

IN RE: IDAHO WATER RESOURCE BOARD
STATE WATER PLAN HEARING ON POLICY 32
TWIN FALLS, IDAHO

JANUARY 31, 1985
2:00 P.M. and 7:00 P.M

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Prepared for

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STATE WATER PLAN HEARING ON POLICY 32 TAKEN 1-31-85

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1 UNIDENTIFIED SPEAKER: This is a recording of the
2 state water plan hearing on Policy 32 in Twin Falls,
3 Idaho, at 2:00 p.m. on January 31st.
4 MR. GRAY: Good afternoon, ladies and gentlemen.
5 My name is Gene Gray. I'm chairman of the Idaho Water
6 Resource Board, and with me today I have a Dave
7 Ridulch, [phonetic], Dave is a farmer from the Saint
8 Anthony area and also a member of the Committee of
9 Nine, Jim Shauver [phonetic] from the Eaton area, Jim
10 farms over there, Don Kramer from the Castleford area.
11 From the Department of Water Resources, we have Wayne
12 Hawes and a geologist with the Department, Frank
13 Sherman. I got it right, didn't I, Frank?
14 What we're here to speak to you about today is
15 Policy 32, a revision thereof of the state water plan.
16 If you have a copy of your current, the front page will
17 kind of give you a general rundown on exactly the
18 position of the Water Resource Board. December of 1984
19 we accepted some draft language for a revision of
20 Policy 32 of the existing state water plan. That's
21 what we're here for today, to take your testimony on
22 the revisions of that policy. If you look on page 2
23 and page 3 of your copy of the current, you will find
24 the draft language of Policy 32. Mr. Sherman will be
25 going over that briefly for you to give you kind of an

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1 overview of exactly how the thing lays out.
2 Pages 4 through pages 7 is the legislative package
3 you've all been hearing about and reading about that
4 our legislature is presently working on. Policy 32 is
5 an integral part of that legislative package. It's
6 very important to the Board that we get your public
7 input so that we know how you feel about the draft
8 language. We want you to constructively take it apart
9 for us. We want your criticism. We want your
10 recommendations. The Board will be accepting written
11 testimony at the Boise office until February 22nd, and
12 you might write that down. If you're not going to
13 testify this afternoon, but would prefer to send us
14 written testimony, we would certainly be honored and
15 glad to receive that from you.
16 If you'll take a look on page 7 on the right-hand
17 side; you'll see some actions that must be taken by May
18 15th to implement the entire package. The first one on
19 the list shows amendment to the state water plan, and
20 that's why we're here today, to get the information so
21 the Board can then go back and put this information
22 together. Secondly, the legislative package must be
23 passed, and it must be passed pretty much the way it is
24 right now, or all three parties that negotiated this
25 particular package may not go for it.

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1 Thirdly, the appropriate action by the Public
2 Utility Commission or the legislature, as called for in
3 pages 4 through pages 7, must be accepted. There must
4 be an order from the Federal Energy Regulatory
5 Commission agreeing to the package that the parties are
6 going to accept.
7 Fifth, the Idaho PUC must dismiss the 1977 lawsuit
8 by the rate payers. And, sixth, if required because
9 Idaho Power has some dams in Hells Canyon which border
10 our neighboring state of Oregon, the Oregon PUC may
11 also have to okay the package, if necessary. And,
12 seven, the enactment by the legislature of
13 subordination language as set forth in 7A and 7B, and
14 you'll find that on pages 6 and 7, and it is again part
15 of the package.
16 What we'd like to do right now is have Mr. Sherman
17 give you an overview of Policy 32. We will follow that
18 by the public testimony, and we have some people who
19 will give formal testimony to us this afternoon. We
20 will close the formal testimony, and then we'll open it
21 for questions and answers. So anything you might have
22 we've got staff with us to help answer those questions.
23 Mr. Sherman.
24 MR. SHERMAN: It gets a little complicated to know
25 what's really happening here. There are three things

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1 people really have to be aware of. There's the water
2 plan that's in place. There's the proposed revisions
3 to one of the policies in the plan, copies of which you
4 have in your hands, and then there's the agreement
5 itself. Most of the changes in the water plan,
6 proposed changes, are really reflections of the
7 agreement, the agreement that the State and Idaho Power
8 entered to specify certain changes that the negotiators
9 felt had to make this thing work.

10 Take a look at the very first one. It talks
11 about Policy 32, the Snake River basin. In the
12 existing water plan, the whole idea of the policy that
13 governed the Snake River basin was that the Water Board
14 was allocating the unappropriated waters within the
15 basin. That got to be offered when the Supreme Court
16 ruled in 1982 that the Idaho Power company had an
17 unsubordinated right at Swan Falls. They had some
18 legitimate claim to certain amounts of water there.
19 That was sent back to District Court, and that's when
20 the State and Idaho Power decided that enough with the
21 courts and let's try and make a deal.

22 The numbers in the existing plan were based on the
23 concept that all of Idaho Power's water right in that
24 facility was subordinated and the State had the
25 authority to allocate all that water to other uses, so

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1 the numbers in here have to be high. It's a concern of
2 the Board already that it needed to be changed with
3 the agreement specifically saying they wanted changes
4 made to it. The Board then looked at the revised
5 language, and it's (inaudible) to hear your comments on
6 it.

7 The one thing that's slightly different about this
8 version than that which is already in the water plan is
9 that we tried to highlight all the different things
10 that seem to be policy. We just have some accompanying
11 text to try to explain the whys and wherefores of the
12 policy. The very key one, (inaudible) the whole
13 agreement gives policy of how the Snake River basin
14 should be managed is the concept that the minimum
15 stream flood the Murphy gauge will be raised. The
16 existing water plan says 3300 CFS year-round. They're
17 going to raise it to 3900 CFS in the summertime and
18 5600 in the wintertime.

19 It's not at least unusual to have different flows
20 or different periods for a water right. That's not a
21 new idea. We try to negotiate a compromise between two
22 competing interests. There's just flat more water
23 going past that gauge in the wintertime, therefore the
24 negotiators set it higher in the winter than in the
25 summer. The proposed condition repeats minimum

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1 flows that are already in the water plan for discharges
2 on the dam that can be zero for periods of overflow.
3 It also repeats a flow at Weiser of 4750 CFS. Those
4 are unchanged. They have gone through the whole
5 hearing process already.

6 The Board is getting or proposes to get under this
7 particular policy minimum average daily flow at
8 Johnson's Bar and Rhine Point. These are two flows
9 that are part of the federal license that Idaho Power
10 has for the Hells Canyon complex. There are points
11 downstream of those dams, and they are there to assure
12 to protect fish and wildlife and navigation on the
13 river. The existing plan recognizes the importance of
14 those flows by citing them and actually quoting the
15 language. The thought is by adding them to the water
16 plan and making it a state policy that they should be
17 minimum flows at those points. No matter what the
18 federal government and Idaho Power might do in regards
19 to the license of those places, these flows then should
20 be protected by the State as part of the state water
21 plan.

22 Policy 32A, water held in trust by the State. The
23 policy doesn't say very much, and it's cryptic as to
24 what it does say because part of the agreement was the
25 so-called legislative package. And these sections of

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1 Idaho Code that are referred to in Policy 32A, 42-203,
2 needs to be made don't actually exist. They're before
3 the legislature right now. (Inaudible) 42-203(c), and
4 that's the one that's been referred to in the
5 (inaudible). Let's back up to a point before we really
6 talk about the public interest criteria. The whole
7 deal as it's called as the compromise to the agreement
8 revolves around the Swan Falls dam and the gauge right
9 below it because that's where the suits (inaudible) in
10 court specific for the water right at that point.

11 The negotiators, looking at it rather
12 realistically and saying we (inaudible), the first
13 point that was really important was what's the historic
14 low flow, how low has it gotten, how far below Idaho
15 Power's (inaudible) CFS? The historic low flow at that
16 gauge is 4500 CFS, quite a bit below what Idaho Power
17 claimed and yet still well above the 3300 that the
18 existing water plan specified. So I'm trying to
19 compromise and sort of just (inaudible). The existing
20 plan calls for 3300, 4500. It's as low as it's gotten.
21 You cut it in half, and you come out with 600 on each
22 side of a dividing point, so they chose 3900 for the
23 summertime flow.

24 Now, everybody thinks about that meaning there's
25 600 more CFS that's got to go past that gauge, 600 more

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1 CFS that's available for allocation, and that's true.
2 The thing one has to remember is that Idaho Power has a
3 different claim to the right in every one of its
4 upstream facilities from Swan Falls. They use the Swan
5 Falls case because it's the critical one in the river.
6 It's the one where the flows have gotten down close to
7 what the water plan called for. It's the one that the
8 court case revolved around. But, in actual fact now at
9 any gauge in the river, Idaho Power's water right is
10 being held in trust by the State.

11 Idaho Power has agreed that as long as 3900 CFS
12 will pass the Murphy gauge in the summertime and 5600
13 in the wintertime that they will not take action on any
14 of their upstream facilities if they're not getting the
15 water at the water right they claim they're entitled
16 to. That's the importance of the Murphy gauge. It
17 doesn't matter how much water (inaudible) or whatever
18 as long as 3900 isn't going past the Murphy gauge
19 anymore. What happens to this water that's held in
20 trust by the State? It represents water that Idaho
21 Power claimed. The Idaho Supreme Court recognizes
22 there's some validity to that claim. They have said
23 you can take part of it and reallocate the water to try
24 to reduce this.

25 Because that water is not the unappropriated

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1 waters of the State, they already have been claimed by
2 someone else, the State can put additional criteria for
3 use on that water. Policy 32A says water to be
4 reallocated can only be done in accordance with the
5 criteria established by Idaho Code 42-203(a). Well,
6 that's the existing requirements that the Department
7 of Water Resources has to check off before they can
8 give you a water right. (Inaudible) beneficial use
9 (inaudible) you prove your beneficial use, those kinds
10 of things, they're already in place. But 42-203(c) is
11 the idea that, because it is appropriating water, we're
12 going to give it to somebody else for a different use,
13 we're going to put some additional criteria on it.

14 These are the ones that talk about what's its
15 impact on the overall economics of the state, what its
16 impact on Idaho policy. Generation capacity
17 (inaudible) is it farm tradition, designed to be a
18 central checkoff list. When someone applies for some
19 of this water, the Department tallies up the pluses and
20 minuses there and has to make a decision whether that
21 water can be allocated or not. Remember, we're talking
22 about water that's already been appropriated. It's not
23 the unappropriated water of the state that can be taken
24 by any citizen.

25 Policy 32B, domestic, commercial, municipal,

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1 industrial. The existing water plan sets aside -- and
2 in the old days we used acre feet, and the negotiators
3 chose to go to CFS, so it gets a little confusing. But
4 the old plan allocated water for municipal industrial
5 uses. Convert the acre feet in here to some kind of
6 average CFS, and it comes out to 144 CFS per day.
7 Average flow shall be diverted or allocated for
8 expansion for municipal and industrial uses. The
9 policy is written out to 150 CFS. More of the reasons
10 for making it larger is that we're including domestic
11 users. It turns out that's not a very important
12 reason. In terms of trying to manage the river, we're
13 now particularly concerned about consumptive use. The
14 amount of diversion, while it has to be recorded, it's
15 not the key any longer. It's how much of that water
16 you divert is actually consumed; how much gets out of
17 the basin one way or another.

18 The real reason for raising it a little bit is
19 because the old plan discusses the possibility of
20 thermal power plants within the state, and they
21 allocated a lot of water for that purpose. We don't
22 see the likelihood of new thermal power plants in the
23 state in the near future. But if they were to come in,
24 we would try -- in accounting for this appropriated
25 water that we are reallocating, we would consider

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1 thermal plants to be (inaudible) and charge them
2 against the 150 CFS set aside.

3 One of the concerns about the 150 CFS is really
4 just a guess. Why we feel comfortable with it is, one,
5 it's close to what the existing water plan called for
6 and, two, the water plan gets revised every five years
7 or at least re-adopted. So if staff people have made a
8 bad guess on how much water should be set aside or
9 expanded uses of the domestic, commercial, municipal
10 and industrial areas can be changed.

11 Policy 32C, agriculture. It's pretty
12 straightforward. As a policy in Idaho the appropriated
13 water held in trust by the State less the amount of
14 water necessary for BCMI shall be available for
15 reallocation depth agriculture uses. Once again,
16 because it's water that's already been appropriated, it
17 has to meet whatever criteria the legislature ends up
18 establishing before the director can turn it loose.

19 The thing that's slightly different here is the
20 existing water plan, when the Board thought they had a
21 lot of water to allocate, they put down desirable acres
22 of new development by the year 2020, for example.
23 We've taken a long, hard look at the number of acres of
24 new development that have come in recently. We find
25 that over the past eight or ten years the average

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1 number of new acres per year is something like 17,000.
 2 We have therefore chosen to say, well, if that's the
 3 number that's been happening let's use that as sort of
 4 a target number or a cap number.

5 Certainly under current conditions, we don't
 6 expect large acreages to come in as new ground. But
 7 rather than just trying to limit it to 20,000 or
 8 17,000 per year, we said let's put a cap of 80,000
 9 acres and then a four-year period. That way a big
 10 project can go in and not be stopped because of some
 11 artificial barrier or the State doesn't like to see
 12 more than 20,000 new acres every year because of the
 13 problem to try to reallocate the water.

14 Policy 32D, hydropower. It says the policy of
 15 Idaho shall be that hydrogeneration be recognized as a
 16 beneficial use. That's already in the law. Certainly
 17 electrical generation is recognized as beneficial use
 18 of water. It further goes on to say that depletion of
 19 flows below the minimum average daily flows set forth
 20 in Policy 32 is not in the public interest. There are
 21 a lot of people who argue that the rate payer is being
 22 hurt because they're taking away water that belonged to
 23 Idaho Power while Idaho Power is in fact giving up
 24 water that belongs to them. That is probably a
 25 legitimate point of view the negotiators and the Board

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1 have to look at.

2 The thing that Idaho Power gets by this agreement
 3 in this particular statement is that the 3900 and the
 4 5600 is now a State policy. The water level should
 5 never go below that. When subordination bills were
 6 introduced in the legislature, the intent certainly
 7 wasn't to take away all of Idaho Power's water and try
 8 to get it down to 3300. That did not (inaudible).
 9 Compromises were made. We won't go quite that low, and
 10 we'll guarantee you State policy needs shall be at
 11 minimum flows.

12 Policy 32E, navigation. It just basically says
 13 that minimum flows that are set by the water plan
 14 provide enough water for commercial and recreational
 15 uses on the river. The only commercial boating on the
 16 river with any significance takes place below the Hells
 17 Canyon complex and in the Hells Canyon area itself.
 18 3900 in the summertime probably will provide adequate
 19 water in the river for recreational uses. Certainly,
 20 it's more than the existing plan provides for so the
 21 Board (inaudible) they're on safe ground with that.

22 Policy 32G, fish, wildlife and recreation. The
 23 policy is sort of the same language that's in the
 24 existing plan except of course it's referring to higher
 25 established minimum flows. It's the policy of Idaho

14

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1 that the minimum flows established under Policy 32 are
 2 sufficient and necessary to meet the minimum
 3 requirements for aquatic life, fish (inaudible) to
 4 provide water for recreation in the Snake River and
 5 below Milner Dam. Stream flow depletion with all the
 6 minimum flows is not in the public interest. The below
 7 minimum (inaudible). (Inaudible) in order to satisfy
 8 the rights on the upper Snake could be set at zero.
 9 (Inaudible) The flow below that is one where Board
 10 (inaudible). That's where the 3900 CFS impacts. If
 11 you stop and think a minute, if for some reason Milner
 12 Dam were shut off and there were no water going by,
 13 where's the water in the river coming from, obviously,
 14 from the Thousand Springs area. That's the water that
 15 makes up the flow for the Murphy gauge in the low flow
 16 parts of the year. If we're going to guarantee 3900 in
 17 Murphy gauge, most of that discharge has to go down the
 18 river (inaudible) at least enough to make up the 3900
 19 or whatever return flows might be recorded.

20 The Board is comfortable here because they're
 21 raising the amount of water that has to be in the river
 22 at any given time. The Board also feels comfortable,
 23 they feel -- thinking for myself, the Board has another
 24 authority to guarantee water for these kind of uses,
 25 and that's their in-stream flow program. The Board is

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1 the only entity in the state that can appropriate the
 2 unappropriated waters in the state and leave that water
 3 in the river. (Inaudible) protecting fish and wildlife
 4 in the whole basin, tributary trees. Trees, in some
 5 cases, are as important (inaudible).

6 Policy 32E, water quality and pollution control.
 7 This is a very terse version of what's already in
 8 the water plan, and that simply is to provide that. To
 9 take good water and mix it with bad water so someone
 10 can meet a wastewater discharge requirement is not a
 11 beneficial use of water. There are existing laws on
 12 the books, both state and federal, which should serve
 13 to protect our water quality. If we're in such a
 14 terrible water-short condition that we can't meet Idaho
 15 Power's water right, we've got to enter some kind of
 16 compromise with them, we shouldn't be taking good water
 17 and using it to make bad water more tolerable.

18 Policy 32I, new storage. This is fairly complex.
 19 Hopefully it won't work out that way, but it seems
 20 complex at the moment, and this particular policy
 21 includes two different policies. The first one is
 22 probably easiest to explain in that it states that: It
 23 is the policy of Idaho that maximum use must be made of
 24 the existing storage facilities in the basin. New
 25 storage upstream from the Murphy gauge should only be

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1 approved after it's determined that insofar as possible
2 maximum use of existing storage is being made.
3 Most of us in here know that a person can have a
4 full natural flow right and a full stored water right
5 for the same piece of ground with the stored water
6 being held (inaudible) water. A person who has got a
7 really old natural flow right never has to call for a
8 stored water right or very rarely, once in ten or once
9 in twenty. There are extreme examples. The city of
10 Pocatello, for example, has a block of storage. They
11 have never called for it. It's there for an extreme
12 emergency. If Pocatello would double in size
13 (inaudible), they might have to call for it.
14 Physically, they can only get it if they put pumps in
15 the river and try to nail it when it went on downstream
16 past them.

17 There's water up there that doesn't get used. So
18 if the negotiators ask the Board to include this policy
19 in the water plan, they can ask the Board to proceed
20 and make the necessary contacts to try, one, change
21 state law, federal law, federal rules and regulations
22 and state rules and regulations in terms of can we
23 better use the water that's held in storage in the
24 basin. We all know that on October 1st, in any good
25 year, the flow in Milner Dam goes to kick it way up as

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1 the water master tries to get some space in next year's
2 runoff. I think this year it was about 12,000 CFS on
3 October 1st. That's water that set in storage up there
4 all summerlong used by the recreational interest but
5 put to no other use and then sent on down the river
6 because you need to make space.

7 Why don't we move that water around for the people
8 who need water? When we're in such a water-short area,
9 why don't we move that water around? The State has
10 what's called a water bank program. Rules and
11 regulations are established so that water can be moved
12 around. (Inaudible) does market water in other parts
13 of the river. Why isn't it particularly effective?
14 Well, federal law says that if you store water behind a
15 federal reservoir you cannot sell that water at a
16 profit. So there's no incentive for someone who has a
17 block of unused storage water to go out and try to sell
18 it.

19 Federal law also provides that if you have water
20 stored behind a federal dam you can only sell or lease
21 that water one year at a time. If someone wants to go
22 in and do something new, break out new ground, put in
23 a new business and he's only assured of water for a
24 one-year contract at a time, he probably is not going
25 to put much of his own money into it and certainly not

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1 many banks are going to want to finance him when his
2 water supply is limited to a contract which duration is
3 one year.

4 State law, even though we, the State, set up the
5 water bank program, state law provides that you cannot
6 expand the water use. You have a right to that water,
7 and it's based on the beneficial use that you claimed
8 it under, and if it's irrigation it's for irrigation
9 for so many acres of ground. If you have excess water
10 and want to sell it, if that's tied to your ground,
11 you'd have to cut down your acreage you're irrigating;
12 otherwise, it will be an expansion of use if that
13 (inaudible) for a consumptive use. You can sell that
14 water to Idaho Power because they're a non-consumptive
15 user, but you couldn't sell it to another farmer
16 because that same block of water that's tied to this
17 one piece of ground (inaudible) two pieces of ground.
18 That's a state law.

19 There's also the worry constantly in the back of
20 anyone's mind who gets involved in the water bank; you
21 use your water for where it's supposed to be once in
22 five years or you lose it. So the Water Board has
23 asked for the State to try to make the rules and
24 regulations to (inaudible) made simpler. They've asked
25 the Water Board -- the Water Board has been asked in

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1 informal discussions with the Bureau of Reclamations,
2 for example, "can we change these state laws?" We need
3 not disincentives but incentives for people who have
4 excess water to make it available for other potential
5 users. That's the first part of the policy.

6 Let me say, as the director of the Department of
7 Water Resources has said in similar meetings, if he
8 were asked to make a determination today, are we making
9 under existing conditions maximum use of the facilities
10 in the system, today he has to say no. There's
11 unallocated water (inaudible). Once that water is
12 gone, allocated out, then his decision would have to be
13 "are we doing the best we can under the existing laws
14 that we operate under?" The answer there would be
15 probably yes. You may not agree that all the laws are
16 the best laws in the world. Hopefully, before the
17 question arises, one, we get rid of the water that's
18 unallocated (inaudible) and somebody comes in with a
19 reasonable new construction facility, these questions
20 will have been asked of the state and federal
21 government, and we'll know whether we're going to be
22 able to change it.

23 Most people aren't too hopeful about changing many
24 of the rules and regulations. It was felt that, if it
25 were so critical we can't meet existing water rights on

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1 the system, why don't we use up some of the water we
2 hold back every year (inaudible). The second part of
3 this very sensitive topic and much more appropriate in
4 this area, the second part states that approval of new
5 storage projects that will divert water from the main
6 stem of the Snake River between Milner and Murphy
7 during the period November 1 to March 31 should be
8 coupled with provisions that mitigate the impact such
9 depletions would have on the generation of hydropower.
10 You've got two competing interests sitting down and
11 trying to work (inaudible) and do tradeoffs. This is
12 one of the tradeoffs.

13 Idaho Power's concern, particularly about the
14 wintertime operation, used to be a big part of their
15 scheme of things in selling water to the West Coast
16 during the winter season to balance the irrigation in
17 Idaho in the summertime. What's getting to be, with
18 more and more urban development in Idaho, it seems like
19 colder winters lately, that they have a pretty good
20 market in Idaho for electric power for heating
21 purposes, also. That's part of their operation scheme.

22 The other key factor, of course, is that
23 (inaudible) during this period. It's the only storage
24 reservoir in the Hells Canyon complex (inaudible) river
25 dam so they -- it's the tradeoff. They wanted to make

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1 sure that there was water coming down in the wintertime
2 to generate power where they needed it and store it if
3 they didn't.

4 Now, it says mitigation. What does that mean?
5 It's very carefully explained in the text that
6 mitigation means lessening the impact of. It doesn't
7 mean compensation. You don't give them a dollar
8 or a volume of water that you think is the one you're
9 taking away necessarily. It means you lessen the
10 negative impact of. I said it's a sensitive topic
11 because the three negotiators couldn't agree as to how
12 this should be handled, and they sort of brought it to
13 Water Board saying, "we want the Board in conjunction
14 with the Department to deal with this mitigation
15 question."

16 Well, if you start thinking about making up
17 general rules, it's pretty clear that each individual
18 project is going to have a different kind of impact, a
19 time of impact (inaudible). It may be necessary. It
20 will be different for each one. It's been pointed out
21 in public testimony and, probably, we'll point it out
22 again that the very few (inaudible) language about no
23 current proposal for storage (inaudible) is incorrect.
24 That's one of the advantages of going out to a public
25 hearing and ensuring that will be changed.

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1 The very last one, 32], storing water for
2 management purposes. This is a whole new concept, and
3 it's not even in the agreement. It's a reflection of
4 what the agreement forces the Department of Water
5 Resources to do. It says the Department can issue new
6 permits but they can never let the river go below 3900
7 or 5600 CFS. (Inaudible). The Department feels
8 there's plenty of water available to do that. We have
9 a historical low flow of 4500 CFS. Our target is 39.
10 Depending on how much consumptive use is made of the
11 water that's diverted, depending where the diversions
12 take place and the timing, conceivably there's a lot of
13 water that can be moved around, still, while
14 maintaining that flow.

15 The thing that Ken Douglas quoted in the paper as
16 saying is that the possibility of him hitting exactly
17 3900 CFS is nil. He has two choices; one, he can be
18 very conservative in how he allocates this new water or
19 this water the State has to be allocated, always
20 keeping himself a good cushion. That's fair, and he
21 never makes a mistake that way perhaps. But it means
22 there's water that could be used that won't be used
23 because he doesn't want to get too close to that 3900.
24 If the State could acquire some water to be held in the
25 State's name that was to be released or available for

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1 call, if the Department made a mistake and if they
2 really screwed up and it was clearly our fault, we
3 could call for that water and beat the requirement of
4 3900 CFS at the Murphy gauge.

5 Two things happen here; one, the water plan or the
6 agreement -- the agreement specifies that any user in
7 place by October 1st, 1984, anyone that can prove
8 beneficial use will not be subject to call by the State
9 or Idaho Power to meet the 3900 CFS requirement. That
10 person is exempt or state-protected, whatever word you
11 want to use for it. So anybody who's a new user after
12 the date of this agreement is the one who would be shut
13 off to try to meet that flow. If we start issuing
14 groundwater permits on the aquifer, and there are lots
15 of advantages to try to do that because a person who
16 pumps groundwater 50 miles from Thousand Springs the
17 impact of his pumping may not be felt for months
18 (inaudible) after the fact if we issue permits right
19 out of the river and two days later the impact of that
20 diversion is shown in Murphy. So we feel that
21 technically we can probably allow more development on
22 the state plan aquifer and see less impact in the
23 river. The problem there, of course, is if there is a
24 call shutting off a junior (inaudible) 50 miles from
25 Thousand Springs isn't going to do the flow at Murphy

24

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1 gauge (inaudible) not for months.
 2 For management flexibility it would really be
 3 nice, if the Department makes a mistake, to be able to
 4 call the water master on the phone and say "dump some
 5 of that water that belongs to the State so we can do it
 6 slow." There's no intention that if the State were
 7 ever to acquire water for this purpose it would sit
 8 there. (Inaudible) much of the agreement is to better
 9 use the water in the system. It would go to the water
 10 bank (Inaudible). It wouldn't sit there idle. But
 11 when we see we're getting down towards 3900, we keep
 12 some of it so we can meet this requirement.
 13 The other reason that I think it would be nice to
 14 have this flow available is that, if it's only the
 15 junior guy who's going to get called on, who's going to
 16 get shut off if the flow were to go below 3900? And a
 17 lot of them are going to be groundwater users. Most
 18 states where they get into that situation -- Colorado
 19 is a good example -- require the groundwater user to
 20 have surface water available (inaudible) in the river.
 21 There's then a likelihood that he's going to be asked
 22 to be shut off.
 23 Now, the unallocated water (inaudible) may not
 24 last that long. Even if it were an individual
 25 groundwater user, it's very cumbersome for him to go to

25

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1 the Bureau of Reclamations and claim a small volume of
 2 water. Whereas if the State held that water, they
 3 could lease it, sell it to the groundwater user as the
 4 insurance water he might (inaudible). I want to
 5 re-emphasize that distinct from the policy the
 6 agreement of course discusses a lot of other things
 7 that have to be done to get the whole thing in place,
 8 the agreement very clearly specifies (inaudible).
 9 October 1st, 1984, if you're in place you're protected.
 10 You're protected in extreme drought condition, even.
 11 If the flow were to go below 3900 because of drought or
 12 mismanagement on the Department's part, the user who
 13 was in place before October 1st would still be entitled
 14 to his water no matter how low the flow got.
 15 I think, Mr. Chairman, I'll stop.
 16 MR. GRAY: Thank you, Mr. Sherman. We'll now
 17 start the public testimony section of our meeting.
 18 When we call your name to testify, if you'd please come
 19 up to the podium and state your name, your address and
 20 your telephone number for the record we'd much
 21 appreciate it. I'd first like to call Robert Reichert,
 22 chairman of the Committee of Nine and member of the
 23 board of directors of the Twin Falls Canal Company.
 24 MR. REICHERT: Mr. Chairman, members of the Board,
 25 ladies and gentlemen, as you have stated, my name is

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1 Robert Reichert. I reside on a farm near Filer, Idaho.
 2 I'm the chairman of the Committee of Nine and also a
 3 member of the Twin Falls Canal Company. At the present
 4 time, I am secretary-treasurer of that board. I appear
 5 here at the request of the Twin Falls Canal Company
 6 board of directors. As you know, the Twin Falls Canal
 7 Company delivers irrigated water, too, in excess of
 8 200,000 acres. We have followed the Swan Falls
 9 controversy and its suggested solution closely. In our
 10 opinion, the only major impact on the existing rights
 11 of the company and its landowners is that we must now
 12 participate in adjudication. Today, the president of
 13 our company is appearing at a legislative hearing in
 14 Boise in support of the Snake River basin adjudication.
 15 As to the proposed changes to the state water plan
 16 that this Board is asked to endorse, we have reviewed
 17 the same and encourage you to implement those
 18 provisions. While a compromise sometimes hurts
 19 everybody a little, it is a reasonable compromise
 20 that's being considered. We encourage your support of
 21 it and further encourage the changes in the state water
 22 plan to facilitate that accord. I thank you for the
 23 opportunity to appear here. I request that a copy of
 24 this statement be made a part of the official hearing
 25 record. Thank you, Mr. Chairman.

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1 MR. GRAY: Thank you, Mr. Reichert. Why don't
 2 you stand for a question that the board members may
 3 have. Mr. Reynolds.
 4 MR. REYNOLDS: I haven't any questions.
 5 MR. GRAY: Mr. Shauver.
 6 MR. SHAUVER: I haven't any.
 7 MR. GRAY: Mr. Kramer.
 8 MR. KRAMER: I'd just like to thank you, Bob, for
 9 coming and giving your testimony and thank the canal
 10 company board members for doing so.
 11 MR. REICHERT: It's our pleasure.
 12 MR. GRAY: Thank you very much. The Board will
 13 now call Del Hiatt.
 14 MR. HIATT: My name is Del Hiatt. My address is
 15 1746 Nora Drive North, Twin Falls. My telephone number
 16 is 733-6925. I've studied this plan for a few days. I
 17 haven't had it very long, this agreement. I'm
 18 fortunately familiar with your responsibilities and
 19 with the water organization. But as I go over this
 20 plan, it seems to me we're sold out to Idaho Power. It
 21 seems to me that the water users is the one on the
 22 short end and you're giving Idaho Power everything that
 23 they've asked for, and so on those points -- I could go
 24 over these one by one, but you even go here to giving
 25 them the right to buy, sell, lease and prior rights to

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1 do all of these things. And after 45 days, why, this
2 filing is out, and I understand there's 2,000 files
3 that haven't been recorded.

4 There's a lot of water out there that somebody is
5 going to pick up, so I'm concerned about this point.
6 I'm concerned about others in this agreement between
7 Idaho Power and the operation. So, therefore, I object
8 to the way that it's drawn up. That's my feeling. I
9 appreciate all you've done. This is my feeling at the
10 present time.

11 MR. GRAY: Thank you, Mr. Hiatt. We'll see if any
12 of the board members have a question of you, if you
13 might stay there for a minute. Mr. Ridulch.

14 MR. RIDULCH: I have no questions.

15 MR. GRAY: Mr. Kramer.

16 MR. KRAMER: No question.

17 MR. GRAY: The Board will now call Art Martin.

18 MR. MARTIN: I furnished -- thank you, Mr. Gray.

19 Ladies and gentlemen, due to some conversation
20 yesterday at the Burley Inn in the same type of a
21 meeting, the word was kicked around quite a little bit,
22 the word "mitigation." And since we first heard of it
23 and any part of its meaning, we've been quite concerned
24 over it, and we worked with the negotiator, continually
25 with Jones's office, the governor's office, and the

29

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1 this agreement, refer to Exhibit A, power generation,
2 in the feasibility study that would be produced as well
3 as using the water for consumptive use in our
4 particular plan with the reservoir and the hydroplant
5 built into the system.

6 Hopefully, the farm economy will improve in the
7 near future, hopefully. If this happens the Little
8 Pilgrim Project could furnish a mountain of benefits
9 for the Magic Valley. We fully support the changes in
10 the minimum stream flows, both winter and summer, in
11 the state water plan. We also support the Swan Falls
12 agreement the State and Idaho Power has negotiated.
13 The last paragraph: The BLM is ready to transfer the
14 land just as soon as they can be assured that we're
15 going to have something to irrigate (inaudible). Thank
16 you very much.

17 MR. GRAY: Thank you, Mr. Martin. You might have
18 some questions from the board. Mr. Ridulch.

19 MR. RIDULCH: Do you have any problem with Policy
20 32I considering the mitigation and how the Board is
21 affected with it? Do you recommend any changes in
22 that?

23 MR. MARTIN: I sincerely believe that when down
24 the road, maybe it's tomorrow, whenever I think if it
25 is weighed properly and the -- I hate to be selfish,

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1 water people trying to let ourselves be known. With
2 the Exhibit A and B that each one of you have, I'll try
3 quickly here to kind of tie that together.

4 We have been informed that the negotiating team
5 for the Twin Falls agreement considered the Little
6 Pilgrim Project as an old project, not a new project to
7 go in tomorrow, but considered that already, you might
8 say, being intact due to being active in both the BLM,
9 and that we'll turn over the ground if they can see a
10 little water. And Water Resources Department over the
11 last ten years, we point to Exhibit -- that's Exhibit
12 A. I'm pointing to the feasibility study, so to speak.
13 We also have been involved in over half a million
14 dollars in investment in the Little Pilgrim Project
15 surveying, engineering, core drilling, feasibility
16 studies, et cetera, over the ten- or eleven-year
17 period. Now then, this is directed -- I guess the next
18 one C -- to Exhibit B, referring to the letter from Jim
19 Jones affirming his feelings on mitigation for the
20 Little Pilgrim Project, I am informed the Water Board
21 has total responsibility of the decision-making on the
22 mitigation (inaudible) part of the Swan Falls
23 agreement.

24 (End of side 1 of tape 1.)

25 Project your support on the mitigation part of

30

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1 but our particular plan is identified for what it is
2 and the benefits therein, our goal for the last seven
3 or eight years is to be just as easy on that river as
4 you possibly can. Don't try to make a pig out of
5 yourself. We have nearly as many acres or about
6 the same as the Bell Rapids Project, if you're
7 acquainted with that. And if anybody here is from Bell
8 Rapids, and if my figure is off a little bit correct
9 me, I have been pretty close to it and their manager.
10 I think you'll find in the books and on the water
11 license issued them that they are allowed to pump
12 something in the neighborhood and the season demands of
13 600 or 650 to 700 cubic feet per second. We can
14 operate this project with a year-round pumping flow of
15 125 cubic feet per second. It will still give us 7- or
16 8,000 more acre feet than the water requirement is.

17 Now, to go back a little further, as I reviewed
18 our water applications with Mr. Norm Young in Boise
19 about three months ago, four at the most, and he said,
20 Art, he said, I didn't realize that you guys were
21 working so hard. But he said as he went through them,
22 he said, you are very, very well-covered in any
23 amendments that you made. And then bouncing against
24 the agreement and the water available, as Frank just
25 told us, we are flexible to a point that we could

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1 reduce in peak-demand period to accommodate Idaho Power
2 very likely down to, maybe, 50 cubic feet a second when
3 their peak-demand period, if it takes that, to make the
4 measuring station where they want it.
5 The same -- and then due to what is on the water
6 applications and what is on record there now is 200
7 cubic feet per second. Well, they're living with that
8 river and watching it means something to me, high
9 flows, whatever, and when it's to the bottom level.
10 There will be months of this 12-month pumping schedule
11 that we could probably pump, it takes a little more
12 equipment to pump more water and a little more pipe
13 size, but that we would probably be able to pump
14 upwards toward 200 cubic feet per second of which would
15 then go to re-balance, more or less taking the water
16 when it's there.
17 MR. GRAY: Thanks.
18 MR. MARTIN: Thank you.
19 MR. GRAY: Any other questions, Mr. Ridulch?
20 MR. RIDULCH: No, I don't have any more questions.
21 MR. GRAY: Mr. Shauver.
22 MR. SHAUVER: I haven't any.
23 MR. GRAY: Mr. Kramer.
24 MR. KRAMER: I haven't any.
25 MR. GRAY: Thank you, Mr. Martin. The Board will

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1 now call Charles E. Harris.
2 MR. HARRIS: I'm Charles Harris, Route 2, Box
3 5223, Twin Falls. My telephone number is 733-3655. I
4 am a farmer, I grew up in Kansas during the dust
5 storms, and I'm real concerned about the natural
6 resources of Idaho. I am not completely pleased with
7 the division of expenses in the water plan. I think
8 that agriculture and our industry are paying too great
9 a share in view of the fact that they come back in with
10 the appropriation from the legislature and help pick
11 that up. But I would not oppose the plan on that
12 issue.
13 My issue is that Idaho is being irresponsible in
14 the development of their natural resources. There's
15 already been suggestion from the federal level that the
16 State help the federal government in developing water
17 projects. I think that the State of Idaho can and
18 should develop their own natural resources for the
19 State of Idaho, and I proposed at the Twin Falls Canal
20 Company stockholders meeting this same proposal. I
21 proposed it in the form of a motion. The chairman
22 ruled it lost for want of a second without calling for
23 a second. But I have gotten several favorable comments
24 since then. In fact, one individual told me that if I
25 hadn't hit them so cold he thought that it would've

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1 been approved.
2 But I think the state water plan, since water is a
3 principal natural resource and since it takes water to
4 develop almost any natural resource that we have, that
5 the state water plan should be amended to provide to
6 raise money to develop the natural resources of Idaho.
7 I propose that the legislature levy a tax of one-tenth
8 of one percent on the gross income of every Idahoan,
9 that this fund be set aside and kept invested on
10 interest, and then we build up a fund to develop the
11 resources of Idaho without going in debt.
12 I further think that the federal government is a
13 poor place to expect money from as they've proven by
14 the fact that in 49 of the last 52 years they've spent
15 more than they took in to the tune of a federal deficit
16 of about a trillion and a half dollars, that we can't
17 expect much from Washington. I think this should
18 eventually come -- I know it's going to take a lot of
19 planning, a lot of time to get the bugs out of it. I
20 think it should eventually come as a constitutional
21 amendment so that the legislature couldn't louse it up
22 between here and there. I'm 70 years old. I don't
23 expect to see much benefit from it, but I think Idaho
24 will. Thank you for the opportunity to testify.
25 MR. GRAY: Thank you, Mr. Harris. Will you stand

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1 for questions if the board members have one.
2 Mr. Ridulch.
3 MR. RIDULCH: I have no questions.
4 MR. GRAY: Mr. Shauver.
5 MR. SHAUVER: I haven't any questions.
6 MR. GRAY: Mr. Kramer.
7 MR. KRAMER: I have no questions.
8 MR. GRAY: Thank you very much. Is there anyone
9 else who would like to testify at this time?
10 MR. BERKS: Members of the Water Resource Board,
11 ladies and gentlemen, my name is Bob Berks. I'm a
12 director from the Northside Canal Company. I'm also a
13 director from the Idaho Water Users. Both
14 organizations have gone on record as approving this
15 Swan Falls agreement. We have a bit of a problem with
16 the adjudication. Actually, you might say from Milner
17 upstream the water has been pretty well decreed by
18 court. The reason we are still saying we'll go along
19 with it is because of adjudicating federal water
20 rights, Indians and the Forest Service and so forth, we
21 think this should be done. It should be done in the
22 state and not wait until it is taken to the federal
23 government.
24 We have a bit of a problem with the funding of it.
25 It's to be charged off to the users, the water users,

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1 irrigation people, power people. No problem with the
2 power people. All they do is pass it on to the
3 consumer. So as we all use electricity, we'll all be
4 paying some through the use of electricity while the
5 farmers will be charged so much an acre foot as to what
6 storage and what CFS is to how much flow rights they
7 get. It isn't a big item but any item now in a
8 farmer's budget is too much.

9 I notice the State proposes going along with the
10 funding over a period of years. Let's split this up
11 for the farmer and say quarterly payments. It wouldn't
12 be any big bookkeeping problem at all. It could be
13 handled right through the irrigation districts, canal
14 companies, and so forth. Thank you for the privilege
15 of appearing.

16 MR. GRAY: Thank you, Mr. Berks. You might stand
17 for a question. Mr. Ridulch.

18 MR. RIDULCH: I haven't any questions.

19 MR. GRAY: Mr. Shauver.

20 MR. SHAUVER: Yes, Bob, I've got a couple of
21 questions. I know you haven't had time probably to
22 study these. But along the way, the 150 CFS that we're
23 setting aside for domestic and commercial and municipal
24 industrial purposes, we've had some criticism on it.
25 Have you had a chance to look at that, and could you

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1 Council, they're going to start asking for pretty big
2 flows of water at certain times of the year to float
3 the fish down. And in the Weiser area the water is
4 there. I say if these other states want to have that
5 water there's a good site there, and they could put
6 that water in and let these other states help pay for
7 it.

8 MR. SHAUVER: We're working on that. I appreciate
9 it. I take it then you're not opposed to some water
10 for management purposes that the State own then?

11 MR. BERKS: No, not at all. I think it could be
12 moved around that way. You know, the way it is now
13 it's hard to move around. But with a bank and so
14 forth, it would be easy to move around.

15 MR. SHAUVER: Okay, I appreciate it, Bob. That's
16 all the questions I have.

17 MR. GRAY: Mr. Kramer.

18 MR. KRAMER: Thank you, Bob, for coming up and
19 your testimony.

20 MR. GRAY: Bob, I have a couple of questions for
21 you. Number one, how many acres does the Northside
22 (inaudible)?

23 MR. BERKS: About 165,000. The water users
24 organization is made up of most of the irrigation
25 companies and water districts and so forth. They

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1 comment if you would have any?

2 MR. BERKS: It is going to be -- if it's a pool
3 you set aside, will it be possible to open it up later
4 if that whole amount is taken out, say, for industrial
5 use and so forth? I'm asking you.

6 MR. SHAUVER: It can be changed, yes.

7 MR. BERKS: You now, industry is jobs.

8 MR. SHAUVER: Every five years we review the water
9 plan and of course it --

10 MR. BERKS: Oh, I don't see any problem. I see
11 they do have a set amount set aside --

12 MR. SHAUVER: That's right.

13 MR. BERKS: -- and if it can be enlarged, I see no
14 problem with it at all.

15 MR. SHAUVER: And we have heard some concerns
16 along the way about the stored water by the State for
17 management purposes. Do you have any comment on that?

18 MR. BERKS: I'd like to see a big dam up there,
19 you know, where the Crandemar [phonetic] dam. But, you
20 know, no way with the environmentalists are they ever
21 going to let Idaho flood that valley. But it would be
22 great if we could have more storage upstream. Right
23 now, I'm in favor of this dam down at Weiser. A lot of
24 people haven't heard from them yet. But if you'll
25 follow the papers, this Northwest Power Planning

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1 represent over 2 million acres in the state of Idaho.

2 MR. GRAY: Excellent. I can bring you up to speed
3 on the Weiser project. It's referred to as the

4 Galloway Dam Project. It would store 1.2 million acre
5 feet of water. Basically there are -- there's nothing
6 environmentally that would be unacceptable. Fish &
7 Game has looked at it; they think it's a pretty good
8 project. The Corps of Engineers should have their
9 feasibility study completed by July, so then we'll know
10 a little bit more about it. But that is a board

11 project, and it's been going on for several years.

12 Thank you for mentioning it because we are pushing that
13 project.

14 MR. BERKS: May I ask you a question? Will that
15 allow any additional agriculture ground to be put in?

16 MR. GRAY: There are some acres that they think
17 they can do some exchanges with up there and, yes,
18 put it (inaudible).

19 MR. BERKS: You know, it's pretty close to the
20 border, and I just wondered if -- would that be
21 strictly in Idaho on this side?

22 MR. GRAY: That would be strictly in Idaho at this
23 time. Thank you.

24 MR. BERKS: Thank you.

25 MR. GRAY: Is there anyone else who might like to

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1 testify at this time? We'll be back again this evening
2 at 7:00 p.m. And again I'd like to mention that the
3 Board will accept written testimony until February
4 22nd, and you can send your written testimony to the
5 Idaho Water Resource Board in care of the Statehouse,
6 Boise, Idaho 83720. Mr. Hawes will close the public
7 hearing testimony, and we will open it up for questions
8 and answers. If Mr. Sherman man will step forward and
9 join the table, please.

10 While he's doing that, I would like to say I
11 forgot two very important guests to me. I was raised
12 south of Hanson in the Rock Creek area. My mother and
13 father, Jack and Lucy Gray, are with us this afternoon.
14 I'm very pleased to have you.

15 MR. SHERMAN: Could I start? One of the comments
16 earlier mentioned a claim period, a water right claim
17 period. That's been a concern of the Department. It's
18 had an extension. They've raised the fees to try to
19 force people to not take advantage of the extension to
20 get this stuff done. It is a concern but I would point
21 out that there are two different what are commonly
22 referred to as amnesty bills before the legislature
23 right now trying to extend that period, trying to
24 protect the person who might get trapped because
25 (inaudible). Most every one else has (inaudible) a

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1 claim. (Inaudible).

2 MR. GRAY: Thank you, Mr. Sherman. We will now
3 accept questions. Who will be first? Yes, sir.

4 UNIDENTIFIED SPEAKER: I have a question on this
5 \$500,000 that you want to charge us for this work
6 that's been done. How is it that you want to put that
7 bill on the water users? Is that right?

8 MR. SHERMAN: I think the gentleman is referring
9 to the money that's to be set aside and called for in
10 the agreement for hydrologic and economic studies
11 in the Snake River basin. It will not be put upon the
12 water user. It's not designed to come out of the
13 adjudication funds. As I understand it, the original
14 proposal calls for it to come from state general funds.
15 What the legislature and joint finance appropriation
16 committee does I don't know. The intent for that money
17 was (inaudible) general fund money. It's not work that
18 has been done. It's work that most people feel needs
19 to be done.

20 You can remember about a year ago the technical
21 advisory committee on the Swan Falls matter for the
22 legislature, and they said that \$4 million needed to be
23 spent roughly in the next four years just to get data
24 needed to try to manage the aquifer and the river, if
25 you're going to try to understand it, let alone try to

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1 hit some magic flow at some point. That money, of
2 course, was not forthcoming.

3 The agreement and the criteria that we expect the
4 legislature to establish for re-allocating these waters
5 calls for assessing the economic impact. The general
6 state economy, the hydropower generation, that's almost
7 impossible to do right now. In terms of if the State
8 permits a well at some distance away from Thousand
9 Springs what's the timing of that impact? That's
10 almost impossible. So those -- the \$50,000, \$500,000
11 that's been talked about was to go for economic and
12 hydrologic studies.

13 MR. GRAY: Mr. Sherman, that shows in these
14 papers, too, \$200,000; does it not?

15 MR. SHERMAN: Correct.

16 MR. GRAY: You might explain that.

17 MR. SHERMAN: The original agreement listed
18 \$250,000. It was pointed out very quickly, in
19 referring to the (inaudible) advisory committee report,
20 that that wouldn't even take care of what the
21 specialists in this large committee of lawyers, water
22 users identified as just the very basic data that we
23 need to collect, so it's been raised --

24 UNIDENTIFIED SPEAKER: Are you sure that this or
25 some of it don't go to Idaho Power's attorneys? I've

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1 been told from people out of Boise that this \$500,000
2 bill was put again the water users to pay Idaho Power's
3 attorneys.

4 MR. GRAY: I'll answer that question. That's a
5 question you should direct to the governor's office
6 because that's where the direction for the spending of
7 it will come from.

8 UNIDENTIFIED SPEAKER: Beg your pardon?

9 MR. GRAY: You should direct that question to the
10 governor's office because that is where the direction
11 for the spending of those funds will come from, not to
12 be part of the Water Resources --

13 UNIDENTIFIED SPEAKER: Isn't that part of this
14 deal? Isn't that part of this whole agreement?

15 MR. SHERMAN: It's part of the whole agreement.
16 Someone decided that it would be inappropriate perhaps
17 for the Department of Water Resources to have this
18 windfall of money to do studies that they wanted to do
19 for years. The decision was made that any money set
20 aside, and I'd like to repeat again, from the general
21 fund for hydrologic or economic studies should be
22 passed through the governor's office. The governor is
23 going to establish an advisory group, and they will
24 determine where the money for these studies goes.

25 It's quite likely that the U.S. Geological Survey

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1 will get the bulk of the money. Water and Power
 2 Research Institute of the University of Idaho is also a
 3 prime candidate because of the expertise they have
 4 (inaudible). The governor will say how that money is
 5 spent.
 6 MR. GRAY: Mr. Berks.
 7 MR. BERKS: Is what he's saying is that the water
 8 that will be -- I mean the fee that will be charged for
 9 adjudication will not be used to study hydrology for
 10 groundwater? Is that what you're saying?
 11 MR. SHERMAN: That's correct.
 12 MR. BERKS: In other words, \$500,000 will be used
 13 to make a study of the groundwater?
 14 MR. SHERMAN: And the economics of how the water
 15 is used throughout the system.
 16 MR. GRAY: Other questions? Art.
 17 MR. MARTIN: While it's fresh on my mind, one
 18 thing brings another, let's assume -- I'll have to go
 19 back and (inaudible).
 20 MR. GRAY: Don't do that to us, Art. Don't be
 21 selfish.
 22 MR. MARTIN: That winter flow -- I think it was
 23 mentioned yesterday the average or was that the low
 24 flow, 6100?
 25 MR. SHERMAN: 6100 CFS is the approximate low flow

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1 at Murphy gauge historically during the wintertime.
 2 MR. MARTIN: Okay, 6100, right? Okay. Now, then
 3 the minimum stream flow set in the agreement for winter
 4 flow is 5600. Now, does that leave any room to
 5 negotiate a small quantity of that, or have we got to
 6 keep our fingers crossed and look at the average years
 7 and high flow years in order to be able to use
 8 something above that 5600 in the winter flow?
 9 MR. SHERMAN: Okay. Two different parts to
 10 Mr. Martin's question: The first is certainly that
 11 water is available for allocation by the State to
 12 whatever uses can meet the criteria established by the
 13 Idaho Code. The other part --
 14 MR. MARTIN: Above the 5600?
 15 MR. SHERMAN: Above the 5600. The other part of
 16 that question of course is because your project
 17 involves wintertime diversion that whole question of
 18 mitigation arises. Now, I would point out, in using
 19 Mr. Martin's project as an example, because they have
 20 not put water to beneficial use, they will be subject
 21 to whatever new criteria the Idaho legislature
 22 establishes for the re-allocation of this water that
 23 formerly was claimed by Idaho Power and still is
 24 claimed by Idaho Power.
 25 The second part that that project faces is that is

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1 the wintertime diversion below Milner Dam they will be
 2 subject to the mitigation criteria. Now, it's up to
 3 the Water Board to establish those criteria. The Board
 4 could conceivably set a date and say "mitigation will
 5 be required only after this point." But this is all
 6 could do, could do, because the Board has taken no
 7 action on this particular topic at this time.
 8 The very fact that Mr. Martin's project could
 9 store some additional water, which they could make
 10 available to Idaho Power, might be considered
 11 mitigation. If they had wastewater return to the
 12 river, the timing of that might be counted in as a part
 13 of any mitigation scheme for the project.
 14 MR. GRAY: Next question, please. In the back.
 15 UNIDENTIFIED SPEAKER: How is the Board going to
 16 adjudicate water that was not allowed to be put
 17 to beneficial use during the moratorium period that
 18 Idaho Power (inaudible), yet their permits would be
 19 ahead of those and maybe they got their pumps in and
 20 running and established beneficial use by other
 21 means beside electrical power?
 22 MR. SHERMAN: I can't really answer that question
 23 except by saying, one, the Board is not responsible for
 24 adjudication. But in terms of the Department, that's
 25 one of those terrible traps that people have fallen

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1 into in this case. The only thing I think a person who
 2 has an outstanding application has going for them is
 3 that once these new criteria for the re-allocation of
 4 water are established by the legislature the Department
 5 will (inaudible) in a priority date in terms of when it
 6 was received at the Department. All those applications
 7 that we're holding now will be processed before any new
 8 ones. But in terms of the adjudication and the
 9 possibility of Idaho Power ever demanding water in the
 10 river, the person who got caught in that
 11 moratorium trap is hurting.
 12 UNIDENTIFIED SPEAKER: In other words, he would be
 13 in a junior position?
 14 MR. SHERMAN: Yes.
 15 MR. GRAY: Mr. Sherman, you might go over the
 16 priority dates and the dates that the rights are
 17 protected with the signing of the agreement, just
 18 briefly, the October 1 figure.
 19 MR. SHERMAN: Okay. I tried to make the point
 20 earlier that this gentleman's question revolved
 21 (inaudible). Anyone who can prove beneficial use by
 22 October 1st, 1984, he doesn't have to have made the
 23 proof before then but he can prove that he was
 24 beneficially using the water by that date, will never
 25 be subject to call because the flow goes below the

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1 minimum flow of the river.
2 Now, he may be in a system where there are enough
3 people using the water upstream from him where he gets
4 shut off but it won't be because of the minimum stream
5 flow established at Murphy Dam or Murphy gauge.
6 Anybody -- and these are people that got caught in the
7 problem that there's no power available to (inaudible)
8 the pump, their proof of beneficial use will come after
9 the October 1st signing of the framework for the
10 agreement. They're subject to new criteria in the
11 legislature (inaudible), and they're subject to a call
12 if the water ever goes below 3900.

13 I think they're relatively safe in that even using
14 the Swan Falls example, there's 600 CFS of water before
15 we have to call anybody to be shut off. The people who
16 are in place by October 1st, if we had a repeat of the
17 '30s, would not be impacted by any water shortage at
18 Swan Falls.

19 MR. GRAY: Mr. Berks.

20 MR. BERKS: What about -- in our irrigation
21 company people didn't realize it until 20 years ago
22 that groundwater could be pumped so easily. So they
23 put in a pump, and they were geographically located
24 where they could expand their acreage, and they used
25 that water or even their surface water, either one, to

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1 commingle, we'll say. Are they going to be protected?
2 MR. SHERMAN: Two comments here: One, under the
3 claims program, the mandatory claims program, they
4 clearly could have protected themselves by going under
5 (inaudible). Under the agreement the answer is still
6 yes, if they were making beneficial use of that water
7 prior to the signing of the agreement.

8 The person who gets into some confusion and
9 trouble perhaps in adjudication would be a person who
10 has an overlapping filing where he claims surface water
11 use and groundwater use on the same piece of property.
12 You're only entitled to a water right for the amount of
13 water you can beneficially put to use. If the two
14 overlap the filing date up to more than the three- or
15 four-acre feet per acre that's allowed in this area,
16 then paper right would be lost. I say paper right
17 advisedly because, no matter what your claimed paper
18 right is, your water right is really only legitimate
19 for the amount of water you're putting to beneficial
20 use.

21 MR. BERKS: Can I ask a further question?
22 Mr. Chairman, let's forget pump water. If a man is on
23 the outer edge of a project and he improves his
24 irrigation system by going to a sprinkler where he
25 gains some of his own water and puts it on additional

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1 ground, originally that water was appurtenant to
2 the ground. Now where does he stand?
3 MR. SHERMAN: If he took advantage of the
4 mandatory claims program that's okay. The amnesty
5 bill that's in front of the legislature now still
6 protects him. The agreement would not. Quite
7 honestly, one of the reasons for the year extension in
8 the mandatory claims program was not so much because we
9 were disappointed in how many people came forward but
10 because there were some legislators who had expanded
11 their water right and needed the time to get their
12 paperwork in order.

13 MR. BERKS: There is a bill now?

14 MR. SHERMAN: Yes. There are two different
15 amnesty bills before the legislature right now. One
16 would protect anybody who had, well, it should be
17 considered an illegal expansion up to the date of the
18 signing of the agreement. I think that one has a fair
19 chance of passing.

20 MR. BERKS: Now let me ask you another question.
21 If they are on Bureau projects, is the Bureau going to
22 accept this?

23 MR. SHERMAN: I have to finally give up. I really
24 can't answer that question.

25 MR. BERKS: The State says yeah, you can improve

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1 it and expand. But is the Bureau going to let that
2 irrigation project as a project expand?

3 MR. SHERMAN: I don't think anybody in the state
4 government except perhaps the director could answer
5 that question. I, quite honestly, am a groundwater
6 expert and not a water -- I'm getting as far as I can
7 get (inaudible).

8 MR. GRAY: Mr. Hiatt.

9 MR. HIATT: This 7E in this agreement, this is one
10 of the things that I object to strenuously, and it
11 covers what we're discussing here in giving Idaho Power
12 the right to -- just read that to us and just give us
13 your opinion on that.

14 UNIDENTIFIED SPEAKER: Could I see --

15 MR. HIATT: 7E down at the bottom.

16 UNIDENTIFIED SPEAKER: If you look under -- on
17 page 4, I think what it was referring to is in the
18 second column on page 4.

19 MR. HIATT: Yes, right at the bottom.

20 MR. GRAY: What we have on page 4 is a copy of the
21 final Swan Falls agreement. This is the one that was
22 signed on October 25th. And one of the provisions in
23 that agreement, item 7, talks about the company's water
24 right.

25 MR. HIATT: The company's ability to purchase

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1 (inaudible) all or otherwise acquire water pumps,
 2 (inaudible) and convey it to and past its power plants
 3 below Milner Dam shall not be limited by this
 4 agreement. Such flow shall be considered fluctuations
 5 resulting from the operation of the company's
 6 facilities.

7 MR. GRAY: What's the question, Mr. Hiatt?

8 MR. HIATT: The question I have is you give this
 9 kind of approval to Idaho Power and what's the
 10 limitations? This is the thing I'm -- this is just one
 11 of the things that I'm concerned about in this
 12 agreement. There are several others, but this is one
 13 I'm very concerned about.

14 MR. SHERMAN: My first response to this particular
 15 objection is that it's not giving Idaho Power anything
 16 because they already have that right. Idaho Power can
 17 purchase water anyplace in the system they want and
 18 move it where they wish to. Concern to where it could
 19 lead to is not so much Idaho Power but economics.
 20 Conceivably, if Idaho Power could offer a farmer enough
 21 money for his water right, they'd buy his water right.
 22 Is Idaho Power to blame for that? Or is the farmer who
 23 sells his water right away to blame for that? That's a
 24 social question.

25 I think there are plenty of provisions in the

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1 agreement in the public interest criteria that we hope
 2 the legislature will adopt that encourages the farming
 3 tradition. But I think the State would be wrong to say
 4 the farmer can't sell his water if the opportunity
 5 arises (inaudible).

6 MR. GRAY: This also covers what Idaho Power
 7 Company has been doing on buying water from the water
 8 bank and just simply specifies that this agreement is
 9 not going to disallow them to do what they have been
 10 doing. It does not give them additional water rights.

11 UNIDENTIFIED SPEAKER: (Inaudible) on this
 12 minimum-maximum flow, what they buy up there, will that
 13 be included in it? That is over and above if they buy
 14 other water?

15 MR. SHERMAN: Yes. If they buy water and move it
 16 down, that will not count toward the flow going past
 17 the gauge. But it's a two-sided coin. If we shut off
 18 the gauge at CJ Strike, for example, the natural flow
 19 that should have been going through there is added to
 20 the flow going past the Milner gauge so it balances out
 21 in terms of (inaudible).

22 MR. GRAY: Frank, he said anybody else can buy
 23 water, too. Point that out.

24 MR. SHERMAN: The thing that Mr. Gray has asked me
 25 to point out that Idaho Power is not the only person

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1 that can buy water. It's an opportunity available to
 2 all of us, theoretically. This was just to point out
 3 the fact that if they were buying water and moving it
 4 downstream it shouldn't count towards what the natural
 5 flow at any gauge would be.

6 UNIDENTIFIED SPEAKER: It sure beats farming right
 7 now.

8 MR. GRAY: Yes, sir, right in front.

9 UNIDENTIFIED SPEAKER: Could that ultimately lead
 10 to an inter-transfer, an inter-basin transfer of that
 11 water once that interest purchased that?

12 MR. SHERMAN: That's a very good question: Could
 13 outside interests purchase the water and move it out of
 14 state? Conceivably, yes, but under the criteria to
 15 allocate these waters that the State now has in trust,
 16 it talks about the impact on Idaho's economy. An
 17 inter-basin transfer, if the State of Idaho doesn't
 18 receive the water, the money for it, it's not going to
 19 be a good impact on Idaho's economy. And almost
 20 automatically such a transfer would not be approved.

21 MR. GRAY: Other questions, please. Yes, sir.

22 UNIDENTIFIED SPEAKER: I'm on the (inaudible)
 23 south of Twin, and we don't run no water in the river.
 24 (Inaudible) But now if we got that water, are you
 25 going to try to head us into this Swan Falls deal, or

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1 we're separated from that? We never let any water go
 2 into the river. (Inaudible) we ain't got water that
 3 goes there. Now we're going to have to pay some of
 4 these costs and things like that because we ain't got
 5 nothing to do with it.

6 MR. SHERMAN: Yeah. Any water user and perhaps
 7 any landowner in the basin, it's not clear just -- we
 8 have to notify everybody in the basin. And, clearly,
 9 every water user would want to protect his own water
 10 right, and he would be under the proposed legislation
 11 required to pay a fee. Let me address the specific
 12 question. I'm not personally familiar with that tract
 13 but --

14 UNIDENTIFIED SPEAKER: If Nevada water comes out
 15 of Nevada and it's a tributary to the Snake River but
 16 never no water ever got there but last year is the
 17 first time it ever got there.

18 MR. GRAY: It's got there.

19 MR. SHERMAN: If it were not being used, it would
 20 either get there as surface water or it would seep into
 21 the ground and (inaudible) to the river. Therefore,
 22 it's water that's part of the system and would be --
 23 any water user in that area would be part of
 24 adjudication.

25 MR. GRAY: Two exceptions you might point out, the

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1 Payette and the Lemhi.
2 MR. SHERMAN: As the bill, the so-called fee
3 schedule bill, is drafted right now, water users in the
4 Payette system would be exempt from fees and water
5 users in the Lemhi would be exempt from fees. Those
6 water users are part of those broad general
7 adjudications that the Department is just finishing.
8 Quite honestly, that was a new one on me. Mr. Duffy,
9 who just came from Boise two days ago, told me that.
10 UNIDENTIFIED SPEAKER: We'd be the same way.
11 We --
12 MR. SHERMAN: You have not been adjudicated. Your
13 right has not been decreed. If it was an old decree,
14 then it has to be tied in with all the new rights and
15 new development and the new requirements.
16 UNIDENTIFIED SPEAKER: Yeah, that was decreed in
17 1910, and we bought water in the state of Nevada and
18 brought it over here, see, in Idaho. We bought water
19 in the state of Nevada. Now, that water never did come
20 to Idaho before. In the last ten years we bought that
21 water and brought it over here.
22 MR. GRAY: We might point out that the Fort Hall
23 Indian Reservation was created in 1867, and it must
24 also fall under the adjudication.
25 MR. SHERMAN: But I would make the point -- as I

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1 said, I wasn't familiar with this gentleman's
2 particular situation. If they bought a water right in
3 Nevada, that water right is still valid, and we may be
4 able to exclude that part.
5 UNIDENTIFIED SPEAKER: It's transferred title now,
6 but it used (inaudible).
7 UNIDENTIFIED SPEAKER: It's in a dam in Idaho.
8 MR. SHERMAN: Then it will probably almost
9 certainly be part of the adjudication.
10 UNIDENTIFIED SPEAKER: It will be.
11 MR. GRAY: We have a question back over here
12 someplace, I think. Other questions, ladies and
13 gentlemen? If not, we will close the meeting until
14 7:00 p.m. this evening. We'd love to have you back and
15 thank you very much for braving the cold and coming.
16 (End of side 1 of tape 2.)
17 UNIDENTIFIED SPEAKER: This is a recording of the
18 state water plan hearing on January 31st in Twin Falls,
19 Idaho, 7:00 p.m.
20 MR. GRAY: We'll call our meeting to order for
21 this evening. I'm Gene Gray, chairman of the Idaho
22 Water Resource Board. With me tonight is Dave Ridulch,
23 a farmer from Saint Anthony and a member of the
24 Committee of Nine, Jim Shauver from Eaton, a farmer,
25 Don Kramer, in the back, a farmer from the Castleford

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1 area, plus we have Wayne Hawes from the Department of
2 Water Resources and Frank Sherman, a geologist from the
3 Department of Water Resources.
4 What we're here for is to take public testimony on
5 Policy 32, the revised Policy 32, the state water plan.
6 We don't have anyone signed up to give testimony so
7 we'll alter course a little bit. We'll have Mr.
8 Sherman get up and give you a brief overview of Policy
9 32. Then we'll open it up for questions and answers.
10 First, Mr. Hawes, I think, will open it up. Is
11 there anyone who will give testimony for the changes in
12 Policy 32, the state water plan, at the present time?
13 If not, we'll close the hearing. Mr. Sherman, please
14 brief us on Policy 32, and we'll follow that with
15 questions and answers.
16 MR. SHERMAN: Okay. It's really hard to
17 understand perhaps what's happening. We have the
18 existing water plan, the proposed revisions, and a copy
19 of the current you have in your hands, the proposed
20 revisions that are on page 2 and 3. We also have the
21 agreement that the State signed with Idaho Power
22 Company that's in the back of the current (inaudible).
23 As part of those agreements, specific exhibits as they
24 were called at that time, a package of proposed
25 legislation that's (inaudible). So when people start

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1 talking about the State claim water rights compromise
2 to the Snake River (inaudible), the compromise to the
3 Swan Falls agreement, you have to remember that all
4 these things that are specified are already a part of
5 the action.
6 Now, on the very back page of your current
7 newsletter, it lists about seven things that have to
8 take place, and I'm sorry it's one page. These things
9 theoretically take place by May 15, 1985. At that time
10 the principals, the three negotiators, sit down and
11 say: Have we made enough progress to continue the
12 agreement? Is it clear we're never going to get our
13 agreement? That decision point is making me think. If
14 you go through that list, you see the very first thing
15 is the change in the state water plan. That's what the
16 proposed revisions attempt to do, they change the state
17 water plan to satisfy the conditions of the agreement.
18 The existing state water plan has the Policy 32
19 which talks about allocating the available and
20 unappropriated waters of the Snake River. When that
21 was first adopted in '76 and re-adopted in '82, the
22 Board and their staff, the Department of Water
23 Resources and perhaps even Idaho Power felt that the
24 right at Swan Falls was subordinated and the State had
25 the authority to take the river down as low as they

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1 wanted. The current water plan says 3300 CFS at Swan
2 Falls.
3 As you all know, the Idaho State Supreme Court
4 said that's not the case, that Idaho Power had an
5 un subordinate right at that particular dam. What the
6 amount of that right was was still subject to
7 litigation in that Idaho Power had (inaudible) 8400 CFS
8 for a number of years (inaudible) they were not
9 receiving their 8400 CFS. It has gone back to District
10 Court to try to resolve just how much water Idaho Power
11 really had a legitimate claim to.
12 The State and the company both felt that in
13 another five years of litigation that it was clear that
14 whatever the District Court resolved it would likely be
15 challenged, if not by one of the principals by someone
16 else, and it would go back to the State Supreme Court.
17 To prevent this continual litigation, both the
18 State and Idaho Power agreed to sit down and see if
19 they could work out a compromised agreement. In
20 October, when the Water Board came around and discussed
21 the agreement per se, they talked about the framework
22 agreement. On October 1st the governor and the
23 company and the attorney general signed an agreement
24 which basically laid out the stipulation of things
25 they thought had to be taken care of in order to reach

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1 a final agreement. The lawyers for the party spent
2 most of that on legal fees, and that's what you had
3 (inaudible), and that was signed on October 25th.
4 The Board is charged with changing the water
5 plan. There are certain specific things they have to
6 address in those changes. There are some other things
7 that, as long as you're going to revise and modify the
8 plan, they sort of crept in. If you turn back to page
9 2, let's just go very quickly through the proposed
10 revision and (inaudible) contrast of the existing water
11 plan point out there's no contrast, and they're trying
12 to explain (inaudible). The main Policy 32 - and what
13 we've done is take out everything that relates to the
14 basin, and where it's strictly policy we bold-faced it
15 and then we (inaudible) in attempt to explain
16 (inaudible) for that policy.
17 The key change here, of course, is that we've
18 raised the minimum flow at the Murphy gauge from 3300
19 year-round. We propose to raise it from 3900 in the
20 irrigation season, 5600 CFS in the non-irrigation
21 season. The compromised value was basically reached at
22 by saying "what's the historic low flow at that gauge?"
23 And it has to be 4500 CFS. The water plan and the
24 State's position was 3300. It's a 1200 CFS difference.
25 You add 6 and take 6 away, what do you have? You come

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1 up with 3900 CFS.
2 There's more water that goes down, obviously, in
3 the wintertime, particularly in the early spring;
4 therefore, part of the tradeoff is to agree that the
5 higher flow would be appropriate in the wintertime. It
6 mentions in the revised version a zero flow at Milner
7 gauge. That's already in the water plan. (Inaudible)
8 realizes that (inaudible) all the water in the upper
9 Snake (inaudible). The Board does not intend to try to
10 force somebody to give up their water right if you have
11 water past that particular dam.
12 The flow at Weiser is already in the water plan,
13 4750 CFS. The two flows at Johnson's Bar and
14 (inaudible) are (inaudible). (Inaudible) and
15 Johnson's Bar are below the Hells Canyon complex.
16 They're mentioned in the existing water plan as the
17 desirable flows. They are part of the power company's
18 federal license for the Hells Canyon complex. What the
19 Board is doing is adopting the language from the
20 license, proposing to add it as a minimum flow in the
21 state water plan so that if the license were ever to be
22 changed they would still be recognized as minimum flow
23 by the State. (Inaudible).
24 If you turn to Policy 32A, it talks about water
25 held in trust by the State. Here we get into the

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1 problem of talking about things that aren't really in
2 place yet because the Water Board and the legislature
3 are all working at the same time. It is the policy of
4 Idaho that water held in trust by the State pursuant to
5 Idaho Code 42-203(b), and that's not yet law.
6 (Inaudible). They reallocated to the uses in
7 accordance with the criteria established by Idaho Code
8 42-203(a) and 42-203(c).
9 Well, 42-203(a) is basically existing new portions
10 of the Code that specify the conditions that have to be
11 met in order for the Department to issue a water
12 right. It has to be beneficial use. It can't be
13 speculative. It has to be in the local public
14 interest. Those criterias that are already in place
15 are 203(a). 203(b) relates to the compromise that the
16 Idaho Power Company and the State reached. 203(c) is
17 what's commonly referred to as the new public interest
18 criteria.
19 Now, what happens in the compromise and happens
20 in the agreement is that Idaho Power agrees to
21 relinquish their claim to water, their 8400 CFS
22 (inaudible) at Swan Falls. They will let the State
23 hold that water in trust, and the State can reallocate
24 it to the uses providing they meet these three set
25 portions of the Idaho Code. Why do we add specific

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1 criteria onto the issuance of a water right when the
2 Idaho constitution says the right of the citizen to
3 appropriate the unappropriated waters to the State
4 shall never be denied? Well, quite clearly, these
5 waters were claimed by Idaho Power. They've gone
6 through the appropriation process as such. They're not
7 unappropriated water to the State.
8 Therefore, when the State wants to reallocate
9 these waters that we use as other than hydropower, they
10 are going to add additional criteria to the normal ones
11 in the water right. The idea here (inaudible)
12 checklist of criteria, and they're going to be broader
13 in scope than the ones that normally apply for ordinary
14 water rights. They're going to talk about impact on
15 the state's economy, impact on hydropower (inaudible).
16 They're listed in the back there. The legislature
17 (inaudible).
18 We talked about water the State has to reallocate.
19 The agreement basically specifies that as long as 3900
20 and 5600 are in the proper times of the year. If it
21 goes past the Murphy gauge which is directed downstream
22 to Swan Falls Dam, Idaho Power will not exercise a
23 claim for any other water rights at any hydropower
24 facility on (inaudible) basin. If you follow the
25 newspaper accounts or other meetings, you always hear

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1 us and we use the same example here (inaudible) 600
2 CFS is now available for reallocation. That's true
3 when you reach immediately above Swan Falls. Idaho
4 Power's claimed right and other structures on up the
5 river is not (inaudible). No matter what that claimed
6 right is, they have agreed they will not call for water
7 to meet their claimed right providing the 3900 and 5600
8 (inaudible) dam.
9 What does Idaho Power really get from this? Well,
10 it depends who would have won in court. What the State
11 is really agreeing to here is that 3900 is the magic
12 flow. The question about subordinating that, the power
13 company has always guaranteed that water. The same is
14 true of 5600 in the wintertime. Idaho Power retains
15 the right to use the water as long as it's available
16 (inaudible) facility. But the State has the authority
17 to hold that water in trust and to reallocate it for
18 other use.
19 Policy 32B, domestic, commercial, municipal and
20 industrial. The water plan, as I said earlier, as it
21 stands today is based on allocating water for new uses
22 (inaudible). One of the allocations was for municipal,
23 industrial uses. The water plan was based on
24 (inaudible) acre fee. Negotiators (inaudible) CFS,
25 what we've done is convert the acre-foot allocation for

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1 municipal and industrial uses. Converted to CFS
2 (inaudible), increased it a little bit because we're
3 talking about domestic commercial, municipal and
4 industrial in saying this is our target guess.
5 Of those waters the State holds in trust, at
6 least of all Idaho Power, 150 CFS will be maintained as
7 a reserve for these kinds of new developments. As I
8 said, it's our best guess. We think it's a relatively
9 conservative one. Most new development is not going to
10 be particularly consumptive. A new industry comes in
11 and has to buy land, the odds are it's going to be land
12 that's already irrigated, the amount of new
13 consumption, because here the key words are 150 CFS of
14 water for consumptive purposes, not just in terms of
15 diversion but in terms of actual consumption. Because
16 the water plan is revised or re-adopted at least every
17 five years, if this is a really bad guess it can be
18 changed, but I feel as the staff person it's a very
19 good starting point.
20 Policy 32C, agriculture. The State holds so much
21 water in trust and they're going to allocate 150 for
22 domestic, commercial, municipal, industrial, the only
23 other use that we think of logically would be
24 consumptive use in Idaho is agriculture. The policy of
25 the State will be that the remaining volume of water

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1 or the flow rate is available for agricultural uses.
2 These agricultural uses (inaudible) have to meet these
3 new criteria that are to be established by the
4 legislature because this is not to be unappropriated
5 water. It's Idaho Power's water that's now being held
6 by the State.
7 The existing water plan had target acreages that
8 they hoped to see in order for Idaho to maintain its
9 position in the food and fiber industry in the nation
10 based on projections in 1975 that called for an
11 expansion (inaudible) Idaho. We have not seen that
12 expansion. It's been a bone of contention that it was
13 outdated shortly after it was adopted because the
14 projections that were used were Idaho's numbers.
15 The plan now says that these waters can be
16 allocated to new agriculture development but no more
17 than 80,000 acres in any four-year period of new
18 irrigation development should take place. (Inaudible)
19 target number to shoot at is actually going to cap now.
20 What we really did is look at the -- well, the
21 negotiators gave us some choices here but this is
22 basically their number. I think it can be justified
23 because from '75 to '83 it says in there an average of
24 new irrigation acreage of about 17,500 acres per year
25 (inaudible). So this 80,000 number gives us 20,000 in

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1 a year. We don't stick with just 20,000 a year because
 2 if a big project came in it shouldn't be artificially
 3 capped by 20,000 per year (inaudible).
 4 The concern here of course is that if we're really
 5 talking about those appropriated waters that the State
 6 holds in trust, if we start juggling the BCMI, then the
 7 agriculture number by default changes at the same time.
 8 Thus, we can find there's more water available
 9 (inaudible).

10 Policy 32D, hydropower. Use of water to generate
 11 electricity is already recognized as a beneficial use
 12 in Idaho. The first part of this is just a simple
 13 restatement of fact. The depletion of flows below the
 14 minimum average daily flow set forth in Policy 32 is
 15 not in the public interest. This is reinforcing the
 16 idea that because Idaho Power is giving up to the State
 17 some water that they can reallocate they want some
 18 protection for what they have left.

19 It is not in the State's public interest to ever
 20 let the flow go over 39 and 56 (inaudible) Policy 32.
 21 The one thing that is here and falls back to the BCMI
 22 issue is that in the original plan where we thought we
 23 had all the water in the river down to 3300 and Idaho
 24 Power was talking about Pioneer, we allocated a big
 25 chunk of water for consumptive purposes for thermal

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1 power generation to the state. Now, the thrust does
 2 not seem to be towards thermal power generation at this
 3 time. We think we can handle it at 150 CFS or BCMI at
 4 least for the near future, so that's a small change
 5 that relates to the allocation for hydropower.

6 Under navigation, it's basically the same language
 7 that already appears in the State water plan. The
 8 Board feels that when the minimum flow is established
 9 there's ample water for -- well, ample -- there is
 10 enough water to protect the recreational interests and
 11 those commercial navigators below the Hells Canyon
 12 complex, those guys who (inaudible). There should be
 13 enough water to satisfy their use.

14 Policy 32F is aquaculture. This is where they got
 15 two parts to it. The first part is if an aquiculturist
 16 or a fish or trout or catfish farmer wants to
 17 appropriate water the process is (inaudible). It's
 18 probably not a significant issue (inaudible) washing
 19 fish is not too consumptive in terms of the depletion
 20 of the BCMI allocation. It goes on to state -- and
 21 this language is really from the existing plan -- that
 22 the minimum flows established at the Murphy gauge
 23 station provide an adequate water supply for
 24 aquaculture. However, it is recognized that it may
 25 be necessary (inaudible). This is the (inaudible)

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1 that's already in the plan. The idea is that if we're
 2 specifying 3900 CFS as the minimum flow at the Murphy
 3 gauge and the minimum gauge (inaudible) can be put at
 4 zero, what water is in the river will satisfy the
 5 requirement (inaudible).

6 Those aquiculturists who rely on Thousand Springs
 7 for their water have that back-up protection behind the
 8 river that can never go below 3900. But it's anyone
 9 who holds a water right in Idaho has to realize the
 10 water right guarantees you water; it does not protect
 11 (inaudible) diversion. If the spring discharge
 12 continues to decline, some of the trout farmers will
 13 probably have to change the way they divert water from
 14 the little channels including (inaudible). This is
 15 true that the same requirement applies to any other
 16 kind of farmer in the state who also holds (inaudible).

17 In an extreme situation we'd be in real trouble.
 18 At Murphy, I don't know if it's a good example, but in
 19 extreme situations a person might be required to build
 20 a well. If the water rights stay the same and the same
 21 for every occasion, it just means the diversion will be
 22 changed.

23 Policy 32G, fish, wildlife and recreation. It is
 24 the policy in Idaho that the minimum flows established
 25 under Policy 32 are sufficient and necessary to meet

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1 the minimum requirements for aquatic (inaudible)
 2 fishing and wildlife and to provide water for
 3 recreation in the Snake River below Milner Dam. Stream
 4 flow depletion below the minimum flow is not in the
 5 public interest. It kept several different competing
 6 uses. In no case does it make good sense to the Board
 7 that the flow at Murphy should go below 3900,
 8 conceivably down to 3300, but everybody suffers the
 9 lower the flow gets. I say conceivably 3300. That's
 10 what it is today with the water plan. (Inaudible) is
 11 good because they're raising the flow. They guarantee
 12 more water in the river for these fish, wildlife and
 13 recreational interests, the Board has specified in the
 14 Policy that's below Milner Dam, but you have to realize
 15 that the Board has another way to protect these kinds
 16 of interests and that's through the in-stream flow
 17 program.

18 The Board is the only entity in the state that can
 19 appropriate water according to stream (inaudible). The
 20 only people that can appropriate the water in Idaho
 21 (inaudible) the power generators (inaudible). The
 22 Board, above Milner Dam on any tributary stream if
 23 there are unappropriated waters available, can
 24 appropriate that water for fish, wildlife and
 25 recreation, esthetic and a whole bunch of other

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STATE WATER PLAN HEARING ON POLICY 32 TAKEN 1-31-85

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1 environmental type purposes. (Inaudible).
 2 Policy 32H, water quality and pollution control.
 3 If we're in a situation where we can't meet Idaho
 4 Power's claimed water right and the State Supreme Court
 5 says (inaudible) a water right, there's question about
 6 it, (inaudible). It seems inappropriate to the Board
 7 to take good water and dilute bad water so somebody can
 8 dump that water into the river or the land surface or
 9 whatever so the Board (inaudible). It's not a
 10 beneficial use of the water (inaudible) pollution.
 11 Policy 32I, new storage. Now we get into the more
 12 complex one. This is one that's mandated by the
 13 agreement. It has two parts. The first part basically
 14 is that some determination that the maximum use of our
 15 existing storage facilities in the basin should be
 16 made. It's a question that the negotiators battled
 17 around with, and they finally decided against the
 18 water plan, charged the Board with trying to get things
 19 moving to find out if we're really doing a good job of
 20 managing the water basin. The idea is that the
 21 director of the Department of Water Resources would
 22 have to make that determination at some point when a
 23 new storage facility application or a permit to
 24 construct a new storage facility came in.
 25 Why did the negotiators think it was important?

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1 All you have to do is live near Milner Dam and you know
 2 that most years, on October 1st when the irrigation
 3 season is over, the flow is increased dramatically as
 4 the water master tries to make room for next year's
 5 runoff. There's water held in that system (inaudible).
 6 Why does that happen? Well, state law provides that an
 7 individual can have a full, normal stream flow right to
 8 irrigate his land, and on top of that as insurance he
 9 can have a full storage (inaudible) on the same piece
 10 of land. In good years he's got enough water to
 11 irrigate his property twice so he only uses
 12 (inaudible). That water sets there and gets dumped.
 13 The city of Pocatello, for example, (inaudible) an
 14 appropriation for water (inaudible) storage space in
 15 one of the reservoirs. (Inaudible) its insurance. If
 16 the community were to expand dramatically or attract a
 17 new industry and they wanted water available, they
 18 never called for that water, today they have no need to
 19 divert it. If they had a call for it, they'd have to
 20 put pumps in the river and try and catch it when it
 21 passed. Those kind of things happen in the upper basin
 22 where there's water there that a person doesn't really
 23 need and he has a legal right to it. The problem is he
 24 has no really good way to do anything about the
 25 (inaudible) water. He's letting someone else use it.

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1 The State has what's called a water bank program.
 2 There are rules and regulations. The water can be
 3 exchanged between (inaudible) users and sellers or
 4 buyers and sellers. The Committee of Nine moved some
 5 water around in the upper basin using the water bank
 6 program and the rules and regulations associated with
 7 it. The things that the negotiators want the Board to
 8 look at and the Board, in turn, wants the Director to
 9 address are the federal regulation that if you store
 10 water in a federal reservoir behind a federal dam you
 11 cannot sell that water at a profit. What is the
 12 incentive for one of these persons who has water
 13 (inaudible) or one in ten years or one in twenty or, in
 14 some cases, never do anything about selling that water
 15 if he can't make a profit by selling it?
 16 Federal rules and regulations further provide that
 17 you can only lease or sell that water for one year at
 18 a time. Even if you were willing to go out and find a
 19 buyer or work through the water bank and fill out all
 20 the forms to protect your right to let somebody else
 21 use it, you can always lease it or sell it to that guy
 22 one year at a time. If a new industry or a new
 23 irrigator or a potential irrigator came in, the
 24 financing to keep (inaudible) of a water guarantee on
 25 a one-year contract is about zero. (Inaudible).

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1 The State has their own barriers, and they're
 2 equally (inaudible) perhaps. If you have a natural
 3 flow right for a piece of ground and you have a stored
 4 water right for the same piece of ground, if you sold
 5 that water to another consumptive user you'd be
 6 expanding your water right. It's against a state law.
 7 What kind of users you could sell that water to are
 8 basically nonconsumptive. State law provides if you
 9 don't use your water once in five years you lose it
 10 except for stored water. If you want to try and move
 11 water around, there are both state and federal barriers
 12 to do it very effectively. The negotiators ask the
 13 Board to see is there any way to streamline the water
 14 bank? Can we approach the federal government and see
 15 if they'll recognize the fact that no profit means no
 16 incentive? It means the water stays there all
 17 summerlong and (inaudible). That's the first part of
 18 the policy.
 19 I have to admit that if someone came in with a new
 20 (inaudible) project today the director would probably
 21 have to find that, no, we're not making maximum use of
 22 the system because there is unallocated water
 23 (inaudible). You can't sell water behind the dam
 24 that's already constructed. Just given inflation,
 25 it seems unlikely that you'd want to deal with a dam.

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1 Once that water is allocated, and the same question was
 2 asked, the director, I think, would have to find that
 3 under the existing legal and institutional constraints,
 4 yes, we're doing the best job we can. What we hope to
 5 do is be able to change some of those constraints
 6 before (inaudible).
 7 The second part is really directly (inaudible)
 8 Twin Falls and down river. The second part of this
 9 particular policy says that approval of new storage
 10 projects and to divert water from the main stem of the
 11 Snake River between Milner and Murphy during the period
 12 November 1 to March 31 should be coupled with
 13 provisions that mitigate the impact such depletions
 14 would have on the generation of hydropower. We all
 15 realize that the State and the power company's
 16 negotiators sit down and there were tradeoffs. This is
 17 one where the power company feels strongly about coming
 18 to Brownlee Reservoir in the wintertime. It's the main
 19 storage facility that allows them to control what
 20 happens in the Hells Canyon complex (inaudible).
 21 Part of the tradeoff for giving up their claim to
 22 8400 CFS and going down to 39, they ask that there be
 23 protection (inaudible) in Brownlee. One way to do it
 24 is to require new diversions only in that region below
 25 Milner to provide some sort of mitigation. The term

1 rules and regulations, the Board and the Department are
 2 required to come out for a public hearing (inaudible).
 3 The very last one then, Policy 321, stored water
 4 for management purposes. It is not specified
 5 (inaudible), a totally new concept perhaps, it's
 6 therefore one basic reason, and that is the agreement
 7 itself, though, in that the agreement says the
 8 Department of Water Resources and the State are
 9 responsible to ensure that within their power the flows
 10 don't go below 3900 or 5600 CFS. Recognizing the Snake
 11 Plain aquifer covers hundreds of square miles out here
 12 and it's the main contributing feature for water in the
 13 river, (inaudible), it becomes really difficult for the
 14 Department to say we're going to manage this river
 15 (inaudible).
 16 Now, law provides that junior appropriators can be
 17 cut off, but cutting off a junior appropriator on the
 18 Snake Plain doesn't do any good in terms of days or
 19 months, even, perhaps for the flow at Murphy. Ideally,
 20 the Department, if they make a mistake, would likely
 21 have someplace where they could call for water and have
 22 it to come down the river and cover up their mistake.
 23 I'm not really talking about their mistake but
 24 satisfying the agreement, satisfying Idaho Power's
 25 right, satisfying the needs for the fishery and

1 "mitigation" is chosen very carefully. If you lessen
 2 the impact, there is nothing you or Idaho Power dollar
 3 for dollar (inaudible). It's a real stumbling block,
 4 and the negotiators couldn't agree to set a criteria or
 5 project rules and regulations to calculate mitigation
 6 for a variety of reasons, certainly different ways of
 7 looking at the problem.
 8 Also, because each individual proposed project is
 9 a separate entity in and of itself, when they divert
 10 the water and how much, when their return flows would
 11 come back, those kind of questions have got to be
 12 addressed before any kind of real mediation period is
 13 calculated. So the negotiators want the Board to
 14 address that. They didn't want the Board to try and do
 15 it now. In fact, the Board proposed a different
 16 language, and the negotiators said, no, that's too
 17 specific, let's let this one sit awhile.
 18 The last part of the text that's been pointed out
 19 is incorrect. There are projects on file that would
 20 propose a new (inaudible) diversion for storage
 21 purposes (inaudible) reach the river. So the Board
 22 will not be able to put this question off too long,
 23 you'll find. They're going to have to address it
 24 fairly soon, but it is not resolved at this time. If
 25 it becomes a matter of state policy or a series of

1 wildlife and recreation and all the rest.
 2 As I said earlier, there are unallocated waters
 3 in (inaudible), for example. If the State could
 4 acquire some of those now while it's easy to get water,
 5 they would have a cushion, and they would feel more
 6 comfortable without issuing new permits for new water
 7 users if they knew there was always this cushion to
 8 protect them from the possibility of a mistake. The
 9 water wouldn't have to sit there idle. That's the
 10 whole thrust of the agreement (inaudible) maximum
 11 utilization. We probably (inaudible) water bank.
 12 (Inaudible)
 13 If we ever get to the point where we really start
 14 drawing down those reservoirs because we're
 15 consumptively using that water or turning it out for
 16 some reason, I think we might see the day when the
 17 recreational user would be advised to acquire the right
 18 to some of that water, and it may be that one potential
 19 buyer (inaudible) recreational interest. They have
 20 been using the water at no cost basically, but the
 21 water rights holders that more effectively use that
 22 water (inaudible) in the summertime.
 23 The other thing that the Department has in the
 24 back of their mind is that we're going to have to
 25 manage this whole basin much more carefully and we're

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1 going to have to work with the groundwater and surface
2 water as a single unit if the groundwater is
3 discharged at Thousand Springs to control the river
4 flow for part of the year. The states that have tried
5 this kind of management approach, the problem with who
6 do you shut off first in a water-short period, it can
7 get pretty unmanageable. In Colorado, for example, in
8 some of their basins, whenever they issue a new
9 groundwater right, they require that that groundwater
10 user have back-up surface water available to meet any
11 future (inaudible).

12 If, down the road, Idaho would get in that
13 position, I personally and the Department feel that it
14 would be much more convenient if they could go to the
15 State when they ask (inaudible) and have a place to
16 keep that water to meet any future river call
17 rather than have to go out and try to buy it when
18 there may be no unallocated water available.

19 This business of meeting that river flow brings me
20 to the last point I'm trying to make tonight, and
21 that's not directly a part of the Water Board's
22 responsibilities here. It comes out of the agreement.
23 The agreement specifically specifies that anyone who
24 can show beneficial use prior to October 1st, 1984,
25 including his beneficial use of the water by that date,

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1 Idaho Power nor the State will not call upon them
2 simply on the basis of not meeting the 3900 or 5600.
3 If he's in a place where he could shut off two or three
4 years in ten, anyhow, he's going to get shut off long
5 before we get down to the 3900 (inaudible) if not more
6 water than that is available.

7 But if in an extended drought period and the river
8 flow got down below 3900, a person who's in place prior
9 to this agreement would not be called upon for water.
10 (Inaudible). Anybody who appropriates water after the
11 date of the agreement, anybody who gets some of that
12 water that the State is holding in trust, they are the
13 ones who's going to get shut off if the flows are not
14 there.

15 I think with that, Mr. Gray, I will conclude.

16 MR. GRAY: Thank you, Mr. Sherman. You might make
17 a note, if you didn't testify this evening, that the
18 Board will accept written testimony until February
19 22nd, 1985, and you can send that written testimony to
20 the Idaho Water Resource Board, Statehouse, Boise,
21 Idaho 83720. Now we would open it for questions. One
22 more time, any questions about your own water rights,
23 about your own situation?

24 MR. SHERMAN: About the agreement.

25 MR. GRAY: About the agreement, about anything we

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1 might answer. Yes, sir.

2 UNIDENTIFIED SPEAKER: It seems a little vague on
3 mitigation, this (inaudible) stream storage. It
4 doesn't even speak to who will make the decision on the
5 mitigation, does it?

6 MR. SHERMAN: No. I think that's another thing
7 that needs to be touched on here. The agreement
8 implies pretty clearly that the decision will be made
9 by the director of the Department of Water Resources.
10 He will abide by guidelines or rules and regulations
11 established by the Water Board. Remember, on the
12 mitigation thing, that's only for wintertime diversion
13 below minimum (inaudible).

14 MR. GRAY: Okay. Any other questions? Yes, sir.

15 UNIDENTIFIED SPEAKER: We have a small water right
16 in American Falls, and it's a 1895 right, I think.
17 (Inaudible) land that the wells have dried up on, too.
18 What becomes of that?

19 MR. SHERMAN: If you were going to put it on new
20 land, I think you'd be in trouble because to acquire a
21 water right, even with an 1890 date on it, you had to
22 show that it was going to be put to some beneficial use
23 on some specific piece of ground.

24 UNIDENTIFIED SPEAKER: Well, we did that.

25 MR. SHERMAN: If you were going to change it from

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1 that piece of ground, it would be an expansion of a
2 water right unless you stopped irrigating on the ground
3 if that's what the agreement specified for. Now,
4 what you may be able to do where you've got a situation
5 where wells are going dry on you you may be able to use
6 that water to replace your groundwater right and say
7 it's a different point of diversion (inaudible).

8 I think you might have something (inaudible).

9 MR. GRAY: Any questions back there?

10 MR. SHERMAN: Can I make one statement?

11 MR. GRAY: Certainly.

12 MR. SHERMAN: Don't -- if you're comfortable with
13 Policy 32, fine. If you're not, please send them in
14 and comment. Those other things that are in the back,
15 the exhibits for the proposed legislation, some of
16 those have already been changed, but your legislator
17 is the right person to contact in that regard. If when
18 the Board takes action or if you can perceive that the
19 Board is going to go in the direction of Policy 32 you
20 don't like, I suggest you contact your legislator, once
21 again.

22 You probably are aware that on the November ballot
23 there was an initiative which gave the legislature the
24 authority to amend, change, disagree with whatever the
25 Water Board does. It gave the legislature the final

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1 authority on the state water plan. So you still have a
 2 chance to get at these guys (inaudible) the back door
 3 if they do something you don't like. Why is the Board,
 4 if they don't have (inaudible) do this, the Board feels
 5 somebody is going to come in (inaudible) and try and
 6 get public opinion.

7 We think that if we do that kind of work and we
 8 propose something to the legislature and we say we went
 9 out and talked to the people and they talked to us
 10 that you have a lot better chance of getting through.

11 MR. GRAY: Any other questions? Well, thank you
 12 very much for coming, and we'll close the meeting at
 13 this time.

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 15 (End of side 1 of tape 3.)
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 2
 3
 4 REPORTER'S CERTIFICATE
 5

6 I, SUZANNE GRIBBIN, CSR No. 706, Certified
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 9 That the foregoing is a tape-recording
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12 That I am not a relative or employee of
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15 I declare that the foregoing is true
 16 and correct.

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 18 IN WITNESS WHEREOF, I set my hand and
 19 seal this 30th day of October, 2007.

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SUZANNE GRIBBIN, CSR No. 706
 Notary Public in and for the
 State of Idaho
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1
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3 REPORTER'S CERTIFICATE
4

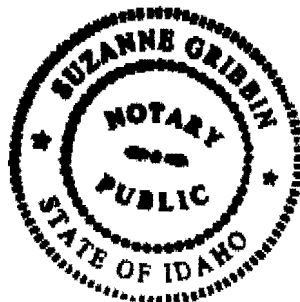
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18 seal this 30th day of October, 2007.
19



Suzanne Gribbin
SUZANNE GRIBBIN, CSR No. 706
Notary Public in and for the
State of Idaho
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STATE WATER PLAN HEARING ON POLICY 32 TAKEN 1-31-85

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