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IDAHO WATER RESOURCES BOARD

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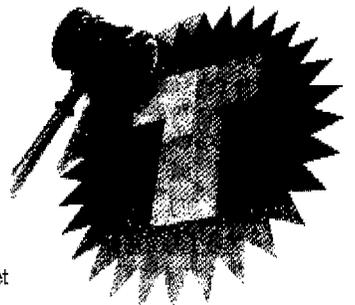
Public Information Meeting  
regarding changes to State Water Plan - Policy 32

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

\* \* \* \* \*



Transcribed by  
Frances J. Morris  
CSR No. 696

P.O. Box 1625  
605 West Fort Street  
Boise, ID 83701

Voice 208 345 3704  
Fax 208 345 3713  
Toll free 800 424 2354  
Web [www.etucker.net](http://www.etucker.net)  
E-mail [info@etucker.net](mailto:info@etucker.net)

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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

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1 LEWISTON, IDAHO  
 2 February 6, 1985, 2:00 p.m.  
 3  
 4 CHAIRMAN GRAY: Good evening, Ladies and  
 5 Gentlemen. My name is Gene Gray. I'm chairman of  
 6 the Idaho Water Resource Board. With me today, we  
 7 have Robert Hammes, who is a Board member from  
 8 St. Maries, in the newspaper business and the book  
 9 business; Dave Rydalch from St. Anthony who is a  
 10 farmer and also from Committee of Nine which is a  
 11 water organization on the Upper Snake system; we  
 12 have Jim Shawver from Eden, Idaho who is secretary  
 13 of the Idaho Water Resource Board and a farmer in  
 14 the Eden area; and Wayne Haas from the Department  
 15 of Water Resources; and Frank Sherman, geologist  
 16 from the Department of Water Resources.  
 17 And what we are here to speak to you  
 18 about today is Policy 32, the existing state water  
 19 plan. In December of 1983 the Board accepted some  
 20 draft language for a proposed change to Policy 32.  
 21 So what we are here today is to take  
 22 your testimony. Since we don't have too many  
 23 people, we are going to kind of break training here  
 24 a little bit and do this a little different. I  
 25 will have Mr. Sherman give you a brief overview of

1 APPEARANCES  
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 3  
 4 Present:  
 5 GENE GRAY - Chairman of IWRB  
 6 ROBERT HAMMES  
 7 DAVE RYDALCH  
 8 JIM SHAWVER  
 9 WAYNE HAAS  
 10 FRANK SHERMAN  
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 12 MALCOLM CRAWFORD (2 p.m.) - Lewiston Orchards  
 13 Irrigation District  
 14  
 15 PAUL TUTCHER (2 p.m.) - 1411 Prospect Avenue,  
 16 Lewiston  
 17 DONALD SATCHWELL (7 p.m.) - North 4340 Idaho Road,  
 18 Post Falls  
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1 Policy 32. After that, we will take testimony,  
 2 oral testimony, from those of you who wish to  
 3 testify. We will close the testimony, then we will  
 4 open it for questions and answers.  
 5 Now, if you kind of follow through  
 6 The Currents, the first page kind of gives you an  
 7 overview of the state Water Resource Board, what  
 8 our function is. Page 2 and page 3 will give you  
 9 Policy 32 as we've accepted the draft language.  
 10 And that's what we would like you to critique for  
 11 us, or at least give us written testimony on.  
 12 Going on over, you will see page 4, page  
 13 5 is the Swan Falls agreement that was put together  
 14 and agreed upon by the governor's office; the  
 15 office of the attorney general, state of Idaho; and  
 16 Idaho Power Company.  
 17 Going on over to Page 6, basically the  
 18 right-hand side of page 5 and page 6 and 7 is the  
 19 legislative package which our legislators are now  
 20 working on at the State Capitol.  
 21 If you take a look on page 7 to the far  
 22 right-hand column, you will notice actions that  
 23 must be taken by May 15 for the implementation of  
 24 this whole thing.  
 25 No. 1, the state water plan is to be

1 amended. That's why we are before you today is to  
 2 get your suggestions, your fears, whatever you  
 3 might have, as far as the Water Board revising this  
 4 and then passing it on to our state legislature.  
 5 No. 2, legislative package must be  
 6 passed, and it's going to have to be passed pretty  
 7 much intact as you will find it in The Currents.  
 8 No. 3, appropriate action by the Public  
 9 Utility Commission or the legislature; as required  
 10 an agreement must be taken.  
 11 No. 4, there must be an appropriate  
 12 order by the Federal Energy Regulatory Commission  
 13 pretty much okaying the way the package is and the  
 14 way the legislature may go ahead and pass it.  
 15 No. 5, the Idaho Public Utilities  
 16 Commission must dismiss the lawsuit from 1977 which  
 17 was filed by the Idaho ratepayers.  
 18 No. 6, since we have three dams in the  
 19 state of Idaho which border our neighboring state  
 20 of Oregon, the Hells Canyon Complex, if required it  
 21 may also have to be okayed by the Oregon Public  
 22 Utilities Commission.  
 23 No. 7, enactment by the legislature of  
 24 subordination language as set forth in 7A and 7B.  
 25 You will find 7A and 7B on page 7 just to the left

1 I will try and emphasize those things that might be  
 2 important to the local area.  
 3 The existing water plan has policies for  
 4 the Snake Basin, the Bear River, the Panhandle  
 5 region. And the intent back in 1976, when this  
 6 plan was first adopted, was to allocate the  
 7 remaining unappropriated waters in the system or in  
 8 that particular basin for specific new uses.  
 9 The agreement that the state and Idaho  
 10 Power entered into called for specific changes to  
 11 that. It needed to be updated anyhow. It is  
 12 updated every five years. But in 1982, when the  
 13 Idaho Supreme Court ruled that the power company  
 14 had a legitimate and valid un subordinat ed claim at  
 15 Swan Falls Dam for water, all the allocations in  
 16 the existing water plan were based on the premise  
 17 that the state could take Idaho Power's water and  
 18 use it for their purposes in the 3300 minimum the  
 19 Supreme Court established for Murphy Gage just  
 20 below Swan Falls.  
 21 This plan, as it stands today, specifies  
 22 probably an unrealistic number given Idaho Power's  
 23 claim in Swan Falls Dam.  
 24 Now, we got into litigation, and it  
 25 finally came down to the point where both the power

1 of the box we are looking at.  
 2 So what we will do now is, we will have  
 3 Mr. Frank Sherman from the Department of Water  
 4 Resources give you an overview. And if you like,  
 5 you can kind of follow what he's discussing on page  
 6 2 and page 3.  
 7 Mr. Sherman?  
 8 MR. SHERMAN: Unless you live with that whole  
 9 situation almost on a day-to-day basis, it gets a  
 10 little bit complicated in that there is in place  
 11 the Idaho state water plan.  
 12 There were two different documents  
 13 signed in October of last year; one, an agreement  
 14 to agree, and one, a legal document using legal  
 15 language specifying what the state and Idaho Power  
 16 agreed to. They are the exhibits as in The  
 17 Currents for proposed legislative changes. Some of  
 18 those have been amended already or modified as they  
 19 proceed through the legislature.  
 20 And then there are the proposed changes  
 21 to the water plan that the Board wishes to address  
 22 at this time. It docs get a little bit  
 23 complicated. Since I assume most people here  
 24 aren't particularly interested in what happens  
 25 above Swan Falls and Murphy Gage (unintelligible),

1 company and the state felt that trying to resolve  
 2 these complex issues in the courts was not the way  
 3 to go. It was back in district court. Certainly  
 4 any decision reached in district court, one of the  
 5 two parties would have taken it back to the Idaho  
 6 Supreme Court. It may have been five or ten years  
 7 before something was put in place by the courts  
 8 which would have then directed the Department of  
 9 Water Resources, particularly, on how water was to  
 10 be used in the system.  
 11 Part of the problem, of course, was they  
 12 assumed, as did the Supreme Court, recognized the  
 13 valid right of Idaho Power. The Department of  
 14 Water Resources stopped issuing new water rights  
 15 above Swan Falls Dam. Now, if we couldn't satisfy  
 16 Idaho Power's water right and it was legitimate, we  
 17 certainly couldn't be issuing new permits for the  
 18 use of water (inaudible) and declare a moratorium.  
 19 We have several thousand permits on file that have  
 20 not been ruled on. If we had to wait another five  
 21 or ten years, clearly it would be more (inaudible).  
 22 People in the basin were being done a  
 23 disservice in that they wanted to do something, and  
 24 they had to wait and see what would happen.  
 25 Everything is sort of at a standstill. The state

1 and Idaho Power agreed to the compromise, and the  
2 compromise itself speaks to several different  
3 things. It speaks to new stream flows at the  
4 Murphy Gage. If you're going to have a compromise  
5 we have two different positions someplace in  
6 between the compromise.

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

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

22 It had already been up to 4500 cfs. The  
23 only way we could guarantee more water than that  
24 was to shut off current users in the basin. The  
25 legislature has clearly shown in several efforts,

1 1, to subordinate Idaho Power's water right; 2, to  
2 allow the governor to enter into a contract with  
3 the power companies, that they did not want to see  
4 existing users shut off.

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

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

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

23 There are several legitimate reasons for  
24 this number. Principally, if you take and project  
25 the kind of development that might take the Snake

1 River down to 3900 cfs, plug that back in the  
2 wintertime uses, it turns out (inaudible) for the  
3 wintertime season. But change from the existing  
4 water plan in that it specified a year-round flow  
5 is not a change in terms of water law or thinking  
6 because most water uses in the state (inaudible),  
7 typically irrigation, from April 1st to September  
8 30th.

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

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

1 the state water plan.

2 So that really is all Policy 32, as  
3 identified here, does. It proposes to use the  
4 3900/5600 cfs at Murphy as specified by the  
5 agreement and to add, as far as the state water  
6 plan, minimum flows at Lime Point and Johnson's  
7 Bar.

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

18 So Policy 32A, Water Held in Trust By  
19 the State. What Idaho Power and the state agreed  
20 to was that, as long as 3900 cfs in the summertime  
21 and 5600 cfs wintertime goes past the Murphy Gage,  
22 Idaho Power will not take action against any other  
23 water user in the basin and call for water based on  
24 their current right at Swan Falls, nor will they  
25 call for water at any of their upstream facilities.

1 All the examples talking about the Swan  
2 Falls compromise, all the assumptions made really  
3 seem to revolve around the Swan Falls Dam because  
4 that's where the lawsuit originated. That's where  
5 the numbers that were developed in court and where  
6 the compromise came from. But in fact Idaho Power  
7 claims a lot more than 8400 at (unintelligible)  
8 Dam.

9 As part of the tradeoff with the state,  
10 as long as the 3900 cfs in the summertime goes past  
11 the Murphy Gage, Idaho Power will not call or  
12 exercise their water right on upstream structures.

13 But what it basically comes down to,  
14 using the Swan Falls example, is Idaho Power says,  
15 "We have a valid claim according to your Supreme  
16 Court." Now, what the size of that claim might be  
17 is dependent upon what district court. "We weren't  
18 getting the water we claimed; therefore, maybe" --  
19 (inaudible) the idea of forfeiture, if you don't  
20 use your water within five years (inaudible) is one  
21 of the things the state law and Idaho Constitution  
22 provides in statute. The state may regulate stream  
23 flow for Idaho Power purposes (inaudible) entitled  
24 to all this water that they were claiming.

25 So Idaho Power said, "We will give up

1 our water right provided you assure us it will  
2 never go below 3900." Those waters, then, that  
3 Idaho Power is saying "we are giving up" were  
4 actually appropriated waters of the state. They  
5 filed the proper claim. The paperwork is on file  
6 with the Department of Water Resources. Because  
7 those waters were claimed at one time, they are not  
8 considered the unappropriated waters of the state.  
9 Most of you realize that the citizen in Idaho is  
10 guaranteed the right to appropriate, use the  
11 unappropriated waters of the state. Now, that  
12 right shall never be denied, according to the  
13 Constitution.

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

20 So Idaho Power turned over, basically,  
21 all their water rights above 3900 cfs to the state.  
22 The state says, "We will reallocate that water for  
23 other uses provided you meet certain criteria."  
24 And that's Idaho Code 42-203A, B, C, as listed on  
25 Policy 32A.

1 There are existing criteria that have to  
2 be satisfied before you can get a water right from  
3 the state, and those are basically listed in the  
4 Idaho Code as 42-203A.

5 203B specifies that, yes, Idaho Power,  
6 or any kind of power water right, can be held in  
7 trust by the state. And 42-203C says that, if the  
8 state wants to reallocate water that had been  
9 claimed by a hydropower company, they may impose  
10 special criteria upon anyone who applies for that  
11 water.

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

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

1 which the negotiators were talking about and what  
2 was in the agreement. It turns out to be roughly  
3 150 cfs; in fact 144. By adding domestic, the  
4 intent is to add a little bit more water to that  
5 number just to cover it. But if you stop and think  
6 about it, we are talking about consumptive uses  
7 now. It really doesn't matter how much water you  
8 divert; it's how much water you consume out of the  
9 basin.

10 An irrigator that burns six or seven  
11 acre feet per acre and his crops only use three,  
12 the other water goes to recharge the aquifer or  
13 comes back to the river directly as surface runoff.

14 So we are talking about consumptive use.  
15 And in terms of any kind of water budget analysis,  
16 the person who drinks water, the individual human,  
17 doesn't consume much water. The amount of intake  
18 he has from beverages that are bottled outside the  
19 basin, that's a lucky thing. In the Snake Plain  
20 Basin, there is only one brewery, for example.

21 Your wastewaters actually balance out  
22 what you drink if you could ignore the amount of  
23 water actually lost from perspiration. By  
24 digesting food, you actually create more water than  
25 you're consuming. So the domestic, the amount of

1 water that's used by the human population of the  
2 area is not a significant factor. In fact, if you  
3 take a look at the numbers the department has, it  
4 turns out that those municipal diversions which are  
5 used to water lawns, golf courses, city parks, are  
6 probably the biggest consumers in the whole basin.

7 This amount, 150 cfs, of this water that  
8 the state now owns in trust is set aside for  
9 consumptive purposes. It will probably allow for  
10 the doubling of the population and industry of the  
11 whole basin.

12 If you take -- it's a fairly inclusive  
13 title -- if you take domestic, commercial,  
14 municipal, industrial, probably the only other  
15 consumptive use is agriculture. So Policy 32C  
16 specifically says that those waters now held by  
17 Idaho, less the amount reserved for DCMI, shall be  
18 available for new agricultural development or  
19 agricultural uses in general. It specifies that,  
20 if you are applying for that water that Idaho Power  
21 formerly claimed, you have to meet new additional  
22 criteria. Conceivable, and certainly the intent of  
23 the negotiators, was the idea that the first  
24 applicant who thinks he can put it to beneficial use  
25 automatically has the right to the water. That's

1 no longer going to be the case.

2 These waters are special waters. They  
3 belong to somebody else. They have been returned  
4 to the state for a new allocation, new criteria.

5 Policy 32D, talks about hydropower.  
6 Specifies that the use of water for hydropower is a  
7 beneficial use. That's already in the state water  
8 plan, the Constitution -- not the Constitution --  
9 the Idaho Code, and points out that the depletion  
10 of flows below the minimum average daily flow as  
11 set forth in Policy 32 is not in the public  
12 interest.

13 As part of the tradeoff from the power  
14 company to the state, the power company had to be  
15 guaranteed something. And what they have been  
16 guaranteed is 3900 cfs in the summertime and  
17 5600 cfs in the wintertime.

18 If the flows were ever to go below that  
19 point, Idaho Power should, would, and will take  
20 action through the state against any new  
21 appropriator of water. The intent of this  
22 agreement is to protect the existing user. For  
23 anybody who can prove, can only show beneficial use  
24 of water after the signing of the agreement, if the  
25 flows ever get below those specified, Idaho Power

1 has legal grounds to demand he be shut off or he  
2 supply them with water somehow.

3 Policy 32E, Navigation. This is  
4 basically no change from the existing state water  
5 plan except that in '76 and '82, when it was  
6 re-adopted, the Board was thinking in terms of  
7 3300 cfs at the Murphy Gage coupled with the  
8 federal licenses for the Idaho Power Complex  
9 supplying enough water for recreational purposes  
10 and commercial navigation below the Hells Canyon  
11 Complex. They now have raised it to over 3900;  
12 they feel, therefore, even better about the fact  
13 that there is enough for recreation and navigation.

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

23 It points out that many of these fish  
24 farmers rely on the discharges from Thousand  
25 Springs for their water flow, divert the water from

1 the springs discharge through the (unintelligible).  
2 They have a water right. Ford and the department  
3 feels that, by having 3900 at Murphy, they are  
4 going to probably always have water coming out at  
5 Thousand Springs.

6 The plan as it exists -- and it's  
7 proposed to revise it or not change -- calls for a  
8 zero minimum flow at Milner Dam near Twin Falls.  
9 All the water in the Upper Snake above that point  
10 is basically allocated to existing uses.

11 It is legal, and has happened on rare  
12 occasions, that there is no water coming past the  
13 Milner Dam. The only major recharge to the river,  
14 then, between Milner Dam and the Murphy Gage below  
15 Swan Falls is the Thousand Springs discharge.

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

21 But state law does not provide that a  
22 water right guarantees your needs of diversion. It  
23 provides only that you have access to water, the  
24 priority date associated with that water right.

25 Conceivably, if the flow sent to

1 Thousand Springs was to decline, the trout farmer  
2 may have to change his diversion structures. In  
3 the worst case situation, he may actually have to  
4 construct a well.

5 But as I say, law does not provide that  
6 a water right guarantees you a means of diversion;  
7 it just specifics you are allowed (unintelligible)  
8 water.

9 And that basic language is in the  
10 existing water plan, not necessarily that all the  
11 trout farmers were aware of the existing plan, if  
12 anymore are aware of this proposed revision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 got Idaho Power, you got 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 water short 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*

1 for irrigation, it might be only used for a certain  
2 project. So you can't move it around even if you  
3 wanted to.

4 The state has a water bank mechanism so  
5 that a person who has excess water can lease it to  
6 someone who needs the water. But the federal law  
7 provides that the waters behind a federal reservoir  
8 are (unintelligible) a federal dam. You cannot  
9 sell it and work a profit.

10 It's a fair deal from the point of view  
11 that, why should somebody be able to make an  
12 enormous profit on water that his grandfather or  
13 father paid some minimal amount and helped support  
14 the construction of the dam (unintelligible); and  
15 why should he be able to make a big profit off  
16 water stored behind the dam, then? At least a  
17 part, and in some cases the biggest part of it, was  
18 paid for by federal dollars.

19 *So that's realistic from that point of*  
20 *view. It would be very unrealistic if you expect*  
21 *someone who has excess water to make it available*  
22 *to someone else. It's hardly worth its while if*  
23 *you can't make a profit letting go of this water.*

24 Another federal restriction is that you  
25 can only lease or sell your water for one year at a

1 time. The intent of that, I suppose, is to protect  
2 the irrigator, the person who holds the water.  
3 There is no way that big business or even new  
4 farmers can come in, and if all they are guaranteed  
5 is water at a one-year-at-a-time basis, well,  
6 they'll not finance that kind of operation.

7 All you have to do is (unintelligible)  
8 the people in the area, and there would be no water  
9 available when you have business. So you can't  
10 lease or sell your water for more than one year at  
11 a time. There is certainly a barrier for trying to  
12 move this water around so that newer uses can be  
13 satisfied.

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

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

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

13 The Board has been asked and has agreed  
14 to trying to find out, are there ways to get around  
15 both state and federal restrictions on optimum,  
16 maximum, whatever you want to define it, better use  
17 of the water that is stored already in the system.

18 If you had to ask the director of the  
19 Department of Water Resources today to make a  
20 decision on it, are we doing the best we can on our  
21 water, he would probably have to say no because  
22 there is some unallocated water behind the  
23 reservoir (unintelligible) to the Snake.

24 Once that water is allocated, the  
25 director has to make a decision and would probably

1 have to rule under existing law, and we're probably  
2 doing the best we can. The intent is for the Board  
3 to see some of these restrictions about how we can  
4 better use the water. Some of those restrictions  
5 can be changed.

6 Certainly there's a lot of problems to  
7 try and change state or federal law as it relates  
8 to reservoir storage, but the intent of the Board,  
9 as far as response, is to look into can these  
10 things be changed.

11 The second part of Policy 32I applies  
12 strictly to the reach of the river from Milner Dam  
13 downstream to the Murphy Gage. Idaho Power is  
14 quite concerned about filling Brownlee Reservoir.  
15 There is no question about that, the amount of  
16 revenues they generate from a full Brownlee  
17 Reservoir. If Idaho Power is going to participate  
18 in the Northwest Power Claim Council Fisheries  
19 Augmentation Scheme, they are going to need water  
20 there to provide for the so-called fish rushes.

21 In trying to work out compromises, the  
22 negotiators agreed finally that filling that  
23 reservoir is so important that anybody who wanted  
24 to divert water directly out of the river during  
25 the wintertime for storage purposes, the impact of

1 that diversion can be measured in some sort of  
2 mitigation should the supply be granted and given  
3 to Idaho Power for that impact on their system's  
4 operation.

5 The plan does not specify, the proposed  
6 revisions of the plan do not specific, what that  
7 mitigation would be. Certainly it would have to be  
8 calculated on the individual base. The amount of  
9 water diverted at the time of the year, each  
10 project, each proposed wintertime diversion, would  
11 be different.

12 The intent is to lessen the negative  
13 impact on Idaho Power's operations. It may be that  
14 the timing of the return flows is beneficial to  
15 Idaho Power than the mitigation (inaudible) itself.  
16 It may be that someone who wants to have water in  
17 the wintertime can do additional amount of acre  
18 feet which are available to Idaho Power at cost.  
19 These are the kind of things that mitigation  
20 (inaudible). It doesn't mean a calculation of the  
21 economic dollars lost by Idaho Power. That's not  
22 the idea behind it. The idea is somehow, before we  
23 can let somebody take water out of the river in the  
24 wintertime in that region, we have to evaluate and  
25 try and lessen the impact on Idaho Power's

1 operations.

2 There is one last policy, and it's  
3 called Stored Water for Management Purposes. This  
4 is one the few changes that's not directly a  
5 reflection of either the agreement or the Supreme  
6 Court decision, but it's certainly indirectly a  
7 reflection of that.

8 The agreement and the proposed changes  
9 to the water plan require that the Department of  
10 Water Resources always maintain 3900/5600,  
11 depending on the time of year, at the Murphy Gage.

12 If the department is going to issue any  
13 new water rights for upstream development, they  
14 have to be weighed, then, against their impact on  
15 those flows. As I said earlier, there can be no --  
16 conceivably there are periods of the year when  
17 there is no flow coming down the river past the  
18 Milner Dam and we are relying totally upon  
19 discharges from Thousand Springs, the discharges  
20 from the Snake River Plain aquifer.

21 We try to manage water. As soon as you  
22 start talking about trying to manage groundwater  
23 and surface water, that's the intent of these  
24 changes in the water plan; that's the intent of the  
25 agreement that you're going to try and manage all

1 the water, ground and surface water, within the  
2 basin as a unit, or at least manage them so that  
3 you're always concerned about the minimum flow at  
4 Murphy.

5 It gets very complicated when we are  
6 talking about an aquifer that's sort of 100 miles  
7 long and 50 to 70 miles wide. And someone who is  
8 pumping water 50 miles from Thousand Springs, if  
9 the flow gets low at Murphy Gage and you want to  
10 shut him off, it would do no good to the flow at  
11 Murphy Gage because the effects of his pumping  
12 groundwater out there might not show up for weeks,  
13 months, (inaudible).

14 So if the department is going to be  
15 allowed to issue new water rights, particularly for  
16 groundwater purposes, they are going to have to  
17 either, one, be very conservative because there is  
18 no magic cutoff when you get close to 3900 because  
19 you're shutting off at (unintelligible), or they  
20 have to have some water someplace they can call  
21 from to cover up the mistake they might make, like  
22 over-appropriating water. And that's the intent of  
23 this.

24 There are unallocated waters. There is  
25 water available in the Upper Snake system that

1 could be specified for the use. If it could be  
2 obtained by the state, it would be there if the  
3 department gets down too close to 3900 and they  
4 make a mistake.

5 Ken Dunn, the director of the  
6 department, in a public hearing said, "The  
7 possibility of me managing the river, coupled with  
8 the aquifer to 3900 exactly, is nil. We don't know  
9 enough about the aquifer to do it. Even if we knew  
10 a whole lot more, the possibility of managing to  
11 some magic number like that are nil." The idea is  
12 to have this water available in case the department  
13 goes overboard, particularly with the idea that, if  
14 we issue too many permits to groundwater users, we  
15 can't make up the water in the river.

16 The idea here, of course, is that, if we  
17 can acquire some water in the system, it would not  
18 sit idle. It would be put in the water bank, it  
19 would be sold by Idaho Power or whatever. But it  
20 would be available as insurance if the department  
21 were to need it.

22 Those are the policies as proposed. I  
23 would just like to touch on a couple of things  
24 about the agreement that relate to the policies, I  
25 guess.

1 The agreement specifies that, if the  
2 flow of Murphy goes below 3900 and it's the cause  
3 of natural consequences, not some mistake on the  
4 part of the Department of Water Resources, Idaho  
5 Power will not protest. They will take no action  
6 against the nexus of the user. If the flow goes  
7 below 3900, any new appropriator, anyone who has  
8 got some of this water or is using water to  
9 formally (unintelligible), they will be subject to  
10 call. They would have to shut off so the  
11 department could get their water.

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

25 The other part, of course, is that the

1 federal government and the Indian tribes claim  
2 reserve water rights. Now, if you take all the  
3 national forests, the Craters of the Moon, the  
4 INREI, the reservation near Idaho Falls, plus the  
5 Fort Hall Indian Reservation, there are a lot of  
6 federally reserved water rights in the Upper Snake  
7 system.

8 The only way an (unintelligible) is  
9 adopted in '76, it asked the federal government and  
10 the Indian tribes to quantify the amount of water  
11 they feel they need. The existing plan provides  
12 that the Department of Water Resources will provide  
13 technical assistance to the Indian tribes, for  
14 example, to quantify their water rights.

15 To date, these have not been quantified.  
16 The only way to force the federal government to  
17 quantify their water right or to participate in the  
18 state adjudication is to do what's called a systems  
19 adjudication. Negotiators felt that, if they  
20 started at Lewiston where the Snake River starts  
21 out of the state and include all the tributaries  
22 upstream, that's a system-wide adjudication. There  
23 is nothing more the state can do as far as where it  
24 leaves the state.

25 That's why the existing legislative

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

9 Now, they had a piece of legislation  
10 introduced this session which would provide that  
11 the Indians not participate in the adjudication,  
12 for the Fort Hall group particularly, not  
13 participate in the adjudication, but that they  
14 negotiate their water rights with the state.

15 What that means in terms of what it  
16 could pass, what that means in terms of how they  
17 vote the adjudication is handled, I don't think  
18 it's important because the adjudication is  
19 basically a negotiation between an individual water  
20 right holder and the state. If an adjudication is  
21 done and this area is included, what happens is,  
22 the department comes out with their records and  
23 sits down with every water right holder in the area  
24 and says, "This is what we show. What do you  
25 claim? Let's discuss it. If we can reach an

1 agreement, fine, that's it," otherwise the private  
2 individual has the right to go to court  
3 (inaudible).

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

11 Mr. Gray, I think that's enough.

12 CHAIRMAN GRAY: Excellent. We will now open  
13 up the meeting for public testimony, and we have  
14 one person to testify. Malcolm Crawford.

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

18 MR. CRAWFORD: My name is Malcolm Crawford.  
19 I'm manager of Lewiston Orchards Irrigation  
20 District. I reside at 521 Karen Avenue in  
21 Lewiston.

22 (End tape 1)

23 MR. CRAWFORD: I'd like to thank the Board  
24 for coming all the way up here to Lewiston to  
25 participate with us. We appreciate some attention

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

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

23 Either way it's something that we feel  
24 is necessary. It has to be done, and we're very  
25 glad to see the state of Idaho moving in that

1 up here on this end because we realize that the big  
2 lag is usually on the agricultural end. Even  
3 though I'm manager of an irrigation district, under  
4 Reclamation law, it's not what you guys are used to  
5 down at St. Anthony's or along the Snake.

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

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

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

1 direction. And I believe that all the people who  
2 benefit need to pay for it. I think there has to  
3 be a look at methods of other users that you  
4 wouldn't normally be able to put your finger on,  
5 like the recreational people, and all of those who  
6 benefit from the use of the waters in the state.

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

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

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

1 know enough about it to say whether they should be  
2 corrected, amended. But some way that pathway  
3 should be eased so that beneficial use can be made  
4 of that water on the year-round.

5 Why have 56,000(sic) cfs at the gaging  
6 station in the winter and 33,000(sic) in the summer  
7 if the best use of it were otherwise than that, if  
8 you can save that spring runoff and use it at other  
9 times and trade off through the water bank, or  
10 whatever. And those things have to be pursued by  
11 the state, the legislature and the Water Board as  
12 well.

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

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

1 Thank you very much.

2 CHAIRMAN GRAY: Mr. Crawford, why don't you  
3 stand for questions if the Board members have one.

4 MR. CRAWFORD: Sure.

5 CHAIRMAN GRAY: Mr. Hammes, do you have a  
6 question for Mr. Crawford?

7 MR. HAMMES: I have no questions.

8 CHAIRMAN GRAY: Mr. Rydalch?

9 MR. RYDALCH: I have none.

10 MR. CRAWFORD: It was a pretty general  
11 statement.

12 CHAIRMAN GRAY: I think pretty much what you  
13 had to say is what we're hearing all up and down  
14 the river. And we thank you very much.

15 Is there anyone else who would like to  
16 testify at this time?

17 Yes, sir?

18 MR. TUTCHER: I'm Paul Tucher. I live at  
19 1411 Prospect in Lewiston. My phone number is  
20 743-6271.

21 I have some concern with the minimum  
22 flow restrictions. Idaho Power doesn't really give  
23 a damn what the minimum flow is down here below  
24 Hells Canyon Dam because it's of no benefit to  
25 them.

1 What they do is, they cut the water off  
2 in the summer. In other words, you're out there in  
3 a boat or in a raft, and you don't have any water.  
4 You're -- they drop the water a foot,  
5 foot-and-a-half an hour, and you're sitting up on  
6 the beach, you're ten feet from the river.

7 It's inconvenient for people who are  
8 trying to use the river, and it's destroyed the  
9 fishing on the river. I've lived here all my life  
10 and been on the river all my life. And I've seen  
11 the bass fishing up there, just it's been  
12 devastated. The beaches are gone.

13 The thing is, the minimum average is  
14 not -- you know, it's not -- nobody is watching it.  
15 If they regulate themselves at Lime Point and at  
16 Johnson's Bar, it doesn't matter to them how much  
17 water comes by there because they've generated  
18 their power at Hells Canyon Dam.

19 I think there should be more concern,  
20 you know, as to what goes on down here. It's great  
21 that you have plenty of water in Southern Idaho,  
22 but I live -- I have a lot right across from Lime  
23 Point, and I can go out and I can see how fast it  
24 drops every night and how much it comes up every  
25 day. And it makes it, you know, very difficult to

1 use the river for anything down here. I know it's  
2 a concern that I have.

3 Thank you.

4 CHAIRMAN GRAY: Mr. Hammes?

5 MR. HAMMES: I'll pass the question just --

6 CHAIRMAN GRAY: Mr. Rydalch?

7 MR. RYDALCH: I have no questions.

8 CHAIRMAN GRAY: Mr. Shawver?

9 MR. SHAWVER: I have nothing.

10 CHAIRMAN GRAY: What are you talking about  
11 fluctuations as far as elevations? Talking ten  
12 feet? Five feet?

13 MR. TUTCHER: I've seen it as much as 15  
14 feet, for example, at Lower Granite. It's a  
15 fairly -- let's face it. When you drop it a foot,  
16 are you talking about the bank at a 45-degree angle  
17 from the river? Are you talking about ten percent?  
18 At a ten-percent angle, I've seen at Salt Creek you  
19 can lose 50 feet. At Lower Granite you can lose 12  
20 feet. That happens every day. I mean, it isn't  
21 something that happens once in a while.

22 What happens is, they store the water,  
23 and during peak use during the day, they start  
24 dropping the river. At night it comes back up.

25 It's pretty well known that bass, when

1 they spawn, go up in the rocky areas and the  
2 beaches and they'll spawn. Well, those eggs are  
3 exposed every day. Every 24-hour period they're  
4 exposed, and they die.

5 And it's -- you know, it just -- I ran  
6 float trips. I was on the river for two summers.  
7 I was on the river every day for six months. I  
8 slept on the river every night, and there wasn't  
9 one night that it didn't happen. You'd set up a  
10 kitchen on the beach, and the river would be from  
11 here to the wall, and in an hour you'd be up to  
12 your knees in water. Get up the next morning, the  
13 river would be from here to the street. I mean, it  
14 fluctuated that much.

15 And I don't think that -- I don't know  
16 who runs the gages at Lime Point and at Johnson's  
17 Bar, and I certainly don't have the means to  
18 measure the river myself. But I find it hard to  
19 believe that, if I get in at a certain time and  
20 they tell me, okay, the river is running at 8500  
21 feet and I see the thing cut in half that it's  
22 being maintained at 5,000. I don't believe that.  
23 I just don't -- you know, I suppose with averages,  
24 if there's 70,000 coming down in the winter and  
25 2,000 coming down in the summer, they can average

1 it out and say, "Well, our minimum average is,  
2 we've maintained it at 5,000," when in essence, you  
3 know, it's jumping up and down like crazy.

4 I don't think there's a lot of concern  
5 for the minimum flow down here. I haven't seen it.

6 CHAIRMAN GRAY: Mr. Hammes?

7 MR. HAMMES: No, the question I was about to  
8 ask he made clear in supplementary remarks.

9 CHAIRMAN GRAY: Any further questions?

10 UNKNOWN SPEAKER: I have no questions.

11 CHAIRMAN GRAY: Mr. Shawver?

12 MR. SHAWVER: I have none.

13 CHAIRMAN GRAY: Thank you very much.

14 MR. TUTCHER: Thank you.

15 CHAIRMAN GRAY: Anyone else wish to testify  
16 at this time?

17 If not, we'll close the testimony part.  
18 and we would open it up for questions and answers.  
19 And we have Frank Sherman again with us from the  
20 department who can handle the technical questions  
21 for us.

22 MR. SHERMAN: Could I start off -- when I'm  
23 talking, I try not to listen to myself and I think  
24 I should.

25 (Laughter)

1 MR. SHERMAN: The point I was trying to make  
2 about the adjudication that I didn't make is that,  
3 despite the excellent testimony supporting the  
4 concept of adjudication, we've been (inaudible) in  
5 this area. I think it's quite likely that the  
6 adjudication (inaudible). Specifying Lewiston  
7 forces the federal government under  
8 (unintelligible) and regulations that they  
9 participate in the adjudicating. Since the  
10 agreement itself only specifics actions above Swan  
11 Falls Dam, I think it's fifty-fifty that they would  
12 start there. I don't think anyone in water  
13 management would argue that they need the whole  
14 state adjudicated at some point.

15 In terms of dollars and cents, we may  
16 well -- we'll take the smallest chunk we can, still  
17 including the Fort Hall Reservation.

18 UNKNOWN SPEAKER: Are you talking about  
19 taking (unintelligible) and adjudicating one at a  
20 time?

21 MR. SHERMAN: Yeah, we can all -- we talk  
22 about -- the estimate is \$28 million over ten  
23 years. And it's hard to judge, because, any  
24 adjudication the department has ever done before  
25 has basically taken ten or more years because

1 they've been done out of the general fund. And  
2 usually three or four people, at most, have been  
3 hired to do them. So they stretch out over ten  
4 years. All the department really did was to  
5 extrapolate the increase in size in this one and  
6 say, "Okay, if you get it done in ten years  
7 (inaudible)."

8 As a non-Board member, I didn't ask a  
9 question, but the last testimony was quite  
10 interesting. And quite honestly, it's the only  
11 testimony supporting even the inclusion of the Lime  
12 Point and Johnson's Bar flow. As far as the state  
13 water plan -- and I judge, and I don't know if the  
14 gentleman will correct me today -- he not only  
15 would support giving those flows any more authority  
16 than they might have; he would support more in  
17 looking at fluctuations and perhaps (inaudible).

18 I would point out that in speaking of  
19 funding an adjudication, recreational interests,  
20 they are hard to pin down. But the state, where  
21 the Board has specified a minimum stream flow, has  
22 to pay on that water as part of the adjudication  
23 process. One of the concerns (inaudible).

24 I think, Mr. Gray, with that, I'll be  
25 seated.

1 CHAIRMAN GRAY: Mr. Haas?  
 2 MR. HAAS: The concern over the river  
 3 fluctuations, it's in the license which you're  
 4 adding to the state water plan. And I just call  
 5 your attention to the fact that we're used to  
 6 talking about cfs, but there is, in this material  
 7 adding to the state water plan, it talks about the  
 8 maximum variation in river stage at the Johnson's  
 9 Bar not to exceed one foot per hour. There is  
 10 nothing in this language which you've put in to try  
 11 out concerning Lime Point. And, of course, the  
 12 one-foot-per-hour, how much riverbank is exposed or  
 13 unexposed is different.  
 14 CHAIRMAN GRAY: If you look at the bottom of  
 15 page 2, take your Currents and look at the bottom  
 16 of page 2 on the left-hand side and go up, gosh,  
 17 let's see, about five or six lines, now that's on  
 18 Idaho Power's federal power license, that language.  
 19 MR. TUTCHER: That's what I'm getting at.  
 20 Above the dam, Idaho Power's concern was to  
 21 maintain minimum flows because they need the water  
 22 to generate the power. Once it goes over Hells  
 23 Canyon Dam, that's water that's lost to them and  
 24 they have no more use for it. They don't care  
 25 what -- in other words, what I'm saying is that, I

1 guess in essence, if they're violating that,  
 2 nobody's doing anything about that.  
 3 CHAIRMAN GRAY: Could we ask you to do one  
 4 thing? We can't change the federal verbiage in the  
 5 federal license as we've indicated it here. But  
 6 we'll be accepting written testimony until February  
 7 22nd. And you can send that to the Statehouse, the  
 8 Water Resource Board, Statehouse, 83720. If you  
 9 might, just draft some language up for us of how  
 10 you think it might fit or dovetail into Policy 32,  
 11 we'd sure appreciate it.  
 12 MR. TUTCHER: All right.  
 13 CHAIRMAN GRAY: And anyone else here who  
 14 hasn't testified today, if you don't want to  
 15 testify up here, we will accept written testimony  
 16 from everyone in the state until February 22nd  
 17 regarding Policy 32.  
 18 Mr. Sherman?  
 19 MR. SHERMAN: I suggest, Mr. Chairman, that  
 20 the Board might wish to entertain, or it may appear  
 21 in different testimony, that at least one of these  
 22 specified points (inaudible) at all, and that the  
 23 Board should encourage the department to seek, as  
 24 part of the underlying studies, better gages on a  
 25 day-to-day basis at these points.

1 CHAIRMAN GRAY: That's a good idea.  
 2 UNKNOWN SPEAKER: I have a question.  
 3 CHAIRMAN GRAY: Yes.  
 4 UNKNOWN SPEAKER: How does your plan fit, or  
 5 have you had any comment whatsoever from the  
 6 federal people about whether or not your water plan  
 7 actually meets the requirements for water quality  
 8 standards?  
 9 CHAIRMAN GRAY: Okay. The first thing that  
 10 you have to realize, it is your plan, our plan.  
 11 UNKNOWN SPEAKER: Has it been submitted to  
 12 the federal government?  
 13 CHAIRMAN GRAY: Oh, yes. We had testimony  
 14 yesterday from the Bureau of Reclamation. We have  
 15 not heard from the Forest Service; we have not  
 16 heard from the Bureau of Land Management; we have  
 17 not heard from any of the tribes.  
 18 UNKNOWN SPEAKER: Does the U.S. Fish and  
 19 Wildlife Service have any jurisdiction whatsoever?  
 20 CHAIRMAN GRAY: Go ahead.  
 21 MR. SHERMAN: I guess I'll answer this in two  
 22 parts. One, let me talk about the Fish and  
 23 Wildlife Service. The Fish and Wildlife Service  
 24 has not testified (unintelligible). They -- I have  
 25 spoken to them (unintelligible). And they are

1 pleased with the idea that the minimum flow is set  
 2 by the plan to be raised. They are considering, if  
 3 there is a systems-wide adjudication, participating  
 4 in the (unintelligible) of the Snake, for example,  
 5 (unintelligible) for wildlife purposes and  
 6 (unintelligible) much higher.  
 7 In terms of water quality, the Nez  
 8 Perce people -- not the Nez Perce.  
 9 UNKNOWN SPEAKER: The Sho-Bans.  
 10 MR. SHERMAN: -- the Sho-Bans, the  
 11 Shoshone/Bannock people from Fort Hall, came to  
 12 represent their (inaudible) water quality questions  
 13 (inaudible). The Environmental Protection Agency  
 14 has not commented principally (inaudible).  
 15 The concern over the existing language,  
 16 there is really only one concern. I don't think  
 17 anybody wants to see us use good water to dilute  
 18 pollution (inaudible).  
 19 The Board and most of the people who  
 20 talk to the issue feel that discharge should be  
 21 part of the (inaudible) plan. There is some  
 22 concern, however, that if the flows in the river  
 23 were to be (inaudible) -- the intent is still to  
 24 put the burden of any obligation (inaudible).  
 25 UNKNOWN SPEAKER: Well, I saw nothing in here

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'll 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 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 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 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 3211; would  
25 that be true? Could you possibly -- we see some

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1 weaknesses with it, also. Might you put something  
2 together in writing for us and submit it by the  
3 22nd? We'd sure appreciate it. But it's --  
4 everything that we can get is going to help.

5 This is not the final form; this is just  
6 a rough draft, so to speak, of what we hope to come  
7 up with when all the testimony is taken into  
8 account. So it would be important to us -- it's on  
9 page --

10 UNKNOWN SPEAKER: Yes, I have it.

11 CHAIRMAN GRAY: Okay. But we would really  
12 appreciate it.

13 One thing I might mention is, a member  
14 of the Idaho Water Resource Board is from Lewiston,  
15 Dick Wagner. And Dick couldn't be with us today.  
16 So any problems you have, why, you might get a hold  
17 of Mr. Wagner.

18 Any other questions we might answer for  
19 you? If not, again I'll reiterate that we will  
20 accept written testimony until February 22nd. And  
21 it can be sent to the Statehouse, Boise 83720. And  
22 we will meet again here tonight at 7:00 p.m. if you  
23 care to join us again.

24 Thank you for coming.

25 (Recess)

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1 LEWISTON, IDAHO  
2 February 6, 1985, 7:00 p.m.

3  
4 (Joke told about a cowboy and a reverend)

5  
6 CHAIRMAN GRAY: My name is Gene Gray, and I'm  
7 chairman of the Idaho Water Resource Board. And on  
8 my right is Bob Hammes from St. Maries, a  
9 publisher, a newspaper man, book store owner, et  
10 cetera; Dave Rydahl who is a Committee of Nine  
11 which is an Upper Snake River irrigation  
12 conglomerate and also a farmer at St. Anthony; and  
13 over here is Jim Shawver who is the secretary of  
14 the Idaho Water Resource Board and a farmer in the  
15 Eden area; and we've got Wayne Haas from the  
16 Department of Water Resources; and Frank Sherman,  
17 geologist from the Department of Water Resources.

18 And we're here to talk to you about  
19 Policy 32, or some changes to Policy 32, of the  
20 state water plan. And if you've got your  
21 Currents -- did you get a copy of that? -- if you  
22 just kind of grab that, I'll just kind of thumb  
23 through it with you a little bit.

24 Page 1 kind of gives you an overview of  
25 the Water Resource Board, our function and a little

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1 bit about Policy 32 and the state water plan.

2 Page 2 and 3 deal directly with the  
3 revisions of Policy 32 of the state water plan.

4 If you go on over to page 4 and half of  
5 page 5, you'll find the entirety of the agreement  
6 that came about between the governor and his staff,  
7 the attorney general, their staff, and Idaho Power  
8 Company.

9 The rest of page 5 through page 7 is the  
10 legislative package which our legislators are  
11 presently working on at the State Capitol.

12 On page 7 on the right-hand side there  
13 are seven items which deal directly with the  
14 package, what we're doing with you as far as Policy  
15 32 is concerned. And No. 1 is State Water Plan is  
16 Amended. And that's why we're here to talk about  
17 the amendment to Policy 32 of the state water plan.

18 No. 2, these all must take place by May  
19 15 of this year. No. 2, the legislative package  
20 must be passed which you have before you.

21 Appropriate action taken by the Public  
22 Utilities Commission or the legislature as called  
23 for in the agreement between all parties.

24 Appropriate order by the Federal Energy  
25 Regulatory Commission kind of okaying this

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1 entirety.

2 No. 5 is the Public Utilities Commission  
3 will dismiss the lawsuit as filed by the ratepayers  
4 in 1977.

5 And No. 6, if required, the Oregon PUC  
6 must okay the package. And the reason for that is  
7 because of the Hells Canyon Complex for those  
8 bordering the state of Oregon. We don't know if  
9 that is going to be something that has to be had,  
10 but it's included anyway.

11 Then enactment of the legislature by  
12 Exhibit 7A and 7B as you see just to the left of  
13 this.

14 So what we'd like to do is, we'll have  
15 Frank give you kind of an overview and the changes  
16 of Policy 32 as we see them. And then we'll open  
17 it up to your statement, and close that, and then  
18 have questions and answers.

19 Frank?

20 MR. SHERMAN: There are five people up here  
21 who have heard this story once or twice or three  
22 times before. It reminds me of the time that I  
23 drove to Post Falls about two years ago to talk  
24 about groundwater. And two staff people from the  
25 Department of Water Resources and two citizens were

1 there, and we gave them an hour and a half. We  
 2 dumped a full load on them.  
 3 (Laughter)  
 4 MR. SILERMAN: I guess the best way to look at  
 5 this -- and there is a lot of confusing things  
 6 going on -- about the only place you don't have a  
 7 compromise is to get things in court. And that was  
 8 the whole reason behind the state and Idaho Power  
 9 agreeing to sit down and discuss the whole Snake  
 10 River Basin and try and settle it.

11 We've been to court, district court, the  
 12 Supreme Court and back in district court.  
 13 Whichever side won there, the other side was going  
 14 to take it back to the Supreme Court. And that's  
 15 the only way you don't get a compromise.

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

1 fact, the lowest flow had been down to 4500 cfs.

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

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

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

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

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

10 The agreement itself, things have  
 11 changed even since October. We're trying to keep  
 12 everybody happy (inaudible).

13 The proposed revisions of the water  
 14 plan, things that these gentlemen are specifically  
 15 concerned about, start off, and, instead of trying  
 16 to allocate the waters in one little policy that  
 17 says we allocate the waters hereby, and we have  
 18 page after page of how the water is supposed to be  
 19 used, the Board has chosen this time to say it is  
 20 the policy. But it is the policy but highlight  
 21 those things that they feel are really important.

22 Certainly, if you're going to try and  
 23 manage the whole Snake River Basin at least above  
 24 Murphy Gage and above Swan Falls, the dam just  
 25 south of Boise, you need to have some guidelines.

1 And the guidelines, as the agreement sets it and  
 2 the Board has agreed to take it out to the public,  
 3 changes the minimum flow at Murphy Gage to 3300 cfs  
 4 year-round; to 3900 cfs in the summertime, 5600 cfs  
 5 in the wintertime.

6 Not an unusual thing to specify certain  
 7 periods of use for a water right (unintelligible),  
 8 but different from the water plan as it stands  
 9 today.

10 Why is it raised to 3900? Where did  
 11 3900 come from? Is it a magic number? It's going  
 12 to be magic if the agreement is put in place and  
 13 the water plan changes are adopted, but it's not  
 14 magic in that it was arrived at by saying that the  
 15 river had already been down to 4500 cfs. That's  
 16 just sort of one point of view. The other point  
 17 was that the water plan calls for 3300. If you  
 18 really split the difference, that's where the 3900  
 19 comes from. So it's a compromise to start with.

20 5600 comes from two different attitudes.  
 21 One, there's a lot more water going down the river  
 22 in the wintertime. And in terms of what Idaho  
 23 Power wanted out of any compromise, they certainly  
 24 wanted to protect filling the Brownlee Reservoir.  
 25 So that was the only storage they had in the Hells

1 Canyon Complex, a key to their whole operation.  
 2 They wanted more out of the wintertime cut. And if  
 3 you take the 3900, stick it into a computer, to get  
 4 it down to 3900 in the summertime, the Department  
 5 of Water Resources projects that 5600 is about  
 6 where it would be in the wintertime.

7 So those are how those numbers were  
 8 arrived at. As I say, it's going to split waters  
 9 in the river between two competing interests.

10 The Board at this time is proposing to  
 11 include as specific water policy a couple of points  
 12 in the river that have never been mentioned before,  
 13 only peripherally mentioned in the past. They're  
 14 going to continue the zero flow at Milner Dam. All  
 15 the water in the Upper Snake in low water years can  
 16 be appropriated; therefore, there is no requirement  
 17 for the water to be dumped past Milner Dam. All  
 18 the water that occurs in the river during those low  
 19 flow periods basically is not a spring fishing  
 20 area.

21 They're going to specify, continue to  
 22 specify, that, at the Weiser Gage, 4750 cfs is  
 23 appropriate. It's a minimum flow. Since this plan  
 24 was adopted in '76, I think there's only been one  
 25 day when the flow ever got below that. And that

1 was because of some unusual operational procedures  
 2 on the Payette River. So it's a reasonable flow,  
 3 and it is designed to assure that Brownlee gets  
 4 some water for Idaho Power purposes.

5 But they're adding Lime Point and  
 6 Johnson's Bar. Now, the existing water plan just  
 7 says the federal license for the Hells Canyon  
 8 Complex specifies these flows at Hells Canyon. And  
 9 the existing plan says that's a good idea. Those  
 10 are necessary flows to protect the fish and  
 11 wildlife and navigation and all the other things.

12 The Board is proposing to adopt those as  
 13 part of the water plan specifically as the policy  
 14 of the state the idea being that, if the license  
 15 were ever changed at the Hells Canyon Complex,  
 16 these flows would be guaranteed by the state water  
 17 plan.

18 As I said, we try to keep everybody  
 19 happy and protect those interests downstream of the  
 20 Hells Canyon Complex. They should be assured  
 21 something.

22 Policy 32A. And I'll say this is the  
 23 case of spelling out what's policy and what's the  
 24 explanatory text. Basically, it deals with several  
 25 different things. It points out that Idaho Power

1 has claimed this water, it's been put to beneficial  
 2 use, and yet now Idaho Power is turning it back to  
 3 the state so the state can give it to other users,  
 4 at least a portion of it.

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

12 The key one, of course, is that, as  
 13 appropriated water, the state can put new criteria  
 14 or additional criteria on anybody who wants to use  
 15 it. So a person who applies for some of this water  
 16 that Idaho Power claimed and now given over to the  
 17 state, in addition to having to satisfy the normal  
 18 criteria of beneficial use -- non-speculative,  
 19 public interest -- may now have to also satisfy an  
 20 additional set of criteria which talks to general  
 21 economics of the state, the impact of hydropower,  
 22 the family farm tradition. A new set of criteria.  
 23 And that's because this water had been  
 24 appropriated, put to beneficial use, and the state  
 25 now has it in its hands to re-allocate.

1 Policy 32B, Domestic, Commercial,  
 2 Municipal, and Industrial. The existing water  
 3 plan, when they thought they could take the river  
 4 down to 3300, allocated in terms of acre feet about  
 5 144 cfs on an average daily diversion for new  
 6 municipal and industrial uses. The Board  
 7 recognizes that the Supreme Court said that Idaho  
 8 Power has a legitimate water right. The compromise  
 9 says we won't take it below 3900 even in the  
 10 summertime; therefore, there's less water available  
 11 for these other competing uses.

12 The Board still proposes to reserve  
 13 150 cfs. Now, by including domestic uses, it  
 14 really doesn't change the parameters because the  
 15 human being doesn't really consume that much water.  
 16 You drink some water, and there's wastes go out,  
 17 and it sort of balances out. But they have changed  
 18 the provisions for the proposed thermal power  
 19 generation in the Snake River Basin.

20 Back in '76 everybody was concerned  
 21 about energy, and that was the big thing. Right  
 22 now Idaho Power generates more energy than what's  
 23 consumed in the state. So it will change some of  
 24 the different uses we perceive being made of this.  
 25 But right now there's only about 100 -- no, 400 cfs

1 are diverted for these kinds of uses in the Snake  
 2 Basin. And that's total diversion.  
 3 The whole intent now is to try and  
 4 manage the river and the aquifer that contributes  
 5 to the river on consumptive use. If you think  
 6 about total diversions from municipal water supply,  
 7 the only consumptive use may be some small industry  
 8 that uses some that goes up into the smokestack as  
 9 steam. The watering of the lawn is probably the  
 10 biggest consumptive user of municipal water.  
 11 A lot of the industry in Idaho is very  
 12 non-consumptive in that it's cooling water, wash  
 13 water. It gets back into the system. People who  
 14 might come in and want to start a new industry,  
 15 most of the land that's available for purchase, it  
 16 would be relatively low cost. It's irrigated  
 17 agricultural land. The amount of water that goes  
 18 on per acre for Idaho may well compensate for all  
 19 the consumptive uses that new industry ends up  
 20 with.  
 21 We don't think that water  
 22 (unintelligible) are necessary for  
 23 (unintelligible). But 150 cfs, just as a guess,  
 24 would probably provide for double the population of  
 25 those living in the basin.

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

1 in half, half for increased (inaudible) Swan Falls  
 2 Dam at Murphy. That's only true in that reach for  
 3 that (unintelligible) Swan Falls. Upstream the  
 4 numbers change. The intent doesn't change,  
 5 however.  
 6 Idaho Power has agreed that the state  
 7 can use their water, they can reallocate it as long  
 8 as the new legislative criteria are met, and as  
 9 long as the flow at Murphy Gage never goes below  
 10 3900.  
 11 Policy 32D, Hydropower. It's already a  
 12 beneficial use of water in Idaho to use water for  
 13 hydropower purposes for generation of electricity.  
 14 The water plan will now specifically recognize  
 15 that, and they will further state that depletion of  
 16 the flows below the 3900 and 5600 established at  
 17 Murphy Gage are not in the public interest.  
 18 This is pretty clearly a protection for  
 19 Idaho Power for giving up something. You know,  
 20 they could go to court and argue, then, maybe their  
 21 8400 cfs claim was legitimate. Maybe they  
 22 forfeited water down to the (unintelligible) flow,  
 23 but they still had rights to all the water in the  
 24 river. So they're giving up something. And in  
 25 return, they're getting protected by the Water

1 Board adopting 3900 in the state minimum flow. The  
 2 intent is that it should never go below that.  
 3 32E, Navigation. This is basically the  
 4 same language that's in the water plan today. And  
 5 it's the policy of the Board in Idaho that, by  
 6 setting these kinds of minimum flows, there's  
 7 enough water in the river for recreational  
 8 purposes. And there will be enough water coming  
 9 through the Hells Canyon Complex for any commercial  
 10 navigation that takes place.  
 11 Aquaculture, 32F. Particularly in the  
 12 reach from about Twin Falls down to Bliss, most of  
 13 the so-called trout farming or fish farming takes  
 14 place. There are catfish and trout that are raised  
 15 in that region. Most of the people rely on  
 16 discharges from Thousand Springs.  
 17 If a person who is engaged in fish  
 18 farming wants to get a water right to process  
 19 fish -- clean it up before he packages it, or  
 20 whatever is involved in processing trout -- that  
 21 water should be regarded as commercial withdrawal,  
 22 and it should come out of that water reserved for  
 23 DCMI.

(End of Tape 2)

MR. SHERMAN: (Gap in testimony transitioning

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

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

15 Policy 32G, Fish, Wildlife, and  
 16 Recreation. The existing water plan basically says  
 17 that 3300, while not an optimal number for fish and  
 18 wildlife purposes, will provide some minimum  
 19 resource. Ford feels that 3900 is a better number  
 20 in terms of protecting fish and wildlife. So they  
 21 basically say, here is the policy of Idaho that the  
 22 minimum flows established under Policy 32 are  
 23 sufficient and necessary to meet the minimum  
 24 requirements for aquatic life, fish, and wildlife,  
 25 and to provide water for recreation in the Snake

1 River below Milner Dam.

2 The other thing that the Board has as  
 3 sort of an acc-in-the-hole or going for it, or  
 4 whatever language that you want to use, is that, in  
 5 a different policy of the state, they provide and  
 6 have had legislative approval and have been  
 7 appropriating water for in-stream flow purposes.  
 8 The Board is the only agency that can appropriate  
 9 water for in-stream flow values.

10 Now, the thing that gets a little bit  
 11 sticky here is that they may appropriate the  
 12 unappropriated waters just like any citizen has the  
 13 right to appropriate unappropriated waters of the  
 14 state. And most of the reliable water in the Snake  
 15 River system now is being held in trust by the  
 16 state because Idaho Power already appropriated it  
 17 once.

18 But on many of the tributary streams,  
 19 and even on the main Snake where there are  
 20 unappropriated waters, the Board has either applied  
 21 for and gotten in-stream flows or are in the  
 22 process of doing so.

23 So between these two different  
 24 mechanisms, one, by establishing minimum flows  
 25 through the water plan and having the ability to

1 appropriate water, the Board feels that they are  
 2 protecting some minimum value of fish, wildlife,  
 3 and recreation.

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

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

25 The very first part of this two-pronged

1 policy is that, before new storage permits are  
 2 approved, some kind of examination and  
 3 determination should be made that we're doing the  
 4 best job we can with the existing storage  
 5 facilities in the system.

6 Now, the negotiators maintained -- and  
 7 this may be reworded for (unintelligible) more  
 8 directly -- but they maintained that there are  
 9 legal barriers. There are federal rules and  
 10 regulations in federal law and state law, that  
 11 prevent the best use, the maximum use of the water,  
 12 that's stored already in the river system.

13 Anybody who lives on the Snake or  
 14 follows the flows in the Snake realizes that on  
 15 October 1st every year the water master dumps a lot  
 16 of water at Milner Dam to make room for next year's  
 17 runoff. This year the flow was 12,000 cfs on  
 18 October 1st.

19 That's where it's been held in storage  
 20 all year long, and it's insurance water, and it's  
 21 never used. It would be ideal if those waters  
 22 could be moved around, made available to someone  
 23 who wants to use it.

24 The state has what's called the water  
 25 bank. The rules and regulations provide for these

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

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

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

1 of a water right. That water is designed to  
 2 irrigate a certain piece of property, a certain  
 3 acreage, and in essence, almost a certain crop or  
 4 crop rotation. If you're going to sell it to  
 5 another consumptive user, that may double the  
 6 amount of consumption, basically. And if everybody  
 7 did that, everything would be so out of control,  
 8 and our water resource would be buried.

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

18 So a lot of things that could be looked  
 19 at might be changed so that we can make better use  
 20 of the water that's already in the system. It's  
 21 hard to stand up in public and say, "We're out of  
 22 water. We can't satisfy Idaho Power; therefore, we  
 23 got to take some of your water away," and  
 24 12,000 cfs comes past the river on October 1st, and  
 25 that's just because the water runs through Murphy

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

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

14 So that prevents the exchange of water  
 15 in the system. The state also has barriers for  
 16 more efficient use of water. And certainly one of  
 17 these is that you can't expand a water right. You  
 18 can have a full natural flow right for a piece of  
 19 property. You can have a stored water right for  
 20 the same amount of water for the same piece of  
 21 property. If you only need that water once in ten  
 22 years, it would seem logical that the best use  
 23 would be to let you give it or sell it to somebody  
 24 else. But if that other person is going to make a  
 25 consumptive use of that water, that's an expansion

1 Gage.

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

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

15 If the director had to make a  
 16 determination now, are we doing the best we can  
 17 with the water that's in the system, he'd have to  
 18 say heck no because there's unallocated water in  
 19 Ririe Reservoir right now that's up for sale for  
 20 (unintelligible). Once that water is gone, and if  
 21 we can't change the federal law, we can't change  
 22 the state law, then it's certainly -- the director  
 23 has to find that we're doing the best we can under  
 24 the existing regulations in Idaho. But the intent  
 25 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 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 Brownlee 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 this point. The negotiators themselves couldn't  
2 agree on what was appropriate, and so they dumped  
3 it in the Water Board's lap. And when the Water  
4 Board gets the first firm proposal in front of it,  
5 they will go through and calculate it.

6 They can either set the rules and  
7 regulations, but that becomes very awkward in that  
8 they're going to have to look at each proposed  
9 project as an individual project. The timing of  
10 the diversion, the amount, when the wastewaters  
11 might come out of the river. All these things will  
12 be involved in it.

13 I guess when the time comes, the Board  
14 is going to have to scratch their hair, probably  
15 coming off of public hearings, and say, "These are  
16 what we think is appropriate for mitigation."

17 There's one very last policy, and it is  
18 not demanded by the agreement. It's sort of a new  
19 idea, something to take out to the public and see  
20 what kind of reaction there is to it. It's called  
21 Stored Water for Management Purposes. As I pointed  
22 out, there are at this time unallocated waters in  
23 Ririe Reservoir.

24 The intent of this policy is for the  
25 state to acquire at least a portion of those

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 5600 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 pumpers 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 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.

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,

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 water 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

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

1 reservations has never quantified how much water  
 2 they claimed in the basin. If you take in all the  
 3 national forests, the INFEL 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

1 negotiators and perhaps the Department of Water  
2 Resources, they'd just as soon see it start at Swan  
3 Falls. That's where the controversy came from.  
4 That's where the original court case mentioned  
5 specifically. But it's important enough to get the  
6 Indians and the feds involved. The state is  
7 willing to do the whole thing if they have to.

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

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

24 This will be the first time the state  
25 has ever tried adjudication of this size. In the

1 past adjudications have always been funded by the  
2 so-called general fund of the legislature.  
3 (Unintelligible) taxpayers of all the state have  
4 paid for every adjudication the department has done  
5 no matter how small it's been and how restrictive  
6 in the allocation.

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

12 \$28 million for ten years to be paid is  
13 the best guess at this time. It's based on the  
14 fact that previously the legislature has funded  
15 three or four people, and it's taken us ten years  
16 to (inaudible). If we extend one (inaudible) for  
17 the whole Snake Basin and expand three or four  
18 people into whatever \$28 million will buy,  
19 (unintelligible).

20 It's a real stumbling block.  
21 Negotiators, the Board, most of the legislature  
22 feels something had to be done at some time. Our  
23 staff at water resources, of course, would say the  
24 whole state should be adjudicated.

25 If you don't have a court decree, a

1 water map is on shaky ground, and we might have to  
2 shut the light off. You really need the decree to  
3 function. And clearly bits and pieces of the Snake  
4 Basin have been done, but none that's been ever  
5 timed together.

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

9 CHAIRMAN GRAY: Thank you, Mr. Sherman.  
10 MR. HAMMES: Mr. Chairman, I have a question  
11 for Mr. Sherman.

12 CHAIRMAN GRAY: Yes.

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

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

25 Now, the Nez Perce, for example, if

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

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

20 In the case of the Indian nations, it  
21 would probably take a full ten years that we're  
22 estimating for adjudication to resolve their water  
23 right. The advantage of the general adjudication  
24 of getting the Indians and the state court, is  
25 that, if after ten years of negotiation with the

1 Department of Water Resources no compromise would  
2 be affected, Idaho state courts would set what  
3 their water rights are. And certainly most legal  
4 people would say better state court than federal  
5 court.

6 MR. HAMMES: Mr. Chairman, Mr. Shetman, is  
7 all of the Duck Valley outside the Snake?

8 MR. SHERMAN: No, I don't think it is. But I  
9 honestly don't know. It's certainly Owyhee  
10 (unintelligible) --

11 UNKNOWN SPEAKER: It's in a wide range.

12 UNKNOWN SPEAKER: All of it? I thought some  
13 of it drained into Nevada.

14 MR. SHERMAN: Oh, yeah, yeah. Well, the  
15 problem we had with that is the Owyhee comes into  
16 the state. That portion of the south fork of the  
17 Owyhee is not on the reservation. But as it goes  
18 into the reservation area, it comes back in the  
19 state. It's really out of Idaho.

20 Now, I think, the intent of the  
21 negotiators, and just as formal discussion, is to  
22 recognize whatever claim they might make and  
23 realize that they have to be approached. But they  
24 may better be served by acquiring water rights in  
25 Oregon.

1 CHAIRMAN GRAY: The Owyhee comes back into  
2 the Snake system between Nyssa and Adrian. So it  
3 comes out of Idaho into Oregon and then back in  
4 again.

5 Thank you, Mr. Sherman.

6 We'll now open our meeting for public  
7 comment. And the Board would call Donald  
8 Satchwell. Don?

9 MR. SATCHWELL: Mr. Chairman, Fellow Board  
10 Members, thank you. I have followed the Swan Falls  
11 thing quite a little bit. I am fairly familiar  
12 with the package as it now stands.

13 I think my main thrust tonight would be  
14 to urge you to take a very serious look at changing  
15 the state water plan so that the minimum stream  
16 flow at Murphy Gage would reach 3900 in the  
17 wintertime -- I have the dates here, but -- and  
18 that 5600. I mean, 3900 in the summer and 5600 in  
19 the winter.

20 I think this is the key to the Swan  
21 Falls plan as far as the state water plan is  
22 concerned. If I am wrong in that, why, maybe you  
23 can correct me a little later on that. But I do  
24 believe that the package as a whole is probably the  
25 best solution, not only to the Snake River Plain,

1 but I also believe that it sets a precedent as far  
2 as the rest of the state is concerned.

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

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

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

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

4 MR. SATCHWELL: Okay.

5 CHAIRMAN GRAY: Can I ask you that?

6 MR. SATCHWELL: My name is Don Satchwell. My  
7 mailing address is North 4340 Idaho Road, Post  
8 Falls, Idaho. And my phone is area code  
9 (208) 773-5285.

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

12 Mr. Hammes?

13 MR. HAMMES: No questions.

14 CHAIRMAN GRAY: Mr. Rydalch?

15 MR. RYDALCH: No questions.

16 UNKNOWN SPEAKER: I have none.

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

19 MR. SATCHWELL: Thank you.

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

22 UNKNOWN SPEAKER: No, (inaudible).

23 CHAIRMAN GRAY: Okay. Thank you.

24 We'll close the official public  
25 testimony and open it for questions and answers

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<p>1 now. Do you fellows have something you'd like to 2 whip on the staff or us? 3 (Laughter) 4 UNKNOWN SPEAKER: (Inaudible) a fire load? 5 UNKNOWN SPEAKER: Not really. I guess maybe 6 I would have maybe a question for the Board. And 7 how many public meetings have you had on the Swan 8 Falls issue so far?</p>	<p>1 above Murphy, this is the only place that will 2 appear. The Board is going also set aside 150 cfs 3 of that water that used to be claimed by Idaho 4 Power, some of it (inaudible). 5 CHAIRMAN GRAY: Anything else, gentlemen? 6 UNKNOWN SPEAKER: No. 7 CHAIRMAN GRAY: We would officially close the 8 meeting. 9 (End of Tape 3 and end of proceeding.)</p>
<p>9 CHAIRMAN GRAY: This is the 12th and final. 10 UNKNOWN SPEAKER: This is the 12th and final. 11 CHAIRMAN GRAY: Yes. 12 UNKNOWN SPEAKER: What has the general 13 consensus been? Do they favor the package? 14 CHAIRMAN GRAY: I would say from Idaho Falls 15 to Lewiston, in the six locations where we've held 16 meetings, two meetings each day, one at 2:00 and 17 one at 7:00 p.m., in general I would say that the 18 state is in favor of the package. I think that 19 people have had enough of seven years of litigation 20 and arguing and trying to run things through the 21 legislature, and they're ready for something to 22 happen. And all indications are that, by gosh, 23 maybe it will. 24 We will accept written testimony until 25 February 22nd, if you fellows would care to write</p>	
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<p>1 something to us. And something may not come to 2 your mind this evening, but if you would like to 3 write it, just send it to the Water Resource Board, 4 Statehouse, Boise 83720, and we'd be glad to hear 5 from you. 6 UNKNOWN SPEAKER: Just to clarify -- and I 7 won't mind to get up -- really the key to this 8 whole thing as far as -- all you're going to change 9 at this particular time is the minimum stream 10 flows, is it not? 11 CHAIRMAN GRAY: And in the items that you see 12 in Policy 32. We've been taking input on these ten 13 items that you'll find on page 2 and 3. And from 14 the input that we have received, we'll take all 15 that input, try to synthesize it, and put it back 16 into a form what we think we've heard from the 17 public. We will then submit that to the 18 legislature, and that will be the kingpin to get 19 this whole thing going. 20 UNKNOWN SPEAKER: Okay. 21 CHAIRMAN GRAY: Mr. Sherman? 22 MR. SHERMAN: I would respond also that this 23 will be the only place that the concept of maximum 24 use of reservoir storage in the system, mitigation 25 (inaudible) diversions as far as below Milner and</p>	<p>1 REPORTER'S CERTIFICATE 2 3 4 I, Frances J. Morris Court Reporter, a 5 Notary Public, do hereby certify: 6 That I am the reporter who transcribed 7 the proceedings had in the above-entitled action 8 in machine shorthand and thereafter the same was 9 reduced into typewriting under my direct 10 supervision; and 11 That the foregoing transcript contains a 12 full, true, and accurate record of the proceedings 13 to the extent they were audible and intelligible 14 in the above and foregoing cause, which was heard 15 at Lewiston, Idaho. 16 IN WITNESS WHEREOF, I have hereunto set 17 my hand this ____ day of _____ 2007. 18 19 20 21 22 Frances J. Morris Court Reporter 23 CSR No. 696 24 25</p>



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R E P O R T E R ' S C E R T I F I C A T E

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 19<sup>th</sup> day of November 2007.

*Frances Morris*

Frances J. Morris, Court Reporter  
CSR No. 696

