

1 STATE OF IDAHO

2 DEPARTMENT OF WATER RESOURCES

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 5 RE: WATER ALLOCATION RULES AND :
 6 REGULATIONS HEARINGS. :
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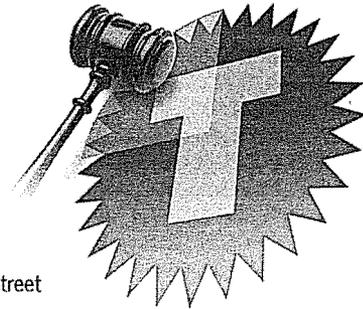
11 TRANSCRIPT OF PROCEEDINGS REQUESTED BY
 12 ATTORNEY GENERAL LAWRENCE WASDEN OF AUDIOTAPES HELD AND
 13 MAINTAINED BY THE DEPARTMENT OF WATER RESOURCES

14 July 21, 1986, 1:45 p.m.

15 before NORMAN YOUNG, HEARING OFFICER

16
17 LEN B. JORDAN BUILDING
18 BOISE, IDAHO

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21
22
23 Transcribed by
24 Frances J. Morris
25 CSR No. 696



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CHARLES PACE
MR. FUNKE
MR. MILES
MS. HAYES
MR. CHAPMAN

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1 APPEARANCES
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 3 CHARLES PACE
 4 MR. FUNKE
 5 MR. MILES
 6 MS. HAYES
 7 MR. CHAPMAN
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1 BOISE, IDAHO
 2 July 21, 1986, 1:45 p.m.
 3
 4 THE HEARING OFFICER: Okay. This is Boise,
 5 Idaho. My name is Norman Young from the state
 6 office of the Department of Water Resources in
 7 Boise. I've been asked by the director, A.
 8 Kenneth Dunn, to serve as the hearing officer in
 9 this matter.
 10 The purpose of this hearing is to
 11 provide an opportunity for formal testimony or
 12 statements, either orally or in writing, relative
 13 to the department's proposed rules and regulations
 14 for water allocation in the state of Idaho. As I
 15 explained previously, the proposed rules are the
 16 adopted rules with the exception of Rule 5,2 is
 17 stayed.
 18 The hearing is required by the
 19 provisions of the Administrative Procedures Act,
 20 Title 67, Chapter 52, Idaho Code and will be
 21 conducted pursuant to the department's rules of
 22 practice and procedures.
 23 Cross examination of witnesses by
 24 participants or others will not be allowed except
 25 that the hearing officer reserves the right to ask

1 clarifying questions.
 2 After the hearing is concluded, an
 3 opportunity will be provided to discuss the
 4 issues. The rules implement provisions of Section
 5 42-203, Idaho Code, and in a general way,
 6 Chapter 2 of Title 42 of the Idaho Code of which
 7 Section 42-203 is a specific part. This section
 8 was amended during 1985 and 1986 session of the
 9 legislature. The authority and the duty for the
 10 adoption of these rules and regulations is
 11 provided by Section 42-1805(8), Idaho Code.
 12 The brief background on these hearings
 13 is that this represents the second round of formal
 14 hearings being conducted on these rules and
 15 regulations. The first hearings were conducted in
 16 January 1986 with rules being adopted pursuant
 17 thereto on April 8th, 1986.
 18 Shortly thereafter the Idaho Power
 19 Company alleged there was a general defect in the
 20 promulgation process and objected specifically to
 21 Rule 5,2 which provides the criteria for
 22 determining which applications and permits are to
 23 be processed under Section 42-203D, Idaho Code,
 24 and will therefore be reviewed under the new
 25 public interest criteria of Section 42-203C, Idaho

1 Code.
 2 Idaho Power Company petitioned the
 3 department to amend Rule 5,2, and these hearings
 4 are a direct response to that petition.
 5 The alleged general defect was that
 6 statutes which were to be implemented by the rules
 7 and regulations were amended by the legislature
 8 part way throughout promulgation process. A
 9 notice of intent to renew the rule-making process
 10 announced the director's intention to repeal the
 11 rules adopted April 8, 1986, and adopt anew the
 12 same rules. The notice also stayed the
 13 implementation of Rule 5,2 until readopted.
 14 Testimony is elicited on all of the
 15 rules for water allocation, but in particular we
 16 would like to have Rule 5,2 addressed.
 17 The notice of intent of rule-making was
 18 published on June 12th, 19th, and 26th, in the
 19 newspapers in Boise, Twin Falls, Idaho Falls, and
 20 Coeur d'Alene. In addition, there was a notice of
 21 correction published on the 20th of June in the
 22 Boise Statesman.
 23 Copies of the notice and the rules were
 24 mailed to all those asking advanced notice and to
 25 all others requesting them. Press releases

1 of the adopted rules to all who attend these
 2 hearings.
 3 Are there other matters that we should
 4 discuss before starting to take testimony?
 5 Today is July 21, 1986. The time is
 6 1:45 p.m. This hearing is being conducted at the
 7 Len B. Jordan conference room in the LBJ building
 8 in Boise, Idaho. The roster of attendance
 9 indicates that Mr. Charles Pace would like to make
 10 a formal statement for the record.
 11 Mr. Pace, if you would state your name,
 12 address, and just proceed with your statement.
 13 MR. PACE: Do you want me to turn around?
 14 THE HEARING OFFICER: If it would make you
 15 more comfortable, I could pick up either way. But
 16 why don't you just turn it around. Let's be sure.
 17 MR. PACE: Thank you, Mr. Young. My name is
 18 Charles Pace. I am working in the Office of
 19 Economic Analysis for the Shoshone-Bannock tribes
 20 at Fort Hall, Idaho. As you no doubt are aware,
 21 the tribes have prior and paramount water rights
 22 in the Snake River Basin. These are federally
 23 reserved for the tribes, and they will be
 24 separately managed and apart from the state
 25 system. However, when allocating new water under

1 announcing these hearings were sent on two
 2 occasions. The notice of intent also indicated
 3 that the statements and testimony presented in the
 4 January hearings will be considered as part of the
 5 record on this rule-making process as well.
 6 The general adoption procedure from
 7 this point is as follows: This concludes --
 8 today's hearing concludes the four hearings that
 9 were held across Southern Idaho concerning the
 10 rules. The record will remain open for written
 11 comment through July 31st, 1986, as required by
 12 the APA. The hearing officer will then prepare a
 13 report of recommendations to the director on
 14 revisions to the rules needed as a result of the
 15 public review and comment. The draft schedule
 16 indicated that the director would try to adopt
 17 final the rules on August 12th, 1986, a rather
 18 ambitious schedule. When they are adopted, there
 19 will be a filed copy of the rules placed in the
 20 central office files of the department to become
 21 effective 20 days after filing. The law library
 22 will then forward adopted rules to the legislature
 23 and to the various law libraries around the state.
 24 The legislature will have an opportunity to modify
 25 or change the rules in 1987. We will mail copies

1 42-203A or 42-203C, trust water and unappropriated
 2 water, these need to be taken into account in
 3 order to avoid adverse impacts on the water
 4 reserve for the tribes.
 5 Our main concern is that this need is
 6 not addressed in the rules and regulations. And I
 7 want to touch on a number of subjects, but
 8 primarily I've got three broad sort of concerns.
 9 The first one has to do with the historical
 10 context in which these rules and regulations are
 11 being promulgated. The second one has to do with
 12 public notice and processing, which is a major
 13 concern in terms of intergovernmental
 14 relationships, tribal and state. And, finally,
 15 I'd like to make a few remarks on the way the
 16 department is going to evaluate the public
 17 interest, in particular the local public interest.
 18 So first, in terms of the historical
 19 context, in ratifying this Swan Falls agreement,
 20 part of the legislative package included House
 21 Concurrent Resolution 16 which indicated that the
 22 tribes in the state would try to negotiate the
 23 tribes' federal reserve water right before
 24 adjudicating or litigating. These were an
 25 integral part of the legislative package.

1 Subsequent developments in terms of the executive
 2 order by Governor Evans to Gene Gray instructing
 3 Mr. Gray to provide for public input, memorandum
 4 of understanding between the tribes and the state
 5 assigned at Fort Hall in August, the new
 6 adjudication statute, and the ongoing
 7 negotiations, all of these are part of the Swan
 8 Falls package. In fact, there may have been no
 9 agreement if it had not been for House Concurrent
 10 Resolution 16. The tribes could have attacked,
 11 and indicated that they would attack, on a number
 12 of issues, including the adequacy of the process,
 13 the scope of the adjudication, the burden of
 14 proof, and the public interest criteria. And it
 15 was determined at that time that it would be less
 16 costly, more efficient, less time involved to
 17 proceed with negotiations rather than
 18 adjudication.

19 The negotiations to date have been up
 20 front, fair, open; access has been provided for
 21 all interested parties to have a say. And the
 22 tribes are concerned that, in implementing the
 23 regulations, that the department implement these
 24 in a similar manner. And yet, when you read over
 25 the regulations, there is nothing to indicate that

1 there is any awareness on the part of the
 2 department of the need to avoid adverse impacts on
 3 the tribes' reserved water rights. It's almost as
 4 if the rules and regulations are being promulgated
 5 in a vacuum. And everyone, I think, recognizes
 6 that absent additional storage, there may not be
 7 enough water to go around. But the tribes do have
 8 prior and paramount rights under Winters. So
 9 given this historical context which the rules are
 10 being promulgated, the tribes would like to see
 11 the department inform people as to their federal
 12 reserve rights and do this right.

13 Now, in terms of how to do that, the
 14 tribes have suggested a disclaimer be inserted in
 15 the rules. And I have brought copies with me of
 16 those. I will pass those around. The tribes, I
 17 believe it was in the second negotiating session,
 18 suggested that this disclaimer be inserted into
 19 the rules so that, in new appropriations of
 20 unappropriated water or in reallocations of trust
 21 water, individuals that are applying for permits
 22 under the state system understand that the tribes
 23 do have these prior rights, and that there is a
 24 potential there for the tribes to exercise those
 25 in a manner that creates potential conflicts

1 between state water appropriations and these
 2 separately managed rights.

3 I think this is consistent with the
 4 philosophy underlying the negotiations. If you
 5 look back, the Swan Falls package, the people that
 6 were negotiating the Swan Falls package, were well
 7 aware that, while they were discussing the
 8 relationship between the tribes, or rather between
 9 the state and Idaho Power Company, the focus of
 10 the discussions of the Swan Falls controversy had
 11 been on the claims and right of authority at that
 12 site. But the settlement of those issues
 13 necessarily involve putting in place legislation
 14 and policies which would govern the rest of the
 15 Snake River and the water resources of Idaho.

16 And specifically -- I believe it's page
 17 4 of the framework -- negotiators say the ultimate
 18 benefit will be to allow and form state policy
 19 decisions on future growth and protection of
 20 hydropower generation. The definition and
 21 implementation of a known and enforceable state
 22 policy will make the Swan Falls controversy an
 23 asset in the history of the state. It's the
 24 tribes' feeling that, to realize that goal to make
 25 the Swan Falls controversy an asset, they need to

1 be up front, frank, and honest, not only in
 2 negotiating, but also in implementing these rules,
 3 implement the rules in a similar fashion.

4 So the tribes are very concerned that,
 5 throughout the rules and regulations, there is not
 6 even a mention of the prior and paramount rights
 7 of the tribes. For example, in the definition of
 8 trust water and unappropriated water, the
 9 implication is that trust water, unappropriated
 10 water, and appropriated water exhaust all of the
 11 resources, water resources, of the state, over and
 12 above minimum stream flows. The tribes feel that
 13 there should be explicit acknowledgement that
 14 water reserved for the tribes may cut those water
 15 resources that can be reallocated or appropriated
 16 down.

17 So that's the first problem that the
 18 tribes have with that is that it's almost as if
 19 these regulations are being promulgated in a
 20 vacuum without an explicit acknowledgement of the
 21 potential for new appropriations to adversely
 22 impact the federally reserved rights of the
 23 tribes.

24 The second thing is the public notice
 25 in processing. When you're talking about

1 intergovernmental relationships, the tribes are
2 very concerned that they not be notified in terms
3 of a newspaper notice. The short time period
4 there, two weeks, the first and second or the
5 third and fourth Thursday of the month followed by
6 a ten-day comment period, is not sufficient time
7 for the tribes to work on an intergovernmental
8 basis with the state to indicate if there are
9 problems. So I think there needs to be direct and
10 express notice to the tribes and the state needs
11 to work directly with the tribes on any and all
12 applications that could potentially impact the
13 water rights reserved for the tribes.

14 When we are looking at what kind of
15 water rights we are talking about, you have to go
16 back to the treaty, the executive order of 1867,
17 the act which established the reservation in 1868,
18 or the treaty, rather, in 1868, that established
19 and then the subsequent executive orders spell out
20 certain purposes for the creation of the
21 reservation. These include agricultural as a
22 major purpose, a permanent homeland for the
23 tribes, continuation of subsistence hunting and
24 fishing on unoccupied lands of the United States,
25 preservation of traditional cultural values. So

1 those will be evaluated. And, again, an
2 indication of how the tribes will be protected and
3 an appreciation on the part of the state that,
4 when you're dealing with water-related issues in
5 Idaho, we are not simply talking about state
6 appropriations and hydropower, that the tribes
7 have significant prior and paramount rights under
8 Winters that need to be -- or that will be
9 protected. And it's incumbent on the state to
10 devise some sort of system so that they avoid
11 those, avoid any adverse impacts on the tribes'
12 reserved rights.

13 Those are the three major areas in
14 which the tribes are concerned. I anticipate that
15 we will submit much more detailed comments on
16 specific provisions in the law or in the rules
17 prior to the 31st. And the tribes also want to
18 convey an ongoing attempt to work closely with the
19 state on these issues.

20 Mr. Funke, the tribal attorney is with
21 me and he may want to extend. Hopefully, he won't
22 want to modify my remarks, but he may want to
23 extend, enlarge on them.

24 THE HEARING OFFICER: Thank you, Mr. Pace.
25 Before we hear from Mr. Funke, let me note for the

1 the tribes have rights under the Winters doctrine
2 to use water for irrigated agriculture, domestic,
3 commercial, industrial, mining, religious,
4 instream flow uses in the Snake and Salmon River
5 Basin. It's the tribes' feeling that they would
6 like to work on an intergovernmental basis with
7 the state, but that the public notice provisions
8 are inadequate to nurture that kind of
9 intergovernmental relationship.

10 Then we come to the public interest
11 criteria. There needs to be some way devised for
12 the state, in appropriating new water and in
13 reallocation of trust water, to assess the impacts
14 on the tribes' prior rights. The major provision
15 in Section 42-203(8), of course, has to do with
16 the question of prior rights. But, again, there
17 is no indication that the state intends to address
18 these issues. So the tribes' question there is
19 how will the department assess the impacts on the
20 prior rights and avoid appropriating water in a
21 manner which adversely affects all of those rights
22 that I have indicated.

23 In terms of 42-203C, a significant
24 reduction in water available for hydropower, there
25 needs to be more documentation on how exactly

1 record that we will include your suggested
2 language for the disclaimer in the record. We
3 thank you for your comment.

4 MR. PACE: Thank you.

5 THE HEARING OFFICER: Mr. Funke. Excuse me.

6 MR. FUNKE: Mr. Young, just in recapping, we
7 realize that the public interest criteria deals
8 with trust water which is mainly the groundwater
9 system in the Snake River Plain, as I understand
10 it. And the tribes' reserved rights deal mainly
11 with surface flow. But the tribe also has a
12 significant interest in the groundwater resources
13 of the plain, uses a significant amount of
14 groundwater. So we have an interest in ensuring
15 that any potential impacts on the groundwater
16 resource, the tribe is made aware of that
17 potential impact, and any potential impacts are
18 assessed in light of the tribes' right.

19 Just an overview. The point being
20 that -- and we had raised this in a negotiating
21 session before -- that there is a separate federal
22 law system for our water rights. What we are
23 trying to do in the negotiation process is come up
24 with a plan that realizes the tribes' water right,
25 reserved water right, and to the greatest extent

Page 17

1 feasible, minimize its impacts on the non-Indian
 2 water users. What I would like to see come out of
 3 the rules and regulations, although they are
 4 dealing mainly with groundwater, is that the
 5 non-Indian water users are aware of the fact that
 6 there are -- we are going through a new water
 7 allocation process here on supposedly freed up
 8 water. And since there is supposedly a finite
 9 amount of water in that system, probably
 10 insufficient enough to realize the tribes'
 11 unquantified right as the present water users, I
 12 think it's unwise, one, that we go through a water
 13 allocation process, a new water allocation process
 14 in light of the fact there isn't enough water in
 15 the system. But I understand the pressures and
 16 the politics of having to allocate new water
 17 rights under this Swan Falls agreement.
 18 So in light of that, and appreciating
 19 that pressure and that political situation,
 20 shouldn't we do this in an open and aboveboard,
 21 not suggesting that the director is trying to keep
 22 this under wraps or anything. I'm not suggesting
 23 that at all. I want to make that perfectly clear.
 24 But shouldn't we get this thing out on the table
 25 and make sure everybody understands that the water

Page 18

1 in the river is limited potentially or possibly
 2 it's fully allocated. A lot of people have
 3 suggested that. When we go through allocating new
 4 water rights under public interest criteria, a new
 5 trust water and this freed up water in the Swan
 6 Falls agreement, shouldn't the non-Indian water
 7 users, whether they are domestic, commercial,
 8 industrial, irrigators, whatever, shouldn't they
 9 be, one, fully aware of that, that there is
 10 limited water and probably not enough water in the
 11 system; and, No. 2, that the tribe has a large
 12 unquantified water right that we are in the
 13 process of determining what that is so that, when
 14 this agreement is -- whether adjudicated or
 15 negotiated to completion, those people that are
 16 being allocated new water are fully of the
 17 understanding that it's subject to defeasance by
 18 unquantified right.
 19 You know, just making sure that
 20 everybody knows what is occurring on all sides.
 21 The negotiation process itself, as Cheryl could
 22 attest to, has been a very open one, very frank
 23 exchange of information. Everybody's attempting
 24 to fully inform either side of what the
 25 give-and-take is. So I guess what we are asking

Page 19

1 for in here in part is that everybody seeking new
 2 water under the new water allocation rules
 3 understands what all the give-and-take is, what
 4 all considerations are, and the fact there is a
 5 large unquantified right yet to be placed on the
 6 system. Part of that would be that disclaimer
 7 just giving people notice, just making them aware
 8 of that. And the other thing is, in the rules it
 9 provides for, as Mr. Pace alluded to, direct
 10 notice to city and county governments of any
 11 potential impact on water rights that may be of
 12 interest to them. I think it's important that
 13 that notice also include the tribe in that
 14 process, direct express notice to the tribe of any
 15 new application for water that may affect their
 16 water right.
 17 THE HEARING OFFICER: We need to change the
 18 tape.
 19 (Tape change.)
 20 MR. FUNKE: So just in keeping with the
 21 philosophy of the negotiations and the progress
 22 being made there and the way we are going about
 23 that, I think it would be a good idea to include
 24 within the rules that disclaimer that puts people
 25 on notice that that, in fact, is occurring so that

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1 it doesn't raise its head later on after people
 2 come in and claim they were unaware of what the
 3 potentials were or what they were getting just so
 4 that everybody understands what's at issue and
 5 direct notice to the tribe of any potential or any
 6 applications that might affect their right.
 7 THE HEARING OFFICER: One clarifying
 8 question. In the rules of procedure for
 9 subscribing to seeking advanced notice, that
 10 particular procedure would allow whoever applied
 11 to that or subscribed to it -- and the cost is
 12 very minimal to be given direct notice at the same
 13 time that the application is sent to the
 14 newspaper -- have you considered that perhaps that
 15 might be a way of getting what you need.
 16 MR. PACE: Well, Mr. Young, that is one
 17 vehicle. But the tribes are concerned that even
 18 that might not be adequate in terms of working on
 19 an intergovernmental basis. Given the uncertainty
 20 surrounding the hydrology in the river, I think
 21 it's more than just a notice of application that
 22 needs to be accorded to the tribes. The tribes
 23 need to be able to work on an ongoing basis with
 24 the state. Certainly that would be a way of
 25 avoiding the problems that I mentioned in terms of

1 just reading about it on Thursday in the
 2 newspaper. But the fact is you have an extremely
 3 short period in which to protest, and the failure
 4 to protest can potentially affect standing in
 5 subsequent proceedings. So I think it needs to --
 6 while notification is one possibility, I think it
 7 needs to go further than that.
 8 THE HEARING OFFICER: You've indicated
 9 you'll probably submit additional comments in
 10 writing. Perhaps using specific language to help
 11 us on that would be useful. I'd appreciate that.
 12 MR. PACE: I think, also, you can anticipate
 13 more detail than I went into on the public
 14 interest criteria, particularly 42-203A.
 15 THE HEARING OFFICER: Very good. We will
 16 appreciate that.
 17 Does anyone else wish to make a
 18 statement at this time?
 19 MR. MILES: I don't have a statement, but I
 20 would like to ask a question.
 21 THE HEARING OFFICER: Well, this point
 22 Mr. Miles, it's for statements. Now, if it's
 23 decide whether you wish to make a statement or
 24 not, we'll go ahead and let you answer the
 25 question. But if it isn't a statement, we will

1 minimum stream flow at Swan Falls. We are
 2 concerned that this has not been considered.
 3 We feel that many things have not been
 4 considered in this allocation, and this has been
 5 done too hurriedly for such a vital process as
 6 this. And we would like to have it reviewed in
 7 every aspect that's going to be affected by this
 8 be considered.
 9 THE HEARING OFFICER: A question for
 10 clarification.
 11 MS. HAYES: Well, we do not believe that the
 12 fish flush, the waters that were to be provided
 13 for fish flush on the Columbia River system to get
 14 the anadromous fish to the ocean has been fully
 15 considered. This is part of the Northwest Power
 16 Planning Act, and apparently it has been forgotten
 17 in the Swan Falls agreement. You have to have
 18 sufficient water at Brownlee in order to bring
 19 about this fish flush to get the smolts to the
 20 ocean. And you're apparently forgetting this in
 21 considering the uses of the water on the Snake.
 22 THE HEARING OFFICER: Okay. Any other
 23 statements? Hearing none -- Mr. Chapman?
 24 MR. CHAPMAN: Mr. Young, just a short
 25 general statement. The Idaho Water Users

1 conclude the record, and then we will --
 2 MR. MILES: Well, I'd like to make a
 3 statement, then, that the federal unappointed --
 4 unappropriated water rights to preserve the Dear
 5 Flat National Wildlife Refuge and the white
 6 sturgeon habitat that reaches the water at the
 7 Dear Flat Refuge be recognized under the Winters
 8 doctrine be provided to protect the refuge since
 9 it was established in 1937.
 10 THE HEARING OFFICER: So you're suggesting a
 11 minimum flow in the Lower Snake River for that
 12 purpose?
 13 MR. MILES: Yes, a minimum flow at least to
 14 protect the white sturgeon in the reach of Dear
 15 Flat National Wildlife Refuge, that is the Snake
 16 River reach of the Dear Flat National Wildlife
 17 Refuge.
 18 THE HEARING OFFICER: Which is below Swan
 19 Falls but above Brownlee?
 20 MR. MILES: That's right.
 21 THE HEARING OFFICER: Any other statements
 22 or questions? Ms. Hayes?
 23 MS. HAYES: I also would like to make a
 24 statement for Idaho Consumer Affairs, that we are
 25 concerned about the fish flush and the inadequate

1 Association, of course, represents irrigation
 2 districts and canal companies that essentially are
 3 water right holders in the state of Idaho. We are
 4 in the position, at least to some extent of the
 5 Indian tribes, in that the water rights that we
 6 hold are much senior to many of the junior rights
 7 that are being considered and will be considered
 8 under the new allocation criteria.
 9 The department has a very difficult job
 10 to perform, I think: That, to protect the Indian
 11 water rights that will be established through the
 12 reserve water rights doctrine; the existing water
 13 rights that are established through the state law;
 14 the preservation of hydropower so that our people
 15 can afford to continue to pump, but at the same
 16 time trying to look at a maximum utilization of
 17 our water resources for all of the beneficial uses
 18 that are still yet to be considered, which include
 19 irrigation, instream flows, aesthetics, new
 20 hydropower development, and the other uses that
 21 Idaho citizens will need in the future.
 22 It's important, I think, that the
 23 department continue the communications effort that
 24 they have in the past. I know that it was
 25 unlikely that they would have been required to

1 hold this last set of hearings. But the
2 department did, and I think that they should be
3 commended for that. I think that the efforts at
4 communication will help to assist the department
5 in developing better rules and regulations. And
6 the association will be providing detailed written
7 testimony after our board meeting which will occur
8 Wednesday of this week.

9 THE HEARING OFFICER: Thank you,
10 Mr. Chapman.

11 Any further testimony?

12 MR. PACE: Mr. Young, I'm Charles Pace
13 again, Shoshone/Bannock tribes. I'm also an
14 assistant or associate professor of economics at
15 Eastern Oregon State College. I am working with
16 the tribes on an in-house basis for a year. But
17 in the public information meetings one of the
18 issues that I tried to raise -- and I'd like to
19 just amplify on the things that Mr. Miles has
20 said -- is this question of the future of the
21 white sturgeon in the middle reaches of the Snake
22 River.

23 You have a very valuable genetic
24 resource there. The best available information
25 from Idaho Fish and Game indicates that you need

1 5500 cfs at Murphy to avoid impacting on those
2 genetic resources. Those resources, while they
3 are not exchanged in the market place, or even
4 though they are not exchanged in the market place,
5 should be viewed as very valuable. And there is
6 very little in the rules that will indicate how
7 those types of specific genetic resources will be
8 protected in appropriating new water and
9 allocating trust water.

10 I think there are a lot of regional
11 considerations, also, that were mentioned in terms
12 of water budgeting, and those are important.
13 Idaho water policy, for better or worse, affects
14 the Columbia Basin's ability to provide for
15 downstream migration of salmon and steelhead. But
16 in addition to anadromous fish, there is a number
17 of the other things that are part and parcel of
18 the power planning council's efforts, particularly
19 the resident fish and wildlife resources. And the
20 west slope cutthroat as well as the white sturgeon
21 have been identified by the power planning council
22 as species of interest.

23 So I think it's incumbent upon the
24 department to look out for those resources when
25 they are allocating -- making water allocations.

1 In addition to that, there are a number
2 of other regional concerns that I will just
3 mention here. I won't go into them into any
4 detail. There is the impacts on the federal
5 Columbia River power system downstream from the
6 investor-owned utilities in Idaho. Any reduction
7 in flows will have significant impacts on the
8 ability of the federal Columbia River power system
9 to generate electricity. And then there are also
10 impacts on lower river tribes that, I think, while
11 it may not be necessary at this point to take into
12 account, it would be wise to take into account.

13 For better or worse, the lower river
14 people and the upper river people are chained
15 together by that river, and I think there needs to
16 be a cooperative effort. If the department would
17 move in that direction, then I think that the
18 region as a whole and Idaho as a state will reap
19 significant benefits.

20 THE HEARING OFFICER: Thank you.

21 Anything further today?

22 I thank you for your good input.
23 You've been most helpful. Again, the record will
24 stay open until the 31st of this month for any
25 further input you wish to put in. I thank you for

1 coming today.
2 (End of proceeding.)
3 -o0o-

1 REPORTER'S CERTIFICATE

2

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

5 That I am the reporter who transcribed
6 the proceedings in the form of digital recording
7 in the above-entitled action in machine shorthand
8 and thereafter the same was reduced into
9 typewriting under my direct supervision; and

10 That the foregoing transcript contains a
11 full, true, and accurate record of the proceedings
12 to the extent they were audible and intelligible
13 in the above and foregoing cause, which was heard
14 in various cities in the State of Idaho.

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this _____ day of _____ 2008.

17

18

19

20

Frances J. Morris, Court Reporter
21 CSR No. 696

22

23

24

25

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10 typewriting under my direct supervision; and

11 That the foregoing transcript contains a
12 full, true, and accurate record of the proceedings
13 to the extent they were audible and intelligible
14 in the above and foregoing cause, which was heard
15 in various cities at Boise, Idaho.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand this _____ day of _____ 2008.

18

19

20

21

Frances J. Morris, Court Reporter
22 CSR No. 696

23

24

25

Water Allocation Rules and Regulations Hearings 7/21/1986

A	
ability 26:14 27:8	announcing 6:1
able 20:23	answer 21:24
aboveboard 17:20	anticipate 15:14 21:12
above-entitled 29:7 30:8	APA 6:12
absent 10:6	apart 7:24
access 9:20	apparently 23:16,20
accorded 20:22	application 19:15 20:13 20:21
account 8:2 27:12,12	applications 4:22 13:12 20:6
accurate 29:11 30:12	applied 20:10
acknowledgement 12:13 12:20	applying 10:21
act 3:19 13:17 23:16	appreciate 21:11,16
action 29:7 30:8	appreciating 17:18
addition 5:20 26:16 27:1	appreciation 15:3
additional 10:6 21:9	appropriated 12:10,15
address 7:12 14:17	appropriating 14:12,20 26:8
addressed 5:16 8:6	appropriations 10:19 11:1 12:21 15:6
adequacy 9:12	April 4:17 5:11
adequate 20:18	areas 15:13
adjudicated 18:14	asked 3:7
adjudicating 8:24	asking 5:24 18:25
adjudication 9:6,13,18	aspect 23:7
Administrative 3:19	assess 14:13,19
adopt 5:11 6:16	assessed 16:18
adopted 3:16 4:16 5:11 6:18,22 7:1	asset 11:23,25
adoption 4:10 6:6	assigned 9:5
advanced 5:24 20:9	assist 25:4
adverse 8:3 10:2 15:11	assistant 25:14
adversely 12:21 14:21	associate 25:14
aesthetics 24:19	association 24:1 25:6
Affairs 22:24	attack 9:11
affect 19:15 20:6 21:4	attacked 9:10
afford 24:15	attempt 15:18
agreement 8:19 9:9 17:17 18:6,14 23:17	attempting 18:23
agricultural 13:21	attend 7:1
agriculture 14:2	attendance 7:8
ahead 21:24	attest 18:22
alleged 4:19 5:5	attorney 1:12 15:20
allocate 17:16	audible 29:12 30:13
allocated 18:2,16	AUDIOTAPES 1:12
allocating 7:25 18:3 26:9 26:25	August 6:17 9:5
allocation 1:4 3:14 5:15 17:7,13,13 19:2 23:4 24:8	authority 4:9 11:11
allocations 26:25	available 14:24 25:24
allow 11:18 20:10	avoid 8:3 10:2 14:20 15:10,11 26:1
allowed 3:24	avoiding 20:25
alluded 19:9	aware 7:20 11:7 16:16 17:5 18:9 19:7
ambitious 6:18	awareness 10:1
amend 5:3	
amended 4:8 5:7	B
amount 16:13 17:9	B 1:17 7:7
amplify 25:19	back 11:5 13:16
anadromous 23:14 26:16	background 4:12
Analysis 7:19	Basin 7:22 14:5
anew 5:11	Basin's 26:14
announced 5:10	basis 13:8 14:6 20:19,23 25:16
	believe 10:17 11:16 23:11
	beneficial 24:17
	benefit 11:18
	benefits 27:19
	best 25:24
	better 25:5 26:13 27:13
	board 25:7
	Boise 1:17 3:1,4,7 5:19,22 7:8 30:15
	brief 4:12
	bring 23:18
	broad 8:8
	brought 10:15
	Brownlee 22:19 23:18
	budgeting 26:12
	building 1:17 7:7
	burden 9:13
	C
	C 2:1 29:1,1 30:1,1
	canal 24:2
	cause 29:13 30:14
	central 6:20
	certain 13:20
	Certainly 20:24
	certify 29:4 30:5
	cfs 26:1
	chained 27:14
	change 6:25 19:17,19
	Chapman 2:5 23:23,24 25:10
	Chapter 3:20 4:6
	Charles 2:3 7:9,18 25:12
	Cheryl 18:21
	cities 29:14 30:15
	citizens 24:21
	city 19:10
	claim 20:2
	claims 11:11
	clarification 23:10
	clarifying 4:1 20:7
	clear 17:23
	closely 15:18
	Code 3:20 4:5,6,11,23 5:1
	Coeur 5:20
	College 25:15
	Columbia 23:13 26:14 27:5,8
	come 14:10 16:23 17:2 20:2
	comfortable 7:15
	coming 28:1
	commended 25:3
	comment 6:11,15 13:6 16:3
	comments 15:15 21:9
	commercial 14:3 18:7
	communication 25:4
	communications 24:23
	companies 24:2
	Company 4:19 5:2 11:9
	completion 18:15
	concern 8:5,13
	concerned 9:22 12:4 13:2 15:14 20:17 22:25 23:2
	concerning 6:9
	concerns 8:8 27:2
	conclude 22:1
	concluded 4:2
	concludes 6:7,8
	Concurrent 8:21 9:9
	conducted 3:21 4:14,15 7:6
	conference 7:7
	conflicts 10:25
	considerations 19:4 26:11
	considered 6:4 20:14 23:2 23:4,8,15 24:7,7,18
	considering 23:21
	consistent 11:3
	Consumer 22:24
	contains 29:10 30:11
	context 8:10,19 10:9
	continuation 13:23
	continue 24:15,23
	controversy 11:10,22,25
	convey 15:18
	cooperative 27:16
	copies 5:23 6:25 10:15
	copy 6:19
	correction 5:21
	cost 20:11
	costly 9:16
	council 26:21
	council's 26:18
	county 19:10
	course 14:15 24:1
	Court 29:3,20 30:4,21
	creates 10:25
	creation 13:20
	criteria 4:21,25 9:14 14:11 16:7 18:4 21:14 24:8
	Cross 3:23
	CSR 1:24 29:21 30:22
	cultural 13:25
	cut 12:14
	cutthroat 26:20
	D
	date 9:19
	day 29:16 30:17
	days 6:21
	deal 16:10
	dealing 15:4 17:4
	deals 16:7
	Dear 22:4,7,14,16
	decide 21:23
	decisions 11:19
	defeatance 18:17
	defect 4:19 5:5
	definition 11:20 12:7
	department 1:2,13 3:6 5:3 6:20 8:16 9:23 10:2 10:11 14:19 24:9,23 25:2,4 26:24 27:16
	department's 3:13,21
	detail 21:13 27:4
	detailed 15:15 25:6
	determined 9:15
	determining 4:22 18:13
	developing 25:5
	development 24:20
	developments 9:1
	devise 15:10
	devised 14:11
	difficult 24:9
	digital 29:6 30:7
	direct 5:4 13:9 19:9,14 20:5,12 29:9 30:10
	direction 27:17
	directly 13:11
	director 3:7 6:13,16 17:21
	director's 5:10
	disclaimer 10:14,18 16:2 19:6,24
	discuss 4:3 7:4
	discussing 11:7
	discussions 11:10
	districts 24:2
	doctrine 14:1 22:8 24:12
	documentation 14:25
	domestic 14:2 18:7
	doubt 7:20
	downstream 26:15 27:5
	draft 6:15
	Dunn 3:8
	duty 4:9
	d'Alene 5:20
	E
	E 2:1,1 29:1,1,1,1 30:1,1 30:1,1
	Eastern 25:15
	Economic 7:19
	economics 25:14
	effective 6:21
	efficient 9:16
	effort 24:23 27:16
	efforts 25:3 26:18
	either 3:12 7:15 18:24
	electricity 27:9
	elicited 5:14
	enforceable 11:21
	enlarge 15:23
	ensuring 16:14
	essentially 24:2
	established 13:17,18 22:9 24:11,13
	evaluate 8:16
	evaluated 15:1
	Evans 9:2

Water Allocation Rules and Regulations Hearings 7/21/1986

everybody 17:25 18:20
 19:1 20:4
Everybody's 18:23
 exactly 14:25
 examination 3:23
 example 12:7
 exception 3:16
 exchange 18:23
 exchanged 26:3,4
 Excuse 16:5
 executive 9:1 13:16,19
 exercise 10:24
 exhaust 12:10
 existing 24:12
 explained 3:15
 explicit 12:13,20
 express 13:10 19:14
 extend 15:21,23
 extent 16:25 24:4 29:12
 30:13
 extremely 21:2

F

F 29:1 30:1
 fact 9:8 17:5,14 19:4,25
 21:2
 failure 21:3
 fair 9:20
 Falls 5:19,19 8:19 9:8
 11:5,6,10,22,25 17:17
 18:6 22:19 23:1,17
 fashion 12:3
 feasible 17:1
 federal 8:23 10:11 16:21
 22:3 27:4,8
 federally 7:22 12:22
 feel 12:12 23:3
 feeling 11:24 14:5
 filed 6:19
 files 6:20
 filing 6:21
 final 6:17
 finally 8:14
 finite 17:8
 first 4:15 8:9,18 12:17
 13:4
 fish 22:25 23:12,13,14,19
 25:25 26:16,19
 fishing 13:24
 Flat 22:5,7,15,16
 flow 14:4 16:11 22:11,13
 23:1
 flows 12:12 24:19 27:7
 flush 22:25 23:12,13,19
 focus 11:9
 followed 13:5
 follows 6:7
 foregoing 29:10,13 30:11
 30:14
 forgetting 23:20
 forgotten 23:16

form 11:18 29:6 30:7
 formal 3:11 4:13 7:10
 Fort 7:20 9:5
 forward 6:22
 four 6:8
 fourth 13:5
 framework 11:17
 Frances 1:23 29:3,20
 30:4,21
 frank 12:1 18:22
 freed 17:7 18:5
 front 9:20 12:1
 full 29:11 30:12
 fully 18:2,9,16,24 23:14
 Funke 2:3 15:20,25 16:5
 16:6 19:20
 further 21:7 25:11 27:21
 27:25
 future 11:19 24:21 25:20

G

Game 25:25
 Gene 9:2
 general 1:12 4:5,19 5:5
 6:6 23:25
 generate 27:9
 generation 11:20
 genetic 25:23 26:2,7
 getting 20:3,15
 given 10:9 20:12,19
 give-and-take 18:25 19:3
 giving 19:7
 go 10:7 13:15 17:12 18:3
 21:7,24 27:3
 goal 11:24
 going 8:16 17:6 19:22
 23:7
 good 19:23 21:15 27:22
 govern 11:14
 governments 19:10
 Governor 9:2
 Gray 9:2,3
 greatest 16:25
 groundwater 16:8,12,14
 16:15 17:4
 growth 11:19
 guess 18:25

H

habitat 22:6
 Hall 7:20 9:5
 hand 29:16 30:17
 Hayes 2:4 22:22,23 23:11
 head 20:1
 hear 15:25
 heard 29:13 30:14
 hearing 1:15 3:4,8,10,18
 3:25 4:2 6:8,12 7:6,14
 15:24 16:5 19:17 20:7
 21:8,15,21 22:10,18,21
 23:9,22,23 25:9 27:20

hearings 1:5 4:12,14,15
 5:3 6:1,4,8 7:2 25:1
 held 1:12 6:9
 help 21:10 25:4
 helpful 27:23
 hereunto 29:15 30:16
 historical 8:9,18 10:9
 history 11:23
 hold 24:6 25:1
 holders 24:3
 homeland 13:22
 honest 12:1
 Hopefully 15:21
 House 8:20 9:9
 hunting 13:23
 hurriedly 23:5
 hydrology 20:20
 hydropower 11:20 14:24
 15:6 24:14,20

I

Idaho 1:1,17 3:1,5,14,20
 4:5,6,11,18,23,25 5:2
 5:19 6:9 7:8,20 11:9,15
 15:5 22:24 23:25 24:3
 24:21 25:25 26:13 27:6
 27:18 29:14 30:15
 idea 19:23
 identified 26:21
 impact 12:22 13:12 16:17
 19:11
 impacting 26:1
 impacts 8:3 10:2 14:13,19
 15:11 16:15,17 17:1
 27:4,7,10
 implement 4:4 9:23 12:3
 implementation 5:13
 11:21
 implemented 5:6
 implementing 9:22 12:2
 implication 12:9
 important 19:12 24:22
 26:12
 inadequate 14:8 22:25
 include 13:21 16:1 19:13
 19:23 24:18
 included 8:20
 including 9:12
 incumbent 15:9 26:23
 Indian 24:5,10
 indicate 9:25 13:8 26:6
 indicated 6:2,16 8:21
 9:11 14:22 21:8
 indicates 7:9 25:25
 indication 14:17 15:2
 individuals 10:21
 industrial 14:3 18:8
 inform 10:11 18:24
 information 18:23 25:17
 25:24
 input 9:3 27:22,25

inserted 10:14,18
 instream 14:4 24:19
 instructing 9:2
 insufficient 17:10
 integral 8:25
 intelligible 29:12 30:13
 intends 14:17
 intent 5:9,17 6:2
 intention 5:10
 interest 4:25 8:17,17 9:14
 14:10 16:7,12,14 18:4
 19:12 21:14 26:22
 interested 9:21
 intergovernmental 8:13
 13:1,7 14:6,9 20:19
 investor-owned 27:6
 involve 11:13
 involved 9:16
 in-house 25:16
 irrigated 14:2
 irrigation 24:1,19
 irrigators 18:8
 issue 20:4
 issues 4:4 9:12 11:12
 14:18 15:4,19 25:18

J

J 1:23 29:3,20 30:4,21
 January 4:16 6:4
 job 24:9
 Jordan 1:17 7:7
 July 1:14 3:2 6:11 7:5
 June 5:18,21
 junior 24:6

K

keep 17:21
 keeping 19:20
 Kenneth 3:8
 kind 13:14 14:8
 know 18:19 24:24
 known 11:21
 knows 18:20

L

lands 13:24
 language 16:2 21:10
 large 18:11 19:5
 law 6:21,23 15:16 16:22
 24:13
 LAWRENCE 1:12
 LBJ 7:7
 legislation 11:13
 legislative 8:20,25
 legislature 4:9 5:7 6:22
 6:24
 Len 1:17 7:7
 Let's 7:16
 libraries 6:23
 library 6:21
 light 16:18 17:14,18

limited 18:1,10
 litigating 8:24
 little 26:6
 local 8:17
 look 11:5 24:16 26:24
 looking 13:14
 lot 18:2 26:10
 lower 22:11 27:10,13

M

machine 29:7 30:8
 mail 6:25
 mailed 5:24
 main 8:5
 MAINTAINED 1:13
 major 8:12 13:22 14:14
 15:13
 making 18:19 19:7 26:25
 managed 7:24 11:2
 manner 9:24 10:25 14:21
 market 26:3,4
 matter 3:9
 matters 7:3
 maximum 24:16
 meeting 25:7
 meetings 25:17
 memorandum 9:3
 mention 12:6 27:3
 mentioned 20:25 26:11
 middle 25:21
 migration 26:15
 Miles 2:4 21:19,22 22:2
 22:13,20 25:19
 minimal 20:12
 minimize 17:1
 minimum 12:12 22:11,13
 23:1
 mining 14:3
 modify 6:24 15:22
 month 13:5 27:24
 Morris 1:23 29:3,20 30:4
 30:21
 move 27:17
 Murphy 26:1

N

N 2:1
 name 3:5 7:11,17
 National 22:5,15,16
 necessarily 11:13
 necessary 27:11
 need 8:2,5 10:2 11:25
 15:8 19:17 20:15,23
 24:21 25:25
 needed 6:14
 needs 13:9,10 14:11,25
 20:22 21:5,7 27:15
 negotiate 8:22
 negotiated 18:15
 negotiating 10:17 11:6
 12:2 16:20

Water Allocation Rules and Regulations Hearings 7/21/1986

<p>negotiation 16:23 18:21 negotiations 9:7,17,19 11:4 19:21 negotiators 11:17 new 4:24 7:25 9:5 10:19 12:21 14:12 17:6,13,16 18:3,4,16 19:1,2,15 24:8,19 26:8 newspaper 13:3 20:14 21:2 newspapers 5:19 non-Indian 17:1,5 18:6 Norman 1:15 3:5 Northwest 23:15 Notary 29:4 30:5 note 15:25 notice 5:9,12,17,20,23,24 6:2 8:12 12:24 13:3,10 14:7 19:7,10,13,14,25 20:5,9,12,21 notification 21:6 notified 13:2 number 8:7 9:11 26:16 27:1 nurture 14:8</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 29:1 30:1 objected 4:20 occasions 6:2 occur 25:7 occurring 18:20 19:25 ocean 23:14,20 office 3:6 6:20 7:18 officer 1:15 3:4,8,25 6:12 7:14 15:24 16:5 19:17 20:7 21:8,15,21 22:10 22:18,21 23:9,22 25:9 27:20 Okay 3:4 23:22 ongoing 9:6 15:18 20:23 open 6:10 9:20 17:20 18:22 27:24 opportunity 3:11 4:3 6:24 orally 3:12 order 8:3 9:2 13:16 23:18 orders 13:19 Oregon 25:15 overview 16:19 o0o 28:3</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 2:1,1 29:1 30:1 Pace 2:3 7:9,11,13,17,18 15:24 16:4 19:9 20:16 21:12 25:12,12 package 8:20,25 9:8 11:5 11:6 page 11:16 paramount 7:21 10:8 12:6 15:7</p>	<p>parcel 26:17 part 4:7 5:8 6:4 8:20,25 9:7 10:1 15:3 19:1,6 23:15 26:17 participants 3:24 particular 5:15 8:17 20:10 particularly 21:14 26:18 parties 9:21 pass 10:16 people 10:11 11:5 18:2,15 19:7,24 20:1 24:14 27:14,14 perfectly 17:23 perform 24:10 period 13:3,6 21:3 permanent 13:22 permits 4:22 10:21 petition 5:4 petitioned 5:2 philosophy 11:4 19:21 pick 7:15 place 11:13 26:3,4 placed 6:19 19:5 plain 16:9,13 plan 16:24 planning 23:16 26:18,21 point 6:7 16:19 21:21 27:11 policies 11:14 policy 11:18,22 26:13 political 17:19 politics 17:16 position 24:4 possibility 21:6 possibly 18:1 potential 10:24,25 12:21 16:15,17,17 19:11 20:5 potentially 13:12 18:1 21:4 potentials 20:3 power 4:18 5:2 11:9 23:15 26:18,21 27:5,8 practice 3:22 prepare 6:12 present 17:11 presented 6:3 preservation 13:25 24:14 preserve 22:4 Press 5:25 pressure 17:19 pressures 17:15 previously 3:15 primarily 8:8 prior 7:21 10:8,23 12:6 14:14,16,20 15:7,17 probably 17:9 18:10 21:9 problem 12:17 problems 13:9 20:25 procedure 6:6 20:8,10 procedures 3:19,22</p>	<p>proceed 7:12 9:17 proceeding 28:2 proceedings 1:11 21:5 29:6,11 30:7,12 process 4:20 5:8,9 6:5 9:12 16:23 17:7,13,13 18:13,21 19:14 23:5 processed 4:23 processing 8:12 12:25 professor 25:14 progress 19:21 promulgated 8:11 10:4 10:10 12:19 promulgation 4:20 5:8 proof 9:14 proposed 3:13,15 protect 22:8,14 24:10 protected 15:2,9 26:8 protection 11:19 protest 21:3,4 provide 3:11 9:3 26:14 provided 4:3,11 9:20 22:8 23:12 provides 4:21 19:9 providing 25:6 provision 14:14 provisions 3:19 4:4 14:7 15:16 public 4:25 6:15 8:12,16 8:17 9:3,14 12:24 14:7 14:10 16:7 18:4 21:13 25:17 29:4 30:5 published 5:18,21 pump 24:15 purpose 3:10 13:22 22:12 purposes 13:20 pursuant 3:21 4:16 put 27:25 puts 19:24 putting 11:13 p.m 1:14 3:2 7:6</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 14:16,18 20:8 21:20,25 23:9 25:20 questions 4:1 22:22</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 2:1 29:1,1,1,1 30:1,1,1 30:1 raise 20:1 25:18 raised 16:20 ratifying 8:19 reach 22:14,16 reaches 22:6 25:21 read 9:24 reading 21:1 readopted 5:13 realize 11:24 16:7 17:10 realizes 16:24 reallocated 12:15</p>	<p>reallocation 14:13 reallocations 10:20 reap 27:18 recapping 16:6 recognized 22:7 recognizes 10:5 recommendations 6:13 record 6:5,10 7:10 16:1,2 22:1 27:23 29:11 30:12 recording 29:6 30:7 reduced 29:8 30:9 reduction 14:24 27:6 refuge 22:5,7,8,15,17 region 27:18 regional 26:10 27:2 regulations 1:5 3:13 4:10 4:15 5:7 8:6,10 9:23,25 10:4 12:5,19 17:3 25:5 relationship 11:8 14:9 relationships 8:14 13:1 relative 3:12 releases 5:25 religious 14:3 remain 6:10 remarks 8:15 15:22 renew 5:9 repeal 5:10 report 6:13 reporter 29:3,5,20 30:4,6 30:21 represents 4:13 24:1 REQUESTED 1:11 requesting 5:25 required 3:18 6:11 24:25 reservation 13:17,21 reserve 8:4,23 10:12 24:12 reserved 7:23 10:3 12:14 12:22 13:13 15:12 16:10,25 reserves 3:25 resident 26:19 Resolution 8:21 9:10 resource 16:16 25:24 resources 1:2,13 3:6 11:15 12:11,11,15 16:12 24:17 26:2,2,7,19 26:24 response 5:4 rest 11:14 result 6:14 review 6:15 reviewed 4:24 23:6 revisions 6:14 right 3:25 8:23 10:12 11:11 16:18,24,25 17:11 18:12,18 19:5,16 20:6 22:20 24:3 rights 7:21 10:3,8,12,23 11:2 12:6,22 13:13,15 14:1,14,16,20,21 15:7</p>	<p>15:12 16:10,22 17:17 18:4 19:11 22:4 24:5,6 24:11,12,13 river 7:22 11:15 14:4 16:9 18:1 20:20 22:11 22:16 23:13 25:22 27:5 27:8,10,13,14,15 room 7:7 roster 7:8 round 4:13 Rule 3:16 4:21 5:3,13,16 rules 1:4 3:13,15,16,21 4:4,10,14,16 5:6,11,12 5:15,23 6:10,14,17,19 6:22,25 7:1 8:6,10 10:4 10:9,15,19 12:2,3,5 15:16 17:3 19:2,8,24 20:8 25:5 26:6 rule-making 5:9,17 6:5</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 29:1 30:1 salmon 14:4 26:15 schedule 6:15,18 scope 9:13 second 4:13 8:11 10:17 12:24 13:4 section 4:4,7,7,11,23,25 14:15 see 10:10 17:2 seeking 19:1 20:9 senior 24:6 sent 6:1 20:13 separate 16:21 separately 7:24 11:2 serve 3:8 session 4:8 10:17 16:21 set 25:1 29:15 30:16 settlement 11:12 short 13:3 21:3 23:24 shorthand 29:7 30:8 Shortly 4:18 Shoshone-Bannock 7:19 Shoshone/Bannock 25:13 side 18:24 sides 18:20 significant 14:23 15:7 16:12,13 27:7,19 similar 9:24 12:3 simply 15:5 site 11:12 situation 17:19 slope 26:20 smolts 23:19 Snake 7:22 11:15 14:4 16:9 22:11,15 23:21 25:21 sort 8:8 15:10 Southern 6:9 species 26:22 specific 4:7 15:16 21:10</p>
--	---	--	--	---

Water Allocation Rules and Regulations Hearings 7/21/1986

26:7
specifically 4:20 11:16
spell 13:19
standing 21:4
starting 7:4
state 1:1 3:5,14 6:23 7:11
 7:24 8:14,22 9:4 10:22
 11:1,9,18,21,23 12:11
 13:8,10 14:7,12,17 15:3
 15:5,9,19 20:24 24:3,13
 25:15 27:18 29:14
statement 7:10,12 21:18
 21:19,23,25 22:3,24
 23:25
statements 3:12 6:3 21:22
 22:21 23:23
States 13:24
Statesman 5:22
statute 9:6
statutes 5:6
stay 27:24
stayed 3:17 5:12
stealhead 26:15
storage 10:6
stream 12:12 23:1
sturgeon 22:6,14 25:21
 26:20
subject 18:17
subjects 8:7
submit 15:15 21:9
submitted 20:11
subscribing 20:9
subsequent 9:1 13:19
 21:5
subsistence 13:23
sufficient 13:6 23:18
suggested 10:14,18 16:1
 18:3
suggesting 17:21,22
 22:10
supervision 29:9 30:10
supposedly 17:7,8
sure 7:16 17:25 18:19
surface 16:11
surrounding 20:20
Swan 8:19 9:7 11:5,6,10
 11:22,25 17:17 18:5
 22:18 23:1,17
system 7:25 10:22 15:10
 16:9,22 17:9,15 18:11
 19:6 23:13 27:5,8

T

T 29:1,1,1 30:1,1,1
table 17:24
take 7:4 27:11,12
taken 8:2
talking 12:25 13:15 15:5
tape 19:18,19
ten-day 13:6
terms 8:13,18 9:1 10:13

13:2 14:23 20:18,25
 26:11
testimony 3:11 5:14 6:3
 7:4 25:7,11
thank 7:17 15:24 16:3,4
 25:9 27:20,22,25
thereto 4:17
thing 12:24 17:24 19:8
things 23:3 25:19 26:17
think 10:5 11:3 13:9
 17:12 19:12,23 20:20
 21:5,6,12 24:10,22 25:2
 25:3 26:10,23 27:10,15
 27:17
third 13:5
three 8:8 15:13
Thursday 13:5 21:1
time 7:5 9:15,16 13:3,6
 20:13 21:18 24:16
Title 3:20 4:6
today 7:5 27:21 28:1
today's 6:8
touch 8:7
traditional 13:25
transcribed 1:23 29:5
 30:6
transcript 1:11 29:10
 30:11
treaty 13:16,18
tribal 8:14 15:20
tribe 16:11,16 18:11
 19:13,14 20:5
tribes 7:19,21,23 8:4,22
 8:23 9:4,10,22 10:3,7
 10:10,14,16,22,24 11:8
 11:24 12:4,7,12,14,18
 12:23 13:1,7,10,11,13
 13:23 14:1,5,14,18 15:2
 15:6,11,14,17 16:10,18
 16:24 17:10 20:17,22
 20:22 24:5 25:13,16
 27:10
tried 25:18
true 29:11 30:12
trust 8:1 10:20 12:8,9
 14:13 16:8 18:5 26:9
try 6:16 8:22
trying 16:23 17:21 24:16
turn 7:13,16
Twin 5:19
two 6:1 13:4
types 26:7
typewriting 29:9 30:10

U

ultimate 11:17
unappointed 22:3
unappropriated 8:1
 10:20 12:8,9 22:4
unaware 20:2
uncertainty 20:19

underlying 11:4
understand 10:22 16:9
 17:15
understanding 9:4 18:17
understands 17:25 19:3
 20:4
United 13:24
unoccupied 13:24
unquantified 17:11 18:12
 18:18 19:5
unwise 17:12
upper 27:14
use 14:2
useful 21:11
users 17:2,5,11 18:7
 23:25
uses 14:4 16:13 23:21
 24:17,20
utilities 27:6
utilization 24:16

V

vacuum 10:5 12:20
valuable 25:23 26:5
values 13:25
various 6:23 29:14 30:15
vehicle 20:17
viewed 26:5
vital 23:5

W

want 7:13 8:7 15:17,21
 15:22,22 17:23
WASDEN 1:12
water 1:2,4,13 3:6,14
 5:15 7:21,25 8:1,2,3,23
 10:3,7,20,21 11:1,15
 12:8,8,9,10,10,11,14,14
 13:13,15 14:2,12,13,20
 14:24 16:8,22,24,25
 17:2,5,6,8,9,11,12,13
 17:14,16,25 18:4,5,5,6
 18:10,10,12,16 19:2,2
 19:11,15,16 22:4,6
 23:18,21,25 24:3,5,11
 24:12,12,17 26:8,9,12
 26:13,25
waters 23:12
water-related 15:4
way 4:5 5:8 7:15 8:15
 14:11 19:22 20:15,24
Wednesday 25:8
week 25:8
weeks 13:4
went 21:13
west 26:20
we'll 21:24
WHEREOF 29:15 30:16
white 22:5,14 25:21
 26:20
wildlife 22:5,15,16 26:19

Winters 10:8 14:1 15:8
 22:7
wise 27:12
wish 21:17,23 27:25
WITNESS 29:15 30:16
witnesses 3:23
work 13:7,11 14:6 15:18
 20:23
working 7:18 20:18 25:15
worse 26:13 27:13
wraps 17:22
writing 3:12 21:10
written 6:10 25:6

X

x 1:3,6

Y

year 25:16
Young 1:15 3:5 7:17 16:6
 20:16 23:24 25:12

1

1:45 1:14 3:2 7:6
12th 5:18 6:17
16 8:21 9:10
1867 13:16
1868 13:17,18
19th 5:18
1937 22:9
1985 4:8
1986 1:14 3:2 4:8,16,17
 5:11 6:11,17 7:5
1987 6:25

2

2 4:6 18:11
20 6:21
20th 5:21
2008 29:16 30:17
21 1:14 3:2 7:5
26th 5:18

3

31st 6:11 15:17 27:24

4

4 11:17
42 4:6
42-1805(8) 4:11
42-203 4:5,7
42-203A 8:1 21:14
42-203C 4:25 8:1 14:23
42-203D 4:23
42-203(8) 14:15

5

5,2 3:16 4:21 5:3,13,16
52 3:20
5500 26:1

6

67 3:20
696 1:24 29:21 30:22

8

8 5:11
8th 4:17

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

2
3
4 I, Frances J. Morris, Court Reporter, a
5 Notary Public, do hereby certify:

6 That I am the reporter who transcribed
7 the proceedings in the form of digital recording
8 in the above-entitled action in machine shorthand
9 and thereafter the same was reduced into
10 typewriting under my direct supervision; and

11 That the foregoing transcript contains a
12 full, true, and accurate record of the proceedings
13 to the extent they were audible and intelligible
14 in the above and foregoing cause, which was heard
15 in various cities at Boise, Idaho.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand this 8th day of October 2008.

18
19
20
21 Frances Morris
22 Frances J. Morris, Court Reporter
23 CSR No. 696

