RECORDING ENTITLED
"TWIN FALLS-1"

Public Information Meeting
Thursday, May 23, 1985
Twin Falls, Idaho

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TRANSCRIPT OF PROCEEDINGS

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When excellence is an obligation

ORIGINAL
MALE SPEAKER: Viewing global public interest of the board of directors of the corporation felt should be whatever this be, I'll read it to you.

MR. YOUNG: Good. And will you submit us a copy of it too?

MALE SPEAKER: Yes.

MR. YOUNG: Very good.

MALE SPEAKER: I'm here now representing the Hagerman Valley Citizens work. Our group might well be defined as a citizenship group whose main concern is the public interest.

We are usually, if not always, supporting positions that will benefit the public at large. As a group we are mainly concerned with maintaining the healthful and attractive community in which to live.

Our own articles of incorporation, our purpose is stated: To secure and enhance the city from social welfare, the residents and visitors of Hagerman Valley.

Our purpose on being here tonight is to state our position regarding the definition of local public interest. The word "public" is defined in Websters as that remaining to and

offering all the people -- pardon me, and affecting all the people.

We have such expressions as public good, public welfare, public health, public trust, all of which referred to the public at large. The concept of the public interest stands in contrast to private interest for particular individual's benefit from some action or policy.

Ideally, all actions of the policy could serve both the public interest and the private interest. There should be an equitable balance between the two. However, when we come into conflict, public interest should prevail, consistent to that document's greatest good to the greatest number of people.

The concept of public interest is very old and can be traced back to English common law and even to Roman law. It certainly goes back to our own Constitution. In the Preamble of the Constitution appears the phrase "To promote the general welfare," and this is interpreted to mean promote the welfare of the public at large.

The term "public good" appears in the Declaration of Independence. The term "public trust" appears also in the Constitution. So the idea of government being concerned with protecting the public's interest is well established in our history and traditions.

The concept of public welfare and public interest is based on the government's relationship with its citizens. One of the principal duties of the government is to look out for the interest of all its citizens. We think that it is in the public interest to protect and preserve our habitat, the places we live and the places our children and grandchildren will live.

We believe that it is in the public interest to take the long view and the broad view when it comes to taking care of our natural resources.

We have no problem in defining local public interest for Hagerman Valley. We are concerned with the quality of the water coming from the springs, flowing in our rivers, and the natural beauty it surrounds. We certainly hope that the Department of Water Resources will take such concern into consideration when writing new rules for issuing water permits.

Thank you.

MR. YOUNG: Thank you. The department's
philosophy is to issue those initial decisions on the local public interest. Your question is very timely. That is I think the next slide.

5 Those are the five -- and again, I'm paraphrasing, let's make them short, and you've got the exact language on the last page of the bill that was handed out to you, the legislation.

8 If the project that you suggested meets all of the first five criteria, the historic five criteria, and could be approved under those five criteria, including the local public interest, and then you look at it and you find that it, along with other water uses, is going to reduce the flow to the hydro power right significantly, then you have ask -- the director has to ask himself these five questions, and let's just go through those in exact language of the statute.

18 If the answer, the director considers, and I say this carefully, this is one of the questions also.

21 A VOICE: Where are we at?

22 MR. YOUNG: The very last page of the bill under Item 2 under 42-203C, there are five criteria. This is the public infrastructure, really the heart of the rules that will be, to be adopted, the director is asked to consider.

3 And on the first five criteria, the historic one, he is asking the cause and determination, "shall find and determine." On these he is asked to consider, is there a different level of consideration between the five criteria? That may be a legal question.

8 But he must consider whether the project would, as it affects the existing hydro power right when you're taking the water away, would be potential benefits both direct and indirect, that the proposed use would provide the state and local economy.

14 Second one is, the economic impact the proposed use would have on electric utility rates in the State of Idaho and the availability, foreseeability, and cost of alternative energy sources to ameliorate such impact.

19 Three, the promotion of the family farm tradition.

21 Four, the promotion of full economic and multiple use development of water resources in the State of Idaho.

24 And five, in the Snake River Basin above the Murphy Gauge, whether the proposed development informs through a staged development policy of up to 20,000 acres per year, or 80,000 acres in any four-year period.

4 So those are the five public interest criteria and will be affecting the (unintelligible).

7 We're asking for your suggestions as we draft the rules on how details should be defined. If we follow the lead of the federal government, as they've gone through project studies, we perhaps would have to have an environmental impact study, principles of standard level (unintelligible) as you look at the economics and sociologic impacts and come up with very detailed guidelines as to what is acceptable or not. If that is what is being proposed here, then we should draw from this? Or is this a cursory review of where (unintelligible) --

19 MR. WAYMENT: Those are regulations designed to solve all development, to make criteria so high that you cannot meet it?

22 MR. YOUNG: I think that's what we have to be so careful about here. As the rules and regulations are adopted, that they make a reasonable requirement. So as the information is available and the director is able to make a decent judgment, they're not to simply make a project infeasible because you can't afford to make a study for necessary approval.

5 Yes, sir?

6 MALE SPEAKER: Does this include ground water also under the same provisions, all this?

8 MR. YOUNG: Yes. We're talking here about the Snake River Basin, above Swan Falls and Murphy Gauge for sure, the water is the makeup of the Snake River. And our belief is that the river is made up of all the sources. Statutorily and case law, that is true. And the spring being the expression of groundwater, yes.

15 MALE SPEAKER: Then in other words, the groundwater would be included in the trust water.

17 In other words, it would be classified as trust water indirectly.

19 MR. YOUNG: That's right.

20 MALE SPEAKER: What about in the event of percolations of the groundwater, since we all just maintain so it takes a thousand years for ten miles in the some areas, et cetera, are you still going to hold that this study with a theory that it's all part of the trust water of the rivers?
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<td>I. MR. YOUNG: That goes back to this question, the point about the delay between when you pump the water and when the spring flow reduces. First it would have -- that would be information you would need to have in order to decide whether you had a significant reduction on hydro power rights. So you need that data for that decision. I suspect you would need it in order to determine the impact on the availability and price of electric energy, the question of promotion of full economic and multiple use of the water. I suspect I ought to put these in terms of questions but that's not the -- so as part of the Swan Falls agreement [unintelligible], there is additional hydrologic data being gathered so that models of the aquifer can -- computer models of the aquifer may be defined to help us and to help the applicants feel to answer that question. MALE SPEAKER: Do they take and consider the aquifer recharge, then? MODERATOR: The return to the aquifer -- winter recharge to an aquifer. MODERATOR: The models do, yes. MALE SPEAKER: What I mean, though, will</td>
<td>I. That still be classified as trust? In other words, the winter flow and the summer flow are different, and et cetera, and the stream flow is different in the winter. I mean, in other words, all water applications, no matter for what or where will be classified as one, in other words; that bill against the trust availability, in other words. MODERATOR: For all practical purposes, that is correct. Now, for example, some of the existing storage projects, specifically at Teton, I think we need to look at that as to whether that would be trust water or not. Yes. As we reprocess those undeveloped permits and new applications, basically we're talking about having to go through these types [unintelligible] if there's a significant reduction. Do you have a question about it? MALE SPEAKER: Apparently on this groundwater you are recognizing in effect that the factual exchange type thing, how is that going to affect prior exchange type rights that the state has not recognized in the past? In the city of Pocatello, Palisades being a case in point,</td>
<td>I. Michaud Flats irrigation is another. MODERATOR: Well, I'm not sure I understand the question well enough to respond to it. One of the issues is raised, and we'll talk about is Issue No. 7. And this question: Permit condition in mitigation. I think what you're referring to is the department's approval that interim permits, while this is being developed and rules and regulations are being developed, require an exchange of historic [unintelligible]. I'll take it from there on how your question -- MR. CORLESS: Well, I'm wondering if you're going to go back in the past. The city of Pocatello has a case in point, the state has not recognized that as a valid consideration, exchanging storage water for groundwater withdrawal. And I'm wondering -- MODERATOR: You're actually moving retroactive? MALE SPEAKER: Yeah. Are you going to go back and look into those -- and there are several of those exchange-type agreements on the Teton Basin and other places in the state.</td>
<td>I. MODERATOR: I'm glad you're not expecting an answer to that. [Unintelligible] that is a policy question. Yes, sir? MR. WAYMENT: Seems to me that that second criteria there could effectively delay any further development for years to come if Idaho Power or somebody else wanted to say, well, we don't have the studies back on the impact of availability of water to supply electricity or to generate electricity and that could in effect stall any development for years conceivably. How long is it going to take to get the study back to the aquifer ten miles south of Burley and three miles east or somewhere else? How are we going to know and when? There's a lot of ground to cover. MODERATOR: There really is. The additional data, having put in the data being gathered this year, every year we get will help us confine it. But I think the decisions will just have to be made on perhaps an interim basis subject to revision as the data improves. I don't know that we can wait 20 years until we get all the data necessary to prove the</td>
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<td>1. point one way or the other, and that's a good question. When I give my idea, I'll ask you.</td>
<td>1. said the applicant had the responsibility of providing plans and specifications in sufficient detail that the project can be built, describe the operation of that, at the time of the protest here.</td>
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<td>2. We don't know.</td>
<td>2. In other words, before the department had made a decision, you must have the project described with sufficient detail to be built and operating. Is that what we're asking for? In that particular case, it required the engineer's plans and specifications.</td>
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<td>3. MR. YOUNG: When do we have sufficient data to make those kind of decisions.</td>
<td>4. Is that what we need to have as a portion of our application? It might be very reasonable to just turn around ideas again on a very large project. But should we take a ten-acre irrigation project to an engineer?</td>
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<td>4. MR. NELSON: The point that might be made there would be that part of the statute placing the burden in that instance on the protestant. So whoever wants to protest a particular new use has the burden to produce the information necessary to make the protest stick. So if he has got a 20-year study, he is not going to be ready for the protest and he'll lose.</td>
<td>5. The 1700 permits that I believe are being re-massaged and fail to file the proof by July 1, I've already got an application. When should they be required and how much time should they be given to submit whatever additional information you need so the protestant will know how to respond? You have some thoughts on that issue?</td>
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<td>5. MALE SPEAKER: If the applicant doesn't have -- the burden of proof is upon the protestant. So if it takes him 20 years to prove it, he can pay it out in ten and so be it. So what. Is that what you're saying?</td>
<td>6. MALE SPEAKER: Are you saying, though, that the burden of proof, which again is a legal term, it simply says, who has to provide the greater evidence, the greater proof on the issue, is switched for these five criteria than what has historically been considered on the first five criteria. It usually said the applicant has the responsibility to prove that his project met the first five criteria. Here the statute specifically says the protestant has that responsibility. That particular statement of legislative intent describes that the idea was not to force the applicant to have to come forward with all of the information. But as you think through that a little bit, the applicant probably has to describe his project with sufficient detail so that the protestant knows how to respond. So what constitutes sufficient information, what level of information is needed on various types and sizes of projects, to be fair to the protestant? Historically, you can fill out a department application, an essentially two-page document; a minimal amount of information is required. Is that all that is required? In a recent district court case, the district court</td>
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<td>6. MR. NELSON: I'm saying if the protestant isn't ready, the applicant is going to win.</td>
<td>7. MR. YOUNG: The way the statute reads, that is that we need to have as a portion of our application? It might be very reasonable to just turn around ideas again on a very large project. But should we take a ten-acre irrigation project to an engineer?</td>
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<td>7. MALE SPEAKER: I see. Okay. Or they can just hold it up until they do decide. (Simultaneous talking.)</td>
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MR. RAY: In these plans that have to be submitted, for an established industry, you would submit detailed plans for a new use trial merit [unintelliglile], and I don't care what you submit at the start of it, you not going to get nothing for that.

Now, if you were going out to build a trout farm, nothing around, detailed plans would be submitted. Most of them are drawn up after the farm has been built [unintelliglile]. But if you are going out to raise sturgeon, which there's a lot of interest in California and will be here in Idaho, there's not a commercially-established farm, and the best system is not developed yet.

You're going to build one pond, and the next year you're going to build another, and you've got to change it. By the time you add on, it's going to be something different.

And it's not going to be going out and building the thing, drawing up a set of plans in detail and building it to those plans. It's going to be built in one pond, and changing the thing the next year and adding to it, and changing it again the next year. The project will be successful. [Unintelliglile] leads to flexibility.

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MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some indication that they're going to have a dual permit. Pretty tough to put that much money up front.

So to ask that there may be some kind of a balance in here, we're certainly entertaining your ideas on what balance needs to be struck and by type and size. And I skipped over this slide.

The next line after the five criteria, the last stage of the legislation says: No single factor enumerated above shall be entitled to greater weight by the director providing this determination.

How does the director use that "no greater weight" idea as he looks at those five criteria? It's been suggested that it's simply a checkoff. He looks at the proposed project. He says yes, it has benefits. He gives a check.

Yes, it will reduce electricity, availability, and raise power rates. So no, it doesn't get a check for that. But it is in the family farm tradition, et cetera. And if you get three checks out of five, does that mean you prove it? If it gets one [unintelliglile] check, does that mean you don't prove it?

Is there perhaps a rating scale that ought to be applied? If it fully complies with the criteria, giving perhaps a ten, under each of these criteria, a full compliance would eight to ten, a full noncompliance would give a minus ten, and algebraically sum up the rating that the director gives based upon the information submitted.

And if it comes up to zero or above, it's an approval. Is that what happens? Or is it some other ideas of how that should be applied?

Again, how that is determined will have a major impact on what the projects are through particular -- we talked about that.

The final issue is this question of mitigation and, perhaps you could say, permit approval conditions in general.

You have an Issue No. 7, is it, in your issue paper? Yes. It addresses one idea of mitigation. The State Water Board, in revising the Snake River Policy 32 of the water plan, which was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level -- for pumping projects taking water out of the main stem of the Snake River between Milner Dam and Murphy.

If it takes the water in the nonirrigation season through off-season storage, that particular kind of project is singled out and mitigation is asked for. Well, what level of mitigation should we incorporate in our rules?

Could that be a replacement power?

Yes, ma'am.

FEMALE SPEAKER: Norm, define mitigation.

What is mitigation?

MODERATOR: Well, I could give you my definition, but that's really the purpose of why we're here. Give us your idea of what constitutes mitigation. Is it a full replacement, or is it just making --

FEMALE SPEAKER: Is it money?

MODERATOR: Is it?

FEMALE SPEAKER: Is it just public interest, or what is it?

MODERATOR: Replacing the hydro power? One
MODERATOR: And above Swan Falls. If you
21 MODERATOR: Well, again, would there be a
22 recharge project proposing to take water out of
23 the main stem of the Snake River below Milner --
24 MALE SPEAKER: Oh, below Milner.
25 MODERATOR: And above Swan Falls. If you
1 did and it was going to pump through or take it
2 out during the nonirrigation season, I think it
3 would probably apply in that case. But when
4 you're above Milner, you're probably taking trust
5 water, you're probably going to have to look at
6 the five criteria, whether the trust criteria
7 empty significantly reduce the flow of the hydro
8 power line, but you wouldn't be subject to this
9 mitigation.
10 MALE SPEAKER: But then you're coming right
11 again in conflict. It seems to me that they're
12 after the groundwater pumpers, and it appears that
13 that type of project would enhance that rather
14 than diminish it if their criteria for pumping it
15 out is correct.
16 MODERATOR: And if you went back to the five
17 public interest criteria, if it indeed was in the
18 public interest to take the water away from hydro
19 generation during that winter period and put it
20 into the groundwater for recharge, then it should
21 be approved [unintelligible] -- public interest
22 criteria.
23 Elaine?
24 MS. MARTIN: Just maybe for interest of
25 those people that were thinking about doing some
1 of this [unintelligible], one of the gentlemen at
2 last night's meeting felt that this mitigation was
3 just not far enough or wide enough and suggested
4 that the law changed so that the fish could be
5 mitigated in the April or May/June flows also.
6 And so you're going to have to put in
7 your suggestions for the mitigation if you want to
8 balance out some of it because they really are
9 suggesting very, very strongly that the mitigation
10 hearings is much too narrow and needs to be spread
11 to fish flows in June also.
12 MODERATOR: The Northwest Power Planning
13 Council's fish watch, which probably would occur
14 on dry years in the April to June period. And the
15 suggestion would be made as to projects, in order
16 to be in the public interest, might have to be
17 envisioned to make up water for that fish watch.
18 That was how broad that person viewed the public
19 interest criteria.
20 Again, that's what we're asking for.
21 Tom?
22 MR. NELSON: One thing, Norm, on this
23 gentleman's example. I don't think that the
24 surface water diversions for recharge above Milner
25 are part of the trust waters. To be part of the
1 trust waters, the water has to be made available
2 by reason of the subordination provision, and
3 there's no water right at Milner. That's a zero
4 flow under the state water plan. So the surface
5 water diversion above Milner would not be subject
6 to those criteria.
7 Now, the EPA may have something to say
8 about it, but I don't think this is the problem
9 under the agreement.
10 MR. YOUNG: Good. I'm glad it's on tape.
11 That makes it easy.
12 MS. MARTIN: Norm, we had one lawyer in the
13 audience last night. We've got another one
14 tonight. Could we ask him how he would use the
15 first-come, first-serve doctrine?
16 MODERATOR: Will you yield?
17 MALE SPEAKER: Sure.
18 MS. MARTIN: It has really helped. A lot of
19 us would like to say, there are some small
20 projects [unintelligible] that are in the
21 emergency situation, that we're talking of 10, 20,
22 30 acres, that really need to be processed. But
23 that if a larger project earlier says, well,
24 that's all right, go ahead and process them first,
25 then they're speculative. And they lose their
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1 water right because they allowed the later guy to
2 go first.
3
4 Is there some way that we can get
5 around the first-come, first-serve doctrine in
6 order to process the emergency cases and the
7 smaller cases, or are we bound by law to go
8 first-come, first-serve no matter what?
9 MR. NELSON: Well, I don't think that the
10 priority doctrine operates strictly on trust
11 waters. My view is, everything else being equal,
12 the older of two projects, one of which can
13 develop and one of which can't, should develop.
14 But if you look at full economic
15 development and benefit to the state and local
16 economy and all the criteria, it seems to me that
17 what you want to end up with is probably the best
18 project out of the whole gamut.
19 I don't know how you can make that
20 decision ahead of getting a record made. In other
21 words, I don't know what creates an emergency for
22 30 acres of development. But until you have some
23 kind of a record on which you can base a better,
24 best, and terrible analysis, I think you'll just
25 have to wait until you get started.

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1 that the best projects should be the one that hits
2 the ground, period. But how do we get around all
3 the lawsuits that the guy earlier can have if he
4 doesn't get his chance to prove he was best and
5 fight for it?
6 MR. NELSON: Well, my feeling is that age
7 has to be one of the criteria that you use to sort
8 the first cut. I think distance from the river
9 would be another. And we may have to give the
10 older projects a shot at proving they are the best
11 or you're going to run into that very problem.
12 But to me, the ultimate cutting edge is the best,
13 not the earliest.
14 MS. MARTIN: And you think we can stay out
15 of court if we give them some guidelines
16 [unintelligible].
17 MR. NELSON: We won't stay out of court. We
18 just might have a better chance of making it stick
19 if that's the way you work it.
20 MODERATOR: Very well put.
21 Now, the mitigation that you were
22 describing for the pumping to offstream storage
23 that is talked about in Policy 321 of the amended
24 water plan is not the mitigation that is addressed
25 in your Issue 7.

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1 That one is -- the question being, one,
2 if you now issue permits with the understanding
3 that our data shows 600 cfs of firm trust water,
4 and we issue permits for ground water pumping on
5 the aquifer, if that 600 cfs was not properly
6 calculated or if there's a worst year, or a
7 sequence of years in terms of dryer than we
8 expected in that analysis, and we indeed with
9 these new filings that are issued, that were
10 issued with the 600 cfs trust water, filed alone
11 at 3900 cfs or the 5600 cfs [unintelligible]
12 forward, how is the state going to then augment
13 the river flow so we don't violate that?
14 And it could be as an attorney told us
15 last night, the state could have some financial
16 liability if that happened. Do we look to the
17 applicants, the permit holders, and we issue the
18 permits to provide some mechanism for augmenting
19 the flow in case that happens?
20 As your issue paper says, it may be a
21 number of months or a number of years before the
22 effect of shutting off a well is felt in the
23 river. So just shutting off the junior user when
24 the river starts below the minimum flow doesn't
25 help. You've got to have a way of augmenting.

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1 The [unintelligible] conditions will
2 require that, force people as a condition of the
3 permit to provide water to the water bank, to buy
4 the money for approval, for seeking funds to be
5 available to buy water rights; pay for the
6 damages. How do you respond?
7 MR. LEMMON: I would like to speak to this
8 recharge situation and the flow of the
9 Snake River, if I may. Our water is dropping off
10 this year down below what it was last year. In
11 other words, we're approaching an all-time low in
12 our aquifer discharge.
13 Now, when A and B Irrigation, isn't it,
14 that is planning on a large increase in pump
15 water, or is it some other irrigation district up
16 here in the central, over the aquifer?
17 MR. CORLESS: There is a plan to develop
18 12,000 acres within the boundaries of A and B,
19 yes.
20 MR. YOUNG: Yes, the application has been
21 made.
22 MR. LEMON: That is basically appropriated
23 water as far as Hagerman Valley is concerned, that
24 they'll be interrupting. We had a higher flow
25 last year than we had the year before, but it

7 (Pages 25 to 28)

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<th>Page 29</th>
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<tr>
<td>1 looked like we were about to approach the low flow</td>
<td>1 the Snake River, which holds in the runoff from</td>
<td>1 recharge.</td>
</tr>
<tr>
<td>2 that we've had for the last 20 years.</td>
<td>2 the spring and is not put back into the aquifer.</td>
<td>MR. HOFFMAN: Yes. I would say it would be</td>
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<tr>
<td>3 Now, if they're allowed to take that</td>
<td>3 And we need to get some method of getting that</td>
<td>vigilant to have a fee on these new water rights</td>
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<td>4 water out of our water, we feel that they should</td>
<td>4 water back in to even the flow of the Snake River,</td>
<td>or recharge. And this project has been before the</td>
</tr>
<tr>
<td>5 join the aquifer -- lower Snake River aquifer</td>
<td>5 because the springs maintain that water flow for</td>
<td>state for years; very feasible, just haven't had</td>
</tr>
<tr>
<td>6 recharge and put the same amount of water back</td>
<td>6 the power production in the summertime and make it</td>
<td>the money to do it, had a good source of money to</td>
</tr>
<tr>
<td>7 into the aquifer that they removed from it.</td>
<td>7 even flow so that their power plants can utilize</td>
<td>do it. And it's people who is going to be using</td>
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<td>8 There's several advantages to recharging that</td>
<td>8 that water that is going down there instead of it</td>
<td>it, pay for it.</td>
</tr>
<tr>
<td>9 aquifer and maintaining an even flow for hydro</td>
<td>9 going past as overflow.</td>
<td>MODERATOR: It's probably a good legal</td>
</tr>
<tr>
<td>10 power generation provisions for fish movements and</td>
<td></td>
<td>question, whether that's something that can be</td>
</tr>
<tr>
<td>11 another things.</td>
<td></td>
<td>done without additional statutory authority.</td>
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<tr>
<td>12 MR. YOUNG: Now, the water rights you're</td>
<td></td>
<td>There is a proposed water marketing bill that was</td>
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<td>13 saying would be impacted and not the hydro</td>
<td></td>
<td>printed last legislative session, House Bill 233,</td>
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<td>14 rights of Idaho Power.</td>
<td></td>
<td>that was not approved. But there's an interim</td>
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<td>15 MR. LEMON: I'm saying our water rights will</td>
<td></td>
<td>study committee from the legislature that is</td>
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<tr>
<td>16 be affected.</td>
<td></td>
<td>looking at water marketing, and this idea of</td>
</tr>
<tr>
<td>17 MR. YOUNG: Your irrigation and fish</td>
<td></td>
<td>augmentation is a part of that bill.</td>
</tr>
<tr>
<td>18 propagation from the springs themselves.</td>
<td></td>
<td>MODERATOR: So I hear suggested that perhaps</td>
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<td>19 MALE SPEAKER: Yes.</td>
<td></td>
<td>as permits are issued, there ought to be</td>
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<td>20 MODERATOR: And so under the law that's in</td>
<td></td>
<td>conditions required of participation of the</td>
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<td>21 effect today and will remain in effect in July,</td>
<td></td>
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<td>22 from the old original criteria said will the</td>
<td></td>
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<td>23 project impact an existing right? So we'll</td>
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<td>24 need -- the judgement will need to be made by the</td>
<td></td>
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<td>25 director as to whether it will indeed impact that</td>
<td></td>
<td></td>
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<td>1 right, and if so, then it could not be approved</td>
<td>1 recharge.</td>
<td></td>
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<td>2 without conditions --</td>
<td></td>
<td>MR. HOFFMAN: Yes. I would say it would be</td>
</tr>
<tr>
<td>3 MR. LEMON: In the past, we have not been</td>
<td></td>
<td>vigilant to have a fee on these new water rights</td>
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<td>4 able to prove that this well affects this stream</td>
<td></td>
<td>or recharge. And this project has been before the</td>
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<td>5 and have not been in court been able to protect</td>
<td></td>
<td>state for years; very feasible, just haven't had</td>
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<td>6 our water rights. So we have got to have some</td>
<td></td>
<td>the money to do it, had a good source of money to</td>
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<td>7 protection from somewhere, and we don't want to</td>
<td></td>
<td>do it. And it's people who is going to be using</td>
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<td>8 stop development. That isn't our trying at all.</td>
<td></td>
<td>it, pay for it.</td>
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<td>9 But this excess water that is going down the Snake River</td>
<td></td>
<td>MODERATOR: It's probably a good legal</td>
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<td>10 over Milner Dam should be put back into the aquifer</td>
<td></td>
<td>question, whether that's something that can be</td>
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<td>11 to bring that water flow back up to maintain an even</td>
<td></td>
<td>done without additional statutory authority.</td>
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<tr>
<td>12 flow on the river.</td>
<td></td>
<td>There is a proposed water marketing bill that was</td>
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<td>13 Now, here is a peculiar thing that has</td>
<td></td>
<td>printed last legislative session, House Bill 233,</td>
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<td>14 been happening that most people don't understand.</td>
<td></td>
<td>that was not approved. But there's an interim</td>
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<td>15 Every time a sprinkler system goes in over that</td>
<td></td>
<td>study committee from the legislature that is</td>
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<td>16 aquifer, it evaporates a larger percentage of the</td>
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<td>looking at water marketing, and this idea of</td>
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<td>17 water that they use, whether it comes from well</td>
<td></td>
<td>augmentation is a part of that bill.</td>
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<tr>
<td>18 water or whether it comes from canal water.</td>
<td></td>
<td>MODERATOR: So I hear suggested that perhaps</td>
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<td>19 And that water goes in the air, and it</td>
<td></td>
<td>as permits are issued, there ought to be</td>
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<td>20 is transported back up to the mountains in the</td>
<td></td>
<td>conditions required of participation of the</td>
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<td>21 Southeast Idaho where it falls back on the ground,</td>
<td></td>
<td></td>
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<td>22 comes back down to the river instead of coming</td>
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<td></td>
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<td>23 down the aquifer.</td>
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<td>24 In other words, every time a sprinkler</td>
<td></td>
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<td>25 is put in, it transfers water from the aquifer to</td>
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draft to come back to you with for adoption in the Administrative Procedures Act is June 15. That's a Saturday, so June 17.

If you've got ideas that you haven't shared with us, to the extent you have shared with us tonight, you've got the record on the tape, we'll use those ideas and consider them as we form this draft. If you've got other ideas, mail them to us. If you get them here by the 17th, they'll for sure be considered. If you get them in after that date, we'll consider them if we're not too far along.

The legislation is effective July 1. The issue paper talks about emergency rules, and there is a provision under the Administrative Provisions Act or Administrative Procedures Act to adopt emergency rules. An agency would be stepping into a meat grinder to adopt emergency provisions, rules if it wasn't very clear-cut of what those rules needed to say. So we won't do that unless [unintelligible].

Even if we did, we would have to immediately start to form a process under the Administrative Procedures Act and have it completed in 120 days. So they're only good for 120 days. I don't expect to see them adopted [unintelligible]. It is mentioned.

MS. HOFFMAN: Norm, there are signup sheets so everybody can get a copy.

MODERATOR: We can stop right here.
(Proceedings concluded.)

REPORTER'S CERTIFICATE

I, Dianne E. Cromwell, Official Court Reporter, County of Ada, State of Idaho, hereby certify:

That I am the reporter who transcribed the proceedings in the above-entitled matter directly into typewriting from an audio recording and with the assistance of the Affidavit of Norman C. Young, attached hereto; and

That the foregoing transcript contains a full, true, and accurate record of the proceedings had in the above and foregoing matter, which was heard in Twin Falls, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand October 13, 2008.

Dianne E. Cromwell, Official Court Reporter
CSR No. 21

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<table>
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Twin Falls 1

5/23/1985

Tucker and Associates, Boise, Idaho, (208) 345-3704
www.etucker.net
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IN WITNESS WHEREOF, I have hereunto set my hand October 13, 2008.

Dianne E. Cromwell, Official Court Reporter
CSR No. 21
NORMAN C. YOUNG, being first duly sworn upon oath, deposes and states as follows:

1. I was an employee of the Idaho Department of Water Resources ("the Department") from 1969 to 2003. In 1985 I held the position of Administrator of the Resources Administration Division and was responsible state-wide for the Department's...
water-related regulatory programs. My normal duties and responsibilities in this capacity included conducting public information meetings regarding the Department’s water-related regulatory programs. These meetings were typically tape recorded on audio cassette tapes.

2. In May of 1985, as part of and in the course of my normal duties and responsibilities as Administrator of the Resources Administration Division, I conducted several public information meetings to obtain public comment, input and suggestions for purposes of assisting the Department in drafting administrative rules and regulations for water appropriation. These meetings were typically recorded on audio cassette tapes.

3. In October 2008, I was contacted by the Idaho Office of the Attorney General and asked to review the documents attached hereto as Exhibit A, to inspect the audio cassette tapes shown in the photocopies attached hereto as Exhibit B, and to review the recordings on the audio cassette tapes. The Idaho Office of the Attorney General informed me that the documents in Exhibit A and the audio cassette tapes shown in the photocopies in Exhibit B had been obtained from the files of the Department.

4. I reviewed the documents attached hereto as Exhibit A, inspected the audio cassette tapes that are shown in the photocopies attached hereto as Exhibit B, reviewed all of the recordings on the audio cassette tapes labeled “Twin Falls-1” and “Twin Falls-2,” and reviewed part of the recordings on the audio cassette tape labeled “Pocatello.”

5. Based on my personal knowledge and memory of the public information meetings I conducted in May 1985, and my review and inspection of the documents and audio cassette tapes as described above in paragraph 4, I have concluded the following:
a. that the handwriting on the labels for the audio cassette tapes that are shown in the photocopies attached hereto as Exhibit B is mine;

b. that the audio cassette tapes labeled “Twin Falls - 1” and “Pocatello” shown in the photocopies attached hereto as Exhibit B contain recordings of public information meetings I conducted in May 1985 to obtain public comment, input and suggestions for purposes of assisting the Department in drafting administrative rules and regulations for water appropriation;

c. that the audio cassette tape labeled “Twin Falls-1” shown in the photocopies attached hereto as Exhibit B contains a recording of the public information meeting held in Twin Falls, Idaho, on May 23, 1985.

6. I recognized several speakers’ voices in the recording on the audio cassette tape labeled “Twin Falls-1,” including my own. As I was listening to the “Twin Falls-1” recording, I wrote the names of the speakers I recognized in the corresponding locations of a draft transcript of the “Twin Falls-1” recording. At the top of the draft transcript for the “Twin Falls-1” recording I also wrote: “Public Information Meeting, Thursday, May 23, 1985, Twin Falls, Idaho.” A true and correct copy of the draft transcript of the “Twin Falls-1” recording with my edits is attached hereto as Exhibit C.

7. I also recognized my voice and the voices of several other speakers while reviewing the recording on the audio cassette tape labeled “Twin Falls-2.” As I was listening to the “Twin Falls-2” recording, I wrote the names of the speakers I recognized in the corresponding location in a draft transcript of the “Twin Falls-2” recording. I cannot be sure of the date or purpose of proceedings recorded on the “Twin Falls-2” audio cassette tape, however. A true and correct copy of the draft transcript of the “Twin
Falls-2" recording with my edits is attached hereto as Exhibit D.

Further your affiant sayeth naught.

DATED this 10th day of October, 2008.

NORMAN C. YOUNG

SUBSCRIBED AND SWORN to before me this 16th day of October, 2008.

STEVEN R. HANNULA
Notary Public for Idaho
Residing at: Boise ID
My commission expires: 8-18-11
Affidavit of Norman C. Young

Exhibit A
May 6, 1985

Dear Interested Party:

Enclosed is a copy of an announcement advising that the Director, Idaho Department of Water Resources intends to promulgate rules and regulations and requests input into the process.

Comments are requested by June 15, 1985 since much of the enabling legislation is effective July 1, 1985.

Additional copies of the announcement are available from any of the department's regional offices located in Boise, Idaho Falls, Twin Falls and Coeur d'Alene.

Sincerely,

DIRECTOR
Idaho Department of Water Resources

Enclosure
REQUEST FOR COMMENT AND NOTICE OF INTENT
TO WRITE AND ADOPT RULES AND REGULATIONS
FOR WATER APPROPRIATION

The director of the Idaho Department of Water Resources hereby announces his intention to write and adopt rules and regulations for the allocation of water resources in Idaho. The legislature enacted Section 42-1805(8), Idaho Code, which will be effective on July 1, 1985, imposing a duty on the director to adopt rules and regulations implementing and effectuating the powers and duties of the department. Also, effective on July 1, 1985 are the changes to the water allocation provisions, (Section 42-203, Idaho Code) enacted in Senate Bill 1008 which place in trust some waters previously appropriated for hydropower generation purposes and authorize reallocation of this trust water to consumptive purposes found to be in the public interest.

The director believes that rules and regulations are needed to provide a uniform and orderly procedure for processing pending and future applications for the trust water made available and for reprocessing existing undeveloped permits under the new public interest requirements. In addition, there is a need to describe more fully the criteria that will be used to decide whether an application or a permit subject to reprocessing will be granted.
All rules and regulations will be adopted in accordance
with the Idaho Administrative Procedures Act, Title 67, Chapter
52, Idaho Code, which provides for full public participation.
The director has determined that public comment is needed to
provide a basis for developing the draft rules and regulations
and requests public input and suggestions. The director
specially requests input on the following issues:

1. What criteria should be used to determine the order
of processing the backlog of pending applications and for
reprocessing existing undeveloped permits?

In December 1982 the department ceased processing
applications to use water for consumptive purposes from the Snake
River drainage upstream from Swan Falls Dam. Over 1,000
applications, nearly all for irrigation purposes, are now being
held. Additionally, an estimated 1,700 permits, nearly all for
irrigation purposes, remain undeveloped in this area. The Snake
River Water Rights Agreement as authorized by Section 42-203B,
Idaho Code, allows development that is in the public interest to
reduce the flow of Snake River near Murphy gauge but not below a
flow of 3900 cubic feet per second (cfs) in the summer or 5600
cfs in the winter. This reduction has been estimated at 600 cfs
below the existing low summer flow on a dry year. One hundred
fifty (150) cfs of this flow is reserved for domestic, commer-
cial, municipal and industrial (DCMI) uses. Existing appli-
cations and undeveloped permits exceed the firm water supply.
available.

Should applications and permits for reallocation of trust water be processed in order of priority or should the order of processing be determined by other criteria which may be administratively more efficient, produce more immediate development, optimize the location and type of development, or distribute development? Should preference be given to new applications filed for development that took place after the mandatory filing dates (May 20, 1971 for surface water and March 25, 1963 for ground water) and before the November 19, 1982 Supreme Court Decision?

2. What should be the requirements for the timing and scope of information to be submitted by the applicant?

The statement of legislative intent for S.B. 1008 indicates that the burden of proof for the public interest criteria of Section 42-203C is to be on the protestant. The applicant must, however, submit sufficient information to allow the protestant to respond to the proposed project.

Should the applicant be required to supply a detailed plan of development including operational details? Should applicants for smaller projects, unprotested applications, or projects proposing uses such as DCMI be exempted from this requirement? If so, what size or type of project should be
exempt?

3. What factors are appropriate in the consideration of "local public interest"?

All applications to appropriate water must comply with the local public interest criteria of Section 42-203A, Idaho Code. The statutes define local public interest as the "affairs of the people in the area directly effected by the proposed use". Should local public interest be restricted to effects directly associated with water diversion and use such as instream values, and water quality or should it be broadly interpreted to include general land use concerns such as property value declines due to a reduced streamflow? Should downstream effects on anadromous fish and hydropower production be considered?

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

Section 42-203C, Idaho Code, requires that if an application to appropriate trust water will significantly reduce water available to a hydroelectric facility, the applications must be evaluated using public interest criteria.

What parameters should be used to evaluate a significant reduction? Should cumulative impacts be evaluated considering depletion of all trust waters down to the minimum flow or only...
the increment predicted to be depleted during some planning period?

Should applications proposing small diversions; or certain uses such as DCMI and those that are not protested be exempted? If so, what size and types of projects?

5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

Section 42-203C, Idaho Code, requires the director to consider five criteria to evaluate the public interest of reallocating trust water. Should rules and regulations be adopted providing detailed guidelines for evaluating the positive and negative impacts of proposed projects on the state and local economy, on utility rates, on the family farming tradition, and on the full use of Idaho's water resources? How can remote indirect impacts be adequately evaluated? Should the value of potential future uses, which are foregone if the application is approved, be considered?

6. What rating scale should be used to balance the five public interest criteria?

Section 42-203C, Idaho Code, states that no single public interest criteria is entitled to greater weight than any other criteria. Does this require a simple check off that the
proposed project complies with the criteria and that a project complying with a majority of the criteria is to be approved, or should a rating system be adopted which recognizes the degree to which a project meets a proposed criteria with each criteria having the same potential maximum value?

7. Should permits issued for new consumptive uses from ground water require maintenance of the capability to mitigate flow reductions in the rivers as necessary to maintain the adopted minimum flows?

The lag time between starting and stopping pumping of a well and the corresponding change in the discharge rate of springs flowing from the aquifer makes curtailment of pumping of junior priority ground water rights ineffective for managing short-term stream flow fluctuations. Holders of permits issued for ground water development could be required to have a source of water for release to insure that the adopted minimum stream flows can be maintained. As an alternative, should the state assess permit holders to purchase storage water or other resources for insuring that minimum flows are met?

The public welfare requires that any rules and regulations necessary to implement the changes to Idaho water statutes be effective July 1, 1985. It may be necessary to initially adopt the rules on an emergency basis in order to meet this public welfare requirement.
All comments and suggestions provided will be reviewed and considered by the director in the process of implementing the new and amended legislation relative to the Swan Falls agreement.

Public information meetings will be scheduled and held by the department as follows:

Tuesday, May 21, 1985 - Bonneville County Courthouse, Room 101, 605 N. Capital, Idaho Falls, Idaho, at 7:00 p.m.,

Wednesday, May 22, 1985 - Pocatello Municipal Airport, Conference Room, Pocatello, Idaho, at 7:00 p.m.,

Thursday, May 23, 1985 - College of Southern Idaho, Room 101, Vo-Tech Building, 315 Falls Avenue, Twin Falls, Idaho at 7:00 p.m. and

Friday, May 24, 1985 - Hall of Mirrors, East Conference Room, 700 W. State St., Boise, Idaho at 1:00 p.m.

Comments should be mailed to Director, Idaho Department of Water Resources, Statehouse, Boise, Idaho 83720 to be received prior to June 15, 1985.

Copies of this notice may be obtained from the regional offices located at the following addresses:

Western Region, 450 W. State St., Boise, Idaho 83720,

Eastern Region, 150 Shoup, Idaho Falls, Idaho 83401,

Northern Region, No. 5, Box 4055 Government Way, Coeur d'Alene, Idaho 83814
May 8, 1985

FOR IMMEDIATE RELEASE

State of Idaho, Statehouse, Boise, Idaho 83720
Phone: (208) 334-4440

NEWS RELEASE

BOISE--The Idaho Department of Water Resources (IDWR) will conduct four public information meetings this month to get citizen comments on suggested content of rules and regulations to be drafted dealing with allocation of water resources in Idaho.

According to A. Kenneth Dunn, IDWR director, these rules and regulations are needed to guide department action in the reprocessing of existing water right permits, administration of the public interest criteria and in the allocation of trust water made available through the Swan Falls settlement negotiations.

Meetings have been slated in:

Idaho Falls, Bonneville County Courthouse, Room 101, 605 N. Capitol, 7 p.m., May 21,

Pocatello, Municipal Airport, Conference Room, 7 p.m., May 22,

Twin Falls, College of Southern Idaho, Room 101, Vo-Tech Building, 315 Falls Ave., 7 p.m., May 23, and

Boise, Hall of Mirrors (State Office Building), East Conference Room, 700 W. State St., 1 p.m., May 24.

Those wishing to submit written comments should mail them to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720 before June 17, 1985.
IDWR rules
add 1-1-1-1-1-1-

A brief description of subject matter to be addressed in the proposed rules and regulations is available upon request from any of the IDWR offices in Boise, Idaho Falls, Twin Falls or Coeur d'Alene.

-30-

Kay Weaver
Information Specialist

The foregoing is a true and certified copy of the document on file at the department of Water Resources.
Signed this 4th day of January 2003

[Signature]
NEWS RELEASE

FOR IMMEDIATE RELEASE

May 17, 1985

Idaho Department of Water Resources to conduct meeting for water users

BOISE -- Water users near Idaho Falls are reminded of the public information meeting slated by the Idaho Department of Water Resources on May 21, 1985, at the Bonneville County Courthouse, Room 101, 605 North Capital, Idaho Falls at 7 p.m. According to A. Kenneth Dunn, IDWR director, the agency wishes to get a clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. Written comments may be sent to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720 and must be received by June 17.

Dunn seeks public input on seven issues in particular. These questions are:

1. What criteria should be used to determine the order of processing the backlog of pending applications and for reprocessing existing, undeveloped rights?

2. What should be the requirements for the timing and scope of information to be submitted by the applicant?

3. What factors are appropriate in the consideration of "local public interest?"

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

(More)
5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

6. What rating scale should be used to balance the five public interest criteria?

7. Should permits issued for new consumptive uses from groundwater require maintenance of the capability to mitigate river flow reductions if necessary to maintain the adopted minimum stream flows?

Other information meetings are slated in Pocatello, Twin Falls and Boise. Copies of the notice to draft rules and regulations may be obtained from any IDWR regional office in Coeur d'Alene, Idaho Falls, Twin Falls or Boise.

After the information meetings have been completed, agency staff will draft the rules and regulations, incorporating comments obtained either at these meetings or from written testimony. Once the rules and regulations have been written, the public will have an opportunity, probably in July, to review them and make comments on the drafts, as required by the Administrative Procedures Act. Final drafts, which may be adopted this fall, will be submitted to the Idaho Legislature for review by the lawmakers.

(30)

Kay Weaver
Information Specialist
FOR IMMEDIATE RELEASE

State of Idaho, Statehouse, Boise, Idaho 83720
Phone: (208) 334-4440

NEWS RELEASE

BOISE- Water users near Pocatello are reminded of the public information meeting slated by the Idaho Department of Water Resources on May 22, at the airport conference room, Pocatello, at 7 p.m. According to A. Kenneth Dunn, IDWR director, the agency wishes to get clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

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Other information meetings are slated for Twin Falls and Boise, and one has already been conducted in Idaho Falls. Copies of the notice to draft rules and regulations may be obtained from any IDWR regional office in Twin Falls, Idaho Falls, Boise or Coeur d'Alene.

After the information meetings have been conducted, agency staff will draft the rules and regulations, incorporating comments obtained either at the meetings or from written testimony. Once the rules and regulations have been written, the public will have an opportunity, probably in July, to review them and make comments on the drafts, as required by the Administrative Procedures Act. Final drafts, which may be adopted in the fall, will be submitted to the Idaho Legislature for review.
FOR IMMEDIATE RELEASE

State of Idaho, Statehouse, Boise, Idaho 83720
Phone: (208) 334-4440

NEWS RELEASE

Water users in southwestern Idaho are reminded of the public information meeting slated by the Idaho Department of Water Resources (IDWR) on May 24, Hall of Mirrors, East Conference Room, 700 W. State St., Boise, at 1 p.m.

According to A. Kenneth Dunn, IDWR director, the agency wishes to get clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. However, written comments may be sent to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720, and must be received by June 17.

Dunn seeks public input on seven issues in particular. These are:

1. What criteria should be used to determine the order of processing the backlog of pending applications and for reprocessing existing, undeveloped rights?

2. What should the requirements be for the timing and scope of information to be submitted by the applicant?

3. What factors are appropriate in the consideration of "local public interest?"

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?
5. What guidelines are needed to evaluate the "public interest" criteria?

6. What rating scale should be used to balance the five public interest criteria?

7. Should permits issued for new consumptive uses from groundwater require maintenance of the capability to mitigate river flow reductions if necessary to maintain the adopted minimum stream flows?

After the information meetings are over, agency staff will draft rules and regulations, incorporating comments garnered either at the meetings or from written testimony. Once the rules and regulations have been written, the public will have an opportunity to review them, probably in July, and make comments, as required by the Administrative Procedures Act. Final drafts, which may be adopted this fall, will be submitted to the Idaho Legislature for review.

Kay Weaver
Information Specialist
REQUEST FOR COMMENT AND NOTICE OF INTENT TO WRITE AND ADOPT RULES AND REGULATIONS FOR WATER APPROPRIATION

The director of the Idaho Department of Water Resources hereby announces his intention to write and adopt rules and regulations for the allocation of water resources in Idaho. The legislature enacted Section 42-1805(3), Idaho Code, which will be effective on July 1, 1985, imposing a duty on the director to adopt rules and regulations implementing and effectuating the powers and duties of the department. Also, effective on July 1, 1985 are the changes to the water allocation provisions, (Section 42-203, Idaho Code) enacted in Senate Bill 1008 which place in trust some waters previously appropriated for hydropower generation purposes and authorize reallocation of this trust water to consumptive purposes found to be in the public interest.

The director believes that rules and regulations are needed to provide a uniform and orderly procedure for processing pending and future applications for the trust water made available and for reprocessing existing undeveloped permits under the new public interest requirements. In addition, there is a need to describe more fully the criteria that will be used to decide whether an application or a permit subject to reprocessing will be granted.
All rules and regulations will be adopted in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, which provides for full public participation. The director has determined that public comment is needed to provide a basis for developing the draft rules and regulations and requests public input and suggestions. The director especially requests input on the following issues:

1. What criteria should be used to determine the order of processing the backlog of pending applications and for reprocessing existing undeveloped permits?

In December 1982 the department ceased processing applications to use water for consumptive purposes from the Snake River drainage upstream from Swan Falls Dam. Over 1,000 applications, nearly all for irrigation purposes, are now being held. Additionally, an estimated 1,700 permits, nearly all for irrigation purposes, remain undeveloped in this area. The Snake River Water Rights Agreement as authorized by Section 42-203B, Idaho Code, allows development that is in the public interest to reduce the flow of the Snake River near Murphy gauge but not below a flow of 3900 cubic feet per second (cfs) in the summer or 5600 cfs in the winter. This reduction has been estimated at 600 cfs below the existing low summer flow on a dry year. One hundred fifty (150) cfs of this flow is reserved for domestic, commercial, municipal and industrial (DCMI) uses. Existing applications and undeveloped permits exceed the firm water supply.
available.

Should applications and permits for reallocation of trust water be processed in order of priority or should the order of processing be determined by other criteria which may be administratively more efficient, produce more immediate development, optimize the location and type of development, or distribute development? Should preference be given to new applications filed for development that took place after the mandatory filing dates (May 20, 1971 for surface water and March 25, 1983 for ground water) and before the November 19, 1982 Supreme Court Decision?

2. What should be the requirements for the timing and scope of information to be submitted by the applicant?

The statement of legislative intent for S.B. 1008 indicates that the burden of proof for the public interest criteria of Section 42-203C is to be on the protestant. The applicant must, however, submit sufficient information to allow the protestant to respond to the proposed project.

Should the applicant be required to supply a detailed plan of development including operational details? Should applicants for smaller projects, unprotected applications, or projects proposing uses such as DCMI be exempted from this requirement? If so, what size or type of project should be
exempt?

3. What factors are appropriate in the consideration of "local public interest"?

All applications to appropriate water must comply with the local public interest criteria of Section 42-203A, Idaho Code. The statutes define local public interest as the "affairs of the people in the area directly effected by the proposed use". Should local public interest be restricted to effects directly associated with water diversion and use such as instream values, and water quality or should it be broadly interpreted to include general land use concerns such as property value declines due to a reduced streamflow? Should downstream effects on anadromous fish and hydropower production be considered?

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

Section 42-203C, Idaho Code, requires that if an application to appropriate trust water will significantly reduce water available to a hydroelectric facility, the applications must be evaluated using public interest criteria.

What parameters should be used to evaluate a significant reduction? Should cumulative impacts be evaluated considering depletion of all trust waters down to the minimum flow or only
the increment predicted to be depleted during some planning period?

Should applications proposing small diversions, or certain uses such as DCMI and those that are not protested be exempted? If so, what size and types of projects?

5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

Section 42-203C, Idaho Code, requires the director to consider five criteria to evaluate the public interest of reallocating trust water. Should rules and regulations be adopted providing detailed guidelines for evaluating the positive and negative impacts of proposed projects on the state and local economy, on utility rates, on the family farming tradition, and on the full use of Idaho’s water resources? How can remote indirect impacts be adequately evaluated? Should the value of potential future uses, which are foregone if the application is approved, be considered?

6. What rating scale should be used to balance the five public interest criteria?

Section 42-203C, Idaho Code, states that no single public interest criteria is entitled to greater weight than any other criteria. Does this require a simple check off that the
proposed project complies with the criteria and that a project complying with a majority of the criteria is to be approved, or should a rating system be adopted which recognizes the degree to which a project meets a proposed criteria with each criteria having the same potential maximum value?

7. Should permits issued for new consumptive uses from ground water require maintenance of the capability to mitigate flow reductions in the rivers as necessary to maintain the adopted minimum flows?

The lag time between starting and stopping pumping of a well and the corresponding change in the discharge rate of springs flowing from the aquifer makes curtailment of pumping of junior priority ground water rights ineffective for managing short-term stream flow fluctuations. Holders of permits issued for ground water development could be required to have a source of water for release to insure that the adopted minimum stream flows can be maintained. As an alternative, should the state assess permit holders to purchase storage water or other resources for insuring that minimum flows are met?

The public welfare requires that any rules and regulations necessary to implement the changes to Idaho water statutes be effective July 1, 1985. It may be necessary to initially adopt the rules on an emergency basis in order to meet this public welfare requirement.
All comments and suggestions provided will be reviewed and considered by the director in the process of implementing the new and amended legislation relative to the Swan Falls agreement.

Public information meetings will be scheduled and held by the department as follows:

Tuesday, May 21, 1985 - Bonneville County Courthouse, Room 101, 605 N. Capital, Idaho Falls, Idaho, at 7:00 p.m.,

Wednesday, May 22, 1985 - Pocatello Municipal Airport, Conference Room, Pocatello, Idaho, at 7:00 p.m.,

Thursday, May 23, 1985 - College of Southern Idaho, Room 101, Vo-Tech Building, 315 Falls Avenue, Twin Falls, Idaho at 7:00 p.m. and

Friday, May 24, 1985 - Hall of Mirrors, East Conference Room, 700 W. State St., Boise, Idaho at 1:00 p.m.

Comments should be mailed to Director, Idaho Department of Water Resources, Statehouse, Boise, Idaho 83720 to be received prior to June 15, 1985.

Copies of this notice may be obtained from the regional offices located at the following addresses:

Western Region, 450 W. State St., Boise, Idaho 83720,
Eastern Region, 150 Shoup, Idaho Falls, Idaho 83401,
Northern Region, No. 5, Box 4055 Government Way, Coeur d'Alene, Idaho 83814 and
PUBLIC INFORMATION MEETING
Thursday, May 23, 1985, 7:00 p.m.
Twin Falls, Idaho

ROSTER OF ATTENDANCE

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<tr>
<td>Henry Burchman</td>
<td>156 Haven, Twin Falls, ID 83301</td>
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The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 10th day of October 2008.

[Signature]
PUBLIC INFORMATION MEETING  
Thursday, May 23, 1985, 7:00 p.m. 
Twin Falls, Idaho

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<td>Leo Edray</td>
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<td>Karr Waymouth</td>
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<td>Earl M. Cady</td>
<td>1354 Hansen Dr, U.S. Bureau of Reclamation</td>
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<tr>
<td>Robert W. Johnson</td>
<td>Box 223, Rt 1, Build, TFCC, Director</td>
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<td>C. G. Lemon</td>
<td>Box 19, Hagerman 36-A</td>
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<td>Donald H. Jones</td>
<td>Box 299, Burley, ID</td>
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<td>Phil Wheeler</td>
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<td>S. C. Carleton</td>
<td>Hagerman, Idaho Citizen, Albert</td>
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<td>Jill Joseph</td>
<td>R2*1, Box 254, Hagerman 83322 Self</td>
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The foregoing is a true and certified copy of the document on file at the department of Water Resources.
Signed this 10th day of October, 2008

[Signature]
NELSON: One thing, Norm, on this gentleman's example. I don't think that surface water diversions for recharge above Milner are part of the trust waters. To be part of the trust waters, the water has to be made available by reason of subordination condition and there is no water right at Milner that's at zero flow in the State Water Plan. So, surface water diversions above Milner would not be subject to those criteria. Now, EPA may have something to say about it, but I don't think they can (file for a grievance.) (file under their agreement.)
Affidavit of Norman C. Young

Exhibit B
Affidavit of Norman C. Young

Exhibit C
MALE SPEAKER: Viewing global public interest of the board of directors of the corporation felt should be whatever this be, I'll read it to you.

MODERATOR: Good. And will you submit us a copy of it too?

MALE SPEAKER: Yes.

MODERATOR: Very good.

MALE SPEAKER: I'm here now representing the Hagerman Valley Citizens work. Our group might well be defined as a citizenship group whose main concern is the public interest.

We are usually, if not always, supporting positions that will benefit the public at large. As a group we are mainly concerned with maintaining the healthful and attractive community in which to live.

Our own articles of incorporation, our purpose is stated: To secure and enhance the city from social welfare, the residents and visitors of Hagerman Valley.

Our purpose on being here tonight is to state our position regarding the definition of local public interest. The word "public" is defined in Websters as that remaining to and
offering all the people – pardon me, and affecting all the people.

We have such expressions as public good, public welfare, public health, public trust, all of which referred to the public at large. The concept of the public interest stands in contrast to private interest for particular individual's benefit from some action or policy.

Ideally, all actions of the policy could serve both the public interest and the private interest. There should be an equitable balance between the two. However, when we come into conflict, public interest should prevail, consistent to that document's greatest good to the greatest number of people.

The concept of public interest is very old and can be traced back to English common law and even to Roman law. It certainly goes back to our own Constitution. In the Preamble of the Constitution appears the phrase "To promote the general welfare," and this is interpreted to mean promote the welfare of the public at large.

The term "public good" appears in the Declaration of Independence. The term "public trust" appears also in the Constitution. So the idea of government being concerned with protecting the public's interest is well established in our history and traditions.

The concept of public welfare and public interest is based on the government's relationship with its citizens. One of the principal duties of the government is to look out for the interest of all its citizens. We think that it is in the public interest to protect and preserve our habitat, the places we live and the places our children and grandchildren will live.

We believe that it is in the public interest to take the long view and the broad view consistent to that document's greatest good to the greatest number of people.

We have no problem in defining local public interest for Hagerman Valley. We are concerned with the quality of the water coming from the springs, flowing in our rivers, and the natural beauty it surrounds. We certainly hope that the Department of Water Resources will take such concern into consideration when writing new rules for issuing water permits.

Thank you.

MODERATOR: Thank you. The department's
philosophy is to issue those initial decisions on
the local public interest. Your question is very
timely. That is I think the next slide.

Those are the five -- and again, I'm
paraphrasing, let's make them short, and you've
got the exact language on the last page of the
bill that was handed out to you, the legislation.

If the project that you suggested meets
all of the first five criteria, the historic five
criteria, and could be approved under those five
criteria, including the local public interest, and
then you look at it and you find that it, along
with other water uses, is going to reduce the flow
to the hydro power right significantly, then you
have ask -- the director has to ask himself these
two questions, and let's just go through those in
exact language of the statute.

If the answer, the director considers,
and I say this carefully, this is one of the
questions also.

A VOICE: Where are we at?

MODERATOR: The very last page of the bill
under Item 2 under 42-203C, there are five
criteria. This is the public infrastructure,
really the heart of the rules that will be, to be
adopted, the director is asked to consider.

And on the first five criteria, the
historic one, he is asking the cause and
determination, "shall find and determine." On
these he is asked to consider, is there a
different level of consideration between the five
criteria? That may be a legal question.

But he must consider whether the
project would, as it affects the existing hydro
power right when you're taking the water away,
would be potential benefits both direct and
indirect, that the proposed use would provide the
state and local economy.

Second one is, the economic impact the
proposed use would have on electric utility rates
in the State of Idaho and the availability,
foreseeability, and cost of alternative energy
sources to ameliorate such impact.

Three, the promotion of the family farm
tradition.

Four, the promotion of full economic
and multiple use development of water resources in
the State of Idaho.

And five, in the Snake River Basin
above the Murphy Gauge, whether the proposed
development informs through a staged development
policy of up to 20,000 acres per year, or 80,000
acres in any four-year period.
So those are the five public interest
criteria and will be affecting the
(unintelligible).
We're asking for your suggestions as we
draft the rules on how details should be defined.
If we follow the lead of the federal government,
perhaps would have to have an environmental impact
study, principles of standard level
(unintelligible) as you look at the economics and
sociologic impacts and come up with very detailed
guidelines as to what is acceptable or not. If
that is what is being proposed here, then we
should draw from this? Or is this a cursory
review of where (unintelligible) --
MALE SPEAKER: Those are regulations
designed to solve all development, to make
criteria so high that you cannot meet it?
MODERATOR: I think that's what we have to
be so careful about here. As the rules and
regulations are adopted, that they make a
reasonable requirement. So as the information is
available and the director is able to make a
decent judgment, they're not to simply make a
project infeasible because you can't afford to
make a study for necessary approval.
Yes, sir?
MALE SPEAKER: Does this include ground
water also under the same provisions, all this?
MODERATOR: Yes. We're talking here about
in the Snake River Basin, above Swan Falls and
Murphy Gauge for sure, the water is the makeup of
the Snake River. And our belief is that the river
is made up of all the sources. Statutorily and
case law, that is true. And the spring being the
expression of groundwater, yes.
MALE SPEAKER: Then in other words, the
groundwater would be included in the trust water.
In other words, it would be classified as trust
water indirectly.
MODERATOR: That's right.
MALE SPEAKER: What about in the event of
percolations of the groundwater, since we all just
maintain so it takes a thousand years for ten
miles in the some areas, et cetera, are you still
going to hold that this study with a theory that
it's all part of the trust water of the rivers?
MODERATOR: That goes back to this question, the point about the delay between when you pump the water and when the spring flow reduces. First it would have — that would be information you would need to have in order to decide whether you had a significant reduction on hydro power rights. So you need that data for that decision.

I suspect you would need it in order to determine the impact on the availability and price of electric energy, the question of promotion of full economic and multiple use of the water.

I suspect I ought to put these in terms of questions but that's not the — so as part of the Swan Falls agreement [unintelligible], there is additional hydrologic data being gathered so that models of the aquifer can — computer models of the aquifer may be defined to help us and to help the applicants feel to answer that question.

MALE SPEAKER: Do they take and consider the aquifer recharge, then?

MODERATOR: The return to the aquifer —

MALE SPEAKER: On the recharge, like the winter recharge to an aquifer.

MODERATOR: The models do, yes.

MALE SPEAKER: What I mean, though, will that still be classified as trust? In other words, the winter flow and the summer flow are different, and et cetera, and the stream flow is different in the winter. I mean, in other words, all water applications, no matter for what or where will be classified as one, in other words; that bill against the trust availability, in other words.

MODERATOR: For all practical purposes, that is correct. Now, for example, some of the existing storage projects, specifically at Teton, I think we need to look at that as to whether that would be trust water or not.

Yes. As we reprocess those undeveloped permits and new applications, basically we’re talking about having to go through these types [unintelligible] if there's a significant reduction.

Do you have a question about it?

MALE SPEAKER: Apparently on this groundwater you are recognizing in effect that the factual exchange type thing, how is that going to affect prior exchange type rights that the state has not recognized in the past? In the city of Pocatello, Palisades being a case in point,
Michaud Flats irrigation is another.

MODERATOR: Well, I'm not sure I understand the question well enough to respond to it. One of the issues is raised, and we'll talk about is Issue No. 7. And this question: Permit condition in mitigation.

I think what you're referring to is the department's approval that interim permits, while this is being developed and rules and regulations are being developed, require an exchange of historic [unintelligible].

I'll take it from there on how your question --

MALE SPEAKER: Well, I'm wondering if you're going to go back in the past. The city of Pocatello has a case in point, the state has not recognized that as a valid consideration, exchanging storage water for groundwater withdrawal. And I'm wondering --

MODERATOR: You're actually moving retroactive?

MALE SPEAKER: Yeah. Are you going to go back and look into those -- and there are several of those exchange-type agreements in the Teton Basin and other places in the state.

MODERATOR: I'm glad you're not expecting an answer to that. [Unintelligible] that is a policy question.

Yes, sir?

MALE SPEAKER: Seems to me that that second criteria there could effectively delay any further development for years to come if Idaho Power or somebody else wanted to say, well, we don't have the studies back on the impact of availability of water to supply electricity or to generate electricity and that could in effect stall any development for years conceivable.

How long is it going to take to get the study back to the aquifer ten miles south of Burley and three miles east or somewhere else?

How are we going to know and when? There's a lot of ground to cover.

MODERATOR: There really is. The additional data, having put in the data being gathered this year, every year we get will help us confine it. But I think the decisions will just have to be made on perhaps an interim basis subject to revision as the data improves.

I don't know that we can wait 20 years until we get all the data necessary to prove the
point one way or the other, and that's a good
question. When I give my idea, I'll ask you.

MALE SPEAKER: So in effect we don't know.

We don't know.

MODERATOR: When do we have sufficient data
to make those kind of decisions.

MALE SPEAKER: The point that might be made
there would be that part of the statute placing
the burden in that instance on the protestant. So
whoever wants to protest a particular new use has
the burden to produce the information necessary to
make the protest stick. So if he has got a
20-year study, he is not going to be ready for the
protest and he'll lose.

MALE SPEAKER: If the applicant doesn't
have -- the burden of proof is upon the
protestant. So if it takes him 20 years to prove
it, he can pay it out in ten and so be it. So
what. Is that what you're saying?

MALE SPEAKER: I'm saying if the protestant
isn't ready, the applicant is going to win.

MALE SPEAKER: I see. Okay. Or they can
just hold it up until they do decide.

(Simultaneous talking.)

MODERATOR: The burden of proof, which again
is a legal term, it simply says, who has to
provide the greater evidence, the greater proof on
the issue, is switched for these five criteria
than what has historically been considered on the
first five criteria. It usually said the
applicant has the responsibility to prove that his
project met the first five criteria.

Here the statute specifically says the
protestant has that responsibility. That
particular statement of legislative intent
describes that the idea was not to force the
applicant to have to come forward with all of the
information.

But as you think through that a little
bit, the applicant probably has to describe his
project with sufficient detail so that the
protestant knows how to respond. So what
constitutes sufficient information, what level of
information is needed on various types and sizes
of projects, to be fair to the protestant?

Historically, you can fill out a
department application, an essentially two-page
document; a minimal amount of information is
required. Is that all that is required? In a
recent district court case, the district court
suggested the applicant had the responsibility of providing plans and specifications in sufficient detail that the project can be built, describe the operation of that, at the time of the protest here. In other words, before the department had made a decision, you must have the project described with sufficient detail to be built and operating. Is that what we're asking for? In that particular case, it required the engineer's plans and specifications. Is that what we need to have as a portion of our application? It might be very reasonable to just turn around ideas again on a very large project. But should we take a ten-acre irrigation project to an engineer? The 1700 permits that I believe are being re-massaged and fail to file the proof by July 1, I've already got an application. When should they be required and how much time should they be given to submit whatever additional information you need so the protestant will know how to respond? You have some thoughts on that issue?

MALE SPEAKER: Are you saying, though, that have already have used prior to that date in 198 -- when is it, October of '84, July of '84 -- are you saying that there is going to be opportunity for protest upon that, or does that letter not state that all water used before that point would be automatically granted?

MODERATOR: The way the statute reads, that to the extent that the project hasn't been developed.

MALE SPEAKER: Has not been developed.

MODERATOR: Has not been developed. Looking here at 42-203D, that it would be subject to a reprocessing under these criteria.

MALE SPEAKER: But if it has been developed --

MODERATOR: Then it would not be --

MALE SPEAKER: Subject to the second set of criteria, but the first set of criteria is still subject it.

MODERATOR: It's already been through those.

MALE SPEAKER: But it has not been filed yet.

MODERATOR: Okay. If it has not been filed on a new application, subject to those first five criteria, yes, that's right.
MALE SPEAKER: In these plans that have to be submitted, for an established industry, you would submit detailed plans for a new use trial, and I don't care what you submit at the start of it, you not going to get nothing for that.

Now, if you were going out to build a trout farm, nothing around, detailed plans would be submitted. Most of them are drawn up after the farm has been built [unintelligible]. But if you are going out to raise sturgeon, which there's a lot of interest in California and will be here in Idaho, there's not a commercially-established farm, and the best system is not developed yet. You're going to build one pond, and the next year you're going to build another, and you've got to change it. By the time you add on, it's going to be something different.

And it's not going to be going out and building the thing, drawing up a set of plans in detail and building it to those plans. It's going to be built in one pond, and changing the thing the next year and adding to it, and changing it again the next year. The project will be successful. [Unintelligible] leads to flexibility.

MODERATOR: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some indication that they're going to have a dual permit. Pretty tough to put that much money up front.

So to ask that there may be some kind of a balance in here, we're certainly entertaining your ideas on what balance needs to be struck and by type and size. And I skipped over this slide. The next line after the five criteria, the last stage of the legislation says: No single factor enumerated above shall be entitled to greater weight by the director providing this determination.

How does the director use that "no greater weight" idea as he looks at those five criteria? It's been suggested that it's simply a checkoff. He looks at the proposed project. He says yes, it has benefits. He gives a check. Yes, it will reduce electricity, availability, and raise power rates. So no, it doesn't get a check for that. But it is in the family farm tradition, et cetera. And if you get
three checks out of five, does that mean you prove it? If it gets one [unintelligible] check, does that mean you don't prove it?

Is there perhaps a rating scale that ought to be applied? If it fully complies with the criteria, giving perhaps a ten, under each of these criteria, a full compliance would eight to ten, a full noncompliance would give a minus ten, and algebraically sum up the rating that the director gives based upon the information submitted.

And if it comes up to zero or above, it's an approval. Is that what happens? Or is it some other ideas of how that should be applied?

Again, how that is determined will have a major impact on what the projects are through [unintelligible]. So my comments on that particular -- we talked about that.

The final issue is this question of mitigation and, perhaps you could say, permit approval conditions in general.

You have an Issue No. 7, is it, in your issue paper? Yes. It addresses one idea of mitigation. The State Water Board, in revising the Snake River Policy 32 of the water plan, which was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level -- for pumping projects taking water out of the main stem of the Snake River between Milner Dam and Murphy.

If it takes the water in the nonirrigation season through off-season storage, that particular kind of project is singled out and mitigation is asked for. Well, what level of mitigation should we incorporate in our rules?

Could that be a replacement power?

Yes, ma'am.

FEMALE SPEAKER: Norm, define mitigation.

What is mitigation?

MODERATOR: Well, I could give you my definition, but that's really the purpose of why we're here. Give us your idea of what constitutes mitigation. Is it a full replacement, or is it just making --

FEMALE SPEAKER: Is it money?

MODERATOR: Is it?

FEMALE SPEAKER: Is it just public interest, or what is it?

MODERATOR: Replacing the hydro power? One
thing we have talked about is perhaps if a project of that type were offstream storage and were approved, that would be written in as a condition of the permit, that on low flow periods in cold weather, if the power company really needs the hydro generation, the diversion would be suspended. Is that sufficient?

They're talking here about not just having to mitigate for the 30 to 40 minimum flow impact, if you took the flow at the Murphy Gauge below 3900 or 5600, I should say. We're talking here about making up for the impact for taking trust water. So this is unique.

MALE SPEAKER: How does this affect any proposed offstream artificial recharge of the aquifer. It appears to me that that would be a conflict. Does that affect it? We have a project over here, the north of here, doing that now; in fact, putting water into the aquifer. How is that going to work?

MODERATOR: Well, again, would there be a recharge project proposing to take water out of the main stem of the Snake River below Milner --

MALE SPEAKER: Oh, below Milner.

MODERATOR: And above Swan Falls. If you did and it was going to pump through or take it out during the nonirrigation season, I think it would probably apply in that case. But when you're above Milner, you're probably taking trust water, you're probably going to have to look at the five criteria, whether the trust criteria empty significantly reduce the flow of the hydro power line, but you wouldn't be subject to this mitigation.

MALE SPEAKER: But then you're coming right again in conflict. It seems to me that they're after the groundwater pumpers, and it appears that that type of project would enhance that rather than diminish it if their criteria for pumping it out is correct.

MODERATOR: And if you went back to the five public interest criteria, if it indeed was in the public interest to take the water away from hydro generation during that winter period and put it into the groundwater for recharge, then it should be approved [unintelligible] -- public interest criteria.

Elaine? Elaine?

FEMALE SPEAKER: Just maybe for interest of those people that were thinking about doing some
of this [unintelligible], one of the gentlemen at
last night's meeting felt that this mitigation was
just not far enough or wide enough and suggested
that the law changed so that the fish could be
mitigated in the April or May/June flows also.
And so you're going to have to put in
your suggestions for the mitigation if you want to
balance out some of it because they really are
suggesting very, very strongly that the mitigation
hearings is much too narrow and needs to be spread
to fish flows in June also.
MODERATOR: The Northwest Power Planning
Council's fish watch, which probably would occur
on dry years in the April to June period. And the
suggestion would be made as to projects, in order
to be in the public interest, might have to be
envisioned to make up water for that fish watch.
That was how broad that person viewed the public
interest criteria.
Again, that's what we're asking for.
Tom?
MALE SPEAKER: One thing, Norm, on this
gentleman's example. I don't think that the
surface water diversions for recharge above Milner
are part of the trust waters. To be part of the
trust waters, the water has to be made available
by reason of the subordination provision, and
there's no water right at Milner. That's a zero
flow under the state water plan. So the surface
water diversion above Milner would not be subject
to those criteria.
Now, the EPA may have something to say
about it, but I don't think this is the problem
under the agreement.
MODERATOR: Good. I'm glad it's on tape.
That makes it easy.
FEMALE SPEAKER: Norm, we had one lawyer in
the audience last night. We've got another one
tonight. Could we ask him how he would use the
first-come, first-serve doctrine?
MODERATOR: Will you yield?
MALE SPEAKER: Sure.
FEMALE SPEAKER: It has really helped. A
lot of us would like to say, there are some small
projects [unintelligible] that are in the
emergency situation, that we're talking of 10, 20,
30 acres, that really need to be processed. But
that if a larger project earlier says, well,
that's all right, go ahead and process them first,
then they're speculative. And they lose their
1 water right because they allowed the later guy to 
2 go first.
3 Is there some way that we can get
4 around the first-come, first-serve doctrine in
5 order to process the emergency cases and the
6 smaller cases, or are we bound by law to go
7 first-come, first-serve no matter what?
8 MALE SPEAKER: Well, I don't think that the
9 priority doctrine operates strictly on trust
10 waters. My view is, everything else being equal,
11 the older of two projects, one of which can
12 develop and one of which can't, should develop.
13 But if you look at full economic
14 development and benefit to the state and local
15 economy and all the criteria, it seems to me that
16 what you want to end up with is probably the best
17 project out of the whole gamut.
18 I don't know how you can make that
19 decision ahead of getting a record made. In other
20 words, I don't know what creates an emergency for
21 30 acres of development. But until you have some
22 kind of a record on which you can base a better,
23 best, and terrible analysis, I think you'll just
24 have to wait until you get started.
25 FEMALE SPEAKER: Well, I think we kind of
26 agree that the best projects should be the one
27 that hits the ground, period. But how do we get
28 around all the lawsuits that the guy earlier can
29 have if he doesn't get his chance to prove he was
30 best and fight for it?

MALE SPEAKER: Well, my feeling is that age
31 has to be one of the criteria that you use to sort
32 the first cut. I think distance from the river
33 would be another. And we may have to give the
34 older projects a shot at proving they are the best
35 or you're going to run into that very problem.
36 But to me, the ultimate cutting edge is the best,
37 not the earliest.

FEMALE SPEAKER: And you think we can stay
38 out of court if we give them some guidelines
39 [unintelligible].

MALE SPEAKER: We won't stay out of court.
40 We just might have a better chance of making it
41 stick if that's the way you work it.
42 MODERATOR: Very well put.
43 Now, the mitigation that you were
44 describing for the pumping to offstream storage
45 that is talked about in Policy 321 of the amended
46 water plan is not the mitigation that is addressed
47 in your Issue 7.
That one is -- the question being, one, if you now issue permits with the understanding that our data shows 600 cfs of firm trust water, and we issue permits for ground water pumping on the aquifer, if that 600 cfs was not properly calculated or if there's a worst year, or a sequence of years in terms of dryer than we expected in that analysis, and we indeed with these new filings that are issued, that were issued with the 600 cfs trust water, filed alone at 3900 cfs or the 5600 cfs [unintelligible] forward, how is the state going to then augment the river flow so we don't violate that? And it could be as an attorney told us last night, the state could have some financial liability if that happened. Do we look to the applicants, the permit holders, and we issue the permits to provide some mechanism for augmenting the flow in case that happens? As your issue paper says, it may be a number of months or a number of years before the effect of shutting off a well is felt in the river. So just shutting off the junior user when the river starts below the minimum flow doesn't help. You've got to have a way of augmenting.

The [unintelligible] conditions will require that, force people as a condition of the permit to provide water to the water bank, to buy the money for approval, for seeking funds to be available to buy water rights; pay for the damages. How do you respond?

MALE SPEAKER: I would like to speak to this recharge situation and the flow of the Snake River, if I may. Our water is dropping off this year down below what it was last year. In other words, we're approaching an all-time low in our aquifer discharge. Now, when A and B Irrigation, isn't it, that is planning on a large increase in pump water, or is it some other irrigation district up here in the central, over the aquifer?

MALE SPEAKER: There is a plan to develop 12,000 acres within the boundaries of A and B, yes.

MODERATOR: Yes, the application has been made.

MALE SPEAKER: That is basically appropriated water as far as Hagerman Valley is concerned, that they'll be interrupting. We had a higher flow last year than we had the year before,
but it looked like we were about to approach the low flow that we've had for the last 20 years. Now, if they're allowed to take that water out of our water, we feel that they should join the aquifer -- lower Snake River aquifer recharge and put the same amount of water back into the aquifer that they removed from it. There's several advantages to recharging that aquifer and maintaining an even flow for hydro power generation provisions for fish movements and another things. 

MODERATOR: Now, the water rights you're saying would be impacted and not the hydro rights of Idaho Power. 

MALE SPEAKER: I'm saying our water rights will be affected. 

MODERATOR: Your irrigation and fish propagation from the springs themselves. 

MALE SPEAKER: Yes. 

MODERATOR: And so under the law that's in effect today and will remain in effect in July, from the old original criteria said will the project impact an existing right? So we'll need -- the judgement will need to be made by the director as to whether it will indeed impact that right, and if so, then it could not be approved without conditions --

GEORGE LEMON: In the past, we have not been able to prove that this well affects this stream and have not been in court been able to protect our water rights. So we have got to have some protection from somewhere, and we don't want to stop development. That isn't our trying at all. 

But this excess water that is going down the Snake River over Milner Dam should be put back into the aquifer to bring that water flow back up to maintain an even flow on the river. 

Now, here is a peculiar thing that has been happening that most people don't understand. Every time a sprinkler system goes in over that aquifer, it evaporates a larger percentage of the water that they use, whether it comes from well water or whether it comes from canal water. And that water goes in the air, and it is transported back up to the mountains in the Southeast Idaho where it falls back on the ground, comes back down to the river instead of coming down the aquifer. 

In other words, every time a sprinkler is put in, it transfers water from the aquifer to
the Snake River, which holds in the runoff from
the spring and is not put back into the aquifer.
And we need to get some method of getting that
water back in to even the flow of the Snake River,
because the springs maintain that water flow for
the power production in the summertime and make it
even flow so that their power plants can utilize
that water that is going down there instead of it
going past as overflow.

MALE SPEAKER: There is another situation
because the people who are losing their water
rights there in Hagerman Valley are taxing
themselves and spending that money to recharge the
aquifer so that the guys up on top can pump it
back out free and use it again.
The people who are depleting the
aquifer are not willing to participate in the
recharge program, the majority saying that some of
these projects developed up there and pumped that
water out should have an obligation to participate
in that recharge, if the guy that is losing his
water rights already participated in it.

MODERATOR: So I hear suggested that perhaps
as permits are issued, there ought to be
conditions required of participation of the

recharge.

MALE SPEAKER: Yes. I would say it would be
vigilant to have a fee on these new water rights
or recharge. And this project has been before the
state for years; very feasible, just haven't had
the money to do it, had a good source of money to
do it. And it's people who is going to be using
it, pay for it.

MODERATOR: It's probably a good legal
question, whether that's something that can be
done without additional statutory authority.
There is a proposed water marketing bill that was
printed last legislative session, House Bill 233,
that was not approved. But there's an interim
study committee from the legislature that is
looking at water marketing, and this idea of
augmentation is a part of that bill.

So it may take additional legislation.
But to the extent that you can see how these rules
could be used to resolve that kind of problem, we
would like your suggestion.

I've been through the legislation with
you. I think I've pretty well touched everything
that is in the issue paper with you this evening.

With the target date, trying to put together a
draft to come back to you with for adoption in the
Administrative Procedures Act is June 15. That's
a Saturday, so June 17.
If you've got ideas that you haven't
shared with us, to the extent you have shared with
us tonight, you've got the record on the tape,
we'll use those ideas and consider them as we form
this draft. If you've got other ideas, mail them
to us. If you get them here by the 17th, they'll
for sure be considered. If you get them in after
that date, we'll consider them if we're not too
far along.
The legislation is effective July 1.
The issue paper talks about emergency rules, and
there is a provision under the Administrative
Provisions Act or Administrative Procedures Act to
adopt emergency rules. An agency would be
stepping into a meat grinder to adopt emergency
provisions, rules if it wasn't very clear-cut of
what those rules needed to say. So we won't do
that unless [unintelligible].
Even if we did, we would have to
immediately start to form a process under the
Administrative Procedures Act and have it
completed in 120 days. So they're only good for
120 days. I don't expect to see them adopted
[unintelligible]. It is mentioned.
FEMALE SPEAKER: Norm, there are signup
sheets, so everybody can get a copy.
MODERATOR: We can stop right here.
(Proceedings concluded.)
-oo0oo-
REPORTER'S CERTIFICATE

I, Dianne E. Cromwell, Official Court Reporter, County of Ada, State of Idaho, hereby certify:

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

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

IN WITNESS WHEREOF, I have hereunto set my hand October 6, 2008.

Dianne E. Cromwell, Official Court Reporter
CSR No. 21
Affidavit of Norman C. Young

Exhibit D
MR. MODERATOR: Cfs at Swan Falls, yes. In the winter that's the minimum flow.

MODERATOR: Is there or has there been historically water available for recharge above that 5600?

MR. MODERATOR: The 5600 is the minimum flow that we anticipate if the summer flow would develop under one set of conditions down to 3900 on a dry year. So on other years, besides the very dry year, yes, there is water that could be looked at under the trust water provision if necessary. As long as you’re above Milner, you’ll have to look at that. I still want to discuss that with Tom, and see.

I believe that yes, there is water above that most years. It’s just the extreme year that there wouldn’t be.

Yes, sir?

MALE SPEAKER: I have a question about the trust water. Now, is the trust water up to Idaho Power’s 8400 second-feet, that anything above that, is that still trust water clear to 25,000, or does that end at their water right?

MR. MODERATOR: It ends at their water right.
1 MALE SPEAKER: 8400 second feet.
2 MR. MODERATOR: If you're looking at Swan Falls, it's apparently 8400 cfs. If you're looking at Bliss --
3 MALE SPEAKER: 15,000 or 17,000.
4 MALE SPEAKER: That's the springs [unintelligible].
5 MALE SPEAKER: Do we still have to supply anything back on this here deal with the
6 Idaho Power if you have your permits and
7 everything in order before 8400? Do we have to answer anything legally?
8 MR. MODERATOR: Okay. Let's use yours as a specific. Give me the details. You have a project that was developed --
9 MALE SPEAKER: We had seven different permits, that they were all approved. Say, the last one is a permit, it's not adjudicated.
10 MR. MODERATOR: It's a permit that is issued, applied for --
11 MALE SPEAKER: Probably in '75.
12 MR. MODERATOR: Okay. Before November 19, 1982. When was the development?
13 MALE SPEAKER: Probably about that same time.

1 MR. MODERATOR: Okay. The contract, the Swan Falls contract, not the agreement, the contract, says that Idaho Power recognizes and subordinates to those projects that were applied for before November 19, 1982 and were developed, water was actually diverted or there was substantial investment before that date, November 19, 1982.
2 So you should be eligible for release, and it may have already been released in the lawsuit. The thing that triggered that is if you had filed the proof of beneficial use document --
3 this is where we came in -- the proof of beneficial use document before November 19, 1982.
4 You should have been automatically released in the first release.

5 If you hadn't filed it, you should have received from Tom Nelson's office a letter saying file a Form A or a Form B. If you withdrew your [unintelligible] by November 19, 1982, file Form A and you will be.
6 MALE SPEAKER: Then any that have not been proven up as of now, where do they stand? They've been applied for, but they've not been proven up on.
MR. MODERATOR: Any undeveloped permit that is going to rely on trust water is to be reprocessed to the extent it has not been developed under the public interest criteria.

MALE SPEAKER: This has been applied for before 1982. It was not through the --

MR. MODERATOR: The indicator that the department has indicated we will use to determine whether it has to go under this new criteria or not, is have you filed the proof of beneficial use document on that permit by June 30 of this year.

If you haven't, then we're going to assume that you have to be re -- processed. Maybe it will come in [unintelligible], maybe develop and get out of it. But we're gong to assume that without that, yes, you will be re-processed.

MALE SPEAKER: You have to reapply?

MR. MODERATOR: No. You won't have to reapply, but that is one of the issues that we raised, is, what information should you have to [unintelligible].

MALE SPEAKER: How about water that has been adjudicated and will never enter into this thing?

It was adjudicated through the courts.

MR. MODERATOR: Really not an issue here this evening at all.

MALE SPEAKER: But you don't have to do nothing with --

MR. MODERATOR: You shouldn't have probably been named in the lawsuit.

MALE SPEAKER: It wasn't. And that's why I was wondering if there was any --

MR. MODERATOR: Just not an issue here or not, we could get over into the question of the adjudication, then you'll need to file --

MALE SPEAKER: I'm not talking about -- I'm talking about decree.

FEMALE SPEAKER: The Form A's and B's do have to be in by June 30. Right?

MALE SPEAKER: That's per the department's personnel. I don't care when I get them.

FEMALE SPEAKER: Okay.

MR. MODERATOR: We just need some kind of a date that says, hey, you have to file by this date, and we're going to see if you need to be reprocessed. And not that you can't get out of it, but you're going to have to provide some indication, proof that you did have [unintelligible].

FEMALE SPEAKER: What happens to the
"Trout Co." Draw? That thing has been in limbo for the seven years that's before the Supreme Court now. Will they have to go back through this reprocessing?

MR. MODERATOR: Well, the Trout Co. water is, and correct me if I'm wrong, fish propagation and hydropower.

FEMALE SPEAKER: Yes.

MR. MODERATOR: They need to go through those first five criteria [unintelligible] in the first place. If they get through those, then they look to see, will that cause a significant reduction in hydropower rights downstream, and if it is a nonconsumptive use, the answer will be no, does not significantly reduce, so you don't have to go through the five criteria.

FEMALE SPEAKER: Would that apply also to fish propagation filings that are in the process now under with the five-year period, all fish propagation? Because it is a non-consumptive use.

MR. MODERATOR: That's correct.

FEMALE SPEAKER: So you would not have to go through --

MR. MODERATOR: Non consumptive uses should get -- filter out of having to go through the entire, the new public interest criteria, as they should not cause a significant impact on hydropower. They'll have to be looked at because some of them are fine. You could have a nonconsumptive use [unintelligible] around, hydropower. Not even sure you subordinate that particular one.

Another question? Yes, sir.

MALE SPEAKER: On the geothermal wells, this is geologic water, been locked in for centuries, has not been contributing to hydropower in the river system. Does it fall under the same classification as the aquifer over here that does contribute to power generation, or should it be excluded from wells in the geothermal aquifer?

MR. MODERATOR: I guess that comes down to the question of showing that indeed the relationship doesn't exist. Now, where you show that, under the first five criteria under the significant reduction, public interest -- new public interest criteria is probably something that needs to be scoped out in the rules and regulations. But to the extent that they do not affect hydropower, they should be not subject to
the new criteria.

MALE SPEAKER: And then if it was nonconsumptive use on that, then that it would not be subject --

MODERATOR: As long as it didn't affect downstream hydro, a significant reduction.

The address to send your comments to are on the screen. If you have further comments, suggestions, I would be happy to sit here and listen to them. After quite a while [unintelligible]. So I appreciate your comments you have made. I hope that your understanding of where we're trying to go with these rules and regulations is such that you'll be able to give us a new direction. We appreciate that.

Thank you.

(Proceedings concluded.)

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REPORTER'S CERTIFICATE

I, Dianne E. Cromwell, Official Court Reporter, County of Ada, State of Idaho, hereby certify:

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

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

IN WITNESS WHEREOF, I have hereunto set my hand October 6, 2008.

Dianne E. Cromwell, Official Court Reporter
CSR No. 21