

STATE WATER PLAN HEARING)
_____)

PUBLIC HEARING
BEFORE THE IDAHO WATER RESOURCE BOARD
POCATELLO, IDAHO
JANUARY 29, 1985
7:00 P.M.

TRANSCRIPTION BY:
Canyon Transcription
P.O. Box 387
Caldwell, Idaho 83606

Proceedings recorded by electronic sound recording.
Transcript produced by transcription service.



A P P E A R A N C E S:

Gene Gray
Dave Rydulch
Jim Shawver
Wayne Haas
Don Kramer
Frank Sherman
Richard L. Hahn
Lynn Ruby
Charles Pace
Dan Daley
Mack Gamblin
James Osborn
Tom Stroschein
Gordon Toeus
Harold Funk
Ritchey Toeus
Ben Caviness
Gary Gohring



(Tape begins.)

UNIDENTIFIED SPEAKER: This is a recording of the State Water Plan hearings in Pocatello on January 29 at 7:00 p.m.

MR. GRAY: -- Resource Board's public hearings on the revisions of Policy 32 of the State Water Plan. With me tonight is Dave Rydalch. Dave's a farmer in the St. Anthony area and he's also a member of (Inaudible). And Wayne Haas with the Department of Water Resources; Don Kramer who's handling the sign-in sheet back there is a farmer from Castleford, board member; J.D. Williams, attorney at law from Preston. We have Ken Dunn, director of the Department of Water Resource with us tonight. Frank Sherman from the Department of Water Resources will be talking to you and we have Tom Stroschein is Congressman Stallings' agricultural fieldman.

So with that, we'll kind of get started. If you kind of grab your "Currents" and take a look at the front page, the front page will give you a general rundown of what has transpired to this point as far as the board is concerned. The board is charged with making water policy for the State of Idaho. The State Water Plan was developed and put together for the public hearing process by the Idaho Water Resource Board. What we're going to be talking about tonight is revisions to Policy 32 and we accepted

3

some revision language in December of 1984 and that's what we have with us tonight and that's what we would like you to testify on.

If you take a look at page 2 and page 3 inside your paper, you'll find the language and proposed revisions for Policy No. 32. Page 4 through 7 is the legislative package that our legislature is working on at the State capital present.

Now, in order of representation, if you'll look at the right-hand side of page 7, you'll see actions that must take place for this thing to be in place and that must all be done by May 15, 1985. No. 1, the State State Water Plan is to be amended and that's what we're here in front of you for this evening is to get your input on that portion of it.

No. 2, the legislative package must be passed. No. 3, the appropriate action by the PUC or legislature as called for in agreement is taken. 4, an appropriate order by the Federal Energy Regulatory Commission acceptable to the parties to the agreement must be issued. The Idaho PUC must dismiss the 1977 petition by the Idaho rate payers.

No. 6, if required, the Oregon PUC must also approve the package. No. 7, enactment by the legislature of subordination language as set forth in Exhibit 7A and 7B which you find on pages 4 through 7.

4

So with that, we'll have Mr. Sherman briefly give you an overview of the changes that we're contemplating in Policy 32. We'll follow that by public -- your public response. We'll close the public response and then we'll open it up for questions and answered. Mr. Sherman.

MR. SHERMAN: The existing State Water Plan is a policy that's directed towards water use in the Snake River Basin. It needs to be changed for two reasons. When this plan was first drawn up, the idea about managing water in the basin was to allocate the water in the system for specific uses.

When the Idaho Supreme Court in 1982 decided that the water right at Swan Falls Dam held by Idaho Power was an unsubordinated water right, (inaudible) water year, it made these allocations inaccurate. When this plan was put together, it was assumed that the Idaho Power water rights at Swan Falls was subordinated and the State could take that water away from the power company.

So allocations that are (inaudible) how much water's available. The other and more pressing (Inaudible) is that, as Mr. Gray explained, the State and Idaho Power reached an agreement and compromised to resolve the conflict. They specified certain changes that they felt had to be made to the water plan.

Proposed language addresses those changes very

5

specifically (Inaudible) incorporate (inaudible) into the State Water Plan. The old policy was just a general statement saying that it is the policy of the State that the water shall be allocated to the public with the following criteria or uses.

What we've attempted to do in the revised version is spell out this policy of the State of the waters and how they will be used and what the board feels about the different uses (inaudible).

So let's start right off with Policy 32. It's a key policy. The intent of the agreement and certainly the way the agreement can be implemented in terms of water -- managing the water in the system is treat the groundwater and surface water as an entity to try and manage all the waters in the basin.

The agreement says that because of the conflict at Swan Falls and the Murphy Gauging Station that's the nearest U.S. Geological Gauging Station on the river to Swan Falls, there's a controversy around that and the fact that the existing State Water Plan specifies a year-round flow of 3300 cfs. The key change right away has to be we're going to change those flows.

Idaho Power had claimed -- has a claimed water right in the Swan Falls Dam of 8400 cfs. The river has been as low as 4500 cfs in the summertime. This is a

6

1 historic fact. The negotiators in trying to implement some
2 kind of compromise said, "Well, we've already been down to
3 45. The State Water Plan calls for 33. Let's split the
4 (inaudible)." We come up with 3900 in the summertime
5 because a significantly larger (inaudible) water goes past
6 that point, the (inaudible).

7 The compromise (inaudible) 5600 cfs (inaudible).
8 It's a compromise. Why is it a compromise? Because Idaho
9 Power says as long as that volume of water flows past that
10 gauge, they will not take action through the State against
11 anyone for (inaudible) water rights providing those people
12 are making beneficial use of that water right prior to the
13 signing of agreement. The whole intent of the agreement is
14 to rationally split up the water that's left; protect the
15 existing user.

16 You'll note that the proposed policy discusses
17 minimum flows of (inaudible). In the existing water plan,
18 the plan recognizes these flows because they are part of
19 Idaho Power's license to operate (inaudible) hydropower
20 complex.

21 It was felt that by incorporating these officially
22 into the State Water Plan, they would assure those flows no
23 matter what might happen to the (inaudible). So the draft
24 language suggests that two additional (inaudible) would be
25 appropriate. There are two other flows in the existing

7

1 water plain which will remain unchanged. One at Milner
2 Dam. (Inaudible) has to be fixed because if water
3 shortage -- all the water's appropriated above that plan.
4 That (inaudible) should stay the same. It's the minimum
5 flow established by the gauging station in Weiser set for
6 4750 cfs. That flow will remain unchanged.

7 Policy 32A, water held in trust by the State. In
8 trying to effect the compromise, what happened to the water
9 that Idaho Power claimed that they were no longer going to
10 get guaranteed to them? The decision was made that that
11 water should be held in trust fund (Inaudible). The State
12 could allocate it to the uses.

13 The problem that comes into the matter is that
14 these (inaudible) had already been appropriated. We're not
15 talking about the unappropriated waters of the State.
16 We're talking about water that we generally and is now
17 available for reallocation to other uses.

18 The agreement that was reached says you can
19 reallocate the water. Idaho Power has the use of that
20 water until it is reallocated. Because it's sort of
21 special water, the State can and will put special criteria
22 upon people who want to use it.

23 You'll notice at the end of the draft language, it
24 talks about Idaho Code 42-203C. There is no such piece in
25 the Idaho Code today. This is what the legislature has to

8

1 do. The board is recognizing that because it has been
2 appropriated or claimed at one time, new criteria can be
3 put on people who want to use it. It's up to the
4 legislature to establish those criteria. The suggested
5 language for those criteria is contained in the back pages
6 of the (inaudible).

7 Policy 32B, domestic, commercial, municipal and
8 industrial. Existing water plan has an allocation of water
9 that's based on mistaken assumptions about no water being
10 available (inaudible) for municipal and industrial uses.
11 It's given in acre-feet. The existing water plan is
12 volume. The negotiators talked always in terms of rate of
13 flow. If you convert the volume it set aside and the water
14 plans to date from municipal, industrial uses, you come out
15 to about 144 cfs. The proposed language suggests setting
16 aside 150 cfs for consumptive uses (Inaudible).

17 We're still talking about how much water
18 (inaudible). How much water is (inaudible). The
19 department is going to be charged with managing this block
20 of water and how much water is consumed.

21 If you do water budget analysis for a community,
22 consumptive losses are basically (inaudible) watering
23 grass. People who drink the water, it goes on through to
24 the treatment plant and back to the river, back on the
25 land. It's not lost in the system. So consumptive uses

9

1 for new industry (inaudible) consumptive use for standard
2 population is very low. Many of the new industries who
3 come in (inaudible) irrigated. Therefore, they may even
4 get a net increase if the water is available to the State
5 to use. We set aside 150 cfs.

6 As you probably know, the water plan has to be
7 reevaluated and readopted every five years. If this number
8 was off by a major factor, it would be changed.

9 Policy 32C, agriculture. The existing plan said
10 that it was the policy of the State to try and maintain
11 Idaho's position in the nation in terms of food and
12 (inaudible) production. Based on that, estimates of what
13 the agricultural growth in the nation would be and the plan
14 hoped for specific months of new irrigation.

15 Recognizing that now there's not as much water
16 available as we thought there was, this particular policy
17 would only state that of those waters held by the State
18 what used to be Idaho (inaudible), after we satisfy all the
19 DCMI uses, the remaining water be would be available to
20 (inaudible).

21 32D, hydropower. This is so short, I can read it.
22 "It is the policy of Idaho that hydropower use be
23 recognized as a beneficial use of water." (Inaudible.)
24 And that depletion of flows below the minimum average daily
25 flow set forth in Policy 32 is not in the public interest.

10

1 If you're a ratepayer, it's not in the public interest to
2 see (inaudible). As part of the trade-off of getting the
3 water released by Idaho Power, the negotiators had to say,
4 "Okay. We can treat those minimum flows as part of your
5 water right. Now the water's going to be guaranteed to you
6 forever." (Inaudible.)

7 Navigation. This is basically the exact language
8 that's in the current water plan. It just says that by the
9 establishment of an easement, there's always going to be
10 enough water to use for recreational purposes and for
11 commercial and navigation (inaudible) navigation purposes.

12 Aquaculture. There's two basic statements. The
13 first one is that anyone in the aquaculture business who
14 wants to get a water right to process (inaudible) that
15 water should be counted against the DCMI reservation.
16 Second part which is really already in the water plan is
17 that because of the minimum flows and because of the fact
18 that for most of the summer, the water in the river where
19 aquaculture occurs, water comes out of Thousand Springs.
20 That water will hopefully be -- certainly enough would have
21 to be here to satisfy (inaudible) gauge. So there should
22 be water available for aquaculture purposes.

23 Because some of these people rely on discharge from
24 the aquifer itself at Thousand Springs for their water use,
25 the State cannot guarantee that their need for diversion is

11

1 protected. The water right in the State of Idaho
2 guarantees you access to water. It does not necessarily
3 protect how you get it. If you continue (inaudible), a
4 trout farm might have to change its diversion (inaudible)
5 in extreme cases (inaudible) and dig a well. It takes
6 priority (inaudible).

7 Policy 32G. Fish, wildlife and recreation. This
8 is basically the language that's in the existing water plan
9 and realize that the language that's in there was based on
10 a year-round flow of 3300 (inaudible); not the 39
11 (inaudible). It's a policy of Idaho and the board that
12 these minimal flows satisfy the minimum requirement of fish
13 and wildlife and aquaculture and aquatic life and
14 recreational purposes.

15 The board does not pretend that these are optimum
16 (inaudible) but they are the minimum values in the state to
17 serve sort of outdoor recreation (inaudible) come to accept
18 being available to us in Idaho.

19 Water quality and pollution control, Policy 32H.
20 The part of the country where we're concerned about the
21 amount of water available are the people who use any water.
22 It seems inappropriate to take good water and mix it with
23 bad to cover up a pollution problem. The board feels that
24 there are enough laws about water quality that if they're
25 all implemented, we don't have a real major water problem.

12

1 The water quality problem in Idaho (inaudible). Therefore,
2 pollution dilution is not a beneficial use of the water.

3 Policy 32I, new storage. Very complicated policy
4 that tries to express two different criteria I guess with
5 two different -- there's going to be some parts overlapping
6 areas of the state. The State, we're saying there's not
7 enough (inaudible) to satisfy existing old water rights.
8 It seems wrong somehow that on October 1, the water master
9 on the representation changes the flow at Milner Dam from a
10 few thousand cfs to 12,000 cfs. This flow is basically
11 made up of water that is held in the reservoir storage all
12 summer long and dumped to make room for next year's run-
13 off.

14 (Inaudible) terrible (inaudible) in our water, we
15 got to manage it better if we can. So the very first part
16 of this policy is that no new storage projects above the
17 Murphy Gauge should be approved unless the director of the
18 Department of Water Resources finds that maximum use is
19 being made of the existing system.

20 Today, he probably couldn't find that because there
21 are unappropriated waters at least in one major reservoir
22 in the system. Once those waters are appropriated, what
23 other barriers that you would have to look at. We really
24 want to use our water and use it as best we can. There are
25 some legal barriers to water trade-off.

13

1 The State has set rules and regulations for a water
2 bank. (Inaudible) users. (Inaudible) has used that in the
3 upper Snake as a means for someone who has excess water to
4 sell it to someone who doesn't have enough.

5 One of the things that the board will be asking is
6 can these rules and regulations be approved but there are
7 some other more serious barriers. The person that stores
8 water behind the federal dam, he may not release those
9 (inaudible). No problems to the farmer involved except
10 it's (inaudible). The big problem for a new user, you want
11 to be guaranteed water while you're (inaudible). Major
12 legal difference.

13 Another major federal legal difference is if you
14 have water stored behind the (inaudible), you may not sell
15 that water (inaudible). You can't sell it (inaudible).
16 This is not only not an incentive. It's clear disincentive
17 to people who have water storage. Why should they go
18 through the hassle of arranging an agreement with
19 (inaudible) going to the water bank if at the end of all of
20 this there's no profit?

21 So there are people who have full (inaudible), full
22 right to stored water who use that stored water once
23 (inaudible) in some cases, (inaudible). The city of
24 Pocatello is an example. They had an emergency water
25 supply (inaudible) reservoirs. They don't even have a good

14

1 way to get out of it. The water sits there all summer long
2 (inaudible).
3 So the board has accepted the charge of negotiators
4 to try and look at these kind of problems. The State has
5 their own problems. If you have water and you want to sell
6 it to another user, that user better not be a consumptive
7 user or you're (inaudible) your water right if you continue
8 with your own operation. That's a real problem. You have
9 to hope to find a non-consumptive user and (inaudible).

10 The second part of this policy is directed
11 specifically to that (inaudible) of the river below Milner
12 Dam. Idaho Power Company and their systems operation
13 relies on wintertime flows for two purposes. One, they can
14 sell to the west coast for using (inaudible). The last few
15 winters, there have been plenty of demand for electricity
16 for heating in Idaho itself.

17 The second reason is that gas (inaudible)
18 reservoir. (Inaudible) storage reservoir in the
19 (inaudible). So they are concerned that they did not want
20 to see a lot of water taken out in the wintertime when it
21 would impact on their operation (inaudible). They can't --
22 did not argue. The negotiators agreed that above Milner
23 there is a requirement for zero flow back to the dam. They
24 couldn't work out (inaudible) but below Milner to the
25 Murphy Gauge, the negotiators compromised and said, "Okay.

15

1 Anybody who wants to divert from that (inaudible) of the
2 river during the wintertime for storage purposes, some kind
3 of analysis and mitigation must be supplied to the power
4 company if there's a negative loss or negative effect on
5 their operations.

6 The word "mitigation" is carefully used. It
7 implies a lessening of the impact. Compensation was
8 avoided because that generally (inaudible). Certainly if
9 someone wanted to use some of that water and store it
10 during the wintertime, they had to replace its value on a
11 dollar for dollar basis because (inaudible). Mitigate
12 means lessen the impact in some way. Maybe by storing some
13 of that water in your own facility which you would like
14 (inaudible). It may be that your releases will be timed so
15 that they (inaudible). It may be economics (inaudible).

16 How is mitigation calculated? Something the water
17 board has to face when the time comes. The negotiators
18 couldn't agree amongst themselves (inaudible) what they
19 feel is an adequate resolution. The whole composition of
20 the river shouldn't be held up by (Inaudible). If and when
21 we get a general proposal, the water board is charged
22 (inaudible).

23 Policy 32J. The last one. It says "Stored water
24 for management purposes." As I said earlier, it is
25 available perhaps. There are at least unappropriated

16

1 waters in the system. If the State is charged with
2 managing the river so it never goes below (Inaudible) in
3 the summertime, 5600 in the wintertime, we can hire the
4 best technicians you want for that job and sooner or later
5 someday probably somebody's going to mess up.

6 If they don't mess up, they have been so
7 conservative that we're not taking full advantage of the
8 water that's available. But if they try and issue water
9 rights and try and manage the river now to this magic
10 number, (inaudible), the State should have some (inaudible)
11 call for (inaudible).

12 Many of the junior users are probably going to be
13 out on the (inaudible). We (inaudible) with the effect of
14 shutting them off in flow the Murphy Gauge, it's not going
15 to show up for six months or it might be so subtle, you
16 never see it. Therefore, to meet that flow, we're thinking
17 in terms of water available to (inaudible).

18 It seems appropriate to try and get the water now
19 while there are unappropriated waters rather than to wait
20 10 or 15 years and realize we may need that water and not
21 be able to find it; at least not be able to find it as
22 cheap as we may find it now. There's no (inaudible) if the
23 State could acquire some water, it will probably go to the
24 water bank. It could be sold to Idaho Power or be put to
25 use but it will be there in case the problem would develop.

17

1 I think Mr. Chairman, I'd like to stop.

2 MR. GRAY: Thank you, Mr. Sherman. We will now
3 start taking public testimony and the chair would call
4 first Dan Daley.

5 MR. DALEY: Mr. Chairman, members of the board. My
6 name is Dan Daley. I'm a fisheries biologist for the
7 Shoshone Bannock Tribes.

8 MR. GRAY: Dan, would you give us your address and
9 telephone number so we could reach you if we need to?

10 MR. DALEY: Sure. Post Office Box 306, Fort Hall,
11 Idaho, 83203. And the telephone number is (208) 238-3900.

12 MR. GRAY: Thank you.

13 MR. DALEY: The tribes are concerned about the new
14 State Water Plan for the Snake River Basin and also can
15 only view the State Water Plan in light of the Swan Falls
16 agreement and the later general adjudication in the Snake
17 River Basin.

18 We think the State Water Plan is being modified in
19 view of those -- of the Swan Falls agreement and in view of
20 the later general adjudication and therefore must be viewed
21 in concert with those -- with those two actions.

22 We have two general concerns, two basic concerns.
23 One of those is that we're concerned that the changes in
24 the State Water Plan and the Swan Falls agreement are being
25 viewed as a local level decision and being viewed as having

18

1 impacts only on a local basis.

2 This is just untrue. Any changes we make in water
3 use in the Snake River Plain in the Snake River Basin will
4 have a regional impact not just throughout Idaho but
5 throughout the Columbia River Basin.

6 One of the reasons this is true is because any
7 agreement at Swan Falls and any change in water use can
8 potentially affect the water budget and for the benefit of
9 anybody in the room who's unfamiliar with the water budget,
10 I'll briefly describe it. It's a plan that was initiated
11 by the Columbia Basin -- or by the Northwest Power Planning
12 Council in their Columbia Basin Fish and Wildlife Program.
13 It's implemented through Bonneville Power Administration
14 largely at the expense of the rate payers.

15 And the plan itself is designed to guarantee flows
16 and guarantee storage within the Columbia River Basin
17 including the Snake River to -- or moderate flows
18 throughout those basins to guarantee passage flows during
19 anadromous fish, fish both migrating upriver to spawn and
20 (inaudible) migrating downriver to the ocean.

21 This plan requires certain storage within the Snake
22 River so that that storage can be moderated and allowed to
23 spill over the dams at those critical times when fish are
24 migrating upriver and migrating downriver. Any agreement
25 at Swan Falls could have impact on Idaho Power's ability to

19

1 comply with the water budget.

2 Non-compliance with the water budget on Idaho
3 Power's part could have an impact all the way down the
4 Columbia River Basin but more importantly, it's certainly
5 going to have an impact on fish reaching the Salmon River
6 Drainage and the Clearwater Drainage, anadromous fish
7 reaching those areas. That in turn will have an impact on
8 aboriginal treaty rights that the Shoshones hold and that
9 the Nez Perce hold and also on Idaho sportsmen in general.

10 A decline in the number of fish reaching either the
11 Salmon River or the Clearwater River will be felt
12 throughout Idaho and probably throughout the Columbia River
13 Basin. That's one of our concerns and that's one reason
14 why the State Water Plan should be viewed in light of any
15 impacts it might have on a regional basis.

16 The other concern we have is that we see very
17 little indication that water quality impacts are being
18 considered either in the State Water Plan or in the Swan
19 Falls agreement or later in the general adjudication.
20 Whenever you change the priority use of water, in this case
21 from hydropower to irrigation, and if you open up new lands
22 for irrigation, you're going to have a definite water
23 quality impact.

24 In other words, when water is used for irrigation
25 and returns to the river as surface flows, it brings with

20

1 it certain amounts of dissolved salts, suspended sediment,
2 the changes in temperature, normally an increase in
3 temperature and that has a water quality impact throughout
4 the Snake River and below Swan Falls; not just in the
5 general area of irrigation or the general area of new
6 development.

7 Our concern in this light is that at the present
8 time, we have very little idea how water -- how much water
9 returns to the Snake River as groundwater flow, how much
10 water recharges the Snake River as surface flow and in
11 fact, we have -- we have only a vague idea of how much
12 water is being diverted at each point along the system.

13 Without these kinds of information, we cannot
14 develop a detailed comprehensive river model. Without a
15 detailed comprehensive river model, we should be very
16 cautious in accepting any kind of State Water Plan or Snake
17 River water plan and any kind of agreement at Swan Falls.

18 In other words, the kind of information we need to
19 gather is once water is diverted from the Snake River and
20 it's either spread over the land through a sprinkler system
21 or flood irrigation, we need to know how much water is lost
22 through evaporation. How much water is lost through
23 transpiration? How much water returns in groundwater flow
24 since -- if it recharges the Snake River as groundwater, it
25 has a chance to filter out some of the impurities and how

21

1 much is returned as surface flow.

2 Our main concern is the larger point of the water
3 that's going to return as surface flow because that's the
4 water that's going to contain the higher quantities of
5 dissolved salts, higher suspended solids and probably
6 increase the temperature.

7 An example of the lack of interest in the Snake
8 water plan in this regard is Policy 32H, water quality and
9 pollution control. And this policy -- this part of the
10 Policy 32 states that it is a policy of Idaho that the use
11 of water to provide pollution dilution is not a beneficial
12 use of water. If we increase the amount of water diverted
13 through irrigation and if the amount of water that returns
14 to the Snake River increases or it returns to the Snake
15 River by surface flow increases, this is going to have a
16 definite impact on water quality in the Snake River. It's
17 going to degrade the water quality.

18 Lack of mention that increasing the amount of water
19 that stays in the river could dilute this impact is either
20 an oversight or it's -- it's ignoring the fact that we're
21 going to have water quality impacts. These water quality
22 impacts are going to be detrimental to irrigators farther
23 downstream and they're going to be detrimental to fish and
24 wildlife.

25 One last concern is that although Policy 32 states

22

1 that the minimum flow set in the policy should provide for
2 the protection of fish and wildlife habitat -- aquatic
3 life, recreation, aesthetic beauty, transportation and
4 navigation values and water quality, it becomes apparent
5 that these minimum flows, particularly the minimum flow of
6 3900 cfs during the irrigation season in Swan Falls will
7 not provide for the protection of fish and wildlife.

8 This is based on the fact that in 1977, Idaho Fish
9 and Game prepared a report that stated or recommended
10 minimum stream flows below Swan Falls at 5500 cfs for
11 rearing -- for rearing of fish alone. Okay. Generally,
12 that rearing time occurs right during irrigation season,
13 exactly when we're guaranteeing only 3900 cfs over Swan
14 Falls in this water plain.

15 So it's the Shoshone Bannock Tribe's policy or at
16 least concern that we are not adequately studying the
17 impacts of this water plan. We are not adequately studying
18 the ramifications -- regional and local ramifications of
19 the Swan Falls agreement and we cannot adequately predict
20 what impacts this water plan and the agreement is going to
21 have on the Snake River Basin without first development of
22 a detailed comprehensive water plan of the type that I just
23 described a few minutes ago.

24 Thanks very much for your time.

25 MR. GRAY: Thank you, Dan. We might have a

23

1 Swan Falls during low water years will interfere with the
2 storage capacity of Brownlee Dam. That storage behind
3 Brownlee is primarily going to be responsible for
4 compliance with the water budget.

5 Now, whether -- whether Idaho Power can alleviate
6 that or not is -- needs to be determined at some future
7 date, but I would suggest that we request Idaho Power to
8 lay their cards on the table as far as water budget goes.

9 MR. WILLIAMS: Anything else? Any other ideas?

10 MR. DALEY: As far as Idaho Power --

11 MR. WILLIAMS: The water --

12 UNIDENTIFIED SPEAKER: Affecting the water budget.

13 MR. DALEY: Well, there's actually a group of
14 experts involved with the water budget called the water
15 budget managers. Those people need to be contacted by the
16 State. I've already talked to them and they've described
17 in general what kind of impacts they think will occur and
18 they could supply very detailed information, very detailed
19 predictions or at least projections as to what kind of
20 problems or lack of problems they're going to have with the
21 Swan Falls agreement and the water budget.

22 The other people who can probably give technical
23 advice is the Northwest Power Planning Council -- the staff
24 of the Northwest Power Planning Council and I would suggest
25 we contact them.

25

1 question for you here if we could. Mr. Rydalch, any
2 questions?

3 MR. RYDALCH: I don't believe I do.

4 MR. GRAY: Mr. Williams.

5 MR. WILLIAMS: I do. Mr. Daley, on the water
6 budget concept (Inaudible), do you have any particular
7 recommendations (Inaudible) our planning to assist with
8 that program (Inaudible)?

9 MR. DALEY: Yeah. Well, one of the most direct and
10 immediate things we can do is request Idaho Power to
11 project -- they have the information available and they can
12 project whether they're going to be able to comply with the
13 water budget.

14 (Tape No. 2 ends. Tape No. 3 begins.)

15 MR. DALEY: The Swan Falls agreement will put a
16 further constraint on their compliance. What we're
17 primarily concerned on a political level is that the Swan
18 Falls agreement will give Idaho Power an out. They'll say
19 we can't comply with the water budget and with the State
20 Water Plan and the Swan Falls agreement all at the same
21 time. Therefore, the water budget will go down the tubes
22 and we still have the Swan Falls agreement. Without the
23 water budget, we cannot assure anadromous fish runs in the
24 Salmon and Clearwater Basin. Plain and simple.

25 We know for a fact that the guaranteed 3900 cfs at

24

1 MR. WILLIAMS: Thank you.

3 MR. GRAY: Mr. Kramer.

4 MR. KRAMER: That was a very good presentation
5 considering I don't see a whole pile of notes there.

6 MR. DALEY: I'm getting used to it.

7 MR. GRAY: A couple things, Dan, before you get
8 away.

9 MR. DALEY: Yeah.

10 MR. GRAY: You made mention that the way that we
11 have structured 32H is very weak in reference to water
12 quality.

13 MR. DALEY: Yeah.

14 MR. GRAY: Would you be willing to sit down
15 yourself and write out something the way you would like to
16 see it?

17 MR. DALEY: Certainly.

18 MR. GRAY: And we will be accepting written
19 testimony until February 22.

20 MR. DALEY: Certainly. Be glad to.

21 MR. GRAY: And just send it to the Department of
22 Water Resources, Statehouse, in Boise at the address on the
23 "Currents."

24 MR. DALEY: Okay.

25 MR. GRAY: Another thing in regard to your -- to

26

1 your water budget, the Idaho Water Resource Board has been
2 working on a project on the Weiser River for several years
3 now and that's referred to as the Galloway Project. Are
4 you familiar with it?

5 MR. DALEY: Vaguely. Vaguely.

6 MR. GRAY: The Corps of Engineers should have their
7 feasibility study completed by July of this year. There
8 are three levels of dams that they're investigating. If
9 the large dam were to go in, it would store 1.2 million
10 acre-feet of water. So that's something that we may be
11 asking you help on later but I just give you that for
12 information because there is that possibility:

13 MR. DALEY: And after that feasibility study is
14 complete, you can be sure you'll be hearing from Shoshone
15 Bannock Tribes on the issue also.

16 MR. GRAY: Fantastic. Thank you.

17 MR. DALEY: Sure.

18 MR. GRAY: The board would call Charles Pace.

19 MR. PACE: Thank you. My name is Charles Pace. I
20 live here in Pocatello. No. 7 Dartmouth. I'm an economist
21 at Idaho State University and Idaho State of course doesn't
22 necessarily endorse the views that I'm advocating.

23 I think there's a number of good things about the
24 Swan Falls agreement. One of course is the recognition --
25 explicit recognition of the interaction of surface and

27

1 groundwater with all the accompanying hydrological and
2 economic implications that are location-specific. The
3 other thing that I think is probably good about the
4 agreement is that it sort of diffuses the situation in that
5 it's worked out any time you can work out or negotiate,
6 work out a deal, it's probably preferred to ending up in
7 court. The question is whether that activity can be
8 extended.

9 If we start looking though at the economic
10 implications, one of the things that the agreement does is
11 it contains language in there that says priority will be
12 given to future allocations of water that promote the
13 family farming tradition and so on. And economically,
14 there's a lot of uncertainty in Idaho. Where are we going
15 to be in 20 years? If you the present situation and extend
16 it in the future, I think the consensus among most people
17 is that the water probably has its greatest value left in
18 the river in terms of its ability to just simply generate
19 revenues. I mention there the Hamilton Lyman (phonetic)
20 Study on the loss of power concept and so on. But there's
21 no reason to think that that's going to be the situation
22 forever. And I think it's probably a mistake to get locked
23 into public interest criteria that tend to favor one
24 particular approach.

25 There's also the question of how we define the

28

1 public interest. The agreement sets aside 600 cfs for use
2 according to the public interest. And obviously the way
3 that the public interest is defined is going to be critical
4 here. In terms of the criteria that have been suggested in
5 the agreement and are contained in your newspaper, the
6 public interest really needs to have further -- further
7 definition. I think you have to look at both quantifiable
8 and qualitative effects of different alternative
9 strategies. What will be the value of the loss of
10 hydroelectric capability if stream flows decline?

11 And like Dan Daley already pointed out, you have to
12 not only consider Swan Falls. I think PUC came up with a
13 \$55 million figure at Swan Falls but you have to consider
14 the Idaho -- the Hell's Canyon Complex, the three in Hell's
15 Canyon and then you have to consider also the Lower Snake
16 River, the (Inaudible) and then the lower -- hydropower
17 generation on the Lower Columbia: The Dalles, Bonneville,
18 John Day, McNary. All of those will be affected by
19 depletions of in-stream flows in terms of loss to
20 evaporation and transpiration and also other types of losses
21 of water with diversions.

22 So I think you have to look at the loss of hydro
23 capability not just at Swan Falls but all the way
24 downstream. You also are going to have to consider the
25 primary -- or in the public interest criteria the primary,

29

1 secondary and tertiary values generated by consumptive uses
2 and often those have substantial economic values.

3 But those things are already placed on the agenda.
4 The things that are sort of lacking here are the things
5 that Dan Daley was bringing out. What will be the impacts
6 on fish and wildlife if in-stream flows decline? You have
7 to consider a number of resident fisheries. It may be that
8 we can use a market -- a water market. We can design a
9 water market to facilitate water rental and transfer of
10 water rights down the road and provide water for
11 consumptive uses or use the water in-stream to generate
12 hydroelectric power.

13 But if we cut down on the minimum -- on the minimal
14 flows from 4500 to 3900 and from 65 or the 2800 that's
15 going to be cut off in the winter and it has the kind of
16 biological impacts that we've talked about, what we mean
17 there is irreversible changes in the amount of genetic
18 information and just because things like resident fisheries
19 are not exchanged in the marketplace doesn't mean that they
20 don't have economic value. It may be that that is the
21 long-term effect here in terms of how we're going to be
22 looking back at this say 50 or 100 years from now. This is
23 when we add some irreparable damage to the resident
24 fisheries.

25 It's also significant that you have an endangered

30

1 population of white sturgeon in the upper river. In the
2 lower river where this -- where this fish isn't endangered
3 provides significant fishery. People spend literally
4 hundreds of dollars on equipment and very valuable fishery
5 on the lower river and it's possible that the sturgeon
6 might thrive in the upper river.

7 Another issue that was brought out with this whole
8 question of the water budget and one of the other things
9 besides the question of fish and wildlife in-stream that
10 was neglected here was the whole question of out of region
11 import -- out of state but within the region impacts on
12 fish and wildlife. And the water budget is an obvious
13 concern there but there's also a lot more to the Northwest
14 Power Planning Council's activities. There's a whole area
15 of restricted development, protected areas and a focus also
16 not just on anadromous fish but also on resident fish so I
17 think that has to be taken into account here too and it's
18 obviously not being taken into account.

19 I think that's probably the greatest thing -- the
20 greatest flaw in this agreement is that it was worked out
21 by two of a number of interests -- of a number of groups
22 that have interest in water policy in the Snake River. The
23 new agreement neglects fish and wildlife, it neglects
24 federal reserve rights and interests outside of the State
25 of Idaho.

31

1 As it was pointed out before, the whole agreement
2 is also intimately bound up with the whole question of
3 adjudication of the Snake River and here the potential I
4 think for negotiation of federal reserve rights is enormous
5 as are the dangers of not negotiating, of ending up in
6 court and settling those with litigation. The last thing
7 in the world I think that anybody wants is to have enormous
8 amounts expended on legal fees so there's -- I'm not sure
9 of this but I would guess that there is a very large
10 possibility, a great deal of room for negotiation when it
11 comes to the whole question of federal reserve rights. Not
12 just the Shoshone Bannock rights but also the INEL
13 questions and so on.

14 I've already mentioned the impacts on fish and
15 wildlife throughout the Columbia River Basin. Another
16 thing that the agreement calls for is the design of
17 efficient water markets so that water can be provided
18 outside of an appropriate -- or an appropriation process.
19 This, as you pointed out, is going to require changes in
20 Idaho water law. But there's another question here and
21 that's how should the market be organized and one principle
22 here is that you should have limit -- as few limitations on
23 entry as possible; that the State should use water price --
24 the price of water to allocate between different uses
25 rather than restricting the participation of different

32

1 groups in the water market. That will tend to guarantee a
2 greater efficiency in the allocation decision than it will
3 if you simply bar individuals from participating in the
4 market.

5 As you mentioned before, there's a possibility for
6 purchasing unallocated water storage, primarily from the
7 Federal Bureau of Reclamation and the Corps of Engineers.
8 I'll close on this because I was at a conference not too
9 long ago in Portland and a man from the Yakima Indian
10 Nation, Bill Yellup (phonetic), stood up and gave a speech
11 and he went through a lot of different things but what he
12 had to say basically was, look, this is a wet year now.
13 Okay. When this comes to a dry year, what we're going to
14 do is we're going to end up in court.

15 And that -- I think that's probably something to
16 remember. While that water is out there now, it may be a
17 good time to get an agreement, but at the same time, you
18 want to get that agreement in terms of not just -- not just
19 the wet water years but also nail it down in terms of what
20 happens during the years when there's not enough to go
21 around to be allocated to a fully allocated system. I
22 think that's a real difficult question.

23 MR. GRAY: Thank you, Mr. Pace. Mr. Rydalch, any
24 questions?

25 MR. RYDALCH: Are you in favor of Policy 32J on the

33

1 stored water for management purposes? You're kind of vague
2 on that.

3 MR. PACE: The question of storage I think has to
4 have a full accounting of costs. There's several things
5 that you hear in Idaho about -- it's almost as if we could
6 dewater the river at the Idaho border and that would not
7 necessarily be bad for Idaho. I certainly don't think that
8 that we need to hold back every bit of water. The water in
9 the stream flowing down the river has uses; not just
10 hydroelectric.

11 In terms of additional water storage, I'm not
12 necessarily opposed to additional water storage but
13 additional water storage that doesn't account for severe
14 impacts on fish and wildlife I think would probably be a
15 mistake. So the question on the Galloway Project for
16 example in Weiser, I'm not sure it's in the -- or the power
17 planning council is going to see it as a contribution to
18 their efforts to budget water for downstream migration if
19 you have significant detrimental impacts on upstream
20 fisheries.

21 So I think there's -- you know, as long as you have
22 a full accounting of costs in the question of water
23 storage, I don't see any problem with that.

24 MR. RYDALCH: Thank you.

25 MR. GRAY: Could we -- could we request you send us

34

1 a copy of your testimony?

2 MR. PACE: Sure.

3 MR. GRAY: By February 22.

4 MR. PACE: You bet.

5 MR. GRAY: Okay. Thank you. Is there anyone else
6 who would like to testify at this time? We will close
7 testimony and open it up for questions and answers.
8 Questions, anybody?

9 UNIDENTIFIED SPEAKER: I have one question.
10 Possibly readjudication I guess (inaudible). The concern
11 of some of the people with some of the old established
12 rights (inaudible) groundwater system -- we end up with two
13 rights. You got an underground water right on the piece of
14 ground and also a right on the land that is under
15 Reclamation property (inaudible). Is there going to be
16 some latitude (inaudible). Is that one -- is that person
17 going to have to decide which right that he's going to have
18 or (inaudible) there going to be some latitude to release
19 it (inaudible)?

20 MR. GRAY: Frank, would you like to respond to
21 that?

22 MR. SHERMAN: (Inaudible.) If a person has a claim
23 or a water right of surface and groundwater, the value of
24 his right is only for the amount of water he can put to
25 beneficial use. (Inaudible) is the water right to be

35

1 recorded (inaudible). It's no different than Idaho Power's
2 right. They claim some large water right in Swan Falls in
3 excess of (inaudible). Certainly a latitude for which
4 right the person will have to sell in terms of surface
5 (Inaudible) property if he indeed wants to sell.
6 (Inaudible.) In fact, he could assume (inaudible), he
7 could change his point of diversion and use one or the
8 other (Inaudible).

9 UNIDENTIFIED SPEAKER: My concern is that really
10 it's going to be hard (inaudible) understand that
11 (Inaudible). See, that's my concern.

12 MR. SHERMAN: Under the (inaudible) system, it's
13 tied to the land and the (inaudible) release it for some
14 period of time but it would be up to the (inaudible)
15 director himself (Inaudible).

16 UNIDENTIFIED SPEAKER: So a determination is going
17 to have to be made though because only so much water's
18 going to be indicated for that piece of land, right?

19 MR. SHERMAN: Right. (Inaudible.)

20 UNIDENTIFIED SPEAKER: Tell me about the
21 adjudication in general. People are terribly concerned
22 about what the adjudication does (inaudible).

23 MR. SHERMAN: In addition to quantifying what's
24 happening out there, it really provides a court order
25 saying this man is entitled to this much water and it sets

36

1 the priority date (inaudible) shut off in terms of managing
2 the water for the local area (Inaudible) system. So we've
3 done adjudication in this part of the state (Inaudible)
4 thousands of water rights gone on for years and years have
5 (inaudible).

6 MR. GRAY: Sixteen.

7 MR. SHERMAN: Sixteen people (inaudible). So it
8 ends up getting resolved. People have (inaudible) claims
9 of this rights (inaudible) and they sell their property,
10 the buyer knows what he's getting. Anyways (Inaudible)
11 individual. The problem with this adjudication (Inaudible)
12 that for the first (Inaudible) past adjudications that they
13 have (Inaudible). In other words, it's take 10 to 15 years
14 to do (inaudible). What was different is that we're
15 talking about big dollars because we're talking about a big
16 land area. Hopefully there will be enough dollars
17 (inaudible).

18 The agreement itself specifies that any person who
19 was making beneficial use of the water including in terms
20 of when (inaudible) shall be protected. (Inaudible) a
21 natural cause, (inaudible), those people will be protected.
22 Even if the flow at Murphy goes below 3900 through natural
23 causes, those people will be protected. If the flow were
24 to go below 3900 in a natural drought disaster, only people
25 who have appropriated water and approved (inaudible) uses

37

1 after the signing is (Inaudible).

2 MR. GRAY: Yes, Dan.

3 MR. DALEY: One of the problems there, the tribes
4 ask (Inaudible). And that being the case, we really hate
5 to see the State rush into (Inaudible) water rights for a
6 couple of reasons. First, the (Inaudible) require trying
7 to quantify his water rights. We hate to see our water
8 rights appropriated above us.

9 The other problem is that since we're dealing with
10 the Snake River Adjudication of the Snake River Basin,
11 we're also involving the Shoshone Paiute and (inaudible).
12 And we're going to be -- it looks like we're going to be
13 adjudicating all the way up the Salmon River and the
14 Clearwater River also. These guys have never been involved
15 in any of the discussions and we're already anticipating
16 this (Inaudible). We're still going to require some
17 (Inaudible) administration of the Shoshone Paiute
18 (inaudible).

19 So as far as federal reserve water rights go, the
20 only adjudication we can do is (inaudible) to gather more
21 information (inaudible) Water Resources need to gather more
22 information than just how much the water (inaudible).

23 UNIDENTIFIED SPEAKER: You've raised several key
24 points, Dan, and I don't disagree with any of them.
25 (Inaudible) what I think is the (Inaudible) negotiator

38

1 takes (inaudible). The reason for improving the Salmon
2 (inaudible) is to assure (inaudible).
3 UNIDENTIFIED SPEAKER: (Inaudible.)
4 UNIDENTIFIED SPEAKER: (Inaudible.)
5 UNIDENTIFIED SPEAKER: Yeah, but I think in the
6 compromised position (inaudible). The second point is that
7 I know you've (inaudible). We're not ready to (inaudible).
8 The estimate we're making now is ten years. It's going to
9 be (inaudible). It goes into (inaudible) that really
10 struck me is it may not be (inaudible) but we have
11 (inaudible) take the position that we (inaudible) terms of
12 how does that protect you, Idaho Power's (inaudible) 8400
13 and (inaudible).

14 MR. GRAY: Dan, one question. When was the
15 reservation created? What was the date?

16 MR. DALEY: '67 (inaudible).

17 MR. GRAY: 1867?

18 MR. DALEY: Yes.

19 MR. GRAY: Any other questions? Yes, sir.

20 UNIDENTIFIED SPEAKER: Where is the actual process
21 (inaudible) applications? At what point in the State Water
22 Plan do you have to make that decision and is that in here
23 someplace or is that (inaudible)?

24 MR. SHERMAN: In terms of future applications,
25 we're talking about a general application for appropriated

39

1 water?

2 UNIDENTIFIED SPEAKER: Consumptive use.

3 MR. SHERMAN: As long as it's not wintertime
4 diversion below Milner Dam, (inaudible). The agreement
5 specifies as part of the agreement (inaudible) enable the
6 governor to enter into (inaudible). That's being done.
7 7500 (inaudible). The agreement would provide that anybody
8 who had not proven beneficial use (inaudible) but had an
9 application filed with the department, they would be
10 reviewed in terms of do they meet the new criteria.

11 (Inaudible) file -- new filing would be behind the
12 applications on hand in terms of (inaudible). Certainly
13 nothing can be done till the legislature (inaudible).
14 (Inaudible) is obligated to process those ones they've been
15 holding for (inaudible).

16 UNIDENTIFIED SPEAKER: Are they doing that now? Is
17 that --

18 MR. SHERMAN: They have to wait until the
19 legislature (inaudible).

20 UNIDENTIFIED SPEAKER: But the department is
21 (inaudible) the legislature, are they going to do it after
22 the rule setting (inaudible)?

23 MR. SHERMAN: The legislature will adopt the
24 language which directs (inaudible). They would have to
25 probably (inaudible). But people have been asking me

40

1 should they file (inaudible). I had one guy (inaudible).
2 I think the date of your application is still key
3 (inaudible). So yes, (inaudible). Remember that there's a
4 filing fee. If the agreement doesn't go through, the
5 department may hold that filing fee for the next 10 years
6 and you're not going to see it. (Inaudible.)

7 MR. GRAY: Yes, sir.

8 UNIDENTIFIED SPEAKER: My understanding is that the
9 3900 is sufficient (inaudible).

10 UNIDENTIFIED SPEAKER: I can't say that for an
11 honest fact. I almost doubt it but it is the compromised
12 numbers that are (inaudible). I think certainly the 5600
13 in the wintertime, typically you see (inaudible). I doubt
14 that 3900 with a flow going through the reservoir
15 (inaudible).

16 UNIDENTIFIED SPEAKER: The reason I ask is if
17 that's what those figures are based on, why is there any
18 reason (inaudible) fish and wildlife and recreation and
19 necessarily be -- not be subject to (inaudible) impact? In
20 other words, because of the (inaudible) minimum flows
21 established (inaudible) are sufficient to meet the minimum
22 requirements but I guess what I'm thinking is that my
23 understanding is that those minimum flows were set
24 (inaudible) and not for fish and wildlife. Is there a
25 (inaudible) sort of study of fish and wildlife that

41

1 (inaudible)?

2 UNIDENTIFIED SPEAKER: Yeah. Not at 39
3 specifically because that increases (inaudible). The State
4 Water Plan (inaudible). 3300 was a compromise which after
5 hearing public testimony (inaudible) they decided that was
6 a reasonable number that's not (inaudible). The
7 legislature proved that (inaudible).

8 So from a pure fishery point of view, now is when
9 the (inaudible) could have been -- the whole agreement when
10 we pick at bits and pieces of it, you have to remember that
11 three different entities sat down basically and looked
12 (inaudible). We think that 3900 is still (inaudible). I
13 agree with Dan that it would have been nice if (inaudible).
14 I guarantee more (inaudible). We were not (inaudible).

15 MR. GRAY: Mr. Dunn.

16 MR. DUNN: One of the other things that happens
17 with the 3900 (inaudible), you don't have 3300 is that the
18 3300 was never set by (inaudible). Let's assume we get
19 down the road 20 or 30 years and they approach that 3300.
20 If the pressures were such that (inaudible) to lower that
21 to 3000, all that would need to be -- to do to accomplish
22 that would be (inaudible). The State Water Plan is
23 (inaudible). With the agreement (inaudible). You can't
24 remove that. The only way you can lower that (inaudible)
25 from that point on. You'd have to purchase that

42

1 (inaudible) down to the system. So it gives you -- to
2 guarantee the 39 can't be (inaudible).

3 MR. GRAY: Dan.

4 MR. DALEY: There's also a disadvantage to that
5 because it is a vested water right and you can't raise it
6 either (inaudible).

7 (Inaudible discussion had.)

8 UNIDENTIFIED SPEAKER: The only thing that -- the
9 only thing behind it was if the power company allows us --
10 puts in play -- it allows us to go down to 3900,
11 (Inaudible), through the agreement, they won't have any
12 recourse when that one day flow is 3900. If the decision
13 (inaudible) whether is to raise it (inaudible). But you
14 can never go below that amount.

15 UNIDENTIFIED SPEAKER: (Inaudible) the fact that
16 the 3900 was arrived at by three lawyers essentially
17 negotiating (inaudible) based on these lawyers who have
18 very little expertise in (inaudible) flows and (inaudible)
19 minimal (inaudible). There's nothing you can do about it
20 except say that we're not going to repeat that mistake.
21 (Inaudible). It really scares me that (inaudible) regional
22 impact and negotiate an entity such as the Swan Falls
23 agreement based on the three lawyers (inaudible).

24 MR. GRAY: Dan, let's let Mr. Caveness say
25 something. I think he might have something --

43

1 MR. CAVENESS: (Inaudible.) One of the things that
2 I think you have to keep in mind is that when our state was
3 formed and our laws were set up, they were set up strictly
4 (inaudible) orientation. Either mining, manufacturing or
5 agriculture with no reservation whatsoever for (inaudible).
6 What they were -- and our laws to this day are designed for
7 (inaudible). It doesn't matter what happens it the fish.
8 If there are enough farmers on the creek to dry the creek
9 up, the creek is dead and the fish are dead and nothing's
10 left. And it was that concept of the law framework that
11 those parties were negotiating from.

12 The scenario that was faced by the negotiators was
13 one if Idaho Power proposed (inaudible) they would be
14 entitled not to change the water plan. It was draw down to
15 the 3300 feet both winter and summer that they would be
16 entitled to receive compensation for hydropower losses
17 only. There would be no (inaudible) under our existing law
18 other than (inaudible) minimal stream flow protection under
19 the recently enacted provisions of the Idaho Code which
20 relate to public interest and trying to establish stream
21 flows.

22 They could possibly (inaudible). But otherwise,
23 the power company would give compensation to rate payers
24 (Inaudible) because they would receive compensation for the
25 losses. Idaho Power would (inaudible) 3300. The fish and

44

1 wildlife would not have any protection. Consequently, on
2 the flip side, if you want to call it (inaudible) or the
3 irrigation interest at this point. The river still could
4 be depleted to 3300 feet summer and winter but no
5 compensation to the power company. No compensation for the
6 fish. So I think that the (inaudible) and the difficulty
7 that the negotiators were addressing was they were
8 addressing legal issues based on existing legal rights
9 under existing laws and they had no legal authority to give
10 any legal status to (inaudible) interest in the river and
11 since they were increasing the minimum flows above those
12 presently set, I assume that they were thinking they
13 couldn't hurt anything because they were only increasing
14 the amount of water in the river.

15 The other comment that I was going to make was that
16 people should be aware that the average flows of that river
17 are greatly in excess of 3900 or the 5600 in the winter.
18 Those are the lowest recorded flows since the beginning of
19 time. 4500 and 6100, Tim, 6300. 6300 is the lowest
20 recorded flow in the winter and 4500 is the lowest recorded
21 flow in the summer.

22 And essentially what they did then (inaudible) took
23 the 1200 cfs that was left over and seen what the average
24 flow was and the lowest flow (inaudible) for power and fish
25 and will allow only 6 of the 1200 left (inaudible) to be

45

1 used for irrigation (Inaudible). I guess it's a legal
2 (inaudible) reason they acted the way they did is because
3 of the archaic laws which stressed consumptive use over all
4 other issues in the river.

5 MR. GRAY: Thank you.

6 MR. CAVENESS: (Inaudible.)

7 MR. GRAY: I knew you would though. Are there any
8 other questions? Yes, sir.

9 UNIDENTIFIED SPEAKER: I'm a little confused about
10 the distinction that's drawn between man-caused reduction
11 in the flow and (inaudible). I had the impression that
12 water users' rights were protected under a certain
13 (inaudible) and the river could then be gone down below
14 that minimum flow established (inaudible).

15 MR. SHERMAN: That's correct. The person whose use
16 is in place will be protected even if it went below that
17 (inaudible).

18 UNIDENTIFIED SPEAKER: So we're not talking about
19 (inaudible).

20 UNIDENTIFIED SPEAKER: (Inaudible.)

21 UNIDENTIFIED SPEAKER: Except in order to go below
22 3900 (inaudible), you have to have a situation that is
23 substantially more than that (inaudible). With the
24 existing development and the (inaudible), you still don't
25 get (inaudible).

46

1 UNIDENTIFIED SPEAKER: (Inaudible.)
2 UNIDENTIFIED SPEAKER: That's what we're trying to
3 do is the increased use would be limited so we didn't
4 violate that. That's what we aim for is taking the dryest
5 period (Inaudible).
6 UNIDENTIFIED SPEAKER: (Inaudible.)
7 UNIDENTIFIED SPEAKER: I'd like to see some water
8 available if we get down to 3900 and it turns out
9 (inaudible).
10 MR. GRAY: Anymore questions? Okay. We'll call
11 the meeting adjourned.
12 (Tape ends.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1

2

STATE OF IDAHO)
) SS
COUNTY OF CANYON)

I, TAMARA A. WEBER, State-certified and licensed
transcriber, do hereby certify:

That the foregoing transcript is a transcript of
cassettes made of the proceedings in the matter of the
Public Hearing in re: State Water Plan before the Idaho
Water Resource Board, January 29, 1985, 7:00 p.m.,
Pocatello, Idaho; that the foregoing pages 1 through 47 of
this transcript contains as accurate and complete a
transcription of said cassettes as I was able to make.

IN WITNESS WHEREOF, I have hereunto set my hand
this 6th day of November, 2007.



TAMARA A. WEBER, CSR RMR
Idaho CSR License No. 278
Transcriber

