

1 Official Report of Proceedings
2 Before the Idaho Water Resources Board
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11 HEARING OF THE IDAHO WATER RESOURCE BOARD
12 ON STATE WATER PLAN POLICY 32

13 TRANSCRIPT OF AUDIOTAPED PROCEEDINGS

14 January 30, 1985, 2:00 p.m.

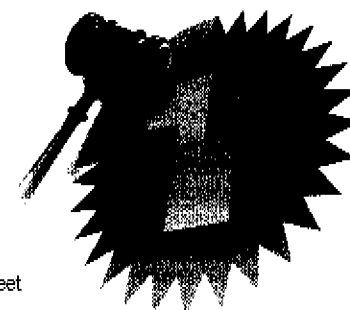
15 Burley, Idaho

16 Before Board Members:
17 GENE GRAY, Chairman
18 DON KRAMER
19 JIM SHAWVER
20 DAVE RYDALCH
21 WAYNE HAAS

22
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<p>1 Official Report of Proceedings 2 Before the Idaho Water Resources Board 3 4 5 6 7 8 9 10 11 HEARING OF THE IDAHO WATER RESOURCE BOARD ON STATE WATER PLAN POLICY 32 12 13 TRANSCRIPT OF AUDIOTAPED PROCEEDINGS 14 January 30, 1985, 2:00 p.m. 15 Burley, Idaho 16 Before Board Members: GENE GRAY, Chairman 17 DON KRAMER JIM SHAWVER 18 DAVE RYDALCH WAYNE HAAS 19 20 21 22 23 24 Transcribed by Debora Ann Kreidler 25 CSR No. 754</p>	<p>1 over the changes as are indicated in the paper. 2 After that, we will take the public testimony. 3 We'll close the public testimony. Then we'll open 4 it up for some brief questions and answers if you 5 have something on your mind that might be 6 bothering you. 7 So if you look at pages 2 and pages 3, 8 you'll find proposed draft changes of Policy 32. 9 Going on to pages 4, 5, 6 and 7 is the proposed 10 legislative package. Now, that particular section 11 is devoted to what our legislators are now working 12 on in Boise. Policy 32 plays a very important 13 role in the development of that legislative 14 package. And it's very important to us that we 15 hear what you have to say. 16 Now, if you look at the right-hand side on 17 page 7, you'll see some actions that must be taken 18 by May 15th of 1985. And I'll just kind of read 19 down through those with you. Number one, the 20 "State Water Plan is to be amended." And that's 21 the purpose that we are in front of you today. We 22 want to hear your comments and things that you 23 think we should do, revise, change, delete, 24 whatever, of the proposed Policy 32. 25 No. 2, "the legislative package is to</p>
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<p>1 * * * * * 2 (Whereupon, Tape 1 begins.) 3 THE CHAIRMAN: This is the recording of the 4 State Water Plan hearing on Policy 32 in Burley, 5 Idaho on January 30th at 2:00 p.m. 6 Ladies and gentlemen, we'd like to welcome 7 you to the fifth of the series of public 8 information meetings and public testimony that 9 we're taking on behalf of the Idaho Water Resource 10 Board for revision to Policy 32 of the State Water 11 Plan. 12 If everybody has a copy of the Currents, I'd 13 kind of like to just drift through that with you 14 just a little bit. In December of 1984, the Water 15 Board sentenced some draft language, proposed 16 language to the revision of Policy 32, the State 17 Water Plan. The Idaho Water Resource Board's main 18 function is to develop the Water Plan, keep the 19 Water Plan up to date, make any changes to the 20 Water Plan. 21 And what we are here for today is to take 22 your testimony on revisions of Policy 32. The way 23 we would like to work it is, after I've given some 24 introductions, we're going to have Frank Sherman, 25 from the Department of Water Resources briefly go</p>	<p>1 be passed by May 15th." No. 3, "appropriate 2 actions by the PUC or the legislature called for 3 in the agreement must be taken." No. 4, "the 4 appropriate order by the Federal Energy Regulatory 5 Commission acceptable to the parties to the 6 agreement is to be issued." "The Idaho PUC must 7 dismiss the 1977 petition by the Idaho 8 ratepayers." No. 6, "if required, the Oregon PUC 9 must also approve the entire package." No. 2nd -- 10 No. 7, "enactment by the legislature of 11 subordination language as set forth in 7A and 7B," 12 which you find from pages 4 through pages 7. 13 So with that -- let's see, I better 14 introduce everybody. We've got Don Kramer, board 15 member from Castleford. Don farm's over there. 16 Dave Rydalch is from the St. Anthony area. He's a 17 farmer, and also a member of the Committee 9. On 18 my left is Jim Shawver. Jim's a farmer from the 19 Eden, Idaho area. And Wayne Haas on end of the 20 table. 21 Frank Sherman will be -- from the Department 22 of Water Rights Resources will be discussing the 23 32 revisions. And we have a director of the 24 Department of Water Resources with us today, 25 Kenneth A. Dunn.</p>

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<p>1 Frank?</p> <p>2 MR. SHERMAN: Thank you, Mr. Director.</p> <p>3 It gets a little bit complicated. There's</p> <p>4 an existing State Water Plan. There's the</p> <p>5 proposed revisions to one of the policies of the</p> <p>6 plan. And there's the agreement itself. I'd like</p> <p>7 to go through the proposed revision very quickly</p> <p>8 with you.</p> <p>9 The existing Water Plan deals with water</p> <p>10 allocations in the Snake River Basin. It has to</p> <p>11 be changed for two reasons. Quite clearly, the</p> <p>12 agreement specifies changes to the State Water</p> <p>13 Plan that negotiators felt were necessary. But</p> <p>14 there's another reason. And that is when the</p> <p>15 Idaho Supreme Court ruled that Idaho Power</p> <p>16 Company, in an unsubordinated right to water at</p> <p>17 Swan Falls Dam, it made these allocations wrong,</p> <p>18 because they were based on the idea that the State</p> <p>19 protects Idaho policy water rights as low as they</p> <p>20 wanted. But the whole plan stays around a flow of</p> <p>21 3300 CFS. And that's what we gauged for Swan</p> <p>22 Falls Dam.</p> <p>23 Now, the compromise and negotiations,</p> <p>24 whatever, specified that, as part of the tradeoffs</p> <p>25 between the State and Idaho Power Company, that</p>	<p>1 because the Idaho code sections refer to the</p> <p>2 proposed revisions do not exist. They do exist in</p> <p>3 the form of the legislative package that the</p> <p>4 negotiators put together, and are asking the</p> <p>5 legislature to pass.</p> <p>6 Because these waters that are being held in</p> <p>7 trust once belonged to Idaho Power, they are not</p> <p>8 the unappropriated water from the State.</p> <p>9 Therefore, the State can put special criteria on</p> <p>10 anyone who wishes to use those waters. And that's</p> <p>11 what at one time was called, quote, interest</p> <p>12 criteria. It's hopefully going to be referred to</p> <p>13 as Idaho Code Section 42-203C. It's what's in the</p> <p>14 agreement.</p> <p>15 This is where the discussion about the</p> <p>16 family farm (unintelligible) hydropower, that kind</p> <p>17 of thing. Those are criteria for the State to let</p> <p>18 someone else take this water that Idaho Power</p> <p>19 claims for their own use. The Board acknowledges</p> <p>20 that this, perhaps, is best established</p> <p>21 (unintelligible). Should be part of Idaho code,</p> <p>22 just the requirements for a person who applies for</p> <p>23 unappropriated waters are in the Idaho Code.</p> <p>24 It's a little complex. We always talk about</p> <p>25 the Swan Falls problem that flows past</p>
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<p>1 the flow at the Murphy Gauge will be changed from</p> <p>2 3300 CFS to 3900 CFS in summertime, and 5600 CFS</p> <p>3 in the wintertime. That's basically what Policy</p> <p>4 32 Snake River Basin addresses. It addresses that</p> <p>5 change. It also includes minimum flows for places</p> <p>6 called Johnson's Bar and Lime Point. They're</p> <p>7 below the Hells Canyon complex. They're mentioned</p> <p>8 in the existing Water Plan as desirable flows.</p> <p>9 There are actually flows required by Idaho</p> <p>10 Power by their federal license. By proposing to</p> <p>11 add them to the Water Plan as State policy, the</p> <p>12 Water Board feels that, if there were ever to be a</p> <p>13 change in the license requirements, this much</p> <p>14 water would be guaranteed at those two places.</p> <p>15 And that's really what May Policy 32 is all about,</p> <p>16 establishing those minimum flows within the river.</p> <p>17 Now, Policy 32A, water held in trust by the</p> <p>18 State has a new concept in Idaho in that the water</p> <p>19 that we're talking about is the water that was</p> <p>20 claimed by Idaho Power. This water is being held</p> <p>21 in trust by the State for the State to reallocate</p> <p>22 to other uses. It is the policy of the State and</p> <p>23 the Board, that upon reallocation, it can only be</p> <p>24 done if it meets certain Idaho code and criteria.</p> <p>25 This is another place where it gets complicated,</p>	<p>1 Murphy Gage. You have to realize that Idaho Power</p> <p>2 has a claimed water right at all our hydro</p> <p>3 facilities upstream at that point. When someone</p> <p>4 says there's only 600 CFS in the river</p> <p>5 (unintelligible) divided it up between 3900, 3300,</p> <p>6 4500 it's actually been down to. That's true only</p> <p>7 in the reach around Swan Falls facility. Idaho</p> <p>8 Power's appointment other upstream resources can</p> <p>9 be much larger.</p> <p>10 As part of the agreement, Idaho Power</p> <p>11 Company has said they will not protest the lack of</p> <p>12 water at any of their other facilities providing</p> <p>13 the 3900 and the 5600 criteria are met at</p> <p>14 Murphy Gage.</p> <p>15 So when the negotiators made the decision to</p> <p>16 split between what is historically known as the</p> <p>17 Murphy Gage and what the State Water Plan called</p> <p>18 for, they really were setting the rules for that</p> <p>19 particular gauge. There's more water</p> <p>20 theoretically held in trust in an upstream</p> <p>21 facility. How much of that water you can actually</p> <p>22 use, still get 3900 past Murphy Gage</p> <p>23 (unintelligible).</p> <p>24 But that's the water that's held in trust by</p> <p>25 the State, that water that had been claimed by</p>

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<p>1 Idaho Power. They can certainly use it as long as 2 it's available to them. But they agree not to 3 protest if the State wants other people to use 4 that water providing they meet the laws in the 5 State of Idaho, including the new criteria. 6 Policy 32B, "domestic, commercial, municipal 7 and industrial." The existing Water Plan when it 8 made its allegations for specific uses in the 9 basin set aside -- at that time we were talking in 10 terms of acre feet, but it converts to about 144 11 CFS in water on average flow for municipal and 12 industrial uses. 13 The proposed revision keeping the CFS 14 designation as negotiators reached -- were used in 15 reaching their common laws, we plan, or we suggest 16 or we suggest at 150 cubic feet per second of 17 water be set aside for domestic, commercial, 18 municipal and industrial uses. You note we're 19 including domestic as part of this. It's not too 20 painful an inclusion, because a person who drinks 21 water, his waste products generally don't leave 22 the basin. So each treatment plant puts it back 23 in the river or out on the land. The water budget 24 for a human, basically, what he sweats is lost to 25 the Snake River Basin ground water system and</p>	<p>1 the State pursuant to Policy 32A, less the amount 2 of water set aside to be domestic, commercial, 3 municipal and industrial use, shall be available 4 for agricultural purposes." 5 Problem there, of course, is that a new 6 agriculture use has to meet these new criteria the 7 legislature's going to establish if they're going 8 to get that water the State is holding in lieu of 9 Idaho Power plan. 10 Policy 32D, Hydropower. It acknowledges 11 that hydro -- use of water for generation of 12 electricity is beneficial use. That's already law 13 in the State of Idaho. What they do here, though, 14 is say, "and that depletion of flows below the 15 minimum average daily flow set forth in Policy 32 16 is not in public interest." 17 So what they're doing is part of the 18 tradeoffs here is saying that we'll recognize that 19 3900 and 5600 are necessary. And it's in the 20 public interest that that water is available to 21 Idaho Power for power storage. We're taking some 22 of the water away from them, but we're 23 guaranteeing them water hopefully in perpetuity, 24 saying it's not in public interest to know what 25 (unintelligible) the minimum flow is.</p>
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<p>1 river system. The rest of it is bad. So the 2 inclusion of domestic doesn't really amount to 3 much. 4 If you want to get a feel for how much water 5 is going to be set aside out of this water, right 6 now in the basin we divert approximately 400 CFS 7 in average. Going to set aside 150 CFS. You'll 8 note that this policy very specifically says 150 9 CFS of consumptive use. Now, that 400 CFS that 10 gets diverted, that part that's used to water 11 people's lawns, keep the golf course green, some 12 of that, most of that water probably is consumed. 13 But the water that's used for cooling purposes, 14 wash water, that water gets back in the system in 15 a real consumptive use, very close management 16 approach. 17 You need to know how much of the water 18 anybody is diverting is actually consumptively 19 used and lost to the system. So if you take 150 20 CFS consumptive use, that's pretty close to what's 21 probably being consumptively used today by 22 domestic, municipal, commercial and industrial 23 use. 24 "Policy 32C, Agriculture. It is the policy 25 of Idaho that appropriated water held in trust by</p>	<p>1 Now, the existing Water Plan will take the 2 role that the rate -- if the legislature passes 3 the (unintelligible) bill, (unintelligible) below 4 that. So they get something new, and the State 5 gets some of the water. 6 Policy 32E, Navigation. This is basically 7 the same language that's in the existing Water 8 Plan. And it says that, with these minimum flows, 9 the State feels there's enough water in the river 10 at all times to satisfy recreational interests and 11 those commercial motives (unintelligible). 12 Agriculture Policy 32F. This again is a 13 repeat of the language that's already in the State 14 Water Plan. It does testify, however, that if a 15 trout farmer or agriculturist wishes to process 16 his product, that's a commercial or manufacturing 17 type (unintelligible). Waters for that purposes 18 should be accounted for in DCMI withdrawal 19 allocation. And then says that the minimum flows 20 established by the plan should supply water to the 21 trout farming industry. That's because the water 22 in the river below Milner Dam, at least in the 23 low-flow periods of the year, is frequently mostly 24 (unintelligible) Mountain Springs. Many of the 25 fish cultures in the state (unintelligible).</p>

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<p>1 If we're going to have 3900 going past 2 Murphy Gage, we're going to have to have the water 3 coming up Mountain Springs. Therefore, those guys 4 would probably protect it to some degree. It does 5 specify, as does the existing Water Plan, however, 6 that a water right is not a guarantee of your need 7 for diversion, and says you're entitled to the 8 water as long as there's a legitimate way to get 9 it. If the springs were to decline, some people, 10 trout farmers, for example, may have to change the 11 diversion works. In extreme case, someone might 12 even (unintelligible). His water rights, priority 13 date, he has water available to him. But his need 14 for diversion would not necessarily be protected. 15 Policy 32G, Fish, Wildlife and Recreation. 16 This one I think I'll read at least part of it, 17 because it's a sore point for many individuals. 18 "It is the policy of Idaho that the new minimum 19 flow established under Policy 32E are sufficient 20 and necessary to meet the minimum requirements for 21 aquatic life, fish and wildlife, and to provide 22 water for recreation in the Snake River below 23 Milner Dam." 24 The Board has always acknowledged that 3300 25 CFS at Murphy was not optimum for fish and</p>	<p>1 where somebody may dump into the river 2 (unintelligible) is a beneficial use of water. 3 The person has -- waste waters are so bad you 4 can't meet the Federal and State requirements, you 5 shouldn't be dumping into the river. You should 6 change what you're doing. There are laws to make 7 this happen. We shouldn't take our good water and 8 mix it with bad water (unintelligible). This 9 policy is basically already in the existing Water 10 Plan. 11 Policy 32I, New Storage. This policy is a 12 direct outcome of the agreement. Negotiators 13 spelled it out in the agreement and asked the 14 Board to address the problem to include this 15 language or very similar language in the State 16 Water Plan. The Swan Policy really has two 17 policies in it. See with the first one -- which 18 may be easier to explain, but it may not be easier 19 to picture it. 20 The first policy is that before new storage 21 is developed in the basin above Murphy Gage, a 22 determination should be made that we're making 23 maximum use of the existing facilities in the 24 system. It's hard to accept that in an area of 25 the state where we can't meet water claims for</p>
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<p>1 wildlife or aquatic life, but it is a minimum 2 value to protect and retain some of the resources 3 we know of. By raising that flow, they're saying 4 it may be, perhaps, even that 3900 isn't optimum, 5 but it will protect the minimum value that we 6 need -- accept as sort of a lifestyle in Idaho. 7 It is also the figure that the negotiators have 8 asked the Board to adopt. 9 The Board has another mechanism for 10 protecting fish and wildlife. And that's their 11 end-stream (unintelligible) program. The Board is 12 the only entity in the State who can appropriate 13 the unappropriated waters of the state for 14 end-stream values. And they've done that on many 15 of the tributaries (unintelligible) through 16 system. It's a different mechanism. Over and 17 between the two, the Board feels they can protect 18 fish, wildlife and recreation values within the 19 state. 20 Policy 32E -- no, H. I don't know why I 21 said that. Policy 32H, Water Quality and 22 Pollution Control. The Board feels that there are 23 enough Federal and State regulations to protect 24 the water quality in the State of Idaho. They do 25 not feel that using good water to dilute bad water</p>	<p>1 water in the river at this stage and we haven't 2 for Idaho policy 8400 claim (unintelligible) that 3 on October 1st, the water master chose 12,000 CFS 4 or something along those lines over Milner Dam. 5 And it goes on down the river. 6 It would be more beneficial to the State if 7 that water were used rather than just dumped in 8 the irrigation system. So the negotiators asked 9 the Board and to the Board of Director to examine 10 this problem. In fact, put the burden on the 11 director to make determination as to whether 12 maximum use is being made of the system. There 13 are today unappropriated waters in the 14 (unintelligible). I think it would be very hard 15 for the director to say we need a new dam when 16 there are nonappropriated waters in the system. 17 If you were asked today to approve the 18 preparation of that water and then someone came in 19 and ask for new construction, you might have a bit 20 of problem reaching a decision. The things that 21 the negotiators want the Board to look at are 22 really legal institutional barriers to the use of 23 this water which sits in the reservoir during 24 irrigation season, then is dumped. There are a 25 lot of barriers, a lot of legal barriers, some</p>

1 State barriers, Federal barriers.
 2 Federal barriers, one, person can only lease
 3 or sell his water from a Federal reservoir
 4 one year at a time. There's a provision in the
 5 Idaho law. There are rules and regulations for
 6 the water bank. Committee of nine uses that to
 7 move water around to some degree in the upper part
 8 of the basin. But dealing with water from a
 9 Federal reservoir, it can only be used one year at
 10 a time. Not very much incentive for someone who
 11 wants to come in and do something new, because,
 12 one, why would he risk his own money when he's
 13 only guaranteed water for one year.
 14 (Unintelligible) guaranteed water for one year.
 15 So that's a barrier to fair use, more efficient
 16 use of the water.
 17 A second barrier is that if your water is
 18 stored in a non-Federal reservoir, you cannot make
 19 a profit on sale or lease of that water. What's
 20 the incentive for someone who's got water use
 21 one year in 10, or one year in 20, go out and try
 22 and sell it, if you can't make a profit? So those
 23 are two real barriers to trying to make more
 24 efficient use of the water in the already existing
 25 system.

1 There are several barriers at the State
 2 level. A person can have a full natural flow
 3 right and full storage water right for the same
 4 piece of ground. But a person can't sell off his
 5 water if it would be a dissension in use. Your
 6 water right entitles you to put so much water in
 7 so much ground for agricultural purposes, for
 8 example. If you have more water than that, you
 9 can't sell it to another person that's going to
 10 consume it. Many potential sales get caught in
 11 this trap. It would require changing the State
 12 law.
 13 The same thing sort of applies to all the
 14 rules and regulations for the water bank on
 15 Kutralis (phonetic). Person doesn't put his water
 16 to use where it's supposed to go once in
 17 five years, he can lose his water right.
 18 There are plenty of reasons why this water
 19 sits in there year after year and it gets dumped.
 20 City of Pocatello, for example, has a water right
 21 to be used in emergency situations, which the only
 22 way they could use would be to throw
 23 (unintelligible) in the river tell the water
 24 master (unintelligible) try and catch it when it
 25 goes by. They'll never using that water.

1 We're talking about a part of the state
 2 where we're really facing up to the fact we're
 3 water short. And yet, there is water that doesn't
 4 get put to economic uses. That's the first part
 5 of the response.
 6 The second part relates specifically to the
 7 reach of river below Milner Dam and above the
 8 Murphy Gage. By the working agreement, everybody
 9 trades here and there. And one of the trades that
 10 Idaho Power wanted was protection for their
 11 wintertime operations. Two things that need to be
 12 protected, at least two I know of. Certainly,
 13 they have a ready market on the coast where some
 14 of these people (unintelligible).
 15 The other is at wintertime is when they fill
 16 Brownlee Reservoir, the only storage reservoir
 17 really in the Hells Canyon common. So they wanted
 18 as much water assured to them during that period
 19 of operation as they could get. That's the reason
 20 for 5600 CFS in the wintertime.
 21 What do negotiators agree to when the Board
 22 is supposed to include a State policy is that
 23 approval of new storage projects that would divert
 24 water from the main stem of the Snake River
 25 between Milner and Murphy during the period

1 November 1st, March 31st, should be coupled with
 2 provisions that mitigate and impact such
 3 depletions we have on the generation of
 4 hydropower.
 5 Mitigate, very specifically identified in
 6 the fine as lessening the impact. It doesn't mean
 7 that if you're going to take so many, someone
 8 wants to take so many, there could be water around
 9 for storage. He has to give Idaho Power a dollar
 10 value for that. It means he has to lessen the
 11 impact.
 12 The rules and regulations for how it's going
 13 to be calculated will only be in place if the
 14 agreement ever gets through. It's going to be a
 15 complicated procedure. Quite honestly, each
 16 diversion project will probably be evaluated
 17 within the basin. You've got to calculate the
 18 mitigation. You have to know the details and the
 19 specifics of when the water's coming out and when
 20 it's coming back in, that kind of thing.
 21 The last Policy 32J, Storage Water for
 22 Management Purposes. This is a policy that's not
 23 specifically called for in the agreement. When
 24 some of the things the agreement calls for makes
 25 this a record as a policy. As I said earlier,

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<p>1 there are unappropriated waters in the system 2 conceivably the State could acquire 3 (unintelligible). If the Department is going to 4 issue permits from the river and from the aquifer, 5 and realize that the aquifer discharge is 6 basically American Falls and Thousand Springs. 7 The key (unintelligible) point in terms of 8 the whole Snake River is that Thousand Springs, if 9 we start issuing permits on the aquifer and get 10 below 3900 through an error on our part, we, the 11 State, has no place to get water for the call. 12 Idaho Power would bank, shutting off a pump 13 (unintelligible) is not going to get the water at 14 the Murphy Gage in any kind of reasonable time, if 15 at all. It would eventually, but (unintelligible) 16 measure of consequence of shutting off water 17 (unintelligible). Of course, if we could shut one 18 or two river people off, you'd see water on the 19 way. 20 If the State had access to some water 21 where -- to be used when the State made a mistake, 22 it would allow the managers and regulators to be 23 less conservative in issuing water rights without 24 having to fall back on, I would assume, the 25 directors, if you are careful as he starts to</p>	<p>1 Mr. Chairman, (unintelligible). 2 THE CHAIRMAN: Thank you, Mr. Sherman. 3 We'll start the formal public hearing 4 process. And the chair would first call Dr. Chuck 5 Brockway. 6 Thank you. State your name, address and 7 telephone number. It would be most appreciated, 8 Dr. Brockway. 9 DR. BROCKWAY: Chuck Brockway. I'm with the 10 University of Idaho at Kimberly Research Station. 11 And the telephone number is 423-4691. 12 Am I the only one signed up, Mr. Chairman, 13 to speak? 14 THE CHAIRMAN: No, sir. We have one more. 15 DR. BROCKWAY: A whole bunch of them. Good. 16 Then I won't take the whole period. 17 THE CHAIRMAN: But if you would like to take 18 the full hour -- 19 DR. BROCKWAY: I would like to address some 20 of the things that concern me regarding 21 implementation of the proposed Policy 32. One of 22 them deals with the 32B for DCMI allocations. It 23 seems like, and maybe it's inevitable, that 24 whenever a policy's changed, or new statutes 25 adopted, it places additional burdens on the State</p>
Page 22	Page 24
<p>1 approach his 3900 maximum level. If he knows -- 2 if he makes a mistake, he's going to get the water 3 pretty quickly, then he may go ahead and issue 4 whatever he thinks is his maximum level. 5 Now, this water would not necessarily -- if 6 the State it could inquire. They're not going to 7 sit idle. It could go to the water bank. 8 Conceivably could be sold to Idaho Power. It 9 would not have to sit idle. But it would be there 10 if the State felt, through their own fault, they 11 could not meet the terms of the agreement. 12 One thing that's not in the State Water Plan 13 I'd like to just discuss, and then I'll shut up, 14 the agreement is designed to protect the existing 15 use. It states that if a person can prove he was 16 making beneficial use of the water prior to the 17 day of the signing of the agreement, he shall be 18 protected. If in terms of dry years and the flow 19 were not there naturally, the existing user would 20 not be called upon by Idaho Power to be shut off 21 to satisfy Idaho Power right. It would only be 22 the person whose proof of use came after the 23 signing of the agreement that Idaho Power would 24 take action against if their right went out past 25 the 3900 (unintelligible).</p>	<p>1 agencies for regulation and/or administration. 2 This one seems to do that in that if we are 3 allocating or proposing to allocate 150 CFS of 4 consumptively used water, which could translate 5 into anywhere from 150 to a thousand CFS of 6 diverted water, depending on the percentage of the 7 diversion which is deemed to be consumptively 8 used. 9 The determination for all of the various 10 DCMI uses of what is actually consumptively used 11 is difficult, technically. I'm not sure that we 12 have the kind of data to allow the director to 13 make those kind of determinations, at least 14 currently. There could be some problems with that 15 kind of an evaluation of what is consumptively 16 used for the DCMI uses. Maybe -- maybe the 17 director feels differently about that, but I could 18 see some problems that might arise there. 19 Another concern that I had was with 32I. 20 And that was addressed by Frank. And that is the 21 determination by the director of whether the 22 upstream storage is currently on-line. We are 23 making the maximum possible use of the existing 24 storage. There has to be some criteria defined 25 for what is meant by maximum possible use.</p>

1 That -- to me, that's another term like reasonable
2 pumping level that has yet to be defined.
3 And technically, it's going to be difficult,
4 again, to evaluate whether you are talking about
5 optimal use to meet certain objectives, or some
6 other criteria for maximum possible use. It might
7 be well to put some of those criteria in the
8 policy rather than leave it entirely up to the
9 Board and to the director.

10 Another thing on Policy 32I that seems a
11 difficult one to get over, and that's the
12 mitigation aspect of wintertime storage between
13 Milner and Murphy, and determination by the Board
14 of what is reasonable mitigation to decrease the
15 impact on power rights within the Snake River.

16 If I'm reading the write-up under 32I,
17 provision 2, it states that "there are no current
18 proposals for new storage projects that would
19 divert Snake River water between the Milner and
20 Murphy gaging stations. I don't think that's
21 true. I think there are proposals that have been
22 on the books for 10 years that contemplate
23 wintertime storage on the Bruncau Desert by
24 pumping from the Snake River between Milner and
25 Murphy. So it may be that whoever wrote that

1 should review that again.

2 The -- I agree wholeheartedly with the
3 intent here to really evaluate how the water bank
4 and those provisions can be made more flexible to
5 get better use of the storage facilities that we
6 have on-line, and to help evaluate the needs for
7 new storage in the system. That should have been
8 done a long time ago. And perhaps now this could
9 be the impetus to do it.

10 In relation to Policy 32J, stored water for
11 management purposes, I'm not sure that's a good
12 deal from this standpoint. One of the rationale
13 is to allow the State, then, to mitigate a mistake
14 in management, perhaps. If we make a mistake and
15 that flow goes below 3900, we just reach in the
16 sugar bowl and make it up. That would give the
17 director some flexibility. It could also induce
18 the director to be a little lax in management in
19 that he wouldn't have a strict line to adhere to
20 if he had someplace or some way to bail him out.

21 The other problem is where are you going to
22 get the money to buy the storage? Are you going
23 to take that out of the adjudication fund?
24 Storage is not inexpensive. And whether the State
25 needs to get into that, and to assume, perhaps,

1 some liability under all cases for maintaining
2 that minimum flow of 3900, because they have this
3 pot, I'm not sure we need -- we want to do that
4 within the agency.

5 That involves some legal implications, I
6 think, that ought to be evaluated by the staff to
7 see if the State would be incurring some kind of
8 responsibilities or obligations that we don't want
9 to have.

10 I think that's all, Mr. Chairman, that I
11 have specifically on Policy 32. I understand
12 there will be an opportunity to at least ask
13 questions on some of the other aspects of the
14 agreement.

15 THE CHAIRMAN: Thank you, Dr. Brockway. In
16 case we have some questions for board members,
17 would you stand for them, please?

18 DR. BROCKWAY: You bet.

19 THE CHAIRMAN: Mr. Nyerman?
20 (Unintelligible).

21 MR. NYERMAN: I have one. On 32B, the
22 domestic, commercial DCMI one, what would be your
23 answer? You had some misgivings with it. But
24 what would be your answer to changing this or
25 bringing it around so it might be acceptable?

1 DR. BROCKWAY: Well, I think maybe it's
2 acceptable to a more knowledgeable person. In
3 other words, if you ask me to -- well, let's go
4 back to the aquaculture portion here, where it's
5 going to be the policy, perhaps, to charge the
6 processing part of water use for aquaculture to
7 DCMI allegations. Well, if you asked me what is
8 the consumptive portion of water for cleaning and
9 washing fish as a percentage of that total
10 diversion requirement, I don't know. And I don't
11 know who knows.

12 The other aspect is, well, for heating or
13 for cooling purposes, if you're talking about
14 power plants or whatever, we can certainly measure
15 the consumptive use under prototype situations,
16 but a lot of times it's difficult to estimate
17 consumptive use as a percentage of diversion for
18 those kind of uses. At the least, implementation
19 of this portion of the policy would take
20 considerable research to determine what these
21 values are. And maybe the staff has done that. I
22 don't know. But I see some problems with making
23 those determinations.

24 Let me give you an example. I was involved
25 with assisting a water permit holder in evaluating

1 his needs consumptively in an industrial
 2 recreational complex where he had a truck washing
 3 facility, a car washing facility, and a swimming
 4 pool, and a couple of laundry mats, those kind of
 5 things which would fit in the DCMI allocation.
 6 How much of the diversion for a laundromat
 7 is consumptively used? How about a swimming pool?
 8 You can make estimates, but whether we have good
 9 data on all of those, I'm not sure.
 10 MR. NYERMAN: Maybe we can get the money for
 11 the research to get these answers the same place
 12 we can get the money to buy it over in
 13 (unintelligible).
 14 DR. BROCKWAY: That could be. I'd vote for
 15 that.
 16 MR. NYERMAN: If you have some thoughts or
 17 something on 32B that you might write down for us
 18 between now and the 22nd day of February, we'll be
 19 accepting your testimony until that day, would you
 20 please get them to us? We'd certainly appreciate
 21 it.
 22 DR. BROCKWAY: I'll do it.
 23 MR. NYERMAN: Thank you very much.
 24 THE CHAIRMAN: Chair would call Elmor
 25 McDaniels, please.

1 MR. McDANIELS: Elmor McDaniels, manager of
 2 A & B Irrigation District, Box 675 in Rupert,
 3 Idaho. Phone number is 436-3152.
 4 We have some concerns about some -- well,
 5 most of the areas, really. Maximum use of storage
 6 we feel should be more defined. And are you going
 7 to make those assumptions and those regulations on
 8 water years that we've had in the last year or
 9 two, or are you going to go back to '77 and the
 10 early '30's when we had dry years. And I guess
 11 what I'm trying to say is people have short
 12 memories. Let's don't sell the rest of the farm.
 13 The other thing that I want to just touch
 14 on, and I'm not known for long statements, in your
 15 deliberations of the minimum stream flows, I would
 16 like to be sure that you tie this in to the rest
 17 of the package that is in the legislative process.
 18 Don't get yourselves in the box of increasing
 19 minimum stream flows, and the rest of it goes down
 20 the tube, and then you've got to go through the
 21 loops of more things to get them back where they
 22 were. Let's not sell the rest of the farm.
 23 And I think as far as I'm concerned, Idaho
 24 Power got the big end of the stick. Let's not
 25 give them the rest of it. That's two main things

1 I wanted to touch on.
 2 THE CHAIRMAN: Thank you, Mr. McDaniels.
 3 Is there any questions, Mr. Kramer?
 4 MR. KRAMER: No.
 5 THE CHAIRMAN: Mr. Rydatch?
 6 MR. RYDALCH: No.
 7 THE CHAIRMAN: Mr. Shawver?
 8 MR. SHAWVER: No.
 9 THE CHAIRMAN: Okay. Thank you.
 10 Is there anyone else who at this time would
 11 like to testify?
 12 Okay. We'll close the official testimony.
 13 And we will open it up for questions and answers.
 14 Who's first?
 15 Dr. Brockway.
 16 DR. BROCKWAY: I have a question regarding
 17 what Exhibit 3 -- and that deals with the part of
 18 the agreement that would require the allocation of
 19 monies for hydrologic and economic studies. The
 20 number in there is \$200,000, I think, at least
 21 that's published.
 22 Is that firm? Or are we talking about a few
 23 more dollars than that?
 24 UNIDENTIFIED VOICE: Well, within my
 25 perspective, we're talking about a lot more

1 dollars. Now, in yours, it may be a few more
 2 dollars. Total number, what I have, is a half
 3 million instead of 200,000. In the budget that
 4 was submitted to Dave Bachs, it calls for a half a
 5 million dollars for those studies, to begin the
 6 studies. What that number comes out to be, we
 7 don't know. That is put together subsequent to
 8 that exhibit.
 9 (Whereupon, Tape 1 concludes and Tape 2
 10 begins.)
 11 THE CHAIRMAN: Other questions for us?
 12 Yes, sir.
 13 UNIDENTIFIED VOICE: With regard to
 14 adjudication, does the Water Board have any affect
 15 on -- or will they take a stand on how the money
 16 is to be appropriated based on communication?
 17 UNIDENTIFIED VOICE: What was that?
 18 UNIDENTIFIED VOICE: Will you have any
 19 effect on it? Let me ask you that.
 20 UNIDENTIFIED VOICE: We hope that what will
 21 happen is the input that we receive from these
 22 public hearings will have an effect on the total
 23 overall package. And we haven't heard too much
 24 about the adjudication as far as the monetary
 25 input is concerned. What we have heard to this

1 point is, so far, everyone's pretty much in favor
 2 of the adjudication idea.
 3 Does that answer your question?
 4 THE CHAIRMAN: Yes.
 5 UNIDENTIFIED VOICE: Another question.
 6 Suppose during the summer, the flow falls -- the
 7 flow at Murphy Gage falls below 3900. What
 8 happens?
 9 MR. SHERMAN: Two things could happen. One, Idaho
 10 Power Company could ask the State for
 11 (unintelligible) water guaranteed to them,
 12 providing no new users have been placed, nothing
 13 would happen if the flow stayed below 3900. Idaho
 14 Power's agreed to protest only new applicants for
 15 water in place after the signing of the agreement.
 16 If people are in place and the director shut off,
 17 Idaho Power would not go after continued shut-offs
 18 of people who were in place before the agreement
 19 was signed.
 20 So, yes, conceivably, the flow will be at
 21 some time below 3900. The Department can only
 22 take action under the agreement against the new
 23 users.
 24 THE CHAIRMAN: You might, Mr. Sherman, if
 25 you would point out what the recorded historic low

1 flows have been winter and summer.
 2 MR. SHERMAN: You're asking me
 3 (unintelligible) it gives me an embarrassing
 4 question, because I don't know what historic low
 5 in the wintertime is. I think it's around 6100,
 6 some number fairly high, well above 56. In fact,
 7 the compromised values would sort of fall between
 8 historic low and what was what the
 9 (unintelligible) was.
 10 UNIDENTIFIED VOICE: What was that figure,
 11 please?
 12 MR. SHERMAN: 6100 CFS.
 13 UNIDENTIFIED VOICE: How many?
 14 MR. SHERMAN: 61.
 15 UNIDENTIFIED VOICE: 61.
 16 MR. SHERMAN: The summertime flow has been
 17 as low as 4500 CFS on a daily average. And that's
 18 Greeway Catholic (phonetic). No one trying to do
 19 it on Isa Canyon's (phonetic) flows. Anything
 20 modern day, you have to wait -- you have a good
 21 day before you take any action. So daily average
 22 is the number we're talking about here in Boise.
 23 UNIDENTIFIED VOICE: Over what period of
 24 time do you take that average?
 25 MR. SHERMAN: One year. On any one day, the

1 average is less -- it's never been less than 4100.
 2 And the plan would say any one day it should never
 3 be less than 3900.
 4 UNIDENTIFIED VOICE: Does that go back to
 5 1977?
 6 MR. SHERMAN: No.
 7 UNIDENTIFIED VOICE: (Unintelligible) it
 8 goes back past it.
 9 MR. SHERMAN: Well, yeah.
 10 UNIDENTIFIED VOICE: It didn't occur in '77.
 11 MR. SHERMAN: It didn't occur in '77, no.
 12 UNIDENTIFIED VOICE: What was the minimum
 13 flow back in '77?
 14 MR. SHERMAN: I honestly don't know. And I
 15 didn't even bring that information with me on this
 16 trip, I have to admit.
 17 UNIDENTIFIED VOICE: But you say it was
 18 above 39?
 19 MR. SHERMAN: Well, I'll say it was above 45
 20 in '77.
 21 UNIDENTIFIED VOICE: In '77?
 22 MR. SHERMAN: Yes.
 23 UNIDENTIFIED VOICE: Oh.
 24 MR. SHERMAN: '77 wasn't -- in terms of
 25 operation of the river, it wasn't that big a year.

1 The lowest it's ever been at Murphy on a one-day
 2 average 4500.
 3 (Unintelligible).
 4 MR. SHERMAN: That's fine.
 5 It could really happen. Two different
 6 times. It happened in 1981, I think, and it
 7 happened back, if you run a computer model back of
 8 current development, back in the thirties. I
 9 think it happened once in the sixties on the
 10 computer model.
 11 UNIDENTIFIED VOICE: It happened in '61 or
 12 '62.
 13 MR. SHERMAN: And I'm not saying that's
 14 relation (unintelligible) that water's always
 15 going to be there. Because, as a ground water
 16 man, I always point out that if that flow is
 17 Thousand Springs discharge, what's happened at
 18 Thousand Springs in the last thirty years. It is
 19 sure that Thousand Springs has trickled down in
 20 thirty years. But there should be -- because
 21 we've never been below 4500, there should be some
 22 room to play.
 23 UNIDENTIFIED VOICE: What if it does go way
 24 below?
 25 MR. SHERMAN: If it ever goes way below,

1 anybody who's got a water right that's younger
 2 than the signing of the agreement --
 3 UNIDENTIFIED VOICE: That includes the wells
 4 up through there?
 5 MR. SHERMAN: Absolutely. That's why I'd
 6 like to see us have the storage water that Dr.
 7 Brockway suggested *may be a problem*, because
 8 shutting off the wells up through here doesn't do
 9 us a bit of good in terms of our flows. But
 10 according to State law, the director would have to
 11 shut off everybody junior, whether they were
 12 ground water pump or water systems.
 13 THE CHAIRMAN: Dr. Brockway.
 14 DR. BROCKWAY: I'd just like to comment on
 15 that.
 16 Isn't it true that he would have to shut
 17 them off only if he could show they were impacting
 18 the current deficiency?
 19 MR. SHERMAN: Yes.
 20 DR. BROCKWAY: Which would be obviously hard
 21 to do in the aquifer.
 22 MR. SHERMAN: Right. Yeah, but I think --
 23 well, I don't think it would. I couldn't show the
 24 individual ones, but I think I could show a trend
 25 in decline in spring. And that's -- you show that

1 absent the ability to shut the well off right now
 2 and have an effect, I'd have to say you can never
 3 (unintelligible). Because, *that could then might*
 4 reoccur itself.
 5 By law, you've got to protect 3900. That's
 6 why I'm not proving right now is I have to protect
 7 the power company water bill. So in order to make
 8 sure 3900 doesn't violate, I've got the manifest
 9 system to make sure it doesn't. So instead of
 10 saying we've got 600 CFS to appropriate, I'm
 11 really going to have to be substantially less than
 12 that to make dang sure we go farther than 3900.
 13 That's why we've said if you've got some
 14 storage, you can make the decision of how much
 15 you're going to go. And then from that point on
 16 the user's going to (unintelligible).
 17 UNIDENTIFIED VOICE: Scary, isn't it?
 18 MR. SHERMAN: Yeah.
 19 THE CHAIRMAN: Mr. Shawver.
 20 MR. SHAWVER: Joe, you do understand, when
 21 you said wells, that's only the wells since last
 22 October that would be drilled, not anything prior
 23 to October.
 24 JOE: What if this Thousand Springs drops
 25 real bad. Where are they going to get the water

1 to fill that 3900?
 2 MR. SHERMAN: If the person has screwed up
 3 on his water before the agreement was signed, we
 4 can't touch him under the terms of the agreement.
 5 JOE: Wells included.
 6 MR. SHERMAN: Wells included.
 7 MR. KRAMER: Mr. Chairman.
 8 THE CHAIRMAN: Mr. Kramer.
 9 MR. KRAMER: Let's talk a little bit about
 10 what Dr. Brockway mentioned about the off-stream
 11 storage that has been on the books for 10 years
 12 between Milner and Murphy. A little pilgrim
 13 project, I think, was filed on years ago. And
 14 they have a plan to pump water out of the Murphy
 15 area to an off-stream storage. And right here it
 16 says "no water will be pumped out."
 17 Where does that project stand? And do they
 18 have any more right than a person that is fighting
 19 today on that particular water? Can you answer
 20 that?
 21 UNIDENTIFIED VOICE: 30, 40 grams is 48. I
 22 have to apologize. There's a mistake on the
 23 photostat. We wrote that and they were looked at.
 24 And there's a pretty good reason why we didn't --
 25 what we struggled with that is the negotiators who

1 put the compromise agreement together couldn't
 2 agree on how to calculate communication.
 3 The Board approached the negotiators with
 4 some proposal items (unintelligible), and we
 5 couldn't agree to that. So we said, please, delay
 6 this problem. We hate to see the whole thing go
 7 down too slowly. Calculation mitigation for an
 8 off-stream wintertime storage in one relatively
 9 small (unintelligible). So we haven't really done
 10 a good job on that one, but there's some reasons
 11 for that.
 12 In terms of little pilgrim, where they
 13 stand, they stand, as far as I can tell, with any
 14 new appropriator of water, because they have not
 15 put water to beneficial use before signing the
 16 agreement.
 17 UNIDENTIFIED VOICE: Mr. Chairman.
 18 THE CHAIRMAN: Mr. Kramer, so what you're
 19 saying is that particular filing and right will
 20 have to be mitigated between them and the Idaho
 21 Power water use the block of water that they're
 22 going to pull out?
 23 MR. KRAMER: With the director of the Board
 24 or Board acting as referee, I would
 25 (unintelligible). With the director in the rain,

1 and the water (unintelligible) judge
2 (unintelligible).
3 UNIDENTIFIED VOICE: Dr. Brockway, I have a
4 question. We've heard some concern on Policy 32
5 item, referring to storage. We also see a trend
6 in the State of Idaho -- and let's just take
7 agriculture and set it aside, because it is the
8 backbone of Southern Idaho, and it needs to be
9 protected, obviously. But we do have changing
10 demands on water. And with that, no doubt, we'll
11 have changing water laws within the State of
12 Idaho.

13 Do you see a problem with new storage when
14 it comes to future recreational uses, fishery
15 uses, wildlife uses, et cetera? 'Cause, we are
16 hearing a lot of comments in that direction as
17 we're coming (unintelligible).

18 DR. BROCKWAY: Well, there will be problems
19 with new storage. Those problems won't be
20 problems to everybody. They won't be problems to
21 the irrigating people. But they'll be problems to
22 fish, recreation and wildlife. I think we need to
23 take another good hard look at new storage in the
24 upper Snake system. I think there's potential for
25 additional storage that can be managed and revised

1 help.

2 Because I commented on the State buying
3 storage and using it as a slush fund, that doesn't
4 mean I'm not saying that it shouldn't be for
5 storage value. I think there should. My comment
6 is I don't think that the State ought to be in the
7 position of owning storage as a buffer for many.

8 THE CHAIRMAN: Mr. Dunn?

9 MR. DUNN: I'd like to, on Chuck's comment,
10 one of the things we're looking at in terms of
11 owning new storages or owning some allocated
12 storage, wherever it's at, is if the Board, the
13 State own that, and they're able to pay for that
14 to lease to the power company for power sampling,
15 and then we get to the point where development has
16 occurred and we are in jeopardy of violating the
17 3900, and have to make revisions.

18 One of the thoughts is that the new
19 appropriators would end up paying (unintelligible)
20 fee to pay for that water use. If you're going to
21 use water that will cause the 3900 to get in
22 trouble, the people that are doing that ought to
23 pay for storage, because nobody's -- even you --
24 nobody knows exactly what happens when you take
25 water out of that aquifer. You have to make some

1 better management of the total resource.
2 It will be more difficult now to implement
3 any new storage because of the competing concerns
4 that we didn't have 30 years ago and 40 years ago.
5 But I really believe that we need to look harder
6 at the new storage as a procedure for helping us
7 optimize the use of the total water resource.

8 And that needs to be coupled with aquifer
9 storage and regulations and management as well.
10 We can't just manage the surface waters of the
11 State, or the surface waters of the Snake River
12 and neglect the aquifer systems that are
13 intimately related with the river systems. And we
14 need to do that. And we need to have, in my
15 opinion, better data and better tools to do it
16 with.

17 That's why I asked the question about the
18 hydrologic studies and economic studies funding
19 that, to me, are the backbone of providing the
20 ability for the department to make evaluations of
21 how beneficial this new storage, how can you
22 better manage the aquifer river system and not
23 global all 3900. There are some things you can
24 do, management-wise, with the river to regulate it
25 and to keep the 3900 there. And new storage would

1 assumptions. You make the assumptions that the
2 guys appropriating it know there are some
3 (unintelligible), and knows the risk of their
4 being wrong and you've got to pay in the future.

5 That's some of the things we're looking at
6 in terms of (unintelligible).

7 UNIDENTIFIED VOICE: Well, if you got into
8 the storage business, I would say that's an
9 equitable way to (unintelligible), if you got into
10 the business.

11 I don't know. It certainly is not
12 traditional for the State of Idaho. That doesn't
13 mean it shouldn't be looked at pretty close.

14 UNIDENTIFIED VOICE: The problem is that
15 nobody can go out and buy a couple acre feet at a
16 time. You've got to go out and buy a chunk of the
17 reservoir and just, you know, get it. So
18 somebody's got to be the catalyst, be it the State
19 or whomever. Somebody's got to buy a chunk so
20 people can buy bits and pieces of it.

21 UNIDENTIFIED VOICE: What happens, though?
22 Can we get down -- you know, we're right in the
23 brink there, 3900, and whoops, we made a mistake.
24 And for three years or five years, whatever, the
25 projected flow is only 3700. So that means you've

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1 got to draw on that storage. And maybe if we
 2 overshot too far, you've got to draw on it
 3 perpetually. It no longer becomes a buffer. It
 4 becomes hard-wired in the system.
 5 Would you manage any different if you had
 6 that?
 7 UNIDENTIFIED VOICE: Certainly. You end up
 8 cutting people off. I mean, the water supply is a
 9 finite number. You make the best estimate you
 10 can. You can't say, well, we can't make a
 11 decision if we don't have all the data. That's
 12 not the way life operates. You take the best data
 13 you have. You make the best decision you can.
 14 And if you're wrong, you're wrong. You have to go
 15 back and correct it. Then, you know, given all
 16 the variables, the chances of being exactly right
 17 are nil.
 18 It's like in Congress, people make a
 19 projection, it's probably going to be wrong, but
 20 you may be close. And that's about all you can do
 21 in that is hope we get close enough that we've got
 22 some kind of commission to compensate for it. You
 23 know, without any storage, don't look for 600.
 24 We'll have some lesser number, I can guarantee it.
 25 We don't dare get to exactly 600 based on our

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1 estimates of depletion. We need to stretch it out
 2 or you shorten it up.
 3 UNIDENTIFIED VOICE: Well, Mr. Dunn,
 4 wouldn't it be in the public interest to have
 5 other upstream storages. Dr. Brockway talks about
 6 covering mismanagement of water. But it would
 7 appear to me that if somehow, through the process,
 8 we actually did mismanage water, that's not going
 9 to be done on purpose. It may be because of the
 10 state of the art at the time that caused it. But
 11 wouldn't it be in public interest to have other
 12 new storages just to cover those contingencies?
 13 MR. KRAMER: Mr. Chairman?
 14 THE CHAIRMAN: Mr. Kramer.
 15 MR. KRAMER: Jeff, don't you think that it
 16 might be easier to build new storage once you get
 17 everyone involved? Problem with the storages we
 18 have built up until now, it's been agriculture and
 19 power. And they're the only two that have put the
 20 bucks in to build the storage. Any storage that's
 21 going to be built from now on, I think everybody
 22 will participate in. Therefore, there will be
 23 more people that owns the water. And maybe there
 24 will be a bigger buffer.
 25 We hear as we go up and down here, we want

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1 more water for fish, more water for recreation.
 2 It's high time that those people start putting up
 3 the bucks if we're going to build storage, because
 4 those are the people that are doing the yelling.
 5 So we may have an easier time to build storage
 6 than we've had up until now. It's going to be
 7 tough for agriculture to build anymore storage.
 8 DR. BROCKWAY: Mr. Chairman?
 9 THE CHAIRMAN: Dr. Brockway.
 10 DR. BROCKWAY: Well, I think you'll find
 11 that certainly the demands are greater from a
 12 wider segment of the populus than they ever have
 13 been. I think you'll also find, if you look at
 14 the record, that those who cry the loudest have
 15 the least money.
 16 I don't call it that will continue forever,
 17 but that's historically the way it's been. And so
 18 you may have a lot of people crying, but not
 19 willing to really share the load like the
 20 agriculture has in the past. I don't know.
 21 UNIDENTIFIED VOICE: All right. That could
 22 be. Of course, the farmers that going broke's
 23 doing a lot of crying.
 24 Gene?
 25 THE CHAIRMAN: Yes, Mr. Haas.

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1 MR. HAAS: Chuck, on your comment about
 2 major consumptive use on -- for DCMI, I agree with
 3 you on all of the difficulties. It seems to me
 4 that the only alternative to that is to not have
 5 an allocation. Is that what you were suggesting,
 6 that there not be an allocation, specific
 7 allocation made to DCMI?
 8 DR. BROCKWAY: Well --
 9 MR. HAAS: Seems to me you have two choices.
 10 Either you allocate or you don't. If you
 11 allocate, you have to measure something or try
 12 your best.
 13 Were you suggesting no allocation?
 14 DR. BROCKWAY: I don't think I'm saying you
 15 shouldn't have some sort of allocation. I don't
 16 know how you came up with the 150 CFS.
 17 MR. HAAS: It was in part of the agreement
 18 package, negotiators --
 19 UNIDENTIFIED VOICE: That means some lawyers
 20 put it together.
 21 DR. BROCKWAY: Well, how that worked doesn't
 22 matter. Certainly the State could have gotten the
 23 policy of a certain amount of designated
 24 consumptive use required for DCMI. My problem is,
 25 through regulation, the determination of -- a guy

1 comes in with an application for a water right or
2 for permit and he says I want to divert 4 CFS for
3 my fish processing group subsequently. What
4 guidelines would we use to determine what part of
5 that 150 CFS consumptively allocated that guy's
6 going to use.

7 MR. HAAS: Well, I'm not disagreeing at all,
8 Chuck. And I guess we would use the best guess we
9 had.

10 DR. BROCKWAY: Whatever you've got, yeah.

11 UNIDENTIFIED VOICE: Whatever the university
12 provided.

13 MR. HAAS: Well, I think our choice, you
14 know, either -- forgetting whether it's 150 or the
15 number. I think that's not important. But you're
16 saying that -- I'm not sure what your testimony is
17 there, I guess. I agree with the difficulty, but
18 doesn't seem to me like you have a choice. Either
19 you make an allocation, or you don't. If you make
20 an allocation, then you have to some way try to
21 measure something.

22 The alternative to make an allocation is to
23 say there will be no allocation for any types of
24 uses. And whoever gets there first, fine. And
25 when the director thinks the total is close enough

1 to -- where we're getting the 3900, we shut it
2 off.

3 DR. BROCKWAY: Let me pose a question, then,
4 in opposition to the allocation procedure.

5 MR. HAAS: Okay.

6 DR. BROCKWAY: Let's suppose that I'm the
7 1201st guy that comes in to the Board with an
8 application for some kind of commercial water use.
9 And I come in and I need 2 CFS and you say, no,
10 you can only have one CFS, because we've
11 determined that that's all you need. But low and
12 behold, after you add up all the figures, that
13 comes out to 151 CFS. And so you deny the permit.
14 On what basis can you really make that stick as
15 compared with an irrigator or with some other
16 user?

17 In the defense, to set up an arbitrary
18 allocation for specific uses when everybody in the
19 state's supposed to have equal opportunity for
20 diversion and use -- beneficial use of water.

21 THE CHAIRMAN: Mr. Haas, do you have
22 anything else?

23 MR. HAAS: I'm not going to answer that when
24 the director's here to handle it.

25 THE CHAIRMAN: Mr. Dunn.

1 MR. DUNN: It's totally defenseless. That
2 the problem is that we get into a situation where
3 everybody wants a finite -- exact finite answer.
4 And you don't have that. And if we look at the
5 maximum transpiration, we made decisions on water
6 supplies based on evaporative transpiration. You
7 can blame critically, because, as you know, it's
8 not right, it's wrong. (Unintelligible) But at
9 the time, it was the best we had. And you make
10 the dang decision, right or wrong, the best you
11 got. As you get more information, you change it.

12 You come in with DCMI, and you get down to
13 the last second foot as we know it. And the guy
14 only gets one. He doesn't get two. It's
15 defensible unless he can show that we're wrong up
16 to that point. And it's one person's word, I
17 guess, against the other.

18 But absent precise data, you use the best
19 thing you can -- you got. And that's -- some
20 assume (unintelligible) tries to redo that all the
21 time, the allocations (unintelligible). But,
22 again, it's the reason you need some kind of
23 cushion. With 150 out saved for DCMI, on the
24 other side of the pendant you're down to 450 now
25 for the other consumptive use. You know, you've

1 got to be more careful as you start -- as I start
2 to allocate that. Better data we get, better
3 decision we make. We continue the way we are now,
4 you're going to get some pretty raw decisions.
5 150, we're going to be careful that we don't allow
6 everything to be seen through (unintelligible).

7 But beyond that, let's assume that we go
8 into just a hellacious development in this state
9 of nonagriculture, just DCMI. And all of a
10 sudden, we're using that all up. Well, we haven't
11 got -- used up the 450 yet. The answer to that
12 then is for the Board, in addressing the Water
13 Plan to say, well, we reserved 150 for DCMI, but
14 obviously, we were wrong. We've got more use for
15 that kind of water than we anticipated, and we're
16 going to raise it to 200, and reduce the other one
17 to 400, because that's -- it's said in policy.
18 It's not set (unintelligible). Change the
19 allocation (unintelligible). That's the advantage
20 of having it as a policy for the State so you know
21 what we're following and we can see how the thing
22 progresses over time.

23 UNIDENTIFIED VOICE: Boy, if one thing to
24 keep in mind also, that by law, the State Water
25 Plan has to be updated on a five-year basis. So

1 it seems they're not written in blood.
 2 Mr. Chairman?
 3 THE CHAIRMAN: Yes, Mr. Sherl.
 4 MR. SHERL: I'd like Frank to help me
 5 explain something to Elmor's concerns here that we
 6 agree with the -- change the Water Plan, Policy
 7 32, no problems. Legislature gets in a fight.
 8 They never get anything done. Are we saying we
 9 won't have a changed Water Plan if that happens,
 10 Frank?
 11 MR. SHERMAN: It's very likely. Your next
 12 board meeting is not scheduled until early March.
 13 If you can't read the legislature by then, maybe
 14 you shouldn't be on the Board. Maybe the
 15 legislature will be so deadlocked you can reach a
 16 decision that way too.
 17 The other thing that happens, of course, is
 18 with passing of the addition of last November, the
 19 Water Board no longer has the real final say in
 20 the State Water Plan. They can adopt 3900, and
 21 the legislature isn't making any moves to
 22 implement the agreement, the legislature can
 23 change it back to 3300 like that.
 24 So people might ask the question why is the
 25 Board going to all the trouble coming out for

1 public hearings, and we held information hearings
 2 and all the rest. That's because the Board still
 3 is responsible for forming the policy with the
 4 State. Legislature now can review and change the
 5 Water Plan. The Board even -- feels even more
 6 strongly that they need public input to the Water
 7 Plan. So it's less likely that the legislature
 8 will change the plan.
 9 But if they adopt the 39/56 and the
 10 agreement's not going anyplace, I feel fairly
 11 confident the legislature would change that back
 12 to 33. And, in fact, the Board themselves could
 13 change it back, but it would be faster if the
 14 legislature would do it. They do it in one day.
 15 The Board would probably hold some more public
 16 hearings.
 17 THE CHAIRMAN: Thank you, Frank.
 18 UNIDENTIFIED VOICE: Mr. Chairman?
 19 THE CHAIRMAN: Yes, sir.
 20 UNIDENTIFIED VOICE: There's a lot said
 21 about everybody giving all they can and that. But
 22 there's nothing said about beneficial use and the
 23 proof of beneficial use and the efficient user. I
 24 wonder why that's not been addressed.
 25 UNIDENTIFIED VOICE: I think I'll try that

1 one, Mr. Chairman. I don't know if I could do a
 2 good job of it.
 3 The agreement in no way changes beneficial
 4 use requirements that are already in place. Now,
 5 what's exploring the maximum use of stored water,
 6 for example, may duly show that State law as it
 7 exists today is actually at a disincentive to the
 8 water efficient user. And as that thing gets
 9 flushed out -- and I say the Board has accepted
 10 the responsibility of trying to at least look at
 11 the scoreboard.
 12 As that gets flushed out, it may be possible
 13 that we can see changes in the law which really --
 14 as I said earlier, as an example, the person
 15 who -- well, this would be a different example.
 16 But if a person is now diverting five acre -- feet
 17 per acre and he figured out he only needs three,
 18 those two acre feet are really part of his water
 19 right there. He can't sell them to somebody else
 20 and put it on new ground, because that's expanding
 21 the number of acres being irrigated with that same
 22 use of water.
 23 And that's one of the laws that -- it sounds
 24 easy to change, but it really isn't. That's sort
 25 of a guaranty about how things work in the system.

1 But it's one that should be looked at and will be
 2 looked at. We're always caught, at the
 3 Department, at least, between how you encourage
 4 more efficient use of water if there's no profit
 5 or return to the end user farm.
 6 We see all these sudden pivots going in, and
 7 we know they're energy efficient, they're water
 8 efficient. The reason they're going in is because
 9 they're labor efficient, not water efficient or
 10 energy efficient.
 11 And I think the agreement and these changes
 12 in the Water Plan which reflect the agreement were
 13 specific to a problem at Swan Falls. And the
 14 intent was to resolve as many problems in the
 15 whole basin as it could. They don't pretend to
 16 solve the problem the Board's been worrying about
 17 for two years on how do you manage the groundwater
 18 resources in the state most effectively. They
 19 don't solve the barriers to efficient use of
 20 water. It does answer, at least, about the stored
 21 water issue.
 22 THE CHAIRMAN: Go ahead.
 23 UNIDENTIFIED VOICE: I had concern too about
 24 a lot of generators that are going in at Beature
 25 Dam (phonetic). They can be more efficient. And

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1 does that need licensing based on kilowatts -- the
2 water generates so many kilowatts? Or can they
3 expand their kilowatts and -- by their efficiency?

4 UNIDENTIFIED VOICE: I think you've got a
5 two-pronged question here. And I'll try and
6 answer it. And maybe the director can scream at
7 me if I don't satisfy you.

8 In terms of generating power with existing
9 water, you're going to a nonconsumptive use of
10 water. If a ditch company, an irrigation
11 district, whatever, were to run that water through
12 the generator rather than putting it on the lands,
13 that is not what their original water right was
14 for. And they'd be jeopardizing that water right
15 by not putting it on the ground (unintelligible)
16 use (unintelligible).

17 UNIDENTIFIED VOICE: And if I become more
18 efficient on my water right and utilize the whole
19 right for a year, they could say, well, you can't
20 prove the beneficial use of that water, and you
21 don't need it anymore.

22 UNIDENTIFIED VOICE: That, unfortunately, is
23 100 percent correct.

24 UNIDENTIFIED VOICE: And that's existing
25 water. That doesn't have anything to do with

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1 this, but --

2 UNIDENTIFIED VOICE: But if I wanted to get
3 out from that, the Water Board here in this area,
4 they protect the inefficient user and he's running
5 water off adjacent land. And they're not doing
6 anything about that. And they say, well, you
7 become efficient. And all that money you spent to
8 get efficient, we'll reward you with a bale of
9 hay.

10 UNIDENTIFIED VOICE: And that's true. What
11 Brian said was existing State law may not be the
12 best there is in the world. But the Swan Falls
13 agreement can't address that. It's not intended
14 to address that. And I think that's something we
15 need as a State to look at in the future is what
16 we're going to do with their water rights. You
17 can't solve it with the Swan Falls agreement.

18 THE CHAIRMAN: Yes, sir.

19 UNIDENTIFIED VOICE: I understand there's
20 something in the river basin, tributaries to the
21 Snake River in western Idaho where they have
22 already recently adjudicated their water. These
23 people are objecting to having to help pay for
24 adjudication all over again.

25 Where do we stand on that? Where do they

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1 stand on that?

2 UNIDENTIFIED VOICE: It's true that
3 particularly the Payette is the example. And it's
4 frequently slighted when there was some 9,000
5 water rights. It was down to 10 or 11 court
6 cases, and adjudication work will be finished.

7 Why should they be asked to help pay for it?
8 Let's start out with why is the adjudication at
9 this time going to start at Lewiston? To bring in
10 federal government to participate in the State
11 adjudication in the State courts, you have to do a
12 system adjudication. Negotiators and lawyers over
13 the State feel there's no question that if you
14 start at Lewiston and include the Clear Water and
15 Salmon Rivers, you're doing a systems
16 adjudication.

17 I think the hope would be that we can
18 negotiate with the federal government and Indian
19 tribes, and perhaps start the adjudication at Swan
20 Falls, a more realistic point in terms of the
21 water rights controversy from the south. If that
22 were to happen, Payette people would be out of the
23 picture.

24 Why should they pay if they're included?
25 Historically, adjudications have been done at the

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1 general expense of the State. The Payette
2 adjudication was paid with the general funds
3 money. The water users in that area contributed
4 no money towards adjudication, per se.

5 This Swan Falls agreement, the Snake River
6 Basin adjudication is so large and so complicated,
7 that it shouldn't be paid out of State general
8 funds unless we stretched it out over 40 or
9 50 years instead of the 10 directly
10 (unintelligible) optimistically estimated.

11 They're going to get the benefit of the
12 adjudication. They're going to be incorporated
13 into the whole basin-wide picture. Their rights
14 are going to be quantified along with everyone
15 else in the basin. In terms of what they would
16 have to do except help support the adjudication in
17 their part of the state, they won't have to do
18 anything. That Court decree will be incorporated
19 into the new Court decree. They got a free
20 adjudication. They don't want to pay now to help
21 solve a major regional picture of the problem.

22 UNIDENTIFIED VOICE: And they won't. They
23 won't be paying. Payette, with the
24 (unintelligible) and the two general adjudications
25 (unintelligible). And the statutes that have been

15 (Pages 57 to 60)

1 drafted does not provide for them to pay for those
2 adjudications.
3 UNIDENTIFIED VOICE: In fact, what they've
4 already done *defends that*.
5 UNIDENTIFIED VOICE: Sure it does. We've
6 done the adjudication. We've filed it with the
7 Court. And the provision in the statute, in the
8 new bill says that if those were volumes were made
9 to the Court prior to a specific date of -- I
10 forget the date right offhand -- they're not
11 subject to these fees. And that's the case.
12 KEN: Why would they be opposed?
13 (Unintelligible.)
14 UNIDENTIFIED VOICE: I don't know. You
15 know, I've explained that to --
16 UNIDENTIFIED VOICE: Ken, before you answer, I
17 would you address the question again? We didn't
18 hear it.
19 KEN: Oh, I just asked why they would be
20 opposed to it then, to the adjudication if they
21 don't have to pay for it.
22 UNIDENTIFIED VOICE: I've explained that to
23 Representative Little several times, and he's
24 still concerned about it. I don't know. Well,
25 let me read the draft statute for you so you --

1 it's not -- it only takes about 10 seconds.
2 UNIDENTIFIED VOICE: I would think
3 (unintelligible) like me, and didn't realize it
4 had changed (unintelligible).
5 UNIDENTIFIED VOICE: Everybody's going to
6 have to pay.
7 UNIDENTIFIED VOICE: Says, "the schedule set
8 forth applies to the adjudication proceedings
9 commenced or enlarged on or after January 1st,
10 1985. And the adjudication proceedings from which
11 the proposed finding of the water right has not
12 been filed with appropriate District Court by the
13 Department of Water Resource." They apply if the
14 findings have not been filed. In the Lemhi, they
15 have been filed. In the Payette, they have been
16 filed. Therefore, these don't apply. And I can't
17 get anybody to understand that. It is not to
18 reduce the Payette, not reduce the Lemhi and not
19 (unintelligible).
20 UNIDENTIFIED VOICE: Ken, how does that
21 language relate to some of the older decrees that
22 have been filed? Is there some period in there?
23 UNIDENTIFIED VOICE: There's only two
24 general adjudications in the state, Lemhi and
25 Payette.

1 UNIDENTIFIED VOICE: It's the general
2 adjudications.
3 UNIDENTIFIED VOICE: Everything else has
4 been done in a sweetheart deal between the Butch
5 and the water users. There are only two general
6 adjudications that the State's had.
7 UNIDENTIFIED VOICE: And refers to general
8 adjudication.
9 UNIDENTIFIED VOICE: Yes.
10 THE CHAIRMAN: Dr. Brockway.
11 DR. BROCKWAY: I have a question, I guess,
12 for the director. And that addresses this
13 gentleman's concern about expansion of the water
14 right, new lands. Is there provisions in the
15 agreement for grandfathering those individuals who
16 have expanded their right prior to the agreements,
17 albeit illegally?
18 MR. DUNN: There is a House Bill 71 which is
19 being considered which would provide a -- where an
20 expansion occurred under a valid water right that
21 was unadjudicated, that that expansion could be
22 taken care of. And it would be with the priority
23 date as of the expansion.
24 So somebody didn't file the claims as they
25 should, and they go on ahead and expand. It says

1 "expansion of use after acquisition of the valid
2 unadjudicated water right in violation of the
3 mandatory permit requirements."
4 Remember the ground water, if you did that
5 after 1963, by law, you had to have a permit. So
6 we're saying if it was done in vio- -- in
7 expansion in violation of the manager permit
8 requirements, it shall be presumed to be bound and
9 to have created a water right with a priority date
10 as of the completion of the expansion in the
11 absence of injuries or other appropriate" --
12 So House Bill 71 takes care -- tries to take
13 care of anyway, that expansion that occurred in
14 violation of mandatory permit system by giving it
15 a date of priority as of expansion. It also talks
16 about the expansion where the water right had been
17 previously adjudicated, where the Courts, in,
18 like, the Rexburg decree, and various other of the
19 30 or 40 small decrees that have gone on in the
20 system, where the Court at one time adjudicated
21 it. And in the passage of time, the irrigated
22 acres may have shrunk or grown or there are all
23 kinds of different contractions of the amount of
24 land that's actually irrigated with water.
25 And we say that once the adjudication is

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<p>1 started, that the lands that were presently being 2 irrigated will be considered to have the same 3 priority as the original adjudication. We won't 4 worry about when they came in. That will, I 5 think, take care of the question of whether a 6 canal company has a water rights of -- some are 7 1890, and some are 1892, and some are 1896. And 8 you got a whole array of priority dates. If the 9 original decree said 1890, we'll look at how much 10 irrigating's done, and that's what the right would 11 be. Right or wrong, that's what the law would 12 say.</p> <p>13 THE CHAIRMAN: Joe, did you have a question?</p> <p>14 JOE: Yeah. I was wondering what ever 15 happened to that here a few years ago that's 16 talking about recharging the aquifer. I never 17 heard no more about it. Doesn't surprise me. I 18 just heard about it once.</p> <p>19 THE CHAIRMAN: Dr. Brockway --</p> <p>20 JOE: I was kind of hopes they'd fill it up, 21 so they'd come out and move that bump.</p> <p>22 DR. BROCKWAY: It's more involved 23 (unintelligible) about the technique 24 (unintelligible) because he's been working with 25 those people. In fact, that spring, the first</p>	<p>1 quality in that the only kind of places you can 2 get big volumes of water down in the ground is 3 basically where you dump (unintelligible) salt. A 4 lot of salt does (unintelligible) filtering and 5 purifying. The river (unintelligible).</p> <p>6 The people down in Oakley are certainly 7 looking very hard at artificial recharge. They're 8 in the fortunate situation -- or unfortunate 9 situation they've drawn water levels so down, you 10 can hardly put the pump in there.</p> <p>11 UNIDENTIFIED VOICE: (Unintelligible) last 12 spring.</p> <p>13 UNIDENTIFIED VOICE: They're fortunate in 14 the sense they have probably pretty good cone and 15 depression underneath their property. If they can 16 get it in there, it's not going to get out, 17 because they're drawing water in all the richest 18 parts. So they -- it takes a real unusual set of 19 circumstances before it becomes economically 20 attractive.</p> <p>21 THE CHAIRMAN: Mr. Dunn.</p> <p>22 MR. DUNN: I'd like to ask Chuck Brockway 23 for his comments on the natural or at least 24 semi-natural recharge that's occurring on 25 Egin Bench (phonetic), and what he thinks the</p>
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<p>1 pilot test was done out in the Jerome area there. 2 And data was collected on how fast water would go 3 into the ground, where it wanted to travel to. 4 Some water quality data was going because there 5 are lots of barriers that seem to be 6 (unintelligible) to this kind of operation. But 7 we anticipate water will be going in the ground 8 out there next year. But -- this year, now, I'm 9 sorry. We're in '85. This year again.</p> <p>10 In terms of why we see more artificial 11 recharge in the State and in some parts 12 (unintelligible), you have to realize that once 13 that water goes in the ground, the person who's 14 putting it there loses control over it. You can 15 spend a lot of money putting water in the ground 16 and not get any of it back, except from local 17 reduction (unintelligible) perhaps.</p> <p>18 Now, a project that's been going on is 19 funded to a large degree by the trout farm 20 industry. And they're concerned about the water 21 that comes out of Fountain Springs. They know 22 that water gets in the ground, at least no less is 23 going to come out (unintelligible). So they are 24 willing to support in that sense.</p> <p>25 There's some real barriers in terms of water</p>	<p>1 effect would be on the State plan if that were 2 halted, in other words, if that converts to 3 sprinkler irrigation as opposed to precedent.</p> <p>4 THE CHAIRMAN: Dr. Brockway?</p> <p>5 DR. BROCKWAY: Well, the Egin Bench. 6 (Whereupon, Tape 2 concludes.)</p> <p>7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

1 AUTHENTICATION

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This is to certify that the attached transcription of audio recording of proceedings before the Idaho Water Resource Board, in the matter of State Water Plan Policy 32, were held as herein appears, and that this is the original transcript thereof.

IN WITNESS WHEREOF, I have hereunto set my hand November 15, 2007.

Debora Ann Kreidler, Court Reporter
CSR No. 754

<p>A</p> <p>ability 38:1 42:20 able 43:13 absence 64:11 absent 38:1 51:18 Absolutely 37:5 accept 14:6 15:24 acceptable 4:5 27:25 28:2 accepted 55:9 accepting 29:19 access 21:20 accounted 12:18 acknowledged 13:24 acknowledges 7:19 11:10 acquire 21:2 acquisition 64:1 acre 9:10 44:15 55:16,17 55:18 acres 55:21 64:22 acting 40:24 action 22:24 33:22 34:21 actions 3:17 4:2 add 6:11 50:12 addition 53:18 additional 23:25 41:25 address 15:14 23:6,19 58:13,14 61:17 addressed 24:20 54:24 addresses 6:4,4 63:12 addressing 52:12 adhere 26:19 adjacent 58:5 adjudicated 58:22 64:17 64:20 adjudication 26:23 32:14 32:24 33:2 58:24 59:6,8 59:11,12,16,19 60:2,4,6 60:12,16,20 61:6,20 62:8,10 63:8 64:25 65:3 adjudications 59:25 60:24 61:2 62:24 63:2,6 administration 24:1 admit 35:16 adopt 14:8 53:20 54:9 adopted 23:25 advantage 52:19 affect 32:14 agencies 24:1 agency 27:4 ago 26:8 39:13 42:4,4 65:15 agree 9:2 19:21 26:2 40:2 40:5 48:2 49:17 53:6 agreed 33:14 agreement 4:3,6 5:6,12 7:14 8:10 15:12,13 19:8 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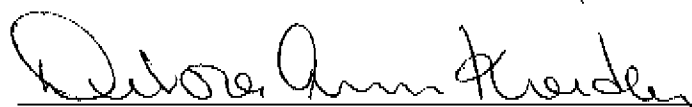
R E P O R T E R ' S C E R T I F I C A T E

I, Debora Ann Kreidler, Court Reporter
Pro Tempore, County of Ada, State of Idaho, hereby
certify:

That I am the reporter who took the
proceedings had in the above-entitled action in
machine shorthand and thereafter the same was
reduced into typewriting under my direct
supervision; and

That the foregoing transcript contains a
full, true, and accurate record of the proceedings
had in the above and foregoing cause, which was
heard at *Burley*, Idaho.

IN WITNESS WHEREOF, I have hereunto set
my hand *this 19th of November*, 2007.



Debora Kreidler, Court Reporter Pro Tempore
CSR No. 274

