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the document on file at the department of
Water Resources.

Signed this 4th day of January 20 1985
Ray Spalkman

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Department of Water Resources

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.

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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 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, 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 DDMI 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

Southern Region, 1041 Blue Lakes Blvd. North, Twin
Falls, Idaho 83301.

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Signed this 4th day of January, 2008

Ray Spackman