and in that regard I'm positive (inaudible).
22. They're meeting today for the first time.
23. CHAIRMAN GRAY: If what I may be reading from
24. you is you see a weakness possibly with 321; would
25. that be true? Could you possibly -- we see some

14 (Pages 53 to 56)
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1. Weaknesses with it also. Might you put something together in writing for us and submit it by the 22nd? We'd sure appreciate it. But it's --
2. This is not the final form; this is just a rough draft, so to speak, of what we hope to come up with when all the testimony is taken into account. So it would be important to us -- it's on page--
3. UNKNOWN SPEAKER: Yes, I have it.
4. CHAIRMAN GRAY: Okay. But we would really appreciate it.
5. One thing I might mention is, a member of the Idaho Water Resources Board is from Lewiston.
6. Dick Wagner. And Dick couldn't be with us today.
7. So any problems you have, why, you might get a hold of Mr. Wagner.
8. Any other questions we might answer for you? If not, again I'll reiterate that we will accept written testimony until February 22nd. And it can be sent to the Statehouse, Boise 83720. And we will meet again here tonight at 7:00 p.m. if you care to join us again.
9. Thank you for coming.
10. (Recess)

1. LEWISTON, IDAHO
2. February 6, 1985, 7:00 p.m.
3. (Joke told about a cowboy and a reverend)
4. CHAIRMAN GRAY: My name is Gene Gray, and I'm chairman of the Idaho Water Resource Board. And on my right is Bob Hammes from St. Maries, a publisher, a newspaper man, book store owner, et cetera; Dave Rydalch who is a Committee of Nine chairman and also a farmer at St. Anthony; and over here is Jim Shawver who is the secretary of the Idaho Water Resource Board and a farmer in the Eden area; and we've got Wayne Hans from the Department of Water Resources, and Frank Sherman, geologist from the Department of Water Resources.
5. And we're here to talk to you about Policy 32, or some changes to Policy 32, of the state water plan. And if you've got your
6. Currents -- did you get a copy of that? -- if you just kind of grab that, I'll just kind of thumb through it with you a little bit.
7. Page 1 kind of gives you an overview of the Water Resource Board, our function and a little bit about Policy 32 and the state water plan.
8. Page 2 and 3 deal directly with the revisions of Policy 32 of the state water plan.
9. If you go on over to page 4 and half of page 5, you'll find the entirety of the agreement that came about between the governor and his staff, the attorney general, their staff, and Idaho Power Company.
10. The rest of page 5 through page 7 is the legislative package which our legislators are presently working on at the State Capitol.
11. On page 7 on the right-hand side there are seven items which deal directly with the package, what we're doing with you as far as Policy 32 is concerned. And No. 1 is State Water Plan is Amended. And that's why we're here to talk about the amendment to Policy 32 of the state water plan.
12. No. 2, these all must take place by May 15 of this year. No. 2, the legislative package must be passed which you have before you.
13. Appropriate action taken by the Public Utilities Commission or the legislature as called for in the agreement between all parties.

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water plan in place that talks about certain things. The changes, as the Board is now presenting them, represent, one, what the agreement specifies they had to change and some other things that seemed reasonable to do at this time.

The whole legislative package, then, a lot of it passed one body or the other of the legislature today and will move on to the other as we go on very soon.

The agreement itself, things have changed even since October. We're trying to keep everybody happy (inaudible). The proposed revisions of the water plan, things that these gentlemen are specifically concerned about, start off, and, instead of trying to allocate the waters in one little policy that says we allocate the waters hereby, and we have page after page of how the water is supposed to be used, the Board has chosen this time to say it is the policy. But it is the policy but highlight those things that they feel are really important. Certainly, if you're going to try and manage the whole Snake River Basin at least above Murphy Gage and above Swan Falls, the dam just south of Boise, you need to have some guidelines.

At this -- find them is a lot of confusing things there, and we gave them an hour and a half. We dumped a full load on them.

We've been to court, district court, the Supreme Court and back in district court.

Whichver side won there, the other side was going to take it back to the Supreme Court. And that's the only way you don't get a compromise.

The state water plan, as it exists today, in terms of Policy 32 which addresses the Snake River Basin, allocates water. It says the unappropriated waters of the state shall be used for this, this, this. There's nothing wrong with that. So when the Supreme Court said that Swan Falls Dam, Idaho Power had a water right that was not subordinated, it was a legitimate water right, they recognized the claim to be 8400 cfs. Most summers they didn't get anywhere near that. In fact, the lowest flow had been down to 4500 cfs.

Well, the original water plan was a compromise. I mean, there were -- the Fish and Wildlife interests produced studies that said you needed the flows up 5500 and higher. And the upstream irrigators said Swan Falls is subordinated, therefore we want to take all the water out of the river. And so the 3300 cfs at the Murphy Gage near Swan Falls represents a compromise.

The governor, the attorney general, and Idaho Power Company sat down and said, "Let's settle it out of court." basically. "Let's find a mutual ground that we can all agree on." And in October they signed two documents. October 1st they signed one that basically said they were willing to agree and these were the points that needed to be addressed. They turned their lawyers loose on it on October 25th. They signed another one which put all that gentleman's agreement into legal terms, and put forth the stuff they wanted to send to the legislature. Told the lawyers what changes they felt had to be made to the water plan.

And that's sort of where we're at. I'll go -- the thing we have to remember is, there is a

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| 1 there, and we gave them an hour and a half. We dumped a full load on them. dump
| 2 (Laughter) dump
| 3 MR. SILVERMAN: I guess the best way to look at this -- and there is a lot of confusing things not going on -- about the only place you don't have a compromise is to get things in court. And that was the whole reason behind the state and Idaho Power agreeing to sit down and discuss the whole Snake River Basin and try and settle it.
| 4 We've been to court, district court, the Supreme Court and back in district court.
| 5 Whichever side won there, the other side was going to take it back to the Supreme Court. And that's the only way you don't get a compromise.
| 6 The state water plan, as it exists today, in terms of Policy 32 which addresses the Snake River Basin, allocates water. It says the unappropriated waters of the state shall be used for this; this, this. There's nothing wrong with that. So when the Supreme Court said that Swan Falls Dam, Idaho Power had a water right that was not subordinated, it was a legitimate water right, they recognized the claim to be 8400 cfs. Most summers they didn't get anywhere near that. In fact, the lowest flow had been down to 4500 cfs.
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I want you to look at the 3900, stick it into a computer, get it down to 3900 in the summertime, the Department of Water Resources projects that 5600 is about where it would be in the wintertime.

So those are how those numbers were arrived at. As I say, it's going to split waters of Water Resources projects that 5600 is about going to continue the spring flow at Milner Dam. All the water in the Upper Snake in low water years can be appropriated; therefore, there is no requirement for the water to be dumped past Milner Dam. All the water that occurs in the river during those low flow periods basically is not a spring fishing area.

They're going to specify, continue to specify, that at the Weiser Gage, 4750 cfs is appropriate. It's a minimum flow. Since this plan was adopted in '76, I think there's only been one day when the flow ever got below that. And that has claimed this water, it's been put to beneficial use, and yet now Idaho Power is turning it back to the state so the state can give it to other users, at least a portion of it.

So this specifies certain portions of the Idaho Code that have to be satisfied before this Idaho Power water can be given to other people to use. These portions of the Idaho Code don't even exist today. We're sort of relying on the legislature to do what the legislative package and the intent of the negotiators was.

The key one, of course, is that, as appropriated water, the state can put new criteria or additional criteria on anybody who wants to use it. So a person who applies for some of this water that Idaho Power claimed and now given over to the state, in addition to having to satisfy the normal criteria of beneficial use -- non-speculative, public interest -- may now have to also satisfy an additional set of criteria which talks to general economics of the state, the impact of hydropower, the family farm tradition. A new set of criteria.

And that's because this water had been appropriated, put to beneficial use, and the state now has it in its hands to re-allocate.

Policy 32B, Domestic, Commercial, Municipal, and Industrial. The existing water plan, when they thought they could take the river down to 3300, allocated in terms of acre feet about 144 cfs on an average daily diversion for new municipal and industrial uses. The Board recognizes that the Supreme Court said that Idaho Power has a legitimate water right. The compromise says we won't take it below 3900 even in the summertime; therefore, there's less water available for these other competing uses.

The Board still proposes to reserve 150 cfs. Now, by including domestic uses, it really doesn't change the parameters because the human being doesn't really consume that much water. You drink some water, and there's wastes go out, and it sort of balances out. But they have changed the provisions for the proposed thermal power generation in the Snake River Basin.

Back in '76 everybody was concerned about energy, and that was the big thing. Right now Idaho Power generates more energy than what's consumed in the state. So it will change some of the different uses we perceive being made of this.

But right now there's only about 100 -- no, 400 cfs...
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1. are diverted for these kinds of uses in the Snake Basin. And that's total diversion.
2. The whole intent now is to try and manage the river and the aquifer that contributes to the river on consumptive use. If you think about total diversions from municipal water supply, the only consumptive use may be some small industry that uses some that goes up into the smokestack as steam. The watering of the lawn is probably the biggest consumptive user of municipal water.
3. A lot of the industry in Idaho is very non-consumptive in that it's cooling water, wash water. It gets back into the system. People who might come in and want to start a new industry, most of the land that's available for purchase, it would be relatively low cost. It's irrigated agricultural land. The amount of water that goes on per acre for Idaho may well compensate for all the consumptive uses that new industry ends up with.
4. We don't think that water (unintelligible) are necessary for (unintelligible) just as a guess, would probably provide for double the population of those living in the basin.

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1. The water plan gets revised every five years; therefore, if this number is a bad guess, it can be changed.
2. Policy 32C, Agriculture. If you talk about domestic, commercial, municipal, and industrial, the only other (unintelligible) consumptive use is agriculture. Therefore, the board's policy, as far as we can tell the intent of the negotiators of the agreement, is to reserve the rest of the water that's available now to be used for agricultural purposes. We have to use (inaudible) for DCMJ, as I say, because you can change the DCMJ. The amount that's available for new agriculture could change also.
3. It's hard to explain, I guess, but everyone always talks about Swan Falls because that's where the lawsuit took place. But Idaho Power claims a different amount of water at every one of their upstream facilities. In some cases it's 11, 12,000 cfs. As part of the compromise, Idaho Power said, "As long as 3900 cfs goes past the Murphy Gage in the summertime, we will not protest no matter how much water we're receiving at any of our other gages." So what people say, they took the water that was left in the river, split it.

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1. in half, half for increased (inaudible) Swan Falls Dam at Murphy. That's only true in that reach for that (unintelligible) Swan Falls. Upstream the numbers change. The intent doesn't change, however.
2. Idaho Power has agreed that the state can use their water, they can reallocate it as long as the new legislative criteria are met, and as long as the flow at Murphy Gage never goes below 3900.
3. Policy 32D, Hydropower. It's already a beneficial use of water in Idaho to use water for hydropower purposes for generation of electricity. The water plan will now specifically recognize that, and they will further state that depletion of the flows below the 3900 and 5600 established at Murphy Gage are not in the public interest.
4. This is pretty clearly a protection for Idaho Power for giving up something. You know, they could go to court and argue, then, maybe their 8400 cfs claim was legitimate. Maybe they forfeited water down to the (unintelligible) flow, but they still had rights to all the water in the river. So they're giving up something. And in return, they're getting protected by the Water Board adopting 3900 in the state minimum flow. The intent is that it should never go below that.
5. 32E, Navigation. This is basically the same language that's in the water plan today. And it's the policy of the Board in Idaho that, by setting these kinds of minimum flows, there's enough water in the river for recreational purposes. And there will be enough water coming through the Hells Canyon Complex for any commercial navigation that takes place.
6. Aquaculture, 32F. Particularly in the reach from about Twin Falls down to Bliss, most of the so-called trout farming or fish farming takes place. There are catfish and trout that are raised in that region. Most of the people rely on discharges from Thousand Springs.
7. If a person who is engaged in fish farming wants to get a water right to process fish -- clean it up before he packages it, or whatever is involved in processing trout -- that water should be regarded as commercial withdrawal, and it should come out of that water reserved for DCMJ.

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(End of Tape 2)

MR. SHERMAN: (Gap in testimony transitioning...
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1. from Tape 2 to Tape 3) -- water forever. Probably yes. But this probably points out specific facets of the state law which says that a water right insures that you have the ability to use water. It does not guarantee your need for diversion. If the spring flows have not been (unintelligible), a trout farmer may have to change (unintelligible) and a (unintelligible). If he's still entitled to use that water, it's going to priority date. It's just that state law will not necessarily guarantee (inaudible).

That's basically in the existing water plan, it's just brought out and highlighted here as an amended version.

Policy 32G, Fish, Wildlife, and Recreation. The existing water plan basically says that 3300, while not an optimal number for fish and wildlife purposes, will provide some minimum resource. Ford feels that 3900 is a better number in terms of protecting fish and wildlife. So they basically say, here is 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, and wildlife, and to provide water for recreation in the Snake River below Milner Dam.

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1. River below Milner Dam.
2. The other thing that the Board has as sort of an ace-in-the-hole or going for it, or whatever language that you want to use, is that, in a different policy of the state, they provide and have had legislative approval and have been appropriating water for in-stream flow purposes.
3. The Board is the only agency that can appropriate water for in-stream flow values.
4. Now, the thing that gets a little bit sticky here is that they may appropriate the unappropriated waters just like any citizen has the right to appropriate unappropriated waters of the state. And most of the reliable water in the Snake River system now is being held in trust by the state because Idaho Power already appropriated it once.
5. But on many of the tributary streams, and even on the main Snake where there are unappropriated waters, the Board has either applied for and gotten in-stream flows or are in the process of doing so.
6. So between these two different mechanisms, one, by establishing minimum flows through the water plan and having the ability to appropriate water, the Board feels that they are protecting some minimum value of fish, wildlife, and recreation.

Policy 32II, Water Quality and Pollution Control. In an area where we are water short, we can't satisfy Idaho Power's water right as well as legitimate competing water rights, it seems a bad idea to let somebody appropriate water for the purpose of diluting his wastewater. Anybody who gets a permit has to meet some certain standards. In the board's mind if this is adopted, it will not be the policy of Idaho that taking water and mixing it with bad water so you can dump it in the river wherever, it's not a beneficial use of water. You want to tighten up your pollution control mechanisms before you want to use good water just to dilute bad water.

Policy 32I, New Storage. This is called for in the agreement. There are several reasons for it, and you will find this in the (inaudible) policy. It's one that really -- I can't say definitely applies, because anything that happens on the Snake River applies. But it's more in terms of upstream from Murphy.

The very first part of this two-pronged

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1. policy is that, before new storage permits are approved, some kind of examination and determination should be made that we're doing the best job we can with the existing storage facilities in the system.
2. Now, the negotiators maintained -- and this may be reworded for (unintelligible) more directly -- but they maintained that there are legal barriers. There are federal rules and regulations in federal law and state law, that prevent the best use, the maximum use of the water, that's stored already in the river system.
3. Anybody who lives on the Snake or follows the flows in the Snake realizes that on October 1st every year the water master dumps a lot of water at Milner Dam to make room for next year's runoff. This year the flow was 12,000 cfs on October 1st.
4. That's where it's been held in storage all year long, and it's insurance water, and it's never used. It would be ideal if those waters could be moved around, made available to someone who wants to use it.
5. The state has what's called the water bank. The rules and regulations provide for these

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kind of water exchanges, a so-called willing seller to a willing buyer. The Committee of Nine where Mr. Rydalch is a representative or member provides using those authorities to actually move some water around within the system. But the barriers to making the most efficient use of that are really hard to overcome.

Let me start off with the federal barriers. Most federal dams when they're built have specific allocations that are often associated with them. And they have so much water that's supposed to be for fish and wildlife, so much for irrigation, so much for flood control. And those waters cannot be used for any other purpose.

The federal government also provides that, if you store water behind a federal reservoir and you want to sell it, you can only do that one year at a time. It's sort of a nice protection for the irrigator in the system in that nobody is going to come in and try and buy up the water right because they can only get it for one year at a time. It's not going to put much money into it, no bank is going to finance a new project when it's only got one-year's water supply storage. But it means that a farmer who had that (inaudible).

water can't sell if for more than a year at a time also.

So the other provision the federal government has is that you can't sell water from behind a federal dam at a profit. You can't make a profit on your water. It made sense when it was put in, in that, why should somebody whose father bought cheap storage in a dam and the feds paid for half or more for it, why should he be able to make a big windfall on selling this water. But there is certainly no incentive for somebody to sell his water and make a profit. It's not even worth going through the paperwork if you can't make any profit.

So that prevents the exchange of water in the system. The state also has barriers for more efficient use of water. And certainly one of these is that you can't expand a water right. You can have a full natural flow right for a piece of property. You can have a stored water right for the same amount of water for the same piece of property. If you only need that water once in ten years, it would seem logical that the best use would be to let you give it or sell it to somebody else. But if that other person is going to make a consumptive use of that water, that's an expansion of a water right. That water is designed to irrigate a certain piece of property, a certain acreage, and in essence, almost a certain crop or crop rotation. If you're going to sell it to another consumptive user, that may double the amount of consumption, basically. And if everybody did that, everything would be so out of control, and our water resource would be buried.

So that's a provision of state law. The only way you can sell that water now is basically sell it to a non-consumptive user. And that's basically Idaho Power. The state law provides that if you don't use your water once in five years, (inaudible). Now, that doesn't apply to stored water, but people are real concerned about what they feel obviously some other use for five years (inaudible).

So a lot of things that could be looked at might be changed so that we can make better use of the water that's already in the system. It's hard to stand up in public and say, "We're out of water. We can't satisfy Idaho Power; therefore, we got to take some of your water away," and 12,000 cfs comes past the river on October 1st, and that's just because the water runs through Murphy

Cage.

So the negotiators specifically asked the Board to look into this problem, approach the federal government, approach water resources, the state legislature to see if more efficient use could be made of the water. One of the first steps, of course, is to rewrite the water bank rules and regulations so they are more flexible, and that's being done.

Whether the Board will ever be able to accomplish anything, changing federal law when it relates to water, (inaudible) maybe Idaho by itself isn't going to (inaudible). The Board is willing to explore the possibilities.

If the director had to make a determination now, are we doing the best we can with the water that's in the system, he'd have to say heck no because there's unallocated water in Ririe Reservoir right now that's up for sale for (inaudible). Once that water is gone, and if we can't change the federal law, we can't change the state law, then it's certainly -- the director has to find that we're doing the best we can under the existing regulations in Idaho. But the intent is to make the Board, make the state, make the
1 citizens aware that there are perhaps artificial
2 barriers to better use of water.
3 The second part of this policy it talks
4 specifically to the reach from Milner Dam to Swan
5 Falls Dam or Murphy Gage, a few miles below it.
6 The nearest (unintelligible) gage. Idaho Power, of
7 course, relies for the great extent their whole
8 operation on the Hells Canyon Complex. To get
9 their benefits out of it, they have to fill
10 Browncle Reservoir (inaudible).
11 So as part of the tradeoff, they have
12 asked and the state has agreed that, for anyone who
13 wants to apply to divert water from that reach of
14 river, Milner Dam to Murphy Gage, for wintertime
15 diversion for storage purposes, the effect of that
16 diversion on Idaho Power's operation should be
17 calculated. Some kind of mitigation should be
18 supplied to the power company.
19 Now, the text underneath this policy
20 specifically defines mitigation. The idea is we're
21 not going to give Idaho Power or require someone to
22 give Idaho Power dollar-per-dollar value. We're
23 basically saying, if it's got a negative impact, we
24 want to reduce that impact as best we can.
25 Quite honestly, the wording is vague at

1 unallocated waters with the idea that, as they try
2 and manage this whole river system down to 3900 cfs
3 in the summertime and 6000 cfs in the wintertime,
4 the state is not infallible. At some point, far
5 from likely, but possibly they could screw up. And
6 it sure would be nice if we had a place to recall
7 that water and cover our mistake.
8 Now, the choices are really two. The
9 department can be very conservative in issuing new
10 permits. It can hold on to all the water that's in
11 the river and never get it close to 3900. Or they
12 can say, "Okay, if we screw up, there's water we
13 can call. Let's see if we can run it down to
14 3900."
15 If the state were to have this water, I
16 think the department would be much more liberal in
17 issuing a permit. The intent would not be to hold
18 it in storage forever. We're a long ways from
19 3900 cfs in Murphy Gage now, some 600 cfs in
20 summertime flow. It could be sold to Idaho Power,
21 it could go in the water bank. The water would not
22 sit idle necessarily, but it would always be there
23 when we could see that we were getting close to
24 3900.
25 Why does the state feel it needs

1 insurance in trying to manage the river down to
2 this magic number? I guess it's because of the
3 Snake River Plain aquifer. If you can have zero
4 flow at Milner Dam in the summertime -- and on the
5 rare occasion it gets to that point -- most of the
6 water in the river, by the time it gets to Murphy
7 Gage is discharge water from Thousand Springs and
8 (inaudible) the Snake River Plain aquifer dumping
9 into the river.
10 Now, one of the best ways to probably
11 use the remaining water that's so-called in the
12 river going past Murphy Gage would be to allow
13 groundwater pumps to use it. A man can pump
14 water in July and August on the Snake Plain
15 aquifer. The effect of that pumping would not show
16 up in the river until October, November, December.
17 Admittedly we don't know enough about it to be
18 exact. Certainly we know there's a delay time used
19 on the aquifer to 1 thousand Springs discharge.
20 If we had to allocate these waters out
21 to 600-or-so cfs we think we had that belonged to
22 Idaho Power, and we found we made a mistake and we
23 called for the junior people to be shut off, we
24 could shut off 50, 100, 200 easy from the Snake
25 Plain aquifer and see no effect at Murphy.

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1. It's not fair to shut off the junior
2. surface water appropriator while some junior
3. groundwater pumper keeps pumping merrily away. But
4. you got to be trying to manage the whole thing to
5. get that magic number that everybody will be -- so
6. if we made a mistake, we'd like to have water
7. available. Make sure Idaho Power gets theirs, that
8. the fish and wildlife people are happy, the 3900 is
9. still there, and scratch our heads and figure out
10. who to shut off or hope we get a wet year the next
11. year, whichever may come first.
12. The agreement specifically provides that
13. Idaho Power will not take action against the person
14. who is in place and can prove beneficial use by the
15. signing of the agreement -- October 1st.
16. actually -- the framework part of it. No matter
17. what happens in the river, they won't take action
18. against those people. Idaho Power has agreed that
19. anybody who is in place is protected. They are
20. recognizing that they made a mistake not protesting
21. their use of the water.
22. But what they are saying is that anybody
23. after that date who darn well knew there was a
24. problem, and if the water isn't there, they're
25. going to call for it. And as I tried to point out,

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1. calling for water from a groundwater user doesn't
2. make much good sense if you need it in the river
3. today or tomorrow.
4. The other thing the department some day
5. may be faced with is, in Colorado, for example,
6. when a person applies for a new groundwater permit,
7. he has to prove in some of the restricted basins
8. that he has surface water available to meet a river
9. call as far as what he can pump. Now, if we get
10. down close to 3900, the department probably would
11. rather have that kind of insurance than this water
12. sitting (inaudible).
13. But if we wait until we're down at that
14. point, I don't foresee any unallocated water
15. available in the river. If a groundwater user
16. wants a permit and the state's going to say you got
17. to prove you can guarantee us river water equal to
18. the amount you're going to pump, it's going to have
19. to go to the water bank, and he may well be faced
20. with a year-to-year lease situation. If the state
21. had some water, they wouldn't have to give it to
22. the water bank to sell to Idaho Power; they can
23. sell it to the groundwater guy who needed the
24. insurance water.
25. So there are several aspects of this

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1. that might be beneficial. As I said, the agreement
2. protects the existing user; it provides that
3. anybody who wants water after October 1st or who
4. cannot prove he used water beneficially before
5. October 1st knows darn well the water shortage
6. situation in that part of the Snake River Basin.
7. He should have his eyes open when he goes in and
8. asks for water rights. He may be shut off.
9. So those are the parts that -- of the
10. agreement that specifically are being addressed by
11. the water plan. Now, there are several other parts
12. of the agreement, of course, that people in this
13. part of the state are knowledgeable about. The
14. adjudication clearly is one of them.
15. There are two reasons for the
16. adjudication. Basically, one, if you're going to
17. try and manage the river in the river down to some
18. magic number, you're going to include groundwater,
19. you darn well better know who has got what water
20. and what (unintelligible) he makes out of that
21. water (inaudible). It's important to have that
22. kind of information on hand.
23. The other one, of course, is that the
24. federal government, through the federal reserve
25. water rights, the reserved rights held for Indian

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1. reservations has never quantified how much water
2. they claimed in the basin. If you take in all the
3. national forests, the INREL facility near Idaho
4. Falls, and the Fort Hall Indian Reservation,
5. conceivably there's a lot of water that they might
6. claim that we can't now account for. And if we're
7. down to -- in a low flow year, we've only got about
8. 600 cfs above what we claim is the minimum and
9. these people want to come and take water in the
10. future, we don't know what they really got.
11. The only way to force the federal
12. government and the Indians to participate in an
13. adjudication, the state court has to do a
14. system-wide adjudication.
15. So the agreement as it's set today calls
16. for -- and the legislation that's in the
17. legislature calls for -- adjudication starting at
18. Lewiston. Certainly we feel as the state agency
19. and Board feels and negotiators felt that, by
20. starting at Lewiston, there was no way that the
21. feds could get out of it. Their own rules and
22. regulations say in a system-wide adjudication they
23. have to participate. Then they deal with the state
24. court.
25. I think that on the part of the

22 (Pages 85 to 88)

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1. negotiators and perhaps the Department of Water Resources, they'd just as soon see it start at Swan Falls. That's where the controversy came from.

2. That's where the original court case mentioned specifically. But it's important enough to get the Indians and the feds involved. The state is willing to do the whole thing if they have to.

3. If you kept track of what's happening in the legislature, the Shoshone/Bannock Indians at least, have got enough people to put in a piece of legislation which says let's exclude us from the adjudication, but we will sit down in the state (inaudible).

4. So what's going to happen on that aspect, no one knows. I would assume that, if the Indians, the Shoshone/Bannocks, can get their legislation through some negotiations, the adjudication may well start to crumble. That's also if the federal government recognizes the Shoshone/Bannocks, because they are the group above the forest service, BLM, and all the rest of them from the state. If one of those federal agencies refuses, I think it will start (inaudible) so we can force them all.

5. This will be the first time the state has ever tried adjudication of this size. In the past adjudications have always been funded by the so-called general fund of the legislature. (Unintelligible) taxpayers of all the state have paid for every adjudication the department has done, no matter how small it's been and how restrictive in the allocation.

6. Because the Snake River Basin is so big, even if you start at Murphy, the intent is to put in legislation that this adjudication and probably all future adjudications will be paid for by the people in the affected area.

7. $28 million for ten years to be paid is the best guess at this time. It's based on the fact that previously the legislature has funded three or four people, and it's taken us ten years to (inaudible). If we extend one (inaudible) for the whole Snake Basin and expand three or four people into whatever $28 million will buy, (unintelligible).

8. It's a real stumbling block.

9. Negotiators, the Board, most of the legislature feels something had to be done at some time. Our staff at water resources, of course, would say the whole state should be adjudicated.

10. If you don't have a court decree, a water map is on shaky ground, and we might have to shut the light off. You really need the decree to function. And clearly bits and pieces of the Snake Basin have been done, but none that's been ever timed together.

11. Mr. Gray, I think I'll stop. There's a couple of other things I thought about, but kind of slipped me at the time.

12. CHAIRMAN GRAY: Thank you, Mr. Sherman.

13. MR. HAMMES: Mr. Chairman, I have a question for Mr. Sherman.

14. CHAIRMAN GRAY: Yes.

15. MR. HAMMES: You make only reference to the Shoshone/Bannocks. What about the other reservations?

16. MR. SHERMAN: Mr. Gray, Mr. Hammes, the Shoshone/Bannocks, because they are the group above Swan Falls are most directly involved. They have in fact been trying to work in quantifying their water rights for the last couple of years. And as part of the political gamesmanship, it could probably go to federal court and ask for water. So they are the particular tribe most directly affected, I think, by the whole Swan Falls issue.

17. Now, the Nez Perce, for example, if adjudication is started at Lewiston, would be involved. They're two years or more behind the Shoshone/Bannocks in that they haven't started trying to quantify their water rights. They are looking at the whole water rights question from a different point of view in that most likely Indian water rights on the Clearwater/Salmon are going to be for in-stream flow purposes, fisheries aspect, fish and wildlife aspect; whereas the Fort Hall people, based on previous adjudications and federal case law, could probably demand enough water to irrigate all the irrigable acres on their reservation, the priority date from the 1860s.

18. The thing that both Indian nations have going for them, I think, is that in the adjudication, every individual water user sits down with their representative of the Department of Water Resources and says, "This is what I claim. What do your records show?"

19. In the case of the Indian nations, it would probably take a full ten years that we're estimating for adjudication to resolve their water right. The advantage of the general adjudication of getting the Indians and the state court, is that, if after ten years of negotiation with the
but I also believe that it sets a precedent as far
as the rest of the state is concerned.

And one of my concerns is that, in
talking with Pat Kole, I believe his name is, with
the attorney general's office that in North Idaho
we are sitting in a position with the Spokane River
above the dam at Post Falls which could erupt into
the very same thing. And therefore I would like to
see a precedent set in the Snake River that we
could fall back upon. I think that -- maybe that's
not the correct wording, but it's sets a tone for
where we could go.

As far as adjudication is concerned, I'm
in very much agreement, if I understood him right.
I would like to see the whole state adjudicated. I
realize that's probably a ways down the line.
But I really believe that is the only way that you
can really manage the whole state water plan. If
we adjudicate part of the state and not the other
part of the state, when a problem comes up, which
way do you go? I just believe if we do the whole
state, we'd be much better off.

I guess that's my main thrust for
tonight. I can answer any questions that you might
have.

CHAIRMAN GRAY: Don, I forgot one thing.
Would you give us your mailing address and your
telephone number for the record?

MR. SATCHWELL: Okay.

CHAIRMAN GRAY: Can I ask you that?

MR. SATCHWELL: My name is Don Satchwell. My
mailing address is North 4340 Idaho Road, Post
Falls, Idaho, And my phone area code
(208) 773-5285.

CHAIRMAN GRAY: Thank you. Let's see if we
have any questions from Board members.

Mr. Hammes?

MR. HAMMES: No questions.

CHAIRMAN GRAY: Mr. Rydalch?

MR. RYDALCH: No questions.

UNKNOWN SPEAKER: I have none.

CHAIRMAN GRAY: Okay. Is there -- that will
do it. Thank you.

MR. SATCHWELL: Thank you.

CHAIRMAN GRAY: Art, would you like to
testify on anything?

UNKNOWN SPEAKER: No, (inaudible).

CHAIRMAN GRAY: Okay. Thank you.

Well close the official public
testimony and open it for questions and answers

24 (Pages 93 to 96)
now. Do you fellows have something you'd like to
whip on the staff or us?
(Laughter)
UNKNOWN SPEAKER: (Inaudible) a fire k ad?
UNKNOWN SPEAKER: Not really. I guess maybe
I would have maybe a question for the Board. And
how many public meetings have you had on the Swan
Falls issue so far?
UNKNOWN SPEAKER: (Inaudible) a fire k ad?
UNKNOWN SPEAKER: Not really. I guess maybe
I would have maybe a question for the Board. Am I
would have maybe a question for the Board. Am I
and how many public meetings have you had on the Swan
Falls issue so far?
CHAIRMAN GRAY: This is the 12th and final.
UNKNOWN SPEAKER: This is the 12th and final.
CHAIRMAN GRAY: Yes.
UNKNOWN SPEAKER: What has the general
consensus been? Do they favor the package?
CHAIRMAN GRAY: I would say from Idaho Falls
to Lewiston, in the six locations where we've hold
meetings, two meetings each day, one at 2:00 and
one at 7:00 p.m., in general I would say that the
state is in favor of the package. I think that
people have had enough of seven years of litigation
and arguing and trying to run things through the
legislature, and they're ready for something to
happen. And all indications are that, by gosh,
maybe it will.
We will accept written testimony until
February 22nd, if you fellows would care to write
something to us. And something may not come to
your mind this evening, but if you would like to
write it, just send it to the Water Resource Board,
Statehouse, Boise 83720, and we'd be glad to hear
from you.
UNKNOWN SPEAKER: Just to clarify -- and I
won't mind to get up -- really the key to this
whole thing as far as -- all you're going to change
at this particular time is the minimum stream
flows, is it not?
CHAIRMAN GRAY: And in the items that you see
in Policy 32. We've been taking input on these ten
items that you'll find on page 2 and 3. And from
the input that we have received, we'll take all
that input, try to synthesize it, and put it back
into a form what we think we've heard from the
public. We will then submit that to the
legislature, and that will be the kingpin to get
this whole thing going.
UNKNOWN SPEAKER: Okay.
CHAIRMAN GRAY: Mr. Sherman?
MR. SHERMAN: I would respond also that this
will be the only place that the concept of maximum
use of reservoir storage in the system, mitigation
(inaudible) diversions as far as below Milner and
above Murphy, this is the only place that will
appear. The Board is going also set aside 150 cfs
of that water that used to be claimed by Idaho
Power, some of it (inaudible).
CHAIRMAN GRAY: Anything else, gentlemen?
UNKNOWN SPEAKER: No.
CHAIRMAN GRAY: We would officially close the
meeting.
(End of Tape 3 and end of proceeding.)
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...be able to handle...
merely 34:14
merrily 85:2
mer 71:8
methods 40:3
miles 3:26, 7:8, 8:15
million 47:22 90:12, 18
Millner 20:8, 13, 14 29:12
1:31, 16 65:14, 17 74:1
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Note: The table data seems to be a series of coordinates, possibly for a map or a geographical data set. The format suggests it could be a section of a larger dataset or report.
REPORTER'S CERTIFICATE

I, Frances J. Morris Court Reporter, a Notary Public, do hereby certify:

That I am the reporter who transcribed the recordings in the above-entitled action to the extent its contents were audible and intelligible; and

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

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

[Signature]
Frances J. Morris, Court Reporter
CSR No. 696