

RESOURCES AND ENVIRONMENT COMMITTEE

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Meeting on

SB 1006 - To provide that the director of the
Department of Water Resources shall have the power
to promulgate rules and regulations

SB 1008 - Water rights for hydropower purposes

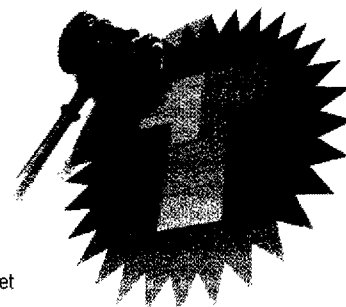
TRANSCRIPT OF PROCEEDINGS

Held on January 25, 1985, 1:30 p.m.

before Chairman Noh

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A P P E A R A N C E S

PRESENT:

Chairman Noh
Senator Beitelspacher
Senator Budge
Senator Carlson
Senator Chapman
Senator Crapo
Senator Horsch
Senator Kiebert
Senator Little
Senator Peavey
Senator Ringert
Senator Sverdsten
Senator Tominaga
Pat Costello, Governor's Office
Pat Kole, Attorney General's Office
Tom Nelson, Idaho Power Company
Ken Dunn

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3 PRESENT:
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5 Senator Beitelspacher
6 Senator Budge
7 Senator Carlson
8 Senator Chapman
9 Senator Crapo
10 Senator Horsch
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12 Senator Little
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14 Senator Ringert
15 Senator Sverdsten
16 Senator Tominaga
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18 Pat Kole, Attorney General's Office
19 Tom Nelson, Idaho Power Company
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22 * * * * *
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1 JANUARY 25, 1985
2 THE CHAIRMAN: Some interest, I know, in --
3 somewhere or other to develop legislative intent
4 to go along with this. Perhaps what we should do
5 first is call upon some of the negotiators to
6 discuss with us those points that were raised at
7 the hearing.
8 Who's prepared to do that? Who would like
9 to do that? Where's Mr. Kole? I guess he's going
10 to be a little bit late, isn't he?
11 UNIDENTIFIED SPEAKER: I don't know where he
12 is.
13 UNIDENTIFIED SPEAKER: Mr. Chairman, he's at
14 the judiciary committee very briefly on a victim's
15 rights bill.
16 THE CHAIRMAN: Okay. Well, maybe we'll --
17 MR. NELSON: I can -- there's certain
18 comments made at that hearing, Mr. Chairman, which
19 I have addressed briefly in a written statement
20 which I've submitted to the committee.
21 THE CHAIRMAN: Right.
22 MR. NELSON: And I would
23 assume (unintelligible).
24 I think one item of general discussion might
25 be the -- how the criterion in 203(c), the

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1 so-called new public interest criteria, fit in the
2 existing process. Senate Bill 1008 remodels
3 existing 203 only to the extent to make it a
4 complete sentence in the body and to renumber it
5 A. I believe there's a publication to that in
6 that section. But basically, the existing public
7 interest criteria, speculation, financial
8 responsibility and so on, and remain exactly as
9 they are today.
10 The 203(c) criteria are new. And the
11 203(c), as written, requires, essentially, a
12 three-step process. Although, in all actuality, I
13 assume it will be in one administrative hearing.
14 We'll review the existing criteria to make sure it
15 passes muster under those standards. You
16 determine that the proposed use will or could have
17 a significant impact on existing hydropower right.
18 And then, after you have those two determinations
19 out of the way, then you address the new public
20 interest standard.
21 So to me, the way the bill is structured can
22 be no question of impairing any existing public
23 interest review. Whatever that statute says now,
24 it continues to say. This is a new review on
25 different issues. And 203, as it now exists, will

1 (Pages 1 to 4)

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1 continue to exist in just exactly that fashion.
 2 If 203 as it exists now is inadequate, I think
 3 those inadequacies should be addressed in separate
 4 legislation, and not tacked onto this one.

5 Admittedly, the negotiators and the parties
 6 approached the Swan Falls resolution from the
 7 standpoint of litigation. There were certain
 8 issues in that litigation. The compromise
 9 addresses those issues in that litigation and
 10 doesn't purport to be an across-the-board public
 11 interest reallocation to review of what we had.
 12 So I don't think those kinds of criticisms are
 13 really valid with where to go with the structure.

14 THE CHAIRMAN: Mr. Kole, do you want to --
 15 what we're starting on here, Pat, is just a
 16 general review of the points that were raised at
 17 the hearing.

18 MR. KOLE: Thank you, Mr. Chairman.

19 Yes, I have specific comments prepared on
 20 the testimony of Mr. Runft. And I would like to
 21 begin by pointing out that Mr. Runft's first
 22 observation that this is a hybrid is correct. And
 23 that's because we intended it to be that way. We
 24 were trying to address two issues, first,
 25 resulting lawsuit, and secondly, more importantly,

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1 action in section 42-203(b)(3) is too broad a
 2 phrase. And quite frankly, in negotiating this
 3 particular proposition, what we were concerned
 4 about was SJR 17 -- 117 which was the current
 5 resolution last year which addressed how you
 6 create minimum stream flows. We wanted to leave
 7 the authority open that this or future
 8 legislatures, they want to become more actively
 9 involved in the minimum stream flowing process.
 10 So we did not want to preclude you from being able
 11 to act in this area. And that's the reason for
 12 using that term.

13 Mr. Runft next contended that there was --
 14 there would be an inability to obtain financing if
 15 there was a subordination condition placed into
 16 the hydropower water rights. That, frankly, is
 17 factually erroneous. To date, the department has
 18 issued over 216 subordinated water rights. And
 19 not one of those projects has had difficulty
 20 obtaining financing. In fact, many those projects
 21 not only have obtained financing, but are now in
 22 the process of being put on-line. So those are --
 23 just hasn't happened.

24 The wonders (phonetic) that we've talked to,
 25 including insurance companies that questioned us

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1 providing a mechanism in state law so that Swan
 2 Falls type problems, it could be resolved without
 3 expensive litigation.

4 And I think as we pointed out last week,
 5 there are other problems like this throughout the
 6 state. And the Spokane River is a prime example.
 7 Now, Mr. Runft's second suggestion, it created
 8 exemption process whereby certain hydropowered
 9 water rights could be exempted from the
 10 subordination process is precisely what we have
 11 done with these two bills. We have created a
 12 process where the director will make a
 13 determination as to whether or not a certain water
 14 right should be subordinated or not be
 15 subordinated.

16 Now, in making that determination, now, if
 17 you look at 1006 in combination with 1008, he's
 18 got to promulgate rules and regulations that will
 19 come back before you for your review. And those
 20 will set forth the criterion under which
 21 subordination will take place. So I think it's
 22 very important to look at the bills in toto and
 23 realize that precisely what Mr. Runft's concern is
 24 is what we are addressing.

25 His third point was that the word state

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1 about what a subordination issue has meant, have
 2 all indicated that they have no problem with the
 3 subordination conditions.

4 He also objected to having a term permit.
 5 That's been our understanding that one of the
 6 concerns expressed by many legislators has been we
 7 don't know how to predict the future. What
 8 happens if there are new alternative sources of
 9 energy available that are cheaper than
 10 hydroelectric generation. In that case, we would
 11 want to have the authority to reallocate that
 12 water. All that term permit does is give you the
 13 authority to wait around and come back and take a
 14 look at the situation if you so desire. If you
 15 don't, that water right, in turn, can be
 16 reinstated and there shouldn't be any problem.

17 He finally argues that the permits that have
 18 been issued as to the state should be
 19 grandfathered in. So if you look at the case of
 20 Hidden Springs Trout Ranch at 102 Idaho 62.3, the
 21 Idaho Supreme Court addressed that issue quite
 22 specifically and found that the legislature could
 23 act in the area of permits, (unintelligible)
 24 permits could do. So I would suggest to you that
 25 it's very important to maintain the flexibility in

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1 the criteria that you have before you.
 2 One other point he made was that the permits
 3 that are out there should not be reevaluated.
 4 Well, one of the primary concerns of Idaho Power
 5 Company and other users has been that there are so
 6 many permits out there, they could have an adverse
 7 impact on our ability to manage the stream system.
 8 If agricultural permits are going to be
 9 reevaluated, it struck negotiators that it would
 10 be only fair that all permits be reevaluated.
 11 I do have his testimony reduced to writing.
 12 And there were supposed to be copies provided to
 13 you. I don't see them here, so I'll leave the
 14 written comments with the secretary for including
 15 them in the record of these proceedings. I'd be
 16 happy to stand for questions.
 17 THE CHAIRMAN: Is there questions?
 18 SENATOR RINGERT: Mr. Chairman?
 19 THE CHAIRMAN: Senator Ringert.
 20 SENATOR RINGERT: Pat, right there at the
 21 end, you mentioned the review process was
 22 important because you needed some authority or
 23 flexibility in managing the water resource.
 24 Could you expand on that a little, please?
 25 MR. KOLE: Mr. Chairman, Senator Ringert,

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1 I'm not sure I understand precisely your question.
 2 SENATOR RINGERT: Well, I'll try to simplify
 3 it.
 4 Why do you need to review authority on
 5 existing permits?
 6 MR. KOLE: Mr. Chairman, Senator Ringert,
 7 it's our understanding there are a number of
 8 permits out there, basically, and if they were to
 9 be developed, they would, in effect, take all the
 10 available water for appropriation in the Snake
 11 River system. By reevaluating and looking at
 12 those permits in accordance with the new public
 13 interest criteria, we believe that we will be able
 14 to more effectively manage the resource and get
 15 additional development over that which would occur
 16 if we were to follow a strict priority approach.
 17 THE CHAIRMAN: Mr. Ringert.
 18 SENATOR RINGERT: What causes you to believe
 19 that? I mean, what empirical value do you have
 20 that tells you that that's the proper way to go.
 21 MR. KOLE: Mr. Chairman, Senator Ringert, I
 22 would like to defer that question to Ken Dunn
 23 because he's completed the analysis
 24 (unintelligible).
 25 THE CHAIRMAN: Mr. Dunn?

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1 MR. DUNN: Mr. Chairman and Senator Ringert,
 2 the number of outstanding permits, if they were
 3 all developed, would lower the minimum flow of the
 4 Snake River to the present minimum flow. And
 5 that's based on those permits that were available
 6 in 1976, permits and applications. Since that
 7 time, there have been a number of others that have
 8 been approved.
 9 Once you put the lid on it, the propensity
 10 to develop, because it's the last opportunity you
 11 have, and you start making people develop
 12 (unintelligible) they might not otherwise have.
 13 So there are outstanding applications and permits
 14 to do that, if they were all available.
 15 SENATOR RINGERT: Well, Mr. Chairman?
 16 THE CHAIRMAN: Mr. Ringert.
 17 SENATOR RINGERT: To continue the line of
 18 questioning, won't the priority system take care
 19 of existing water rights and protect them? Or
 20 doesn't our priority system work anymore.
 21 MR. DUNN: Mr. Chairman, Senator Ringert,
 22 priority system works if you didn't have
 23 moratoriums and other things involved. The
 24 moratorium we're talking about are Bureau of Land
 25 Management. Bureau management of land. As you

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1 know, Desert Entry and Carey Act filings have not
 2 been approved for a number of years. That builds
 3 up a big backlog of things. The water right
 4 filings have been made. We're in a situation
 5 where people who were not going to the Carey Act
 6 or DLE, and some of them who were able to go
 7 around that have developed. And they have a later
 8 priority than some of these outstanding permits.
 9 It's just a fact of life.
 10 Once you start managing the resource, and
 11 you're at the -- start approaching the end of the
 12 development, priority system creates a lot of
 13 diseconomies (phonetic). You have later rights
 14 developed and earlier rights undeveloped and no
 15 water. So you can develop the early ones and go
 16 in and try and shut off the later ones. It really
 17 makes no difference.
 18 THE CHAIRMAN: Mr. Ringert?
 19 SENATOR RINGERT: Mr. Chairman, isn't that
 20 the appropriator's risk, Ken, that he has his land
 21 available first, that's one thing, but he --
 22 shouldn't he recognize that his permit is a later
 23 priority date, he runs the risk that he might wind
 24 up short of water if somebody else comes on line
 25 in accordance with the priority of their permit?

3 (Pages 9 to 12)

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1 MR. DUNN: Mr. Chairman, Senator Ringert, I
 2 think that's right if you have a normal system
 3 operating, which we do not have. We have the
 4 government in the process of having messed it up
 5 to begin with. Due to decision, right or wrong,
 6 the decision was to not create a land rush,
 7 therefore, the development didn't occur for
 8 whatever reason.
 9 SENATOR RINGERT: One more, Mr. Chairman,
 10 and then I'll get off (unintelligible).
 11 THE CHAIRMAN: Senator Ringert.
 12 SENATOR RINGERT: Are we then governing with
 13 policy in this state where land and not water sets
 14 the priority?
 15 MR. DUNN: Mr. Chairman, with this bill, I
 16 think you do it different than that. You start
 17 setting the priority in terms of good economic
 18 development. For example, if the outstanding
 19 permits are let with no further review, many of
 20 them are for extremely high lift pumping plants
 21 directly out of Snake River. And once that
 22 occurs, you have immediate depletion. And the
 23 amount of land that you can develop in shrinks
 24 dramatically because you don't have the return
 25 flow. You don't have water coming back from above

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1 Swan Falls. The economic expansion in the state
 2 is going to be very small.
 3 That's one of the reasons in all our
 4 discussions we've said the best development would
 5 be further upstream in the Snake system. The high
 6 level pumping is a direct diversion from the
 7 river, which has an immediate effect on
 8 hydropower. And it also requires substantial land
 9 to get the water up there. And if somebody knows
 10 that, whoever they are, that that's the only
 11 opportunity they're going to have to get water,
 12 you don't do it now, you're going to lose it, you
 13 start driving the decision not based on good
 14 economics, but on the fact if I put it in, I might
 15 make it, it's worth a chance. You let bankruptcy
 16 in the come back. That's not good for the
 17 economy.
 18 SENATOR RINGERT: One thing leads to
 19 another.
 20 Ken, this economic and foreign commodity
 21 situation, I personally, I really have doubts that
 22 we're going to see anymore high lift projects of
 23 great consequence, particularly if they're a
 24 direct diversion during irrigation season so that
 25 they have to have enough capacity to pump their

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1 needs 24 hours a day throughout the irrigation
 2 season. But then, are we coming to the point
 3 where your Department's determination of economic
 4 feasibility, suitability and efficiency is going
 5 to determine the priority of use of water?
 6 MR. DUNN: Mr. Chairman, Senator Ringert, I
 7 think we're coming to the point in time Snake
 8 Basin where there isn't enough water to meet the
 9 needs. In this situation, we're not coming to the
 10 point where my department is going to make the
 11 decision of priority. We're coming to the point
 12 where the legislation you pass, the rules and
 13 regulations I adopt and you approve will set some
 14 general priorities of what has to be done in order
 15 for somebody to be able to use water in the state.
 16 It will not be a strict first in time, first in
 17 right, no matter what, you get the water. In the
 18 extreme scarce resource, I think those kind of
 19 changes need to be made.
 20 THE CHAIRMAN: Are there other questions of
 21 Mr. Kole or Mr. Dunn? Are we going to have all
 22 our questions answered?
 23 Senator Crapo.
 24 SENATOR CRAPO: Mr. Chairman, is
 25 Mr. Costello going to make any statements today?

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1 THE CHAIRMAN: Mr. Costello, do you have
 2 something for the good of the order here?
 3 MR. COSTELLO: Thank you, Mr. Chairman,
 4 Senator Crapo. I believe that I would just
 5 associate myself with the remarks of Pat and Tom.
 6 The one additional point that I would cover, yes,
 7 concerns comments at the public hearing, and I
 8 believe also Senator Crapo made at the last
 9 meeting of this committee regarding the absence of
 10 mention in the public interest criteria Senate
 11 Bill 1008 of uses other than agricultural uses.
 12 And all I would like to do is point out that you
 13 don't even reach the public interest criteria
 14 unless you first find that the proposed use would
 15 result in a significant reduction of water
 16 available for hydropower.
 17 Most of the other uses and nonagricultural
 18 uses, particularly domestic, commercial, municipal
 19 and industrial is almost entirely nonconsumptive.
 20 And virtually all of those uses would never reach
 21 the public interest criteria. The only exception
 22 would be, I suppose, some particular industrial
 23 application. But certainly something like that,
 24 another hydro project, for example, would be
 25 strictly nonconsumptive and the public interest

1 criteria would not even apply.

2 And that's the only thing that I have.

3 THE CHAIRMAN: Yes, Senator Crapo?

4 SENATOR CRAPO: For a question --

5 THE CHAIRMAN: Certainly.

6 SENATOR CRAPO: Mr. Costello, did the
7 negotiators get into any detail as to what is
8 meant by significantly reduced?

9 MR. COSTELLO: Mr. Chairman, Senator Crapo,
10 no, we did not. That would be left to be fleshed
11 out by Department of Regulations just as the
12 criteria themselves would have the further detail
13 of the regulation.

14 SENATOR CRAPO: And maybe this question
15 could be answered by any of the negotiators. I
16 wonder if any of the negotiators even have any
17 ideas or guesstimates of what that phrase means
18 that we could just be enlightened with. For
19 example, would it be a significant reduction if a
20 well was going to have an impact ten years down
21 the line of some small amount? Is it defined in
22 terms of time? Is it defined in terms of amount?
23 Or what is contemplated here by the Department?

24 MR. COSTELLO: Mr. Chairman --

25 THE CHAIRMAN: Mr. Costello.

1 MR. COSTELLO: -- Senator Crapo, the phrase
2 is individually or cumulatively with other uses.
3 So if you had a well pumping from the aquifer
4 which would not impact the river for ten years,
5 but if you can project that if there were a number
6 of wells in the same vicinity, and that that would
7 have a result at Thousand Springs of X CFS in the
8 year 2000, whatever, yes, it would be possible, in
9 my view, to find a significant impact.

10 THE CHAIRMAN: Would either of the other
11 negotiators care to comment on that?

12 Mr. Nelson, Mr. Kole?

13 MR. NELSON: Mr. Chairman, Senator Crapo, I
14 don't think that that phrase is much different
15 than the burden your company faces with the
16 existing lawsuit. I think that in order to get
17 relief from the Court, it is incumbent on the
18 company to show potential for a significant impact
19 from either an area or a group of people, or
20 however the Court wanted to analyze it.

21 To me, when you look at the sophistication
22 of the gauging systems on the Snake and so forth,
23 you may be looking at something, perhaps, that we
24 could theoretically measure, for example, in the
25 river. We're now down to the point we're talking

1 about 600 CFS. If you look at one CFS out of 600,
2 that could be significant. Maybe the cumulative
3 effect would have to be 2 or 3 or 4. The problem
4 we have is the hydrology of the basin is such that
5 you can argue an isolated effect in a certain part
6 of the aquifer. So significant reduction was
7 intended to allow people to argue with the
8 hydropower right holder that they're not tributary
9 in a significant sense. But we didn't feel we
10 could get more specific than that because of the
11 unknown. But I think that's the burden we have
12 right now, that if we couldn't show the potential
13 for a significant effect in the pending lawsuit, I
14 don't think we can get any relief.

15 SENATOR CRAPO: Mr. Chairman, I'd like to --

16 THE CHAIRMAN: Yes, Senator Crapo.

17 SENATOR CRAPO: -- follow up with a
18 question.

19 I guess I'm kind of interested in seeing
20 that this 600 CFS that is made available through
21 the trust is made liberally available. And I'm
22 just kind of wondering, is that the intent of the
23 negotiators. Or is it the intent of the
24 negotiators that each time an appropriation is
25 applied for, there's going to be a lot of hurdles

1 that any prospective developer must go through?
2 And I guess that's kind of all of what I'm getting
3 here. And maybe the only way to answer my
4 question is to just say yes or no, we do intend,
5 as the legislature or as the negotiators for the
6 legislature to make this something that's
7 liberally available, or are we going to make it
8 restricted.

9 THE CHAIRMAN: And we might end up saying we
10 want some of each.

11 SENATOR CRAPO: Yeah, I mean, I don't
12 know -- I really don't know what this means is
13 what I'm saying. But I would like to know what we
14 intend it to mean.

15 THE CHAIRMAN: Mr. Nelson.

16 MR. NELSON: Mr. Chairman, Senator Crapo, I
17 can tell you where I came down when we were
18 looking at how this would work. And concerns were
19 expressed that you're going to have the ma and pa
20 farm walk in and all of a sudden you've got a
21 hearing room full of people in there to oppose
22 their ten-acre addition to their existing farm.
23 And that's addressed a couple of ways, one, the
24 burden on the protestant, for example. But I
25 think the real protection against that kind of an

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1 administrative ambush, if you will, is just the
2 way the administrative process works.

3 For example, any time you go over to the PUC
4 on an electric rate, utility rate case, for
5 example, in theory, you can start at A and go to
6 Z, and you can litigate in front of the Commission
7 every issue that's possible to raise in a utility
8 rate case. But the fact is, when you get there,
9 usually you're down to a couple of things like how
10 are you going to measure rate base, and what's
11 going to be determined (unintelligible). And by
12 and large, the Commission's previous decisions
13 tell you what kind of a rate you're going to get
14 if you want to litigate the other parts of that
15 rate case, so you don't litigate.

16 In this situation, I have the belief, based
17 on conversations with my counterparts and with Ken
18 Dunn, that that's how this is going to develop,
19 that we'll either have an area-wide proceeding, or
20 a group entry proceeding or -- we won't be faced
21 with a situation where every ten acres comes up
22 naked for a hearing on economic benefit.

23 So the administrative part here is not going
24 to be a problem, at least once we get used to it.
25 On the issue of whether water is liberally or

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1 to implement here. And I don't think it's going
2 to be hard to get a new use of water approved in
3 the system if the economics are there. If they're
4 not there, then it shouldn't be approved.

5 THE CHAIRMAN: Mr. Kole, would you like to
6 comment?

7 MR. KOLE: Mr. Chairman, Senator Crapo, just
8 to add one comment, as we went through the
9 negotiations, we tried to protect the small farmer
10 who wants to just (unintelligible). That's why we
11 specifically mentioned the maintenance of the
12 family farming tradition. The idea was that
13 somebody had started the development. They had
14 120 acres under cultivation, but wanted to add 20
15 or 30 acres more by leveling and improving their
16 operation. That type of operation would have a
17 little bit of advantage from the statutory
18 process. And that's why we specifically
19 (unintelligible).

20 THE CHAIRMAN: Tom, do you have anything you
21 want to --

22 SENATOR RINGERT: Mr. Chairman?

23 THE CHAIRMAN: Senator Ringert.

24 SENATOR RINGERT: Mr. Chairman, Ken, on the
25 42-203(b) in view of permits on page 4, I'm

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1 niggardly available, from our standpoint, the fox
2 is probably in the hen house. The decision here
3 is going to be made by the Department that, for a
4 hundred years, has had no constraints except
5 availability of water on approving new
6 development. So this is -- it's a whole new ball
7 game for them.

8 It's our belief that those decisions will be
9 made on a relatively liberal basis if you can show
10 the economics are there. In other words, that's
11 not going to be a close-run issue. For example,
12 one of the offers I made last year in the
13 subordination fight was that we'll put these kinds
14 of decisions -- we'll be real easy on the
15 subordination bill, but we'll put the decision on
16 the Fish and Game Committee.

17 To raise the issue that the attitude with
18 the agency that you're before determines a lot on
19 how things are done. So in my view, if the
20 economics are there for a particular use, it's
21 probably going to be approved. I mean, that's not
22 saying anything against Mr. Dunn and what he's
23 been doing. (Unintelligible) mention the budget
24 and the constitution (unintelligible).

25 But we've got a whole change in state policy

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1 looking at that, and I'm also looking at the
2 fiscal notes. I'm sure you have some idea of how
3 many permits have been outstanding, and what kind
4 of review process will be necessary.

5 Do you have anything in mind for review? If
6 so, how long will it take? How much will it cost
7 the State?

8 MR. DUNN: Mr. Chairman, Senator Ringert, it
9 will cost the State more than it has cost them in
10 the past. But I do not look at the review as
11 being a detailed review of every permit before
12 you. We're going to ask them areas and fines that
13 are going to be applicable to a lot of permits
14 that come up. And so the first few are going to
15 be expensive by comparing it (unintelligible).
16 And after that, as Mr. Nelson said, if you've got
17 the answers on most of the things, you start
18 getting into one or two items that we'll have to
19 look at.

20 Secondly, if I might, my proposal is to
21 raise the fees for water rights so that we cover
22 the major portion of that cost (unintelligible).

23 SENATOR RINGERT: Okay. Couple of things,
24 then. First, will your present staff be adequate
25 to handle the review? And secondly, if we already

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1 have enough permits issued to use up all the water
2 in the river, when can we expect to have money
3 flowing in from new applications that will help
4 offset some of the general fund costs for permit
5 making?

6 THE CHAIRMAN: Ken?

7 MR. DUNN: Mr. Chairman and Senator Ringert,
8 we do have sufficient applications to use up the
9 600 second-feet. Timewise, I would anticipate by
10 the first of the fiscal year, we would have new
11 regulations adopted and emergency rules so that we
12 could at least get started. And we could try to
13 proceed as rapidly as we can. But we're not going
14 to clear all those up in the first six months. We
15 have on file, I would guess, probably 3,000 water
16 rights applications. It's going to take a long
17 time. We've been collecting them for two years
18 without (unintelligible).

19 SENATOR RINGERT: Applications.

20 MR. DUNN: Applications and
21 (unintelligible).

22 SENATOR RINGERT: Now, staff -- is present
23 staff adequate or --

24 MR. DUNN: Mr. Chairman and Senator Ringert,
25 I would not plan on adding new staff, because it's

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1 going to be more heavy work loads and it's going
2 to go back to the normal routine. We would just
3 stretch it out a little longer and we can get it
4 accomplished. As far as fees, we presently have
5 fees to get us through FY 1986 at the rate we've
6 been standing, and with income that comes in. And
7 we still are receiving applications, I'm
8 anticipating.

9 THE CHAIRMAN: Senator Sverdsten.

10 SENATOR SVERDSTEN: Mr. Chairman, concerning
11 the testimony given by -- concerning the
12 hydroelectric units on the Little Salmon, how
13 would you proceed with those in relation to the
14 bills? Are they you -- do you see holding them up
15 to any extent? Will they be handled soon? Or
16 what will you do in that area?

17 MR. DUNN: Mr. Chairman, Senator Sverdsten,
18 the nonconsumptive uses such as that, fish farms
19 and some others, we would process them and have
20 been processing them in a normal time frame. This
21 would not hold them up because they don't create
22 problems in consumptive use. So I think it will
23 go on (unintelligible) just as we've done in the
24 past, but (unintelligible).
25 (Recording cuts off.)

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1 UNIDENTIFIED SPEAKER: -- relate to you, it
2 mostly depends on where the development occurred.
3 If it all occurred in the lower part of the Snake,
4 just above Swan Falls and you've taken all the
5 water directly out of the river, you know, you can
6 get to 30, 40,000 acres and use up the 600
7 second-feet, you don't get the bang for the dollar
8 for the CFS. As you go higher in the system,
9 you're able to develop more because of the current
10 flow.

11 THE CHAIRMAN: Any other questions?
12 Senator Crapo.

13 SENATOR CRAPO: Mr. Chairman, I'm not sure
14 who can answer this question. Maybe I'll just put
15 it out to the negotiators and any other experts in
16 the room. But at the hearing, there was a concern
17 raised about the question as to whether Idaho's
18 going to be able to protect its water for use in
19 Idaho vis-a-vis other states. And I'm not sure
20 whether that's a legitimate concern or not. And
21 if it's possible for water -- for other states to
22 get ahold of Idaho water, I was wondering if
23 somebody could tell us how another state or an
24 entity outside this state would go about getting
25 control of the water in Idaho.

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1 Does anybody in here know how that would
2 happen or could happen, if it is a real threat?

3 THE CHAIRMAN: That's a very legitimate
4 question. Maybe we ought to ask the negotiators
5 how they dealt with that particular subject.

6 Who wants to lead off? Mr. Nelson?

7 MR. NELSON: Mr. Chairman, Senator Crapo, we
8 didn't specifically deal with it. There's a US
9 Supreme Court case, four maybe -- I think it's a
10 common name -- dealing with exported ground water.
11 The Court, to me, made it pretty clear that its
12 ability to discriminate in favor of its citizens
13 as opposed to citizens of other states is pretty
14 limited.

15 I think if you want to postulate a diversion
16 so we can talk about it, let's take this specter
17 that's raised about major diversions out of the
18 Snake above the Hell's Canyon project, for
19 example. There, I think if we had a statute or
20 even a constitutional provision that says you flat
21 can't convert water out of the Snake for use in
22 another state, that you're wasting your time to
23 even pass this particular legislation.

24 But basically, as I read -- and cases like
25 it, that the state's system of allocation and

7 (Pages 25 to 28)

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1 appropriation will be honored in that situation,
2 as opposed to, say, an interstate equitable
3 apportionment case in the Supreme Court. There I
4 think the most effective from that happening is
5 probably the minimum flow and other existing
6 rights on the Snake River which would be impacted
7 by that kind of a major diversion from the Snake,
8 say, to Arizona or California.

9 So to answer your question directly, we
10 didn't address it. I don't think it can be
11 addressed that directly. I would point out that
12 both the FPC and the state license subordination
13 for all of the licenses of Hell's Canyon, except
14 maybe the Brownlee Reservoir license -- I know
15 they're trying to subordinate for that one -- all
16 say that they're only subordinated for uses within
17 the Snake River watershed. So anyone proposing a
18 massive diversion for use outside the watershed
19 would run head-on into a 35,000 second foot water
20 right at Brownlee. And I think when you have
21 35,000 second feet Snake (unintelligible). So I
22 don't think it's a real concern given both the
23 policies we have in place in terms of minimum
24 flows and the existing water rights on the Snake,
25 that I think we're probably as well protected as

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1 we can be.
2 SENATOR CRAPO: Can I ask a few follow-up
3 questions?
4 THE CHAIRMAN: Certainly may.
5 SENATOR CRAPO: My understanding, then, what
6 you're saying is basically the state is protected
7 by Idaho's Power Company's water rights because
8 they are not subordinated for uses outside the
9 state -- or outside the basin.
10 MR. NELSON: That's correct.
11 SENATOR CRAPO: I have heard figures saying
12 that over a period of years, even though there's
13 been a lot of water appropriated from the river,
14 the river hasn't dropped an equal amount. And I
15 guess -- I don't know whether those figures are
16 accurate or not. That's probably a good reason to
17 have a hydrologic study done. But if it turns out
18 that a hydrologic study shows that some of the
19 diversions that we're using now for, say,
20 agriculture or other uses that appear to somehow
21 recharge the aquifer a little bit (unintelligible)
22 anyway, if that hydrologic study shows more water
23 available than we now contemplate, would that have
24 any impact on the ability of the Idaho Power
25 Company's water rights to protect us from claims

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1 that there was extra water in Idaho available?
2 Am I making my question clear?
3 MR. NELSON: Mr. Chairman, Senator Crapo, I
4 think I understand your question, Senator. The
5 protection -- my example of the Hell's Canyon
6 water rights and the protection there is
7 protection in the sense that the water would have
8 to remain in the river in Idaho at least to those
9 points. If it were to determined, for example,
10 that the aquifer could safely yield more than our
11 supposed 600 CFS, I don't see how it's going to
12 have any impact on the Hell's Canyon issue. It
13 may have an impact on how much you can develop.
14 And the agreement isn't written around 600 CFS
15 being available for development. It's written
16 around the minimum flow. So if there's more than
17 600 CFS available for development, it's available.
18 And the contrary, likewise, is true.
19 (Unintelligible) our best estimate of existing
20 conditions.

21 SENATOR CRAPO: So if I understand
22 correctly, then, what we passed here today doesn't
23 say that there's 600 CFS available. It says there
24 may be 600, there may be 500, and there may be a
25 thousand. Whatever it is, the minimum flow cannot

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1 drop below the established point at different
2 times of the year.
3 MR. NELSON: Mr. Chairman, Senator, that's
4 exactly right. All this is is a planning standard
5 against which the state measures new uses. And
6 the state's planning and it's approval of new uses
7 should be aimed at protecting that minimum flow.
8 And if more information's available they can take
9 more without damaging the flow, then so be it.
10 SENATOR CRAPO: Thank you.
11 THE CHAIRMAN: Mr. Kole, would you care to
12 comment on this general proposition.
13 UNIDENTIFIED SPEAKER: I think Mr. Kole
14 stepped out.
15 (Unintelligible).
16 THE CHAIRMAN: Mr. Costello or Mr. Dunn,
17 would you care to comment on that, please?
18 MR. DUNN: Mr. Chairman, I'd like to talk
19 about the other out of state diversion. And
20 that's water staying in the stream and the call on
21 the downstream states. The protection you have
22 there is, one, the power company rights remain in
23 place until the water is used by other users in
24 the state. So there is an existing right. And
25 secondly, if there is a call on that, again, the

1 best protection you have is a clear identification
2 of what the water rights are.

3 There have been some equitable apportionment
4 cases in the United States. And they vary back
5 and forth as to what the Court says. And in some
6 cases, they say each state or each entity has a
7 right to a good portion of that water, 50/50 or
8 60/40 or however. In the recent case in Colorado,
9 Colorado wanted to prohibit some -- or not
10 prohibit. They wanted to require some more
11 efficient diversions downstream to make water
12 available in Colorado. And the Court said no,
13 they don't have to do that. So depends what
14 you're doing with water, and if you clearly
15 identify it (unintelligible).

16 THE CHAIRMAN: Senator Tominaga had a
17 question he's dying to ask here.

18 SENATOR TOMINAGA: It was back when Mr. Kole
19 was here. For example, there's an irrigation
20 project in my area that covers about 75,000 acres.
21 And both negotiators talk about protection for the
22 small farmer. Well, this irrigation company is
23 thinking of picking up 5, 10 acres here, but the
24 total would probably add up to 4 or 5,000 acres in
25 a concentrated -- fairly concentrated area. Yet,

1 if each individual farmer was to go in and apply
2 with -- I guess what I'm saying is you're looking
3 at maybe 5,000 acres of land maybe being picked up
4 around this irrigated company. They're only
5 picking up 5, 10, 15-acre plots.

6 Is that what significantly would reduce the
7 most flows for that particular? And would that
8 development not take place? Because, when you add
9 the cumulative up, it would be significant. If
10 you take it on an individual basis, it would not.
11 And so I'm guessing -- I need to ask whether Tom
12 or Ken or Pat, you know, how --

13 THE CHAIRMAN: Would you care to comment on
14 that?

15 SENATOR TOMINAGA: Since we're trying to
16 protect the small farmer, how is that going to,
17 you know, be --

18 THE CHAIRMAN: (Unintelligible) going to be
19 cumulatively protecting (unintelligible)?

20 Anyone care to shoot at that one?

21 MR. COSTELLO: I would -- Mr. Chairman,
22 Senator Tominaga, it would clearly, to me, meet
23 the significant reduction test. And, therefore,
24 you would have to pass the public interest
25 criteria. However, I think it would probably fair

1 well under the public interest criteria in that,
2 because the water would be used for a number of
3 small farm operations within the irrigation
4 company, would probably fit the small farming
5 preference.

6 SENATOR TOMINAGA: One follow-up question.

7 Then could that happen in a cumulative basis
8 all across the state in any area, where, if you
9 have enough cumulative, sooner or later the
10 water's going to run out if the cumulative adds up
11 to the 20,000 or 80,000. So how are we going to
12 handle that?

13 THE CHAIRMAN: Mr. Costello?

14 MR. COSTELLO: Mr. Chairman, Senator
15 Tominaga, yes, eventually it will run out. But by
16 giving preference to locations primarily upstream
17 (unintelligible) and groundwater rather than
18 direct pumping, we hope to make it last as long as
19 we possibly can, that there is an influence. And
20 I shouldn't say from that point there would be no
21 development. It will be under market system
22 rather than under appropriation system.

23 THE CHAIRMAN: Anyone else comment on that?

24 Okay. Senator Crapo -- Senator Peavey?

25 SENATOR PEAVEY: No, I have no comment.

1 THE CHAIRMAN: Senator Crapo has raised the
2 question with me of attempting to develop a --
3 some legislative -- a formal legislative intent to
4 be inserted in the record that -- of course, that
5 can be done at any time. If he succeeds in
6 achieving that, it could be put in the record at
7 any time.

8 You want to discuss that with us any,
9 Senator Crapo?

10 SENATOR CRAPO: Yes. Mr. Chairman, it's my
11 concern that, when I first read the legislation, I
12 didn't really understand for sure what the intent
13 was. And we've had three very good hearings now.
14 And I think that I pretty well understand the
15 intent. And with the exception of a few
16 questions, I'd like to know how the committee
17 members are coming down on. I feel pretty good
18 about the whole package.

19 But I think in the future, if this ever gets
20 to court, or if the Department of Water Resources
21 need guidance on how to interpret different
22 aspects of this, that it would be very beneficial
23 that we, as a committee, develop a statement of
24 intent or legislative purpose that accompanied
25 this that said what we really intend to happen.

1 Maybe even use some examples like they do in the
2 Federal Register -- or in the Federal Regulations
3 (unintelligible).

4 And you know, first of all, I'm not sure
5 that we can even accomplish this because there may
6 be too much of a divergence among the committees
7 to agree. I would hope not, but it would seem to
8 me that if there's a divergence on the Committee
9 as to what's intended by this bill, we ought to
10 resolve that now before the bill goes to the floor
11 so that we know what we all think this bill means
12 and either agree on it, or at least know that the
13 majority agree on what we are contemplating.

14 THE CHAIRMAN: What's the Committee's
15 pleasure? I'm not at all opposed to appointing a
16 Committee of two to try to see if they can work
17 out this sort of thing. I think it would probably
18 be wrong to put the majors on hold for whatever
19 time it might take to answer those kind of
20 agreements. There's certainly no reason why we
21 can't have discussions here in terms of
22 any questions anyone has about -- in general terms
23 of what (unintelligible).

24 Senator Beitelspacher.

25 SENATOR BEITELSPACHER: Well, Mr. Chairman,

1 I too share Mike's concern. I see no reason why a
2 couple of the parties couldn't sit down and do
3 that and have a letter of intent and order to go
4 along with it to clarify.

5 UNIDENTIFIED SPEAKER: Mr. Chairman,
6 (unintelligible), I agree. The only thing that
7 bothered me to some extent is certainly there are
8 many, many interested parties hanging here, you
9 know, outside of the legislative body. So you're
10 going to have to reach an agreement with the
11 negotiators too. And so how you will achieve
12 that -- you certainly can't get off on a wrong
13 direction (unintelligible) select
14 (unintelligible).

15 THE CHAIRMAN: Well, I would think this
16 would be more a matter of legislative intent
17 rather than negotiators intent. But got to be
18 something that doesn't badger up the whole
19 agreement.

20 But would it be your understanding,
21 Senator Crapo, if we do this that
22 (unintelligible)?

23 SENATOR CRAPO: Well, I'd like to make two
24 comments. First of all, it's not my intent, nor
25 do I think it's anybody else's intent to sidestep

1 any of the concern of the negotiators. I think
2 that they probably ought to be involved with
3 whoever works on this to make sure that they all
4 agree with what's being said.

5 Secondly, I do object to putting the bill on
6 the floor while we do this, because if we put the
7 bill out on the floor and then find out that there
8 are some significant areas of disagreement, then
9 we got a real problem. Then we got a floor debate
10 rather than a resolution of those disagreements
11 here in the Committee.

12 And so I see no reason why we couldn't hold
13 the bill in the Committee until -- you know, for a
14 week or whatever time it took to put this
15 together, and then put it out. But I realize
16 there seems to be a strong desire to get the bill
17 out of the Committee.

18 THE CHAIRMAN: I think one of the problems
19 is maybe -- I think it's probably a realistic
20 concern, people who tried to accomplish these
21 sorts of things, usually it's a matter of more
22 than a week, maybe more than two weeks, maybe a
23 month. That would be --

24 But anyway, what's the feeling of some of
25 the other committee members -- Committee?

1 Senator Ringert?

2 SENATOR RINGERT: Mr. Chairman, I'm probably
3 concerned on both sides of that particular point.
4 And I would think that a week ought to be plenty
5 of time to develop a worthwhile statement of
6 intent. So I move if we hold it still in the
7 Committee for one week to develop -- for the
8 specific purposes of developing it if it can be
9 done, a statement of intent, but --

10 THE CHAIRMAN: Is there a second?

11 SENATOR CRAPO: I second it.

12 THE CHAIRMAN: Been moved and seconded.
13 Discussion?

14 UNIDENTIFIED SPEAKER: Mr. Chairman, I'm not
15 too sure -- I understand the concern for not being
16 sure, but what kind of an instrument are you going
17 to use with regard to intent? And where are you
18 going to make it a matter of record? And how is
19 it going to correlate to the bill that, of course,
20 we're going to find possibly in Idaho code. I'm
21 not sure I understand -- I don't recall having
22 done this in the past. And I'm not sure how it
23 would work this time.

24 THE CHAIRMAN: Yeah. There have been
25 letters of intent placed in the journal

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<p>1 (unintelligible).</p> <p>2 UNIDENTIFIED SPEAKER: Okay.</p> <p>3 (Unintelligible).</p> <p>4 THE CHAIRMAN: One of you people one want to</p> <p>5 explain what's legally involved here?</p> <p>6 Senator Ringert and Senator --</p> <p>7 UNIDENTIFIED SPEAKER: Well, Mr. Chairman,</p> <p>8 the concern that -- I think you brought it up two</p> <p>9 or three meetings ago is that, in most cases with</p> <p>10 legislation at the state level, we do not</p> <p>11 establish a good statement of legislative intent.</p> <p>12 And when there are ambiguities in the bill and the</p> <p>13 statute, then we have a contest over it, and you</p> <p>14 go to court. And one effort is to try to --</p> <p>15 Supreme Court trying to figure out what the</p> <p>16 legislature intended when it used this word or</p> <p>17 this phrase or, you know, entire paragraph,</p> <p>18 whatever. And the statement of intent is very</p> <p>19 helpful in that respect.</p> <p>20 Now, in the Federal Congress, they print</p> <p>21 formal committee reports that become part of the</p> <p>22 permanent record and are -- those reports go to</p> <p>23 the floor with the bills so at least somebody</p> <p>24 looking at the whole words of the law 40 years</p> <p>25 later or even sooner than have some expression of</p>	<p>1 SENATOR BUDGE: Second the motion.</p> <p>2 (Unintelligible.)</p> <p>3 THE CHAIRMAN: Been moved --</p> <p>4 UNIDENTIFIED SPEAKER: Well, are we dealing</p> <p>5 with 1006 or 1008?</p> <p>6 THE CHAIRMAN: As far as I'm concerned, we</p> <p>7 can put them both in the same motion. I guess</p> <p>8 we're dealing with --</p> <p>9 SENATOR PEAVEY: I would amend my motion or</p> <p>10 remake it to include both bills that -- people</p> <p>11 might want to divide the --</p> <p>12 THE CHAIRMAN: It's been moved that we send</p> <p>13 SB 1006 and 1008 to the floor with a do pass.</p> <p>14 Has it been seconded?</p> <p>15 SENATOR BUDGE: I did.</p> <p>16 THE CHAIRMAN: By Senator Budge.</p> <p>17 Now, is there discussion on the subject two</p> <p>18 motions.</p> <p>19 Senator Ringert. Excuse me.</p> <p>20 Senator Ringert.</p> <p>21 SENATOR RINGERT: Mr. Chairman, members of</p> <p>22 the committee, just in response to Senator</p> <p>23 Peavey's comments, a couple. The regulations that</p> <p>24 Mr. Dunn's department issued should not be in</p> <p>25 conflict with the statute. The regulations are</p>
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<p>1 what the people were looking at when they voted on</p> <p>2 the floor. That's what we're talking about.</p> <p>3 THE CHAIRMAN: Senator Peavey.</p> <p>4 SENATOR PEAVEY: Well, Mr. Chairman, you</p> <p>5 know, there's pluses and minuses on both sides of</p> <p>6 this argument. But I can sure see some of the</p> <p>7 pitfalls. We've got the House Committee to deal</p> <p>8 with. You've got the possibility of fairly pure</p> <p>9 language here that needs to be fleshed out with</p> <p>10 rules and regulations. And then that's another</p> <p>11 set of documents that could be in conflict.</p> <p>12 You've got the history of this legislation</p> <p>13 that goes back to about 1977, at least that far,</p> <p>14 and lately a very intensive effort by a group of</p> <p>15 people who were -- started out at loggerheads, and</p> <p>16 negotiated and negotiated and negotiated and</p> <p>17 reached a settlement. And I would really hate to</p> <p>18 jeopardize that whole process that -- something</p> <p>19 that we could develop here, something that the</p> <p>20 House could develop over there, and all this could</p> <p>21 just be starting to write another bill. I think</p> <p>22 if there's -- I would rather see us get the bills</p> <p>23 on the way, and get this long process closed down.</p> <p>24 With that in mind, I'd move that we send</p> <p>25 Senate Bill 1006 to the floor with a do pass.</p>	<p>1 supposed to flesh it out and explain it. So</p> <p>2 there's -- not that there isn't a remote chance</p> <p>3 that there could be a conflict, but there</p> <p>4 shouldn't be.</p> <p>5 And the second point is if the House does</p> <p>6 not agree with the Senate's statement of intent,</p> <p>7 to me, that is just a pretty good indication that</p> <p>8 this bill is improperly written anyway. If people</p> <p>9 can't agree on what's meant by it, and the very</p> <p>10 body that enacts this law, what are we going to</p> <p>11 have the Department of Water Resources</p> <p>12 (unintelligible) try to figure out.</p> <p>13 UNIDENTIFIED SPEAKER: Well, Mr. Chairman,</p> <p>14 just in response to that, Senator Ringert, the</p> <p>15 regulations, hopefully, at least they won't be in</p> <p>16 conflict with the bill, but the letter of intent</p> <p>17 certainly could be. And it could also be in</p> <p>18 confusing issue if it's in conflict with what the</p> <p>19 Department comes up with.</p> <p>20 THE CHAIRMAN: Senator Budge?</p> <p>21 SENATOR BUDGE: Mr. Chairman, members of the</p> <p>22 committee, as I hear the discussion here, what is</p> <p>23 being attempted is something that I've never heard</p> <p>24 of before. I think the discussion itself is --</p> <p>25 should be a clear example of what if the Committee</p>

1 doesn't agree on what you're discussing on letter
2 of intent. What if the Committee doesn't agree?
3 I think this is a good example right here that
4 concerns you, Pat.

5 I think the vote of the committee itself is
6 the intent, if you talk about a piece of
7 legislation. Every piece of legislature that
8 passes the legislature is a contest of one form or
9 another. If an individual wants to put a letter
10 of intent on the floor, I think that's in the
11 rules and available. The Committee, I believe, in
12 the testimony that's been had -- and one thing I
13 think most of us are forgetting, maybe, that it
14 has to pass the muster of the negotiators, the
15 entire package.

16 And I think that is all important if we're
17 looking for the welfare of the people of the State
18 of Idaho. They spent a lot of time on it and a
19 lot of effort. And this discussion I hear is a
20 little bit like the, I think, too many attorneys,
21 you know. Let's -- getting involved, you know.
22 The worst session I ever had is when we had nine
23 attorneys on the Senate floor.

24 And I believe that, as far as I'm concerned
25 here, there's nothing to be gained by having the

1 committee come up with a letter of intent. I
2 think the secretary's going to take accurate rules
3 of all the hearings and testimony and copies of
4 it. And that should be enough. And I'm sure
5 they're going to support the substantive motion.

6 THE CHAIRMAN: Senator Beitelspacher.

7 SENATOR BEITELSPACHER: Mr. Chairman, I
8 certainly am very appreciative of our attorneys
9 here. I would never speak disparagingly of their
10 efforts of the past.

11 SENATOR BUDGE: As trying as they are at
12 times.

13 SENATOR BEITELSPACHER: Well, I -- with all
14 due respect, Senator, Mr. Chairman Budge, I have
15 to say that Senator Ringert, many times, has tried
16 to help me with things, and I've been appreciative
17 of it, and many times has caught things.

18 But Mr. Chairman, I've got to echo what John
19 Peavey has said. We've dealt with this for a long
20 time, and I think it's time to move this on. I
21 think that the rules -- the Senate rules allow for
22 a majority and minority report to be filed on
23 something. They allowed for the placement of that
24 in the journal, and to clarify, at least, the
25 opinion of the majority of the members of the

1 Senate on the position. And I see nothing wrong
2 with that. I've spoken with Senator Crapo about
3 it. And I think it might be a good idea.

4 But as you've said, we've had this here for
5 a long time. And it's Senator Spear (phonetic) is
6 worried about the trees and rocks in his district.
7 It's time to move it on out to -- here yesterday,
8 I recall, we had a bill where there was some
9 difference of opinion about what it meant on the
10 floor of the Senate. And the majority prevailed
11 at that time. And maybe the majority will prevail
12 here.

13 THE CHAIRMAN: Senator Crapo.

14 SENATOR CRAPO: Mr. Chairman, for a
15 question.

16 If this bill goes -- gets reported out on
17 Monday, when would it be likely to be voted on?

18 THE CHAIRMAN: Well, depending upon Congress
19 and all those other kinds of things, I presume it
20 would be Wednesday.

21 UNIDENTIFIED SPEAKER: Wednesday.

22 SENATOR CRAPO: Does that mean, then, if --
23 I guess there's another question, then --

24 THE CHAIRMAN: Yes.

25 SENATOR CRAPO: Can a majority or minority

1 report be made on a bill that's already passed the
2 Senate?

3 THE CHAIRMAN: My understanding is that it
4 can at any time. We can put something in the
5 journal at any time.

6 SENATOR CRAPO: Mm-hmm.

7 THE CHAIRMAN: And on top of that, we can
8 file additions to the committee report with our
9 minutes. One of the suggestions, which sounded
10 pretty good to me, is that if we get our minutes
11 and our records all put together, we might get to
12 file all over at the law library.

13 SENATOR CRAPO: Just one follow-up comment.
14 I guess, just in argument against the substitute
15 motion, I can understand the reasons that some
16 people would like to see this get out quickly. It
17 has been around for a long time. We've been
18 dealing with it, and so forth. But I guess I just
19 feel that taking another week to look at things
20 carefully is not inappropriate. And I don't think
21 on an issue as important as this that we ought to
22 be rushing it through without due consideration.

23 And if there's going to be a disagreement,
24 which I hope there isn't -- but if there is going
25 to be one, I would think it would be much more

1 healthy for this legislature for that to be
2 discovered when the bill is still in committee and
3 can be worked out.

4 THE CHAIRMAN: Is there any further
5 discussion?

6 UNIDENTIFIED SPEAKER: Mr. Chairman,
7 Senator Little was called out of here by
8 leadership. And if we do that, we need to notify
9 him that a motion on either of these bills came up
10 for a vote. Could we go at ease for a minute
11 while he's --

12 THE CHAIRMAN: Yes. Committee would be at
13 ease. And we'll go and get -- who would be a good
14 volunteer to -- Marty, would you mind doing that?
15 We'd appreciate that.

16 UNIDENTIFIED SPEAKER: Thank you, Senator
17 Calavara (phonetic).

18 THE CHAIRMAN: While we're at ease, I
19 certainly -- if the substitute motion does pass, I
20 think it's understood by everyone, this won't
21 preclude any efforts to develop committee reports
22 legislative intent and all of the other things.

23 UNIDENTIFIED SPEAKER: Well, Mr. Chairman, I
24 think your idea of filing the minutes in the law
25 library is probably as effective as anything that

1 I can think of as far as a matter of record.

2 UNIDENTIFIED SPEAKER: Mr. Chairman, I think
3 your comment initially when we got involved with
4 this that accurate minutes should be kept of this
5 committee, and I'm sure you have with the letter
6 of intent itself.

7 THE CHAIRMAN: (Unintelligible) done a good
8 job.
9 (Unintelligible.)

10 THE CHAIRMAN: We may have to come back to
11 some of the off and on to try to be sure that we
12 have your comments that -- you know how it is when
13 you get recorded on things. Sometimes when it's
14 transcribed back (unintelligible) reflect what
15 you're saying.

16 UNIDENTIFIED SPEAKER: That's only the
17 newspaper.

18 (Unintelligible conversation.)

19 UNIDENTIFIED SPEAKER: Reed, if there was
20 anybody that you could have speared with that, he
21 was sitting right over there. 'Cause he had a
22 number of years experience up here haranguing us
23 before he ever became official.

24 UNIDENTIFIED SPEAKER: I know that. I know
25 that.

1 (Unintelligible conversation.)

2 THE CHAIRMAN: Senator Little has returned.
3 As far as I know, he still has most of his skin.

4 SENATOR LITTLE: Thank you. I appreciate
5 being called out (unintelligible).

6 THE CHAIRMAN: Okay. We have before us two
7 motions. The main motion to hold the bill in
8 Committee for one week to develop a statement of
9 legislative intent to accompany the legislature to
10 the floor. We have a substitute motion to put the
11 bill out with a do pass with the understanding
12 that it would not preclude development of those
13 sorts of comments which we can assert -- insert in
14 the record or (unintelligible) according to our
15 (unintelligible).

16 Any further discussion?

17 Senator Chapman -- or --

18 UNIDENTIFIED SPEAKER: Carlson.

19 THE CHAIRMAN: Carlson.

20 (Unintelligible.)

21 SENATOR CARLSON: Mr. Chairman --

22 UNIDENTIFIED SPEAKER: The one with the
23 short hair.

24 UNIDENTIFIED SPEAKER: Not short of hair.

25 SENATOR CARLSON: Mr. Chairman --

1 THE CHAIRMAN: Yes, sir.

2 SENATOR CARLSON: You mentioned put the bill
3 out. Two bills?

4 THE CHAIRMAN: Yes, sir.

5 Okay. I guess we better have a roll call
6 vote.

7 Secretary would call the roll please on the
8 substitute motion.

9 THE SECRETARY: Beitelspacher?

10 SENATOR BEITELSPACHER: On the substitute
11 motion, I vote aye.

12 THE SECRETARY: Budge?

13 SENATOR BUDGE: Aye.

14 THE SECRETARY: Carlson?

15 SENATOR CARLSON: No.

16 THE SECRETARY: Chapman?

17 SENATOR CHAPMAN: No.

18 THE SECRETARY: Crapo?

19 SENATOR CRAPO: No.

20 THE SECRETARY: Horsch?

21 SENATOR HORSCH: No.

22 THE SECRETARY: Kiebert?

23 SENATOR KIEBERT: Aye.

24 THE SECRETARY: Little?

25 SENATOR LITTLE: Aye.

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1 THE SECRETARY: Noh?
2 SENATOR NOH: Aye.
3 THE SECRETARY: Peavey?
4 SENATOR PEAVEY: Aye.
5 THE SECRETARY: Ringert?
6 SENATOR RINGERT: No.
7 THE SECRETARY: Sverdsten?
8 SENATOR SVERDSTEN: Aye.
9 THE SECRETARY: Little?
10 SENATOR LITTLE: No.
11 THE SECRETARY: Six noes. Six yeses.
12 THE CHAIRMAN: Okay. Substitute motion has
13 -- Senator Crapo has a big smile.
14 (Unintelligible.)
15 THE CHAIRMAN: So we will now vote on the
16 main motion to hold the bill for one week.
17 THE SECRETARY: Beitelspacher?
18 SENATOR BEITELSPACHER: No.
19 THE SECRETARY: Budge?
20 SENATOR BUDGE: No.
21 THE SECRETARY: Carlson?
22 SENATOR CARLSON: Aye.
23 THE SECRETARY: Chapman?
24 SENATOR CHAPMAN: Aye.
25 THE SECRETARY: Crapo?

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1 SENATOR CRAPO: Aye.
2 THE SECRETARY: Horsch?
3 SENATOR HORSCH: Aye.
4 THE SECRETARY: Kiebert?
5 SENATOR KIEBERT: No.
6 THE SECRETARY: Little?
7 SENATOR LITTLE: Aye.
8 THE SECRETARY: Noh?
9 SENATOR NOH: Aye.
10 THE SECRETARY: Peavey?
11 SENATOR PEAVEY: No.
12 THE SECRETARY: Ringert?
13 SENATOR RINGERT: Aye.
14 THE SECRETARY: Sverdsten?
15 SENATOR SVERDSTEN: Aye.
16 THE SECRETARY: Six -- eight for.
17 THE CHAIRMAN: Okay. Senator Beitelspacher.
18 SENATOR BEITELSPACHER: Mr. Chairman, the
19 motion was on 1008?
20 (Unintelligible conversation.)
21 UNIDENTIFIED SPEAKER: What if we disagree
22 on that?
23 UNIDENTIFIED SPEAKER: It will be the same
24 old committee.
25 (Recording ends.)

14 (Pages 53 to 54)

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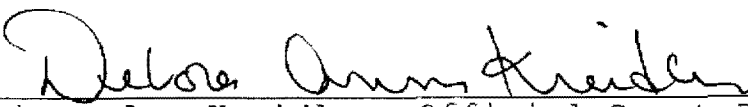
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1 R E P O R T E R ' S C E R T I F I C A T E

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3
4 I, Debora Ann Kreidler, Official Court
5 Reporter, County of Ada, State of Idaho, hereby
6 certify:

7 That I am the reporter who transcribed
8 the above-entitled action in machine shorthand and
9 thereafter the same was reduced into typewriting
10 under my direct supervision; and that the
11 foregoing transcript contains a full, true, and
12 accurate record of the proceedings had in the
13 above and foregoing cause.

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand February 23, 2007.

16
17
18 
19 Debora Ann Kreidler, Official Court Reporter
20 CSR No. 754
21
22
23
24
25

