RESOURCES AND ENVIRONMENT COMMITTEE

PUBLIC HEARING

MINUTES

TIME: January 21, 1985, 7:00 P.M.

PLACE: Room 420, Statehouse, Boise, Idaho

SUBJECT: SB 1006 and SB 1008 RELATING TO SWAN FALLS AGREEMENT

PRESENT: All members of the Senate Resources Committee except Senator Kiebert. Fourteen members of the House Resources Committee were also present.

The hearing was chaired by Senator Laird Noh who explained the hearing was for the purpose of hearing testimony on the multi package agreement dealing with Swan Falls. The main two bills for consideration tonight are SB 1006 and SB 1008. Briefly SB 1008 would implement the state's authority under the 1928 amendment to the Idaho Constitution to limit and regulate the use of water for power purposes. It would also add notice and publication requirements when the Department of Water Resources receives a water right application and sets out the nature and extent of water rights for power purposes.

SB 1006 is to provide statutory authority to the Director of the Department of Water Resources to suspend issuance of water right permits or other action on permits or permit applications when necessary. The bill would also give the Director the authority to promulgate rules and regulations.

There were nine people who signed up to testify before the meeting with two more asking to testify at the meeting. There were approximately 75 people in attendance. The three parties who worked on the agreement were also represented; Pat Kole from the Attorney General's office, Tom Nelson, representing Idaho Power and Pat Costello from the Governor's office.

PAT COSTELLO, the Governor's chief legal advisor, explained the bills are part of a larger compromise package that was arrived at between the Governor and Idaho Power and Attorney Jim Jones this summer and late fall. The agreement came about from a controversey over hydroelectic assets and other beneficial uses, especially agriculture. In the past several years interests have been at odds at how we should allocate the water of Snake River. After years of struggling over this issue the Governor concluded it was essential at this point to end this controversey if possible and to try and come up with a fair compromise that balanced the interests. The five pieces of legislation that have been introduced so far in the legislature as well as one that will be introduced in the next week or so, are the core of the agreement thatwas entered into. In order to implement the agreement, all of these pieces of this legislation need to pass. Mr. Costello at this point briefly went over the legislation pointing out the various features of the agreement and the reasoning behind them. A final

benefit in this agreement is that hopefully agreement can be reached without enormous litigation costs to the state and power company and ultimately to the ratepayers and without an inordinate delay. If the legislation is adopted, the Water Resources Department by the end of the year will be able to begin processing applications for water uses on the Snake under the new management criteria we have proposed.

PAT KOLE, from the Attorney General's office, said three results were attempted in the negotiations. The first, to give effect to the philosophy that Idaho water belongs primarily in the state of Idaho and used here. Secondly, that decisions as to the use and allocations of Idaho water must be made here by Idaho public officials and third in the future in order to protect Idaho from potential threats not only from the federal government but from our downstream sister states, we needed to get this issue resolved and present a united front to protect our water users. I believe the agreement that we have arrived at achieves all three of these goals. The important thing is that where the line is drawn is not magic, but what has been achieved is if the line has been drawn in the wrong spot, the legislators will be able to come back and redraw the line in the future at a different spot. Believe that is an important element of this package. It restores control over Idaho water to members of the legislature.

TOM NELSON, attorney for Idaho Power, believes there is one thing to keep in mind on this. The approval of this package is necessarily chopped up, so you only see pieces of it now and then in the legislature. Remember it was negotiated by us and approved by the principles as a package and should be accepted or rejected as a package. For your information as to where the rest of the conditions for implementation are, a petition has been filed with the Idaho PUC by the Power Company. The PUC has deferred action on that petition until the legislature has acted. A petition has been filed with the FERC and the time for intervention has run and to my knowledge there has been one intervention by the National Marine Fishery Service at the Federal Energy Regulatory Commission. The bill on adjudication was introduced for printing today in the House and a bill on PUC is in the Senate State Affairs. The Company determined that no filing was needed with the PUC of Oregon so none has been made. The amendments to the state water place have been proposed to the Water Resource Board and they will be going to public hearings beginning next week. It is recognized there are pieces of this agreement no one loves, but as a package, it is a rational, well balanced, resolution of the litigation that fostered the negotiations.

MARJORIE G. HAYES, Idaho Consumer Affairs, spoke against the legislation and would like to see the Swan Falls water continue completely unsubordinated. (A copy of the testimony is attached)

SHERL CHAPMAN, Director of Idaho Water Users Association, Inc., spoke in favor of the legislation. In a recent convention of water users here in Boise, after much discussion, the members voted with the except of a few members, to support this package. It is the feeling it is time to settle this issue which he had fought long and hard, but now feels this agreement is a fair way to settle it. They urge favorable consideration of the bills.

HAROLD C. MILES, speaking for the Golden Eagle Audubon Society and the Idaho Wildlife Federation, was not in favor of the legislation as believes it does not serve the public interest of most Idahoans nor take steps to preserve its fisheries, recreation, riparian, water fowl and raptor values. Also the low electrical rates in the state due principally to the Company's large hydro generating capacity is an economic value to Idaho's economy. (A copy of the testimony is attached).

BEN CAVANESS, attorney from American Falls, speaking for himself, said SB 1006 is relatively non-controversial. Water users have no objections to this but hope that the Director of Water Resources would not keep a moritorium indefinitely but make some decisions on permits. As a water user and an attorney who works extensively in the water area, he felt that the overall package is a fair one for all concerned and as fairly as possible reconcils the conflicting uses for the limited resource of water in this state. He commended both bills and asked for a favorable consideration.

FRED STEWART, a water user, spoke against this agreement, as he believes it sets up a vehicle to give our water to California. Mr. Stewart's testimony covered a "wide" range; from the bills in question to the history of how this problem came about. He strongly opposes the agreement. (Some supporting information he handed out is attached).

FORREST HYMAS, speaking for the Idaho Water Rights Defense Group, made up of business people, agricultural interest, recreational interests, professional interests and domestic interests, spoke in support of the two pieces of legislation. He said not all the people in the lawsuit were released by Idaho Power, but they realize they will have to live by this agreement. When the people of the state look at this agreement, it would seem this is the best agreement for the people of the state.

SENATOR HORSCH, I am sure your group has analyzed this legislation. Do you see holes in this legislation that would give our water to California?

MR. HYMAS We do not see this as a problem as the public interest criteria would cover that.

JOHN HATCH, Director, Public Affairs for the Farm Bureau, said as a whole the Farm Bureau does support the agreement. The Bureau has been involved in this issue since its inception. It has been a very difficult issue for the farm community and it has been difficult for them to accept the package. It is a compromise and I would urge the Committee not to tamper with it. The following policy was adopted at our convention in December: "We support a state of Idaho negotiated settlement with Idaho Power as a solution to the Swan Falls issue. This should include a contractual agreement by Idaho Power to allow state appropriation of water for upstream development down to the statutory minimum flow of 3900 cfs in the summer and 5700 cfs in the winter at Murphy. This also should include complete adjudication of the Snake River and its tributaries above Lewiston to be paid for by an equitable distribution of the costs among all said parties."

JOHN RUNFT, attorney, representing the Salmon River Hydro Company. This company consists of 27 small hydropower projects. All of these projects are located on

the main reaches of the main Salmon and the Little Salmon, all well above Swan Falls. All of these projects have received preliminary permits from FERC or exemptions or have licenses pending. All are bonda fide projects that are under way. He is not here tonight to attack the agreement, but rather here to make some comments on the bills that he feels would add to the overall agreement and addressing concerns of the small hydropower projects. Mr. Runft felt several provisions affecting small hydros should be clarified or changed. He expressed concern about their water permits which might be too short to allow economic development. (Statement attached)

PAT FORD, speaking for himself, expressed support for SB 1006 and directed his comments toward SB 1008, looking at that bill from the point of fish and wildlife and recreation; specifically at the public interest criteria. He expressed that this was a fragile package and hoped his comments would be taken in the spirit of helping to make this bill a better one. His comments were directed toward the five criteria for public interest with regard to fish and wildlife and recreation which he feels have not been dealt with adequately and feels they can be dealt with without destroying the entire package. He urged the consideration of adding the criteria that does mention fish and wildlife and recreation in the same way hydropower is mentioned.

AL FOTERGILL, Director of Idaho Coalition, felt the electrical consumers would be paying a very high price for the benefit of new irrigation development and the agreement could be made fair with an amendment requiring other consumers to be fully compensated for the cost of reducing the Snake River's flow and for the cost of serving new irrigation or other major additions to energy demand created by reducing the river's flow. The PUC could determine what the costs are and impose charges on the new loads to recover the cost. In summary, the interest of consumers was ignored when this agreement was put together.

ART MARTINS, representing the Little Pilgrim Irrigation Company, believes this agreement is a job well done and the answer to a situation that has been unresolved for too many years. (Testimony attached)

There being no more people wishing to testify, the meeting was adjourned at 9:30 P.M.

Laird Noh, Chairman

Bev Mullins, Secretary

IDAHO CONSUMER AFFAIRS, INC.

AFFILIATE OF CONSUMER FEDERATION OF AMERICA

OLD BOISE / 106 NORTH 6TH / SUITE 3 / BOISE, IDAHO 83702

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HEARING BEFORE THE LEGISLATURE ON THE SWAN FALLS ISSUE
January 21, 1955

Mr. Chairman... Gentlemen,

I appeared before you last year on this issue and was the next to the last to be heard... This gave me time to hear Mr Perry Swisher of the Idaho Public Utilities Commission as he gave his impassioned appeal to this body not to get into this Pandoras box because of the legal ramifications that would ensue from a "taking" of a water right from The Idaho Power Company . He warned that a Circuit Court Judge in San-Francisco would be making a determination upon a subject about which he had very little knowledge... That Judge would be determining the future of our water in Idaho... After he left, a lawyer, who had earlier identified himself as the legal counsel for a group of Irrigators, called out that Mr. Swisher did not know anything about water and this was picked up and repeated all around the room. I couldn't believe my ears, for water is the base of our hydro-electric system in Idaho and Mr. Swisher is one of our three Commissioners on Energy...To show his ability to assess a problem we now only have to look at a case that is on file at the Public Utilities Commission . A Declaratory Order there is awaiting the outcome of this Legislative Session. It states " Regarding Agreement Dated October 25, 1984, among the State of Idaho, by and through the Governor, John V. Evans, in his official capacity as Governor, Jim Jones in Official Capacity as Attorney General of the State of Idaho, and the Idaho Power Company... It would appear that the Idaho Power Company Officials are putting on public notice that any effect upon the Idaho Power Company's hydro generation by this taking process will not be grounds for a finding or an order reducing Idaho Power Company's present or future revenue requirement or any future rate, tariff, schedule or charge... One cannot help but admire Idaho Power Company's percipiency, for they are a business and must keep financially healthy, but I tremble for the rate payers in the Idaho Power territory, for we may very likely be paying for a dead horse, if this madness of dividing up another's resource continues.

Another aspect to this case is again in the legal area... If the Governor and the Attorney General of this State can take a water right that has been declared by the Supreme Court of the State (opinion # 49, 1983) as being unsubordinated to upstream diversion and consumptive use, what is going to stop them or any future Governor and Attorney General from doing the same to you, and you, and you? This is a dangerous precedent, both for now and for future generations.

There is another road that we can choose to follow... One which would maintain the 6,065 cfs, which has been the average minimum daily discharge at Murphy for the past twenty three (23) years(records of the United States Geological Survey) and let it work for us to help replace the very scarce capital that is the root of our struggle to meet the economic needs of our schools, our social programs, our build- industries, and our Service Organizations in Idaho.

For there is a very exciting movement taking place in the Northwest.., Our own Peter Johnson, who as you know is the Director of the Bonneville Power Administration, is returning the cheaper preference power to the public to whom it was, by law, originally intended (see chp 720, 75th Congress, 1st Session, Aug 20, 1927). He is doing this through the Investor Owned Utilities of which Idaho Power Company, is one.

This is the essence of the plan that is being proposed:
" The Firm Displacement Power Concept was first proposed as a rate in BPA's 1985 Rate Case. The concept would allow utilities to buy power from BPA to serve their Pacific Northwest loads, displacing power from their own generating resources currently used to meet regional loads. This would increase the amount of power the utilities would have to sell to California on a firm basis."

The key to this concept is firm power; for the Northwest Utilities have been selling their surplus non-firm energy to California for years at unbelievably cheap rates... My husband and I attended an Energy Conference in Seattle, Washington where this concept was under discussion. We were told by one of California's Energy Commissioners that they were buying non-firm power for "mills", but would be willing to pay anywhere from five (5¢) to nine (9¢) a kw hr. (depending upon our skill in bargaining)for firm power... With firm power, a power upon which they could depend, they could moth-ball their costly oil fired plants... At the minimal five cent (5¢) per kw hr we could superinsulate every home and mobil home in the Pacific Northwest Utilities Service Areas. (thus generating an additional source of energy)... This should be done without cost to the Consumer, for they have initially paid, through their taxes, for the development of the preference power which will be sold by the BPA to make this plan possible.

A Bureau of Reclamation Water Report for Brownlee shows that over a fifty (50) year period there have been seven (7) dry years which leaves forty three (43) years with average or better water... In order for the Investor Owned Utilities to protect their own Concumers from rate increases during those short fall years a sum should be set aside to purchase power. The true interest, adjusted to inflation, could go to the Investor Owned Utilities for collecting, handling, and bookkeeping costs for this operation.

One more point... There is very likely a possibility that the Investor Owned Utilities will really get involved in going after energy to market. A very negative conotation would be a shift to the development of low head hydro in the anadromous fish spawning streams... These fish require pristine water for spawning and rearing purposes ... We should consider putting in place the following:

(1) A moratorium on any development in the anadromous fish spawning areas of our State for we are going to need to restore that high grade protien source for a rapidly expanding National and World Population.

(2) We are going to need stiff building codes to protect the integrity of a super-insulation program. It is my understanding from talking to some of the people at the Hood River Project that the States of Oregon and Washington already have these in place in anticipation of an early start.

In summary it would appear that we have the following choices to make, ie:

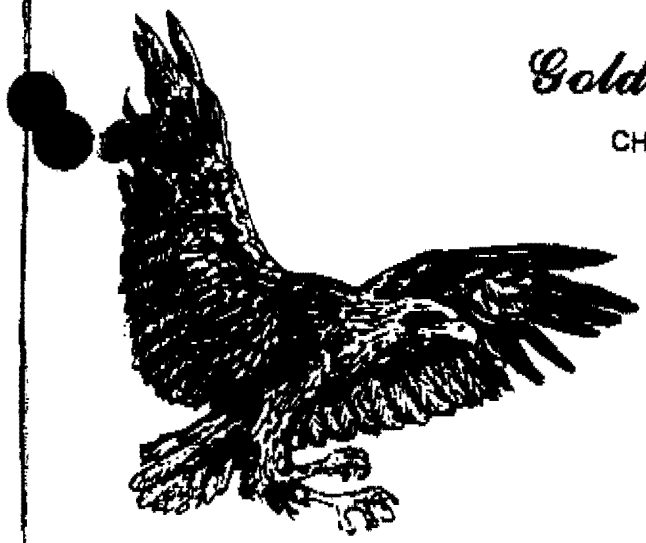
(1) To continue the subordination of the Swan Falls water, which by Court Decree has been determined to belong to another... A taking process.

(2) Leave this decision to a lower court, where it belongs, hoping that they will sustain the Supreme Court Decision for now ... letting this water stay in the Snake to help generate capital for our schools, our social programs, our building industries, and our service organizations... If, in fifteen (15) years or so, the vast agricultural surpluses have been reduced and we would not be further jeapordizing the price for farmers by over-production, we might take another look at this issue... for if the water is left in the Snake for the production of energy, it is not going anywhere... There is another very important factor to consider here... California is becoming desparate for water. If our hydro system is working to produce energy for them, they are not likely to cut their own throats to get at our water.

Marjorie G. Hayes

Marjorie G. Hayes
Idaho Consumer Affairs, Inc.

WE CARE ABOUT YOU.



Golden Eagle Audubon Society

CHAPTER OF THE NATIONAL AUDUBON SOCIETY
P.O. BOX 8261, BOISE, ID 83707

January 19, 1985

TESTIMONY OF THE GOLDEN EAGLE AUDUBON SOCIETY & THE IDAHO WILDLIFE FEDERATION submitted to the Idaho Senate Resources and Environment Committee on Monday, January 21, 1985 in Boise, Idaho., by:

Mr, Harold C. Miles, Authorized spokesperson for both organizations.

Chairman Noh and members of the Committee.

My name is Harold C. Miles, residing at 316 Fifteenth Ave. South, Nampa, Idaho 83651, and I am representing the Golden Eagle Chapter of the National Audubon Society, and the Idaho Wildlife Federation affilliate of the National Wildlife Federation at this hearing concerning S.B. 1006 and S.B. 1008 in particular, consequently we wish to submit the following changes and comments to these proposed pieces of legislation; first, thanking the Committee for allowing us to present testimony concerning our views regarding the Swan Falls controversy.

Relative to S.B. 1006, we request that at the end of the sentence in Section 1 (3) instead of the period after the word "water" a comma be inserted and the following words be added, "to insure an adequate supply of water, at all times, in all major streams to support the game fish fishery."

As previously stated, we have grave concern regarding S.B. 1008, consequently, we propose the following additions and deletions to this bill's language.

Section 1 (5)(d) lines 30-32, we feel limiting water to only those with sufficient financial resources, as the language implies, will preclude small irrigators from further irrigation development.

Section 1 (5)(e) line 34, after the word use, a comma instead of a period, adding,"and maintaining the sport fishery in the local streams in accordance with the recommendations of the Idaho Department of Fish & Game".

Section 2 (1) line 5 after the words"minimum flow" insert a comma instead of a period and adding, "providing Idaho Power Co's (IPCo) water rights for its Swan Falls Dam are maintained in accordance with the 1983 opinion No. 49 of the Idaho Supreme Court."

Section 2 (2) line 16, after the word "Idaho." strike the following sentence which ends on line 18.

Section 2 (3) line 24, after the word "Idaho." strike the following sentence which ends on line 26.

Section 2 (5 & 6) strike these two subsections beginning on line 32 and ending on line 48.

Section 3 (2)(a) line 13 after words, "shall consider" remove ":" and add, "maintaining adequate stream flows to maintain the sport fishery in accordance with the latest stream survey of stream's reaches, or the recommendation of the Idaho Department of Fish & Game in the absence of a survey for that stream or its affected reaches;"

Section 3 (2)(a)(i) line 15 after word "economy" remove ";" and add "including fishery and recreational values;"

Section 3 (2)(a)(ii) line 19 after word "impact ;" remove ";) and add "such costs shall be fully born by the holders of any newly acquired water right;"

Section 3 (2)(a)(iii) line 20 after word"tradition;" remove ";" and add "to be defined as those persons living on the family farm or within 100 miles adjacent, thereto;"

Section 3 (2)(a)(v) line23 after the word"Murphy gauge" strike the remaining words of the sentence and the next sentence through line line 28 and insert the following "no additional water permits will be issued by the Director for new irrigated land development until such a time as all the agricultural acreage removed from agricultural production under any of the U.S. Department's acreage limitation programs are put back into agricultural production and the value of the crops raised thereon shall equal parity, based on the U.S.D.A's definition of parity."

Section 4(1) line 37 change "1985" to "1961".

We hold this proposed S.B. 1008 violates the "Public Trust Doctrine" relied upon by the Idaho Supreme Court in its 1983 Opinion No. 49, regarding the subordination of IPCo's water rights at Swan Falls. In this connection, we respectfully call the committee's attention to the fact that the U.S. Circuit Court for the District of Idaho decreed in 1907 that the Trade Dollar Mining Co. had a 10,000 CFS water right for their Swan Falls Dam, which IPCo acquired when it purchased Swan Falls Dam from the Trade Dollar Mining Co. In addition, IPCo acquired a 4,000 CFS water right, License No. 14,362, on July 29, 1919, which was 9 years before the Constitutional Ammendment to the Idaho Constitution was adopted in 1928, which Governor Evans referred to in his January 8, 1985, "State of the State" address to the Idaho Legislature.

The "Public Trust Doctrine" should not be violated by the Idaho Legislature. If it does, such action is tatamount to stealing navigable water, with its many beneficial uses, from All the people of the State of Idaho, in our view.

The Idaho Legislature does not have the Legal, let alone the MORAL right, to reduce the flow of the Snake River to the extent that such reduction seriously harms the Snake River fishery below Swan Falls Dam, in our opinion, and should take note of the 1976 survey made by the Idaho Fish & Game Department that a minimum average of 5,500 CFS is required in the Snake's reaches from Swan Falls to Brownlee Reservoir. In addition, we call the committee's attention to the fact that the average minimum daily flows of the Snake at Murphy from 1961 through 1983, was 6,065 CFS and the average instantaneous flow for this same time period was 5,616 CFS, according to USGS records. Thus, reducing the flow at Murphy will be catastrophic to not only the fishery below Swan Falls, but the hydroelectric generating capacity of IPCo's major generating facilities since Brownlee requires 33,000 CFS to operate all 5 of its generators at full capacity and 20,400 to operate the 4 smaller units at full generating capacity. Also, on July 1, 1977 the inflow into Brownlee Reservoir would have been only 3,111 CFS if the flow at Murphy was 3,900 CFS. In addition, we would like to point out that on December 31 1984, IPCo had 252,592 customers in Idaho, of which only 10,383 were irrigation customers, or 4% of IPCo's total Idaho customers. Furthermore, it is our view, any

IPCo irrigation customer, who does not intend to expand his irrigated land farming operation and where electrical rates affect his farm's profitability, is at great financial risk, if the Snake's flows are reduced to 3,900 CFS, for most assuredly IPCo's irrigation rates will dramatically increase, as will the rates to all of the other classes of IPCo's customers, if S.B. No. 1008 is enacted into law in its present form. Furthermore, the commodity prices irrigation farmers will receive, most likely will be less if additional acreage is put into irrigated production, especially in light of the proposed reduction in Federal price supports in the upcoming Federal farm bil

We again call the committee's attention, based on the required minimum flow fo Brownlee Reservoir of 4,750 CFS, the minimum flow at Weiser Gauge, the active storag of Brownlee Reservoir can be drawn down in 17.4 days with all 5 generators operati at full hydraulic capacity, or in 31.5 days with only the 4 smaller units operating at full capacity. Will the upstream developers be willing to pay for the imported power IPCo will require to serve its customers during the rest of the summer season

We regard it as the duty of the Legislature to protect ALL of Idaho's citizens' rights to adequate Snake River Water for preserving its fishery, recreation, riparia water fowl, and adjacent raptor values. In addition, the committee and legislature should take note that maintaining IPCo's low electrical rates, due principally to it large hydro generating capacity, is of as great an economic value to Idaho as is the raising of surplus agricultural crops, on which Idahoans as well as all U.S. citizen who pay Federal income taxes, are being taxed in the form of Federal Crop Subsidy payments, or other farm set aside programs, (see our exhibit No. 1), and noting further that in 1984, 677,948 acres in Idaho were held in the Federal PIK or ACR or ACP programs. Furthermore, the Zilog Company of Nampa recently has stated publicly that one of the reasons their plant was located there was due to the low rates of IPCo. Thus, low electrical rates for industry are beneficial for Idaho's economy.

Idaho's electrical ratepayers should not be made the sacrificial lambs of agricultural land developers. Therefore, Mr. Chairman and Committee members, we implore you to hold S.B. 1008 in committee, for by no stretch of the imagination can it be determined its passage will serve the "Public Interest" of most Idahoans. Thank You!

Respectfully submitted, Harold C. Miles

From: Fred R Stewart
Rt. 4, Box 4824
Jerome, Idaho 83338

To: Members of the first regular session of the 48th Idaho Legislature.

Date: Jan. 14, 1985

Subject: Implementation of Governor John V. Evans & Jim Jones Agreement with Idaho Power Company. Do not Implement.

Greetings:

As a defendant in Idaho Power Company v. State of Idaho, Ada County Civil Case No. 42237 (Swan Falls # 1) and in Idaho Power Company v. Idaho Department of Water Resources, Ada County Civil Case No. 81375(Swan Falls # 2) I say to you----

DO NOT IMPLEMENT THIS AGREEMENT

If you do you will place 200,000 holders of Idaho water rights in jeopardy. I refer you to page 41 State Water Plan Part Two. "About 215,000 or 85 percent of the existing uses of water are not on record and are subject to some future determination." This Water Plan was adopted by the Idaho Water Resource Board in December 1976 and declared to be the law by the Idaho Supreme court in Swan Falls # 1. In 1978 the Legislature passed Senate Bill no. 1622 , Idaho code 42-245(see enclosure) "Failure to file claim waives and relinquishes right". The cutoff date for fileing was set at 6-30-1983 then extended to 6-30-1984 then extended to 6-30-1985. To date only 9,000 have filed. If 6,000 more files by 6-30-1985 that leaves the 200,000 up for grabs to any claim jumper. Ken Dunn, State Water Resources Director, has testified that if this AGREEMENT is implemented that he will start adjudication on July 1, 1985, the day after the cut off date for fileing. At this date claim jumping can commence.

I refer you to the AGREEMENT, page 4 Part E."Company's ability to purchase, lease, own, or otherwise acquire water from sources up-stream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities." What a stranglehold Idaho Power will have on the people of Idaho. All they will have to do on July 1st is obtain a up to date computer read out from Ken Dunn on those that have filed and those that have not filed. You dont think they would do it??? Just considered the 7,000 water permit holders that they filed suit against in Swan Falls # 2. Ninety per cent of who had a superior right to their Dec. 1982 (their license expired in 1970 after 50 years and they were not issued a new one till 1984) They have held these 90% as hostage to try to force this AGREEMENT.

I refer you to Exhibit 4 of the AGREEMENT"AN ACT 61-502B. ALLOCATION OF GAIN UPON SALE OF WATER RIGHT." What SALE???? I also refer you to Exhibit 5 of the AGREEMENT SECTION 2 "The Idaho Public Utilities Commission shall have no jurisdiction to consider in any proceeding, whether instituted before or after the effective date of this act, any issue as to whether any electric utility, (including Idaho Power Company), should have or could have preserved, maintained or protected its water rights".

WHY SWAN FALLS ONE and SWAN FALLS TWO and this AGREEMENT???????

Answer---TO TAKE SNAKE RIVER WATER TO CALIFORNIA AND ARIZONA

Consider the following facts--

In 1963 after 20 years of litigation the U.S. Supreme Court awarded Arizona half of California's adjudicated right in the Colorado River. These waters will be taken at the completion of the CAP(Central Arizona Project) in the next two years.

cont

In 1964 a substantial number of massive interbasin water transfer schemes were spawned attempting to provide a solution for the water problems of the Pacific Southwest. See enclosure.

Aug. 29, 1964 Governor Robert E. Smylie called a extraordinary session of the thirty-seventh legislature. He, Governor Smylie, explained to the legislature that he had called the session primarily to discuss the outside threat to Idaho's waters and the means to combat this threat. As a result of this extraordinary session the Idaho Water Resource Board was created by Constitution amendment (Article XV, Section 7) They, the Board, was to formulate and implement a state water plan to protect Idaho's water.

Dec. 29, 1976 the State Water plan - Part Two was presented to the Citizens of Idaho.

Jan. 1977 the Legislative bodies of the First Regular Session Forty-fourth Legislature received and rejected the State Water plan. Senator Reed Budge echoed their feelings when he said "ten years ago I helpd create the Water Resource Board and charged them to protect Idaho's waters and now they have gone diametrically opposite." The feelings of Senator Budge were so prevelant with the members of both the House and the Senate that they passed H.B. 14 (Section 42-1736, Idaho Code), which provided that the State Water Plan should not become effective untill approved by the Legislature.

Jan. 1978 the Second Regular Session of the forty-fourth Legislature passed House Concurrent Resolution N. 48 (42-1736A Idaho Code) The Resolution No. 48 addressed each of the 37 policies of the State Water Plan makeing the necessary changes to protect Idaho waters and thusly all of Idaho. SO SO THE WISHES OF THE LEGISLATURE I THOUGHT.

1977 Senator John Peavey filed a complaint against IPUC(Idaho public Utilities Commission) to force Idaho Power Co. to protect their Hydro Base from being depletated. Ida o Power then filed a Complaint (Case No. 42237, commonly known as SWAN FALLS ONE) against Joh Peavey and all his petition signatories, the State of Idaho, the Water Resource Board, the IPUC a number Canal Companys, a number of individuals and JOHN DOE. This was a two part complaint. The first part addresed the water that the defendants supposedly was taxeing from Idaho Power's hydro base. The second part contested the constitutionality of H.B. 14 that gave the legislature the overview of the State Water Plan. Both parts came before the District Court, Jesse R. Walter presiding, as separate entities. On the first part the Judge granted summary judgment holding, in essence, that the Plaintiff's Swan Falls water rights were subordinated to upstream depletion by the holders of junior water rights. Cross-appeals were thereafter filed to the Supreme Court of the State of Idaho who reversed the lower court, holding that Idaho Power's Swan Falls water rights had not previously been subordinated to upstream depletion and remanding the case for a factual determination as to whether those water rights although fully vested and not subordinated, had nevertheless been abandoned or forfeited, and, if so, to what degree. This action has now been put on a stay of motion until 7 days after this legislative session. Both courts ruled that indeed H.B. 14 was unconstitutional and therefore everything that the legislature had done to protect Idaho waters was 'thrown out the window'. I ask you-- Why was Idaho Power Concerned about haveing these protections in the Water Plan???? Take water to California. How??? Consider the following--

Items allready outlined in the first part of this letter as pertaining to the AGREEMENT

cont

the second part of

1982 In his opinion on/SWAN FALLS ONE Judge Allen Shepard goes to great length to show that FPC (Federal Power Comm. forerunner FERC) had insisted on subordinated of the Idaho Power's three Hells Canyon dams. But when the FERC issued the 40 years Swan Fa license in 1982 they would not subordinate it. HOW NICE FOR CALIFORNIA. Force the water past Swan Falls but it does not have to go past the three large dams except for the minimum stream flow. (refer to plat)

Dec. 15, 1982 Tom Nelson, lawyer for Idaho power, sent a letter(copy enclosed) to all the defendants counsels in SWAN FALLS ONE in which he says that none of the defendants are going to appeal the courts ruling on the subordination of the three lakes (why should the defendants? why not Idaho Power appeal?)dam then they, Idaho Power would like to hook up some irrigation pumps between Swan Falls Damm and the three lower dams. What he does not say is if it is some farmer that wants to hook up a hundred horse power pump or California to hook up enough pumps to convey five to fifteen million acre feet of water to California as shown by the enclosed Modified Snake-Colorado Project plan.

Dec. 28, 1983 Idaho Power filed SWAN FALLS TWO (Case No. 81375) against 7,000 defendants. As stated earlier in this letter 90 percent of them should never been included. Any one with fileings before Idaho Power received their 40 year licionce in Dec. 1982 should never been included.

1968 a ten year moratorium on water diversion studies was put through the U.S. Congress. In 1978 this moratorium was extended for another ten years to run untill 1988.

1983 Rep Robert Lagomarsino, R-California introduced a bill to lift the rest of the moratorium.

1930's Powers from the Los Angles area legally stole the water from from the Owen River Valley. These are the same Powers that are after our waters.

I ask--Who has been in 'cahoots' with these Powers from California and Arizona to legally steal our waters. They should be apperant to anyone who will take the blinders off and look.

Is it too late to save our water??? Almost but not quite.

What to do???

1. Throw this John Evans, Jim Jones Idaho Power Company AGREEMENT in the trash can where it belongs.
2. ~~Repeal~~ Amend Senate Bill no. 1022 Idaho code 42-245(see enclosure) and thus preventing Idaho Power or any other 'high-binder' from claim jumping 200,000 Idaho water rights.
3. ~~Allow SWAN FALLS ONE to go back to the district court to see if whether or not Idaho Power has lost their rights.~~
4. ~~If the courts find that Idaho Power has not lost their rights~~ then the State should exercise its powers of eminent domain and buy the Swan Falls Dam from Idaho Power and thus put the State back in the drivers seat instead of Idaho Power. (I would like to point out that there is a world of difference in takeing through the powers of eminent domain and takeing through subordination).

LETS SAVE IDAHO'S WATER FOR IDAHO

Fred M Stewart

filed shall be forwarded to the claimant by the department of water resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the original, and for which no additional filing fees shall be required. [I.C., § 42-225b, as added by 1967, ch. 338, § 3, p. 974; I.C., § 42-244, as changed and amended by 1978, ch. 345, § 7, p. 884.]

Compiler's notes. This section was formerly compiled as § 42-225b and was redesignated as § 42-244 by § 6 of S.L. 1978, ch. 345.

42-245. Failure to file claim waives and relinquishes right. — Any person claiming the right to divert or withdraw and use waters of the state who fails to file a claim as provided in section 42-243, Idaho Code, shall be conclusively deemed to have waived and relinquished any right, title or interest in said right. [I.C., § 42-245, as added by 1978, ch. 345, § 8, p. 884.]

42-246. Filing of claim not deemed adjudication of right — Evidence. — The filing of a claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one (1) or more water use claimants and another or others. A statement of claim filed pursuant to section 42-243, Idaho Code, shall be admissible in a general adjudication of water rights as evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the claim. A claim shall not otherwise be evidence of the priority of the claimed water right. [I.C., § 42-246, as added by 1978, ch. 345, § 9, p. 884.]

42-247. Notice of chapter provisions — How given — Requirements. — To ensure that all persons referred to in sections 42-242 and 42-243, Idaho Code, are notified of the provisions of this chapter, the department of water resources is directed to give notice of the provisions of this chapter as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in at least one (1) newspaper published and of general circulation in each county of the state, if there is such newspaper, otherwise in a newspaper of general circulation in the county, at least once each year for five (5) consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the state, and by at least one (1) commercial radio station operating from each county of the state having such a station, regularly, at six (6) month intervals for five (5) consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county courthouse in the state.

Idaho Power Company

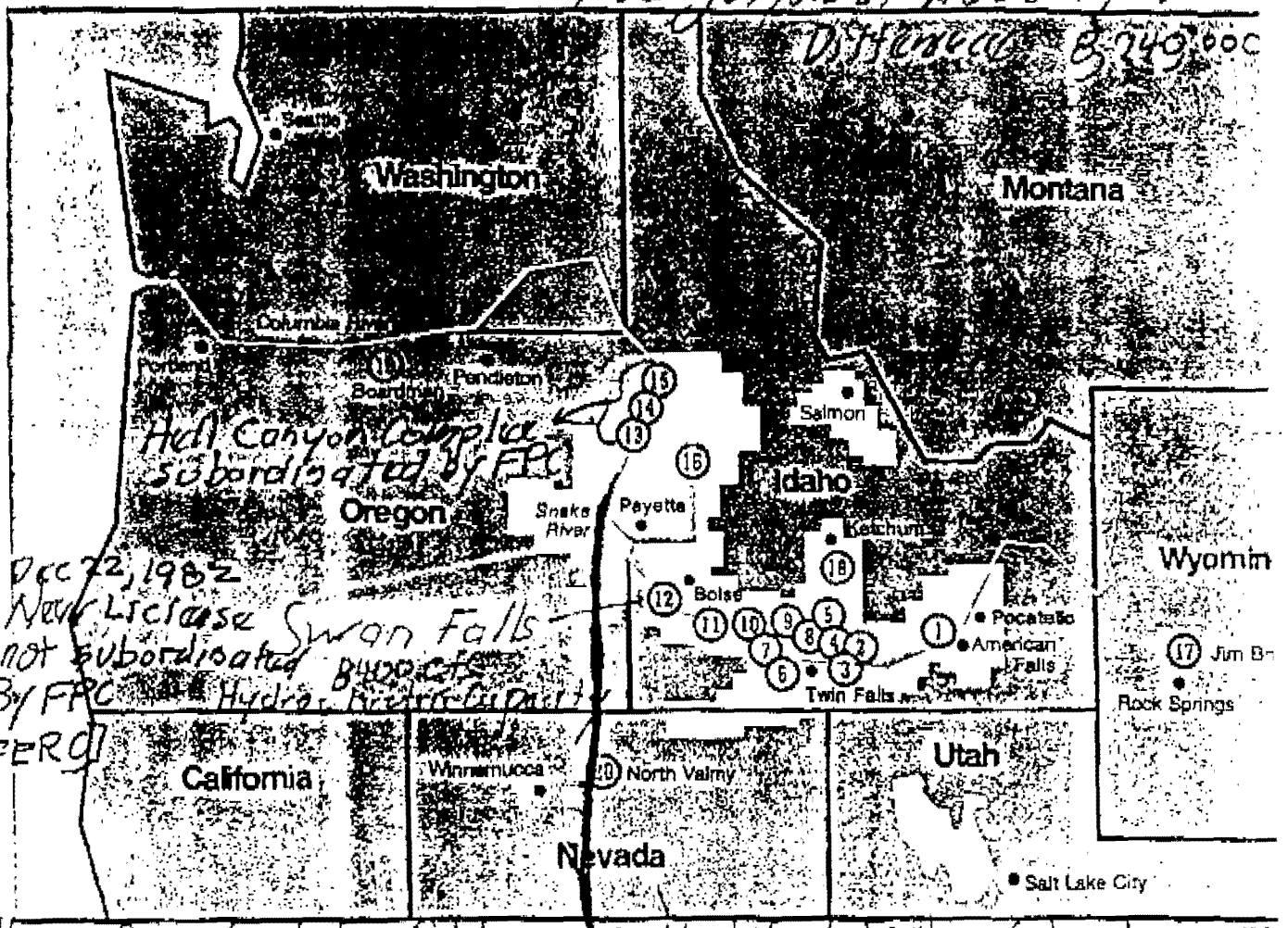
Service Area and Electric Generating Facilities

Min. Stream Flow at Weiser 4750 c FS or 3,429,000 Acre Feet

Lines in service: Transmission, 4,712 miles;
overhead distribution, 16,843 miles;
underground distribution, 1,128 miles; total, 22,683 miles.

Average Flow at Weiser 12,160,000.

Difference 8,249,000 c



Hydro Estimated Capacity

(1)	American Falls	92,340 Kw	(9)	Lower Malad	15,000 Kw	(17)	Jim Bridger	678,077 Kw
(2)	Twin Falls	10,000 Kw	(10)	Bliss	80,000 Kw	(18)	Combustion Turbine	50,000 Kw
(3)	Shoshone Falls	12,500 Kw	(11)	C. J. Strike	89,000 Kw	(19)	Boardman	53,000 Kw
(4)	Clear Lake	2,400 Kw	(12)	Swan Falls	12,000 Kw	(20)	North Valmy (second unit under construction)	126,950 Kw
(5)	Thousand Springs	8,000 Kw	(13)	Brownlee	675,000 Kw			
(6)	Upper Salmon	39,000 Kw	(14)	Oxbow	220,000 Kw			
(7)	Lower Salmon	70,000 Kw	(15)	Hells Canyon	450,000 Kw			
(8)	Upper Malad	9,000 Kw	(16)	Cascade (under construction)	12,800 Kw			

Thermal Capacity

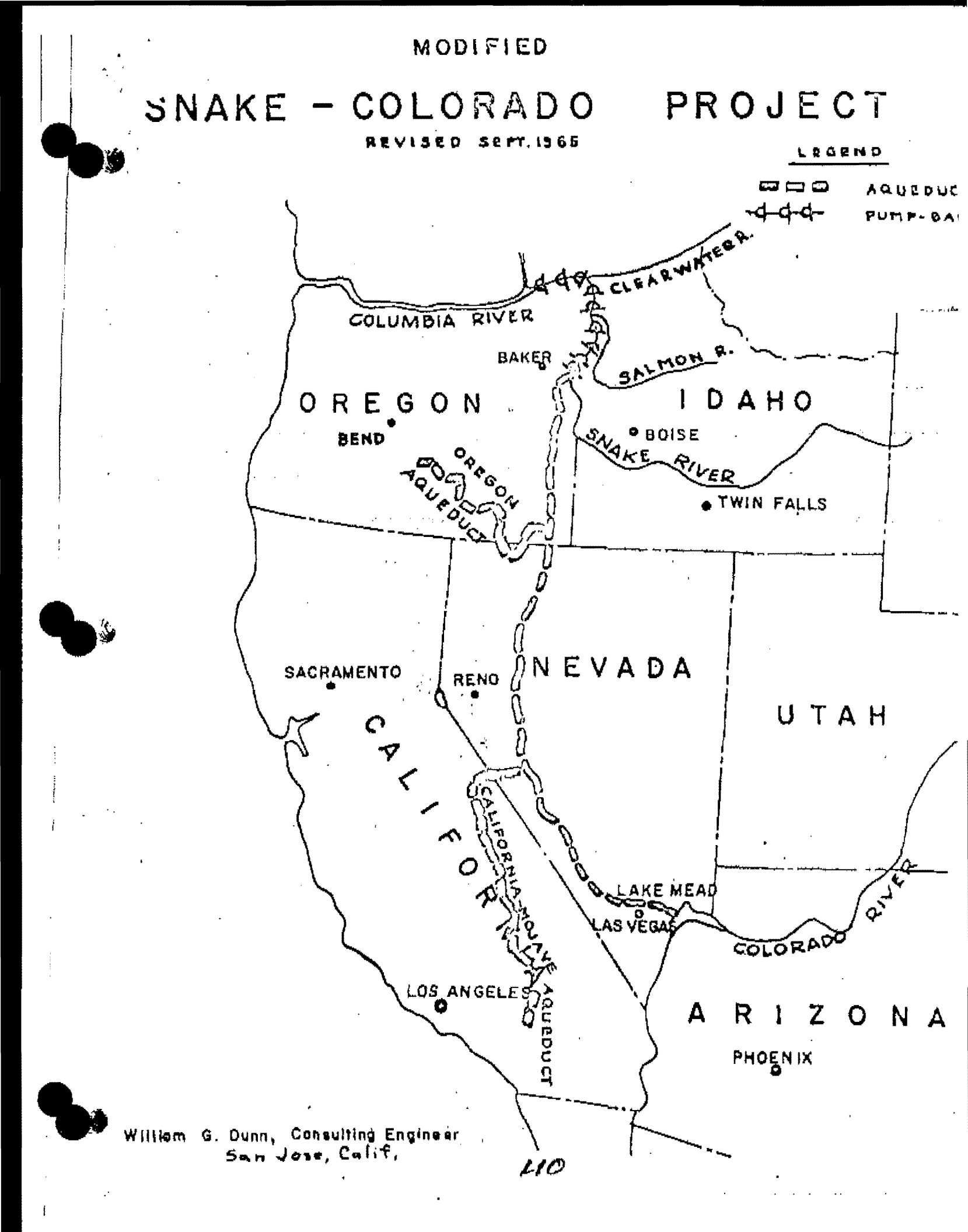
Central Division • Boise, Idaho
Western Division • Payette, Idaho
Southern Division • Twin Falls, Idaho
Eastern Division • Pocatello, Idaho

Idaho Power Hells Canyon Hydro Capacity 1,345,000 Kw
All others 446,000 Kw

MODIFIED

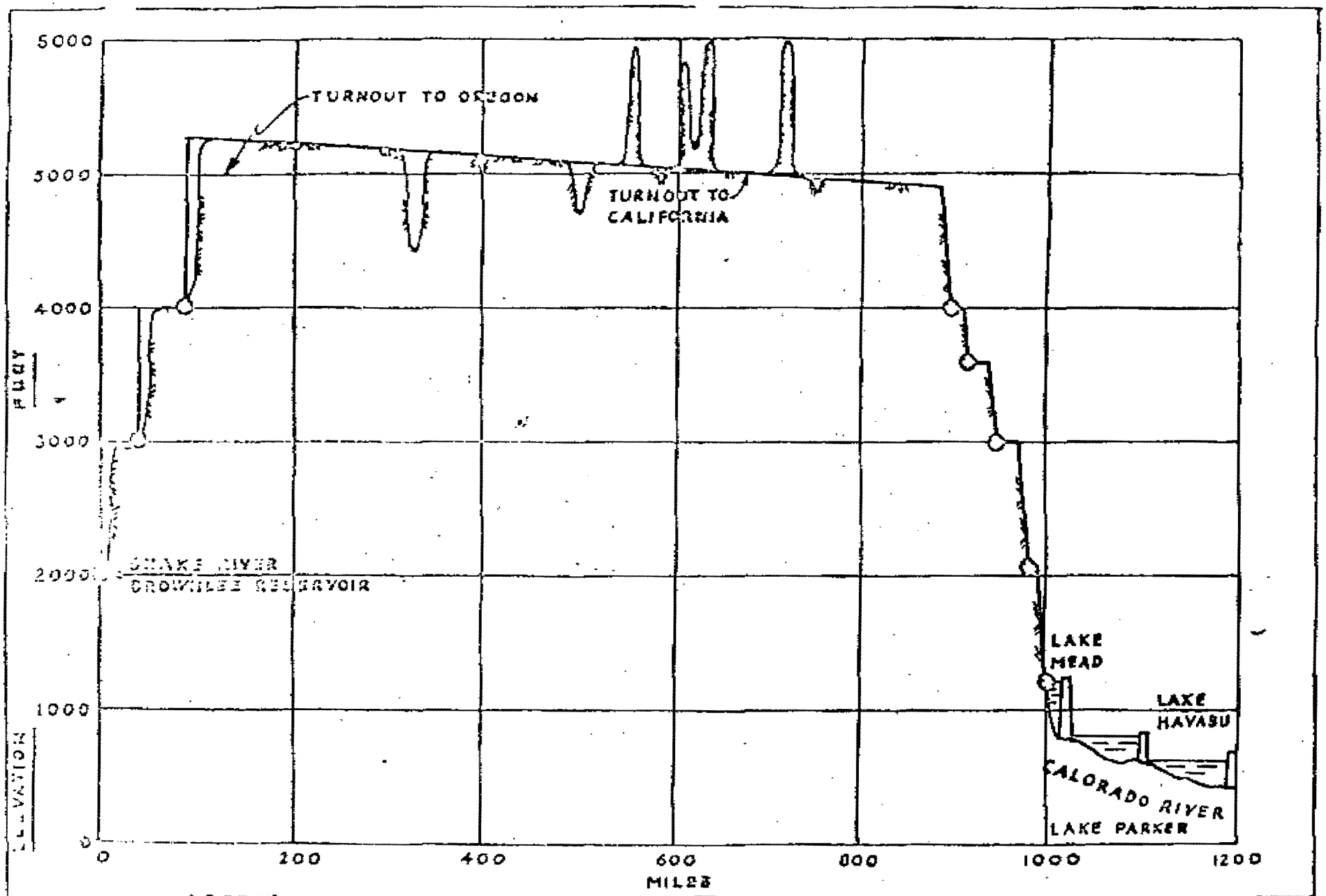
SNAKE - COLORADO PROJECT

REVISED SEPT. 1965



William G. Dunn, Consulting Engineer
San Jose, Calif.

110



LEGEND

- ⊙ PUMP STATION
- ○ POWER PLANT

MODIFIED SNAKE COLORADO PROJECT
PROFILE - BROWNLEE RES. TO COLORADO R.
WILLIAM G. DUNN
CONSULTING ENGINEER
SAN JOSE
SEPT. 1965

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SUN VALLEY, IDAHO 8335[illegible]
TELEPHONE (208) 726-49[illegible]

December 15, 1982

To All Counsel

Re: Idaho Power Co. vs. State

Gentlemen:

The potential for an appeal on the question of the validity of the Hells Canyon FPC license subordination gives rise to a problem for Idaho Power Company. As you know, in December of 1977, the company placed a moratorium on new hook-ups which would deplete flows in the Snake River below Milner and above Hells Canyon.

Given the Supreme Court's decision upholding the validity of the FPC subordination, the basis for the moratorium below Swan Falls disappears, except insofar as it might remain in place while a party appeals on that issue.

The company does have a few requests for irrigation pumping service in that reach of the river. If no one is going to appeal on that issue, then there appears to be no reason not to hook up those applicants. In fairness to them, I would like to avoid a several month delay in letting them know the company's intentions.

I would appreciate hearing from each of you concerning your intention to seek review of the Idaho Supreme Court's decision affirming the validity of the FPC license subordination of the Hells Canyon project. I am not seeking, by this letter, any statement concerning intentions to seek review on other issues.

Yours very truly,

Thomas G. Nelson

THOMAS G. NELSON

TGN:cw

$500 in any one case) caused by the negligent operation of motor vehicles under such appropriations.
(June 25, 1946, ch 472, § 2, 60 Stat. 306.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:
This section formerly appeared as 31 USCS § 693, prior to the enactment of Title 31 into positive law by Act Sept. 13, 1982, P. L. 97-258, § 1, 96 Stat. 877.

CHAPTER 32. COLORADO RIVER BASIN PROJECT

§ 1511. Reconnaissance investigations by Secretary of the Interior; reports; 10 year moratorium on water importation studies

Pursuant to the authority set out in the Reclamation Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof or supplementary thereto, and the provisions of the Water Resources Planning Act of July 22, 1965, 79 Stat. 244, as amended, with respect to the coordination of studies, investigations and assessments, the Secretary of the Interior shall conduct full and complete reconnaissance investigations for the purpose of developing a general plan to meet the future water needs of the Western United States. Such investigations shall include the long-range water supply available and the long-range water requirements in each water resource region of the Western United States. Progress reports in connection with these investigations shall be submitted to the President, the National Water Commission (while it is in existence), the Water Resources Council, and to the Congress every two years. The first of such reports shall be submitted on or before June 30, 1971, and a final reconnaissance report shall be submitted not later than June 30, 1977: Provided, That for a period of ten years from the date of the enactment of the Reclamation Safety of Dams Act of 1978 [enacted Nov. 2, 1978], any Federal official shall not undertake reconnsaisance studies of any plan for the importation of water into the Colorado River Basin from any other natural river drainage basin lying outside the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are in the natural drainage basin of the Colorado River.
(As amended Oct. 3, 1980, P. L. 96-375, § 10, 94 Stat. 1507.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:
1980. Act Oct. 3, 1980, substituted "any Federal official" for "the Secretary".

§ 1520. Authorization of appropriations

(a) [Unchanged]

(b) There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering and cost indices applicable to the types of construction involved therein from the date of the Colorado River Basin Project Act [enacted Sept. 30, 1968]: Provided, That the Secretary shall enter into agreements with non-Federal interests to provide not less than 20 per centum of the total cost of such facilities during the construction of such facilities. Notwithstanding the provisions of section 403 of this Act [43 USCS § 1543], neither appropriations made pursuant to the authorization contained in this subsection (b) nor revenues collected in connection with the operation of such facilities shall be credited to the Lower Colorado River Basin Development Fund and payments shall not be made from that fund to the general fund of the Treasury to return any part of the costs of construction, operation, and maintenance of such facilities.
(As amended Dec. 20, 1982, P. L. 97-373, § 1, 96 Stat. 1817.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:
1982. Act Dec. 20, 1982, in subsec. (b), substituted the sentence beginning "There is also authorized, . . ." for one which read: "There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands.".

REVISED AND SUPPLEMENTED TESTIMONY BY JOHN L. RUNFT
BEFORE THE IDAHO SENATE COMMITTEE ON RESOURCES AND ENVIRONMENT
January 21, 1985

Subject: Testimony regarding Senate Bills 1008 and 1006; Gold Room, Statehouse; 7:00 p.m. - January 21, 1985

Mr. Chairman and members of the committee, for the record my name is John L. Runft and I am an attorney practicing here in Boise, Idaho. This evening I come before you representing Salmon River Hydro Company, Inc., which consists of a group of developers of small hydroelectric facilities under the Public Utility Regulatory Practices Act (PURPA). My clients are presently developing 27 small hydro power projects, all of which are located on the reaches of the little and main Salmon Rivers, and all of which would be directly and materially impacted by the legislation proposed in Senate Bill 1008 and Senate Bill 1006. Let me emphasize for the purposes of this evening's hearing that these projects are located far downstream from the Swan Falls Dam and on a different river system.

In order to lay a proper foundation for the perspective from which my clients view the proposed legislation contained in Senate Bills 1008 and 1006, let me briefly review with you the status of their small hydro power projects. My clients have, every one of them, expended substantial money and time in an effort to develop their hydro electric projects as envisioned under PURPA. All 27 projects have been granted preliminary permits, or exemptions, or have licenses pending under the Federal Energy Regulatory Commission (FERC). Applications for water permits have either been accepted or have been granted on all of the projects by the Idaho Department of Water Resources. In summary, these are serious projects in which considerable engineering and development work has been done and in which citizens of Idaho have expended substantial sums of money and time.

We come before you with no claim of expertise on the subject legislation. We took no part in the ligitation or in the protracted negotiations for settlement of what has come to be called the Swan Falls controversy. Able counsel and technical experts have spent untold hours hammering out not only the settlement between the State of Idaho and Idaho Power Company on the question of subordinative water rights, but also many more hours in an effort to recognize and account for other interests and the rights of the public at large in working out the language of the two bills before this committee. As the witnesses on behalf of the parties to the controversy have made clear, the proposed legislation constitutes the last chapter of the settlement of that controversy, and they have urged that the subject legislation be considered as a "package" with that settlement.

We do not come to attack the fabric of the agreement that has been woven. Frequently, however, a fresh perspective on a "final rough draft" has value. It is, then, in this context of constructive criticism and recommendations for change that we address this committee with regard to Senate Bills 1008 and 1006. I will endeavor to limit my comments to the principal concerns of my clients by making one general observation and seven specific recommendations for change.

My general observation is that one is left with the impression that we have in Senate Bill 1008 a hybrid that may have been better left in two parts:

(a) A bill ratifying the agreements reached in the "Swan Falls" settlement and addressing the issues involved in that controversy;

(b) A bill relating to water rights for hydro power purposes generally and providing for true statewide criteria, standards and procedures for treating those rights.

An example of this dichotomy is the apparent failure of the bill to address those situations where the prospect of depletionary use of water does not exist upstream from water rights granted for power purposes. There are many such areas in our state. My clients with their mountain stream hydro projects fall into that category. The bill provides in Section 42-203B(5) that the Governor or his designee is authorized to enter into water rights agreements for power purposes "to define that portion of their water rights at or below the level of the applicable minimum stream flow as being unsubordinated to upstream beneficial uses and depletions." The effect of this provision is that all water above the level of minimum stream flow in <u>all</u> rivers and streams in this state must be placed in the trust provided for in subsections (2) and (3) of this section. However, the purposes of the trust are expressly limited to be those of assuring "an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes to continue using the water pending approval of depletionary future beneficial uses." (See Section 42-203B(1)) Clearly, in stream reaches where use for power purposes is the only reasonable beneficiary use available, there is no need to place in trust that portion of the water above minimum stream flow. Such "protection" is not needed nor is it desired by hydro power developers in such circumstances. We submit that water users for power purposes should not be subjected to the provisions of this statute if their water rights are reasonably free from the possibility of upstream depletionary uses.

<u>We recommend</u> that authority be vested in the Governor or his designee to exempt such water rights granted for power purposes from subordination and from the authority of the director to limit such permits or licenses to a specific term. Exemptions for such hydro power water rights could be granted

after an appropriate investigation and hearing by the Department of Water Resources. Provision for such exemptions would properly limit the function of the water trust and the authority of the director to subordinate power water rights and to impose time terms on such rights to the real purposes of this legislation: i.e. to establish a means for handling conflicting depletionary (irrigation) and non-depletionary (power) uses of water in this state.

Let me turn now to some specific observations and recommendations regarding the proposed bills, beginning with Sentate Bill 1008:

1. **Section 42-203B(3).** With regard to setting minimum stream flows in the first sentence of subsection (3), the words "state action" would appear to be too broad.

We recommend that such state action should be specifically defined to mean approval by the Department of Water Resources (or the board) with legislative ratification.

2. **Section 42-203B(6).** We submit that the language granting the director "the authority to subordinate the rights" of license and permit holders is too broad. Even though the 1928 amendment to the Idaho Constitution vested in the state the power to regulate and limit the use of water for power purposes, water rights once granted still constitute property rights. Even though water rights for power purposes are subject to regulation and limitation by the state, such regulation and limitation must be made part of the right at the time it is granted or otherwise the exercise of such authority by the director could face the constitutional objection of taking of property without due process of law.

We recommend that the description of this authority be statutorily set forth so as to provide a guide for the promulgation of subsequent regulations.

3. **Section 42-203B(6).** Vesting authority in the director to limit a permit or license for power purposes to a specific term without any apparent limitation or guidelines is of the greatest concern to my clients. As mentioned above, where the issue of subordination of water rights for power purposes is not an issue, there should be an exemption for holders of water rights for power purposes. The mere existence of this broad statutory "authority to limit a permit or license for power purposes to a specific term" will have severe impact on the capability of small hydro developers to obtain financing. The primary economic reality regarding the small power projects is that the financing is based principally upon the viability of the project and not upon the financial well being of the developer. Central to the financial strength and viability of the project is the unconditional water right. Lenders and investors will simply not invest in a project where the underlying water right is subject to delimitation at any time by act of the director. Short term water rights (around 5 years) to cover the

period of return of capital or pay-off of the development loan will likewise not suffice. Frequently in these projects there are second levels of financing by the developers and their partners which must be taken care of after the institutional lenders have been paid. Such developmental partners cannot be acquired on the basis of short-term power rights.

Also, there are the terms of the power contracts to be considered. Virtually all of the contracts for sale of power with the major power companies necessarily contain severe recapture provisions if there is a default in the supply of power during the term of the contract, which is generally 35 years in length. To put it bluntly, time limitations on the water rights for power purposes will reek havoc on the projects of small hydro developers.

As above stated, we recommend that an exemption procedure be established for power water rights associated with projects on stream reaches were subordination to subsequent upstream beneficial depletionary uses will not be a factor. Such exempted water rights would not be subject to subordination or time limitation. This exemption process would also serve to properly limit the resolution of the Swan Falls controversy to the issues and circumstances actually involved therein.

We recommend that the statutory language be amended to require that limitation of a permit or license for power purposes shall not be for a term less than the term of the standard power purchase contract of the utility designated by the water right holder as the utility with which it will seek a power purchase contract. In the event there be no standard power purchase contract or standard contract term available as regards the designated utility, then, in the alternative, the water rights should be for 35 years, which term appears to be the industry standard.

We strongly urge the committee, at the very least, to provide that limitations of permits or licenses for power purposes to specific terms be for a period not less than 35 years. The impact of shorter terms on the economic viability has been discussed above. These economic ramifications not only negatively affect lenders, co-developers and the ability to perform under the power purchase contract, but also would have a deleterious effect on the ability of the developer to obtain a license from the Federal Energy Regulatory Commission (FERC). Economic viability of projects is one of the primary considerations of license grants by FERC. Moreover, imposition of terms shorter than 35 years on water rights for power purposes would clearly constitute state action severely curtailing the incentive for the development of small hydro power as a renewable resource, encouragement of which development is a primary purpose of the Public Utility Regulatory Policies Act of 1978. 16 U.S.C. 2601. See Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742 (1982).

4. **Section 42-203B(6).** The last sentence of this subsection provides that it "shall not apply to licenses which have already been issued as of the effective date of this act."

We recommend that permits should be so grandfathered as well as licenses. Water permits are a defeasible property right which may be terminated if the permit holder does not prove up on the development for which the right was granted. Permittees, such as my clients, have spent considerable sums of money in reliance upon their right to prove up on the permit and eventually secure a license. Likewise, other investors, lenders and governmental agencies (FERC) have acted in reliance upon the viability of these permits. We submit a serious issue of taking without due process of law could be raised by this ex post facto imposition of the provisions of subsection 6 on permits.

5. **Section 42-203C(1).** For clarification purposes, we recommend that the words "for upstream depletionary use" be inserted following the words "appropriate water" in the first line of subparagraph (1).

6. **Section 42-203C(2).** The criteria to be considered by the director in making a water reallocation decision present a problem from the standpoint of what weight to give to each of the listed criteria. The statutory language provides that no single factor "shall be entitled to greater weight." Yet at least two of the five criteria would never be applicable to hydro projects such as those of my clients in the mountain reaches of the Salmon River. Furthermore, the language of the statute would allow the director to give greater weight to factors not listed in his determination of the public interest.

We recommend deletion of the provision limiting the director from giving greater weight to any of the enumerated factors. A public interest determination made by the director under this section must include consideration of the listed factors as well as other matters brought up by the parties which are relevant to the statutory purposes.

7. **Section 42-203D.** This section provides that all permits presently in effect, except for those put to beneficial use prior to January 1, 1985, shall be reviewed for compliance with this new legislation.

As stated above, we recommend that permits already issued should be grandfathered along with licenses. In any event, if these issued permits are to be reviewed, they should all be subject to exemption from the provisions of the proposed legislation in all cases where no subordination issues are reasonably applicable to the uses involved.

The provisions of this section effectively grandfather all permits which can be put to beneficial use prior to July 1, 1985. One assumes the reason for this grandfathering is founded

upon the logic that those permit holders who have spent substantial sums on proving up their permit would be in a position of putting the permit to beneficial use by July 1, 1985. Such presumptions fail badly in the circumstances of small hydro developers, where the beneficial use of the water right cannot be accomplished until final approval by FERC and final agreement with the power company. As discussed above, after-the-fact impositions of restrictions and limitations upon a property right already granted, especially where considerable sums have been expended in reliance upon that right as granted, will most likely raise serious issues of taking property without due process of law.

It is our recommendation that the language of 42-203D be stricten and replaced with a section providing for procedures and standards whereby the director can exercise his authority to subordinate water rights in the future and for the granting of exemptions under appropriate circumstances.

8. Section 1006; Section 42-1805(7). We recommend that the director's authority to suspend the issuance or further action on permits or applications in order to ensure compliance with the provisions of Chapter 2, Title 42, Idaho Code, be limited to certain geographical areas faced with subordination problems (e.g. upstream from the Swan Falls Dam on the Snake River), and limited two certain type of permits or applications (e.g. old irrigation applications).

We recommend that this subsection 7 should be divided into two subsections, one of which would deal with suspension to ensure compliance with the provisions of Chapter 2, Title 42, Idaho Code (which would be limited as above recommended), and the other subsection to provide for suspension on a more broad basis to protect existing, vested water rights and to prevent violation of minimum flow provisions of the state water plan. These latter concerns are of statewide concern and application. The subordination issues contained in Chapter 2, Title 42 are of limited application and should be dealt with differently.

RESPECTFULLY SUBMITTED.

JOHN L. RUNFT, Legal Counsel to
Salmon River Hydro Company, Inc.
205 N. 10th Street - Suite 200
P.O. Box 1960
Boise, ID 83701
(208) 344-6100

Mr. Chairman, Ladies & Gentlemen

I represent Little Pilgrim Irrigation Co, a proposed development lying South & Southwest of the Bell Rapids Project in Elmore, Owyhee & Twin Falls Counties.

~~Because~~ the project has been designed to utilize off-stream storage requiring a minimum of 125 CFS pumped from the river on a 12 month basis into a 55,000 acre feet storage reservoir. In addition to the System being totally self-Contained in underground pipe to reduce water Losses, a hydro power plant located at the inlet sight of the reservoir would bring a net return of approximately

$1,000,000 and make the project even more feasible.

Our Company feels that the advantages and benefits derived from a project such as this would far outweigh any increased power costs or other losses if there are any. Let's Consider:

1. The increased tax base for the County and ~~State~~, making more available for education, ~~etc.~~

2. The increased employment, which would help local businesses, and could help reduce money spent for welfare and increase Sales Tax Collections

3. With more money available, Magic

Valley, the State, & all the people would benefit.

Therefore, we as a Company, are 100% in favor of the Swan Falls Agreement and would like to urge those involved to favorably evaluate all the factors and support.

It is hard to give all the credit due to those individuals, whose time and efforts have made this agreement possible. I think it is a job well done and the answer to a situation that has been unresolved for far too many years.

Thank you