RESOURCES AND ENVIRONMENT COMMITTEE
* * * *
Meeting on
SB 1006 - To provide that the Director of the Department of Water Resources shall have the power to promulgate rules and regulations
SB 1008 - Water rights for hydropower purposes
TRANSCRIPT OF PROCEEDINGS
Held on FEBRUARY 1, 1985, 1:30 p.m.
before Chairman Noh
Transcribed by Boise, ID 83701
Roxanne K. Patchell, CSR, RPR CSR No. 733 Voice 208 345 3704 Fax 208 345 3713 Toil free 800 424 2354 Web www.etucker.net
E-mail info@etucker.net When excellence is an obligation

COPY

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APPEARANCES **PRESENT:** Chairman Noh Senator Beitelspacher Senator Budge Senator Carlson Senator Chapman Senator Crapo Senator Horsch Senator Little Senator Peavey Senator Ringert Senator Sverdsten Tom Nelson, Idaho Power Company * * * * * *

	Page 1		Page 3
1		1	FEBRUARY 1, 1985
2	RESOURCES AND ENVIRONMENT COMMITTEE	2	
3		3	CHAIRMAN NOH: Senator Crapo, can you give
4	* * * * *	4	us a little background and explain how the process
5 6		5	works and where we stand on the matter.
_	Meeting on	6	SENATOR CRAPO: Mr. Chairman, everybody
7	SB 1006 - To provide that the Director of the	7	received yesterday a photocopy of the statement of
8	Department of Water Resources shall have the power	8	the intent as it existed at that point. Today as
9	to promulgate rules and regulations	9	you came in, there was another copy at your place
,	SB 1008 - Water rights for hydropower purposes	10	at the table. There were some minor changes
10		11	between the two, so the one on the table today is
11 12		12	the final version.
13		13 14	The way that came about is a sample
14	TRANSCRIPT OF PROCEEDINGS	15	draft of that was prepared by myself. We discussed that between the representatives of
15	Held on FEBRUARY 1, 1985, 1:30 p.m.	16	Idaho Power, the Governor's office, the Attorney
16 17	before Chairman Noh	17	General's office, and Senator Peavey's, and went
18		18	through another redraft and rewrite at that point.
19	* * * * *	19	Then after everybody saw the redraft,
20		20	we had a few other minor changes and those are the
21		21	minor changes before you today. And Senator
22 23		22	Peavey has not seen the last changes, but I don't
	Transcribed by	23	think there is anything in there that he would
24	Roxanne K. Patchell, CSR, RPR CSR No. 733	24	disagree with.
25		25	But assuming he does not disagree with
	Page 2		Page 4
1	A P P E A R A N C E S	1	any of the last few changes, we should have
2		2	something, that if I understand it correctly, all
3	PRESENT: Chairman Noh	3	of the negotiators and Senator Peavey and myself
-	Senator Beitelspacher	4	have agreed to.
5	Senator Budge	5	Now, let me just quickly go through
6	Senator Carlson Senator Chapman	6	what changes were made between the two documents
÷	Senator Crapo	7	that you have. There were a number of
7	Senator Horsch	8	typographical or grammatical corrections made,
8	Senator Little Senator Peavey	9	which I won't go over, which didn't change any of
	Senator Ringert	10	the substantive language.
9	Senator Sverdsten	11	The statement of purpose had a sentence
10	Tom Nelson, Idaho Power Company	12	added to it which said it's at the bottom of
11		13 14	the first paragraph beginning with "it recognizes"
12	* * * * * *	15	under statement of purpose. "It recognizes that Idaho's population commercial and industrial
13		16	expansion, as well as Idaho's agricultural needs,
14		17	will require an insured supply of water."
15 16		18	UNKNOWN SPEAKER: Is that insured supply or
17		19	amount?
18		20	CHAIRMAN NOH: Insured amount of water.
19 20		21	SENATOR CRAPO: It says amount, okay.
20		22	UNKNOWN SPEAKER: I'm sorry, Senator Crapo,
22		23	could you repeat it?
23 24		24	SENATOR CRAPO: It should be on the copy
25		25	right in front of you. It recognizes

1 (Pages 1 to 4)

	Page 5		Page 7
1	CHAIRMAN NOH: The last sentence of the	1	clarify.
2	first page.	2	And the next change is on page 5 on the
3	SENATOR CRAPO: It recognizes that Idaho's	3	bottom paragraph and the last sentence of that
4	population and commercial and industrial	4	paragraph where it says, "it is the intent that we
5	expansion, as well as Idaho's agricultural needs,	5	talked about family farming tradition and jobs,"
6	will require an insured amount of water.	6	we added the words "otherwise qualified water
7	Then turning to the next page, again	7	uses" in the first part of that sentence.
8	there were some typos, and then we changed	8	So it says, "It is the intent that
9	Article 15 from Arabic to Roman numerals, little	9	otherwise qualified water uses which would promote
10	things like that. But the major first change	10	the family farming tradition or create jobs should
11	is well, let's see, it's ten lines down from	11	be recognized as essential to the economy."
12	section B, section 2, with the sentence beginning	12	And then in the next excuse me
13	with the word "supply." That sentence finished up	13	and the reason for that clarification was that
14	"supply of water for future beneficial upstream	14	there was a desire to clarify that family farming
15	uses."	15	tradition and items that create jobs are
16	The word "all" was deleted and the word	16	recognized as essential to the economy of the
17	"upstream" before "uses" was added. So it didn't	17	state of Idaho, but it was not intended to state
18	say "all future uses." It said "for future	18	that they receive a greater weighting than any
19	beneficial upstream uses."	19	other uses.
20	Then going down another seven lines to	20	So we wanted to clarify that they had
21	the sentence that begins with the word	21	to be otherwise qualified in the equal weighting
22	"depletion."	22	system. Thank you.
23	CHAIRMAN NOH: Sentence or the line?	23	And then we had used the phrase
24	SENATOR CRAPO: The line beginning with the	*	"industrial manufacturing and municipal" in the
25	word "depletion" where it says, "depletion of the	25	sixth and seventh lines from the first paragraph
		\$	
	Page 6		Page 8
1	Page 6 amount of the minimum flow," it did say "and shall	1	Page 8 on the top of page 6. We just corrected that to
1 2	amount of the minimum flow," it did say "and shall be," but it should have said "as," so it reads	2	-
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2 (Pages 5 to 8)

	Page 9		Page 11
1	the other senators should have the opportunity to	1	part of any seconders. The motion is going to die
2	review it. And I guess, I had also thought that	2	for lack thereof.
3	this committee probably ought to vote on it as	3	UNKNOWN PERSON: Mr. Chairman, only because
4	well (tape inaudible.)	4	of the point that you bring up that requires that
5	CHAIRMAN NOH: And I might ask	5	(tape inaudible).
6	Senator Ringert, what do you mean by general	6	CHAIRMAN NOH: Yes. Would someone want to
7	7 circulation?		make a motion?
8	SENATOR RINGERT: Everybody should receive a	1	SENATOR CRAPO: Mr. Chairman, as a member of
9	copy of it, Mr. Chairman.	9	the committee that prepared or the subcommittee
10	CHAIRMAN NOH: You mean handle it like bills	10	that prepared this statement, legislative intent,
11	and circulate it around the state, or are you just	11	I would move that the Senate Resource and
12	speaking of within the legislature?	12	Environment Committee adopt or approve I'm not
13	SENATOR RINGERT: Just the legislature.	13	sure which word I'm looking for there this
14	CHAIRMAN NOH: Okay. Yes, absolutely.	14	statement of legislative intent on behalf of the
15	Correct. Sure. I think that has to be the case.	15	committee.
16	I don't think we can pass anything, can we, that	16	CHAIRMAN NOH: Is there a second?
17	isn't on the senators' desks or circulated in	17	SENATOR BEITELSPACHER: I'd second that.
18	advance?	18	CHAIRMAN NOH: Senator Peavey, you have a
19	SENATOR RINGERT: Well, Mr. Chairman, my	19 20	frown on your face.
20 21	point would be that, you know, when somebody has a problem, and we haven't passed legislation yet, I	20	MR. PEAVEY: Well, Mr. Chairman, are there any comments from anybody in the audience?
22	don't think, that didn't have a problem somewhere	22	CHAIRMAN NOH: Senator Peavey, you were
23	down the line.	23	absent, tardy, late, and we did go over several
24	And a problem arises and a court looks	24	changes that were made apparently since you had
25	for legislative intent to explain a particular	25	last seen the draft, however, there was no
-		<u> </u>	
	Para 10	1	Page 12
1	Page 10	1	Page 12
1	portion of it, we've talked about before, if the	1	disagreement over any of those.
2	portion of it, we've talked about before, if the legislature doesn't consider this material before	2	disagreement over any of those. SENATOR PEAVEY: Well, I just have
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3 (Pages 9 to 12)

	Page 13		Page 15	
1	show that passing the motion and acceptance of the	1	MR. NELSON: Yes.	
2	statement of intent should not be regarded as	2	SENATOR CRAPO: Could you address for me the	
3	addressing anything except for what is	3	interplay between those water rights and the	
4	specifically set out in this statement of intent.	4	minimum stream flow?	
5	-		MR. NELSON: Mr. Chairman and members of the	
6			committee, as I understand your question, Senator,	
7 clear.		7	you are right that the contract, the October 25,	
8	CHAIRMAN NOH: That should be well	8	'84, Agreement, contains a sign-off by the Idaho	
9	understood. Okay. What is your pleasure with the		Power Company that its rights are subordinated to	
10	legislation? We have before us, then, senate	10	actual use as of October '84.	
11	bills 1008 and 1006.	11	,, ,	
12	SENATOR CARLSON: Mr. Chairman, I have a	12	status of that water right, relative to state law,	
13	question: Now that we have accepted this as being	13	to neighbors, to whatever other problems they may	
14	reasonable and understandable, is there something	14	have, that the company's rights are subordinated	
15	more that needs to be done?	15	to those rights.	
16	CHAIRMAN NOH: Yes. I would ask unanimous	16	Now, inherent in the discussion to date	
17	consent that the chairman be allowed to circulate	17	has been the assumption that the historic flow of	
18	this to all of the members of the senate as soon	18	4,500 is the flow. If that assumption is wrong on	
19	as possible and make sure it's on the desks of the	19	the down side, that doesn't operate to the	
20	members of the senate at the time that we vote on	20	detriment of those particular users. In other	
21	the bill, should we put the bills out.	21	words, if there isn't 600 cfs there, that does not	
22	UNKNOWN SPEAKER: Mr. Chairman, there's	22	affect their right.	
23	nothing to prevent you from doing that, if you'd	23 24	Likewise, if there is more than 600 in	
24	like to, anyway. I don't know how binding that	//4		
24			the river, then that the agreement doesn't	
25	is, but if it makes you feel better, why it may be	25	limit the use by other people in that either.	
25	is, but if it makes you feel better, why it may be Page 14	25	limit the use by other people in that either. Page 16	
25 1	is, but if it makes you feel better, why it may be Page 14 helpful.	25 1	limit the use by other people in that either. Page 16 Those folks are subordinated regardless of what	
25 1 2	is, but if it makes you feel better, why it may be Page 14 helpful. CHAIRMAN NOH: Okay. How about the	25 1 2	limit the use by other people in that either. Page 16 Those folks are subordinated regardless of what happens ultimately to the stream flow.	
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4 (Pages 13 to 16)

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	Page 17		Page 19
1	that case, the power company would watch the river	1	the seasonal 3,900 and 5,600.
2	flow go down, as would everybody else, and there	2	SENATOR CRAPO: I just have one more
3	would be have no weapons in which to prevent it	3	question, Mr. Chairman.
4	as to existing users.	4	CHAIRMAN NOH: Senator Crapo.
5	I want to make that clear.	5	SENATOR CRAPO: I noted in that state water
6	CHAIRMAN NOH: Senator Crapo.	6	plan and this is not particularly related to
7	SENATOR CRAPO: How would Idaho Power	7	Idaho Power, but I wanted to see if you or anybody
8	purchase water at the present time if they desired	8	else had a different understanding.
9	to do so? What would be the procedure it has to	9	The state water plan used to have a
10	go through?	10	separate block of water set aside for thermal
11	MR. NELSON: Mr. Chairman, Senator Crapo, if	11	cooling development. And at this point, as I
12	it's a one-year lease through the water supply	12	understand it, the state the proposed changes
13	bank, then that is handled I think that's been	13	to the state water plan, that development would be
14	a lateral from the Department of Water Resources	14	industrial development under the DCMI block that
15	to the Committee of Nine. The company leases	15	has been set aside.
16	water on a one year basis.	16	Is that your understanding?
17	If it wants a longer term of use than a	17	MR. NELSON: Mr. Chairman, Senator Crapo, I
18	year under the water supply bank, then it needs to	18	think clearly a thermal cooling would be an
19	apply for a change in place of use, point of	19	industrial use. That's the to me, the common
20	diversion, and nature of use with the Department	20	understanding of the word. And that, for example,
21	of Water Resources.	21	is the way that the Jim Bridger operators acquired
22	To the extent that that application	22	water in Wyoming is under an industrial latitude.
23	involves more than 50 cfs or I think it's 5,000	23	So yes, I think that thermal cooling
24	acre feet, then it requires legislative approval.	24	clearly is an industrial use.
25	That is the existing law, and of course, this	25	CHAIRMAN NOH: Thank you, Mr. Nelson. Thank
	Page 18		Page 20
1		1	-
1 2	Page 18 agreement and any of the legislation doesn't attempt to change that.	1 2	Page 20 you, Senator Crapo. Senator Ringert. SENATOR RINGERT: Mr. Chairman, Tom, I'll
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24 The contract would still define it as 25 5,600 winter.

5 (Pages 17 to 20)

	Page 21		Page 23
1	So that was an attempt to redivide the	1	criteria was, I think, a mutual desire.
2	existing situation, both between the existing	2	The form - the form each of those
3	water plan and the existing flow. The other	3	criteria went through, I don't know probably 50
4	CHAIRMAN NOH: Senator.	4	drafts, literally, I don't think that is an
5	SENATOR RINGERT: Well, excuse me. Who	5	exaggeration, so to say where any one of those
6	wanted while we're at this point now. Who	6	five came from, I'm not prepared to even guess.
7	wanted the 39 and 56?	7	It's obvious from just where the
8	MR. NELSON: The company wanted both numbers	8	parties were located, that the stricter they were,
9	higher, and the state wanted them both lower. I	9	the more opportunity there was to foreclose
10	won't	10	development, obviously, that is where the company
11	UNKNOWN SPEAKER: If I might interject here,	11	was coming from. But the state wasn't necessarily
12	Senator Ringert, it's my understanding that isn't	12	speaking only for unrestricted development. So
13	there some element of the agreement that makes	13	it's really hard to say where some of those things
14	even this kind of a discussion somewhat ticklish?	14	came from.
15	MR. NELSON: Well, Mr. Chairman, I don't	15	Part of this, obviously, was kind of a
16	know that it's part of the agreement. The	16	put-up or shut-up situation on both sides. The
17	negotiators had an informal understanding among	17	company had said it didn't want to be watermaster,
18	themselves that we wouldn't voluntarily, you know,	18	the state says, "Okay, then take yourself totally
19	pick the agreement apart and say, "Okay, Nelson	19	out of any vestige of control over the rights that
20	got this one, but the Attorney General got this	20	you have defined."
21	one," simply because we have tried to do it as a	21	We said, "All right, but if you are
22	whole.	22	going to be the watermaster, then you get out and
23	I don't think in the face of what's	23	you take care of it." So it's in that context
24	otherwise an inordinate question from	24	that you find the adjudication requirement of the
25	Senator Ringert, I'm in any position myself to	25	thought being that it doesn't make a lot of sense
		ł	

Page 22

1	impose that as our understanding among ourselves.	1
2	CHAIRMAN NOH: Well, I don't know why ou	2
3	other negotiators aren't here today either, but	3
4	UNKNOWN SPEAKER: They are in the house	4
5	CHAIRMAN NOH: Okay, fine.	5
6	MR. NELSON: So, I mean, that has been our	6
7	gentlemen's agreement, and I think by and large we	7
8	have stuck to that. But I don't feel I'm in a	8
9	position to tell Senator Ringert I won't answer	9
10	his question.	10
11	I can't I don't want to be	11
12	misunderstood as saying that there are major and	12
13	minor points of that agreement because the whole	13
14	thing dovetails together, but one of the obvious	14
15	factors involved was the public interest criteria.	15
16	And that was, I think, as I look back	16
17	on it, both the state and the power company wanted	17
18	some element of state control over the allocation	18
19	of that water. That, if the race was to the	19
20	swift, the swift were already afoot. And in this	20
21	situation, the price of one man's failure is	21
22	another man's inability to get started.	22
23	So, the way of the both the existing	23
24	undeveloped applications and future uses outside	24
25	those against some form of public interest	25

to try and define what's in the river when you haven't the foggiest idea, really, of the details of the water uses now going on above Swan Falls.

The scope of the adjudication within the McCarren Amendment was simply an effort to make sure that for planning purposes, the federal government had to get involved. Because you can't plan the river with huge potentially large undefined claims that aren't part of the planning process. So that was, I think, a mutual segment.

The trust provision in section 2 of the 2008 was an idea of -- I think that came from the state. I seized on it with alacrity because it filled what I saw as a major problem the company had in this thing throughout, which was we could get the state to sign up, but how did we get the state to live up to what they said they would do? And that was a major problem from our -- from our side.

The trust provision was suggested to get us around the subordinated versus subordinatable nature of the water above the minimum flow. It remains unsubordinated, but it's held in trust by the state, and that neatly side stepped the problem, but it left us, we think,

6 (Pages 21 to 24)

Page 24

Resources and Environment Committee

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	Page 25		Page 27
1	with another club to use against the state if it	1	doesn't pick it up.
2	tries to ignore the standard set by the	2	SENATOR RINGERT: Just a comment I had on
З	legislation.	3	this Tom, but it just seems rather strange, and I
4	Do you want me to restrict my comments	4	realize that, at least currently, this section 6
5	to 2008, Senator, for now?	5	is in the code already, but I wonder why we have
6	SENATOR RINGERT: I think we should.	6	to mention in some places that judicial review is
7	MR. NELSON: Okay. I believe public	7	available under 1701A and not mention it in
8	interest, I think that as I look back, would be	8	others.
9	the major elements of the particular bill.	9 And I just see the opportunity for a	
10	SENATOR RINGERT: I have a question	10 court to decline jurisdiction of a neat little	
11	Senator excuse me, Mr. Chairman, Tom, on page 4		
12	of the bill, in section 42-203D, 2, lines 44	12 CHAIRMAN NOH: Mr. Young had some	
13	through 47, it specifically names the	13 enlightenment to shed on this question.	
14	4 administrative proceedings, but most of our I'm 14 MR. YOUNG: 421701A, Mr. Ch		MR. YOUNG: 421701A, Mr. Chairman, includes
15	just going on memory now, but it seems to me some	15	a specific allowance for judiciary review. (Tape
16	of our other code sections that are similar to	16	inaudible).
17	this, specifically mention the right to judicial	17	CHAIRMAN NOH: Senator Ringert.
18	review.	18	SENATOR RINGERT: Of any adverse order the
19	Now, would you comment on whether the	19	director (tape inaudible.)
20	lack of that statement in this particular sentence	20	MR. YOUNG: Mr. Chairman, Senator Ringert,
21	would, one, preclude judicial review and, two, if	21 22	that particular section, then, a few years ago
22	that's the case, is that the intent of it?	22	clarified any time the director made any decision
23 24	MR. NELSON: Mr. Chairman, Senator Ringert,	24	that was adverse to a water user or citizen on
24 25	first working backwards. It was not the intent of the section to preclude judicial review, but I	25	which there hadn't been a previous right for a hearing, that provision would kick in giving the
20			
	Page 26		Page 28
1	can't tell you without looking at the rest of 203	1	right to administrative hearing and judiciary
2	where that right to review exists, but I believe	2	review.
3	either in a part of 203 that we haven't put in	3	CHAIRMAN NOH: Are there other questions?
4	there it is, subsection 6, on page 2, just ahead	4	Senator Tominaga, you indicated you might like to
5	of section 2 bill, is in the existing code, a	5	ask a question.
6	right of review, which would I think apply to the	6	SENATOR TOMINAGA: I have one question,
7	entirety of 203.		
~	-	7	Mr. Chairman, for Tom Nelson.
8	1701 is the section of legislature	8	Now, say in 5 or 10 years the state
9	1701 is the section of legislature added or changed, I think in 1980, which creates	8 9	Now, say in 5 or 10 years the state decides to lower the minimum stream flow from
9 10	1701 is the section of legislature added or changed, I think in 1980, which creates the right of review under the Administrative	8 9 10	Now, say in 5 or 10 years the state decides to lower the minimum stream flow from 3,900 to say 3,500, would the state have to
9 10 11	1701 is the section of legislature added or changed, I think in 1980, which creates the right of review under the Administrative Procedures Act.	8 9 10 11	Now, say in 5 or 10 years the state decides to lower the minimum stream flow from 3,900 to say 3,500, would the state have to compensate Idaho Power for because it is a
9 10 11 12	1701 is the section of legislature added or changed, I think in 1980, which creates the right of review under the Administrative Procedures Act. CHAIRMAN NOH: Senator Ringert.	8 9 10 11 12	Now, say in 5 or 10 years the state decides to lower the minimum stream flow from 3,900 to say 3,500, would the state have to compensate Idaho Power for because it is a contract or agreement between the state and the
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7 (Pages 25 to 28)

	Page 29		Page 31
1	rather than the contract amount, then the company	1	under double ii, the analysis there is that you
2	would immediately go to court, as I see it, and	2	look in i at the benefit of the new use. And
3	attempt to force a change in their planning	3	under ii you look at the detrimental effects of
4	process to recognize the contractural right. That	4	the new use on electrical rates.
5	would be in advance of any hopefully, approval	5	That is the other side of the coin. If
6	of any new uses.	6	it is worth X dollars to have the new use in place
7	One option in that situation would be	7	to the economy of the state, and it costs Y
8	for the court or the state through legislature to	8	dollars to have that water taken out of the river,
9	say, "Well, all right you have a contract, but	9	then you have to balance X and Y.
10	your remedy is by compensation not by stopping the	10	That is where the ratepayer interest is
11	state in its planning process."	11	addressed as part of the public interest.
12	But the initial attempt, as we have	12	CHAIRMAN NOH: Thank you. Senator Peavey.
13	explained it to the other negotiators, would be to	13	SENATOR PEAVEY: Mr. Chairman, Mr. Nelson,
14	force compliance with the contract. Only then, if	14	why don't you give us the flip side of Senator
15	we weren't successful in doing that, would we, I	15	Tominaga's scenario in case the state wanted to
16	think, be entitled to claim compensation. We	16	raise the minimum flow? How would that work and
17	would rather have the water than the money	17	would there be any problems?
18	frankly.	18	MR. NELSON: Mr. Chairman, Senator Peavey,
19	CHAIRMAN NOH: Yes, Senator Carlson.	19	in that in the situation where the state raised
20	SENATOR CARLSON: Mr. Chairman and	20	the minimum flow, the company's subordinated
21	Mr. Nelson, early on you indicated that senate	21	rights would remain at 3,900 and 5,600. However,
22	bill 1008 addresses the public interest, and I	22	that increase, then, would make the company a
23	wonder if, can you define the public interest for	23	beneficiary of that increase flow.
24	me?	24	And as I read both what we have and as
25	MR. NELSON: Mr. Chairman, Senator, as	25	those minimum flows operate, the company would be
	Page 30		Page 32
1	Page 30 section 203 of Title 42 now operates, you find	1	Page 32 a beneficiary of the higher flow and would be
1 2	-	1	-
	section 203 of Title 42 now operates, you find	1	a beneficiary of the higher flow and would be
2	section 203 of Title 42 now operates, you find public interest defined in two places. The local	2	a beneficiary of the higher flow and would be entitled to protect it, or to try to make the
2 3	section 203 of Title 42 now operates, you find public interest defined in two places. The local public interest standard in A, and the portion of public interest defined by C. So in that situation, public interest	2 3	a beneficiary of the higher flow and would be entitled to protect it, or to try to make the state enforce it if it raised the flow but at the
2 3 4	section 203 of Title 42 now operates, you find public interest defined in two places. The local public interest standard in A, and the portion of public interest defined by C. So in that situation, public interest is both local public interest as may be applied	2 3 4	a beneficiary of the higher flow and would be entitled to protect it, or to try to make the state enforce it if it raised the flow but at the same time didn't put mechanisms in place to really make it work. CHAIRMAN NOH: Senator Peavey.
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8 (Pages 29 to 32)

	Page 33		Page 35
1	UNKNOWN SPEAKER: You are going to have to	1	for me to interject one comment I have. As I
2	get Tom's paycheck for today.	2	said, I am going to support sending the bill to
3	CHAIRMAN NOH: Senator Ringert.	3	the floor, but with regard to this particular
4	SENATOR RINGERT: Mr. Chairman, Tom, on	4	section dealing with, essentially (tape inaudible)
5	page 3, line 43, it says "permit or license."	5	the new small hydro or at least impacting new
6	Now, my question there is, I can understand if	6 small hydro development, I think there are so	
7	that's if that's a valid premise to start with	7	inequities in the bill where at least that we
8	to see if the condition would be placed in the	8	ought to address the type of discretion the
9	permit, therefore, that same condition would carry	9	director should have to impose such restrictions.
10	over into the license.	10	And it's my understanding that there
11	But I am of concern that this language	11 will probably be some subsequent legislation	
12	would permit the director to impose subordination	12 introduced this term to address those issues.	
13	on the licensed water right that didn't have that	13	so, although, I'm in agreement to send this bill
14	condition when it was a permit.	14	to the floor, I think that we as a committee ought
15	MR. NELSON: Mr. Chairman, Senator Ringert,	15	to be aware that there are some possible
16	that is addressed in the last full sentence of	16	clarifications that need to be attached to that
17	sub 6, "Shall not apply the licenses which have	17	type of discretion on the part of the director.
18	already been issued as of the effective date of	18	CHAIRMAN NOH: Any other questions by the
19	this act."	19	committee members? Are you ready for the
20 21	In other words, what the state wanted	20 21	questions? Senator Little.
21 22	here SENATOR RINGERT: Well Tom, forgive me, bu	i i	SENATOR LITTLE: With this (tape inaudible) about the small hydro, what assurance have we got
23	that is not my concern. My concern is the is	23	that there will be legislation coming to protect
24	the small hydro operator who received a permit in	24	small hydro?
25	1990, and that permit does not have a	25	CHAIRMAN NOH: I presume the dedicated
	Page 34		Page 36
1	subordination provision in it.	1	interest of the logislative componentatives of
		1	interest of the legislative representatives of
2	And he builds his plant and gets into	2	people in those districts that are concerned.
3	operation, and here comes the director and looks	2 3	people in those districts that are concerned. Okay. Senator Peavey.
3 4	operation, and here comes the director and looks at that and says, "I probably should have done	2 3 4	people in those districts that are concerned. Okay. Senator Peavey. SENATOR PEAVEY: One last question of Tom.
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9 (Pages 33 to 36)

	Page 37		
1	left (tape inaudible)?	1	MR. NELSON: Sure.
2	MR. NELSON: Mr. Chairman, Senator Peavey,	2	CHAIRMAN NOH: Se
3	we still have the problem with rights versus	3	SENATOR RICKS: So
4	people. But to date, since October 25th signing	4	mean, then, that they could
5	of the agreement, we have dismissed in round	5	could not or anybody cou
6	numbers 4,000 filings, if you will, from the suit.	6	challenge their water right:
7	As I say, it is hard to tell in people,	7	MR, NELSON: Mr. Ch
8	because some of them you have ten people on them	8	the only meaning that has it
9	or you might have one guy with ten filings, but we	9	that dismissal took place is
10	have dismissed 4,000 filings.	10	company is barred from ev-
11	In terms of filings still subject to	11	water right.
12	the suit, I'd say there is probably 2,500 to 3,000	12	Now, as I said befor
13	as a very rough estimate that we would still be in	13	trouble with their neighbors
14	court with.	14	with the state, whatever the
15	SENATOR PEAVEY: Mr. Chairman.	15	they will continue to have t
16	CHAIRMAN NOH: Senator Peavey.	16	company is barred from cha
17	SENATOR PEAVEY: What category? How could	4	right.
18	you classify the 2,500? Who are they?	18	CHAIRMAN NOH: Se
19	MR. NELSON: Senator Peavey, as far as we	19	SENATOR RICKS: M
20	know, they would be undeveloped applicants and	20	question, then. Mr. Nelson
21	permits. We are in the process of sending out a	21	about what quantity of the
22	questionnaire to try and locate those people in	22	terms of the cfs as far as the
23	that group that are developed or have made the	23	concerned?
24	1180 investment that we don't know about. But by	24	MR. NELSON: Mr. Ch
25	and large, it will be undeveloped applicants and	25	the estimates are necessarily
	Page 38		
1	permits.	1	because when you are look
2	Mostly, large agricultural because we	2	right, somebody who has n
3	have dismissed, to the extent that we can, the	3	filing, and it's on the basis of
4	commercial, industrial, municipal, domestic	4	filings that we did the dism
5	people.	5	I'm not being critical of the
6	CHAIRMAN NOH: Senator Peavey.	6	the way you do it at that sta
7	SENATOR PEAVEY: Just one last question, to	7	acreage and you over file or
8	summarize it then, all we really shouldn't have	8	So if I were to go ba
9	any exiting irrigators left in a status where they	9	people who were dismissed
10	are locked in combat with the power company; is	10	showed on paper, other than
11	that right?	11	had in, I would have a vastl
12	MR. NELSON: Mr. Chairman, Senator Peavey,	12	Now, I have gone ba
13	that is right. At least as soon as we can find	13	and determine from the bas
14	out all of the 1180 beneficiaries, that won't be	14	on the people we know are
15	the case.	15	depletion based on that acre
16	UNKNOWN PERSON: (Tape inaudible), the big	16	the vicinity of 1,000 cfs. B
17	question, of course, other than that group left is	17	rough number because wha
18	who is going to use the future what will future	18	assumptions on top of a cou
			1 F N

N NOH: Senator Ricks. RICKS: So that means -- does that

t they could not be -- the courts anybody could not sue them and water right in the future?

ON: Mr. Chairman, Senator Ricks, ng that has in the context in which ook place is that the power red from ever challenging their

I said before, if they have eir neighbors, they have trouble whatever those other problems are, ue to have them. But the power red from challenging their water

N NOH: Senator Ricks.

RICKS: Mr. Chairman, one further Mr. Nelson, do you have any idea ntity of the river that involves in as far as the permit holders are

ON: Mr. Chairman, Senator Ricks, e necessarily very rough, Senator,

	Page 38		Page 40
1	permits.	1	because when you are looking at holding paper
2	Mostly, large agricultural because we	2	right, somebody who has not proved up but has a
3	have dismissed, to the extent that we can, the	3	filing, and it's on the basis of some of those
4	commercial, industrial, municipal, domestic	4	filings that we did the dismissal, you find and
5	people.	5	I'm not being critical of the filers. It's just
6	CHAIRMAN NOH: Senator Peavey.	6	the way you do it at that stage. You over file on
7	SENATOR PEAVEY: Just one last question, to	7	acreage and you over file on amount.
8	summarize it then, all we really shouldn't have	8	So if I were to go back through those
9	any exiting irrigators left in a status where they	9	people who were dismissed and tell you what they
10	are locked in combat with the power company; is	10	showed on paper, other than the licenses that they
11	that right?	11	had in, I would have a vastly overstated amount.
12	MR. NELSON: Mr. Chairman, Senator Peavey,	12	Now, I have gone back through to try
13	that is right. At least as soon as we can find	13	and determine from the basis of acreage involved
14	out all of the 1180 beneficiaries, that won't be	14	on the people we know are existing and then use a
15	the case.	15	depletion based on that acreage, and I come out in
16	UNKNOWN PERSON: (Tape inaudible), the big	16	the vicinity of 1,000 cfs. But that is a really
17	question, of course, other than that group left is	17	rough number because what you have is about three
18	who is going to use the future what will future	18	assumptions on top of a couple of guesses to even
19	uses be of the remaining water?	19	get that close.
20	CHAIRMAN NOH: Senator Ricks.	20	But that's like I say, if you use
21	SENATOR RICKS: Mr. Chairman, may I ask	21	the diversion numbers, it's huge. I would dare
22	Mr. Nelson a question while it's fresh on my mind?	22	say you would be talking 10 or 15 or 20,000 cfs on
23	The group that you referred to as being	23	the diversion. But in terms consumption, as best
24	dismissed, they were dismissed with prejudice; is	24	I could work out the acreage, it wasn't that big.
25	that right?	25	SENATOR RICKS: Mr. Chairman, one further

10 (Pages 37 to 40)

	Page 41		Page 43
1	question along those lines, that is the part, I	1	or the Department of Water Resources.
2	guess, I haven't got quite clear in my mind. I'm	2	We didn't intend for this to be a
3	trying to comprehend and understand because I'm	3	public hearing. We have had countless public
4	wondering whether there is any really free water	4	hearings. The measure has been before us for a
5	in that river if not we haven't used it all up	5	long, long time. And I'm certainly not one to
6	in terms of permits. I guess that's what I'm	6	want to cut off discussion, but at some point we
7	trying to resolve within my own mind.	7	have to get on with our business.
8	And I recognize the fact that when a	8	MS. HAYES: Well, I have a valid point to
9	person seeks a water permit, any one of us or	9	make.
10	whatever the case might be, and we seek a water	10	CHAIRMAN NOH: All right. Then, Ms. Hayes,
11	permit for X number volume of water. And whethe	+11	you may make your valid point.
12	we use it for two months during the year or ten	12	MS. HAYES: All right. We have done some
13	months during the year or what, we still have the	13	intensive research into the number of cfs that is
14	permits and the right to that quantity of water.	14	in this river. And we have gone to the
15	I guess and I'm just trying to get	15	United States Geological Survey, and we maintain
16	that clear in my mind whether or not there is any	16	that there's 6,065 cfs in that river, that we
17	excess water available in the whole river. That's	17	should be you know, when we have qualified
18	where I'm kind of confused.	18	people, such as this, that are telling us that
19	MR. NELSON: Mr. Chairman, Senator, if	19	that is the amount, this and that, in that river
20	that is one of the ifs if our analysis was	20	over a 23-year period, that this is the average,
21	right that there's 4,500 in the river. In other	21	that this is what we should be considering, and
22	words, if you repeated 1961 and 1985, the low flow		so that we are saying that we are not starting
23	of the river at the Murphy gauge would be 4,500.	23	from a valid point. That we need to consider this
24	All right. If that assumption is	24	6,065 cfs's as the average flow in that stream for
25	correct, implicit in that then is the conclusion,	25	the past 23 years.
	~ 10		
	Page 42		Page 44
1	if you will, that all current development has been	1	If we start on the wrong (tape
2	if you will, that all current development has been reflected in the river.	2	If we start on the wrong (tape inaudible) in planning for this stream, you are
	if you will, that all current development has been reflected in the river. In other words, we have now felt the]	If we start on the wrong (tape inaudible) in planning for this stream, you are going to be coming out with the wrong figures.
2 3 4	if you will, that all current development has been reflected in the river. In other words, we have now felt the effects of all of that development. And that	2	If we start on the wrong (tape inaudible) in planning for this stream, you are going to be coming out with the wrong figures. And I think this is you go to people who keep
2 3 4 5	if you will, that all current development has been reflected in the river. In other words, we have now felt the effects of all of that development. And that one person can see about as far to the ground as	2 3 4 5	If we start on the wrong (tape inaudible) in planning for this stream, you are going to be coming out with the wrong figures. And I think this is you go to people who keep records and you find out what they are.
2 3 4 5 6	if you will, that all current development has been reflected in the river. In other words, we have now felt the effects of all of that development. And that one person can see about as far to the ground as another, but I'm convinced, based on my	23456	If we start on the wrong (tape inaudible) in planning for this stream, you are going to be coming out with the wrong figures. And I think this is you go to people who keep records and you find out what they are. Now this, I think this could throw your
2 3 4 5 6 7	if you will, that all current development has been reflected in the river. In other words, we have now felt the effects of all of that development. And that one person can see about as far to the ground as another, but I'm convinced, based on my conversations with experts at the Department and	234567	If we start on the wrong (tape inaudible) in planning for this stream, you are going to be coming out with the wrong figures. And I think this is you go to people who keep records and you find out what they are. Now this, I think this could throw your whole planning out of kilter, and so I do want to
2 3 4 5 6 7 8	if you will, that all current development has been reflected in the river. In other words, we have now felt the effects of all of that development. And that one person can see about as far to the ground as another, but I'm convinced, based on my conversations with experts at the Department and experts that we have and the experts that other	2 3 4 5 6 7 8	If we start on the wrong (tape inaudible) in planning for this stream, you are going to be coming out with the wrong figures. And I think this is you go to people who keep records and you find out what they are. Now this, I think this could throw your whole planning out of kilter, and so I do want to make that point.
2 3 6 7 8 9	if you will, that all current development has been reflected in the river. In other words, we have now felt the effects of all of that development. And that one person can see about as far to the ground as another, but I'm convinced, based on my conversations with experts at the Department and experts that we have and the experts that other people have hired, that that is a supportable	2 3 4 5 6 7 8 9	If we start on the wrong (tape inaudible) in planning for this stream, you are going to be coming out with the wrong figures. And I think this is you go to people who keep records and you find out what they are. Now this, I think this could throw your whole planning out of kilter, and so I do want to make that point. CHAIRMAN NOH: Thank you. And I should
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1	1981, of 4,530 cfs. So what we are talking about
2	here is a minimum flow. You know, you don't swim
3	in average depth rivers, and fish don't live in
4	average depth rivers.
5	This is a critical period planning
6	mechanism. You look at the worst case and you
7	say, "What could we accept in that river on the
8	worst day that we can foresee we will have?" That
9	day to date has been 4,530 cfs, not 6,065.
10	If you want to go to an average number,
11	then admittedly it will be much higher. But your
12	exposure to flows below an acceptable limit will
13	be much greater.
14	CHAIRMAN NOH: As many are as in favor of
15	senate bill 1008 signify by saying aye.
16	(Affirmative response.)
17	CHAIRMAN NOH: Opposed, no?
19	UNKNOWN PERSONS: No.
19	CHAIRMAN NOH: Would you like your votes
20	recorded as such?
21	UNKNOWN SPEAKERS: Yes. (Tape inaudible).
22	CHAIRMAN NOH: Senators Ringert, Little, and
23	Carlson voted no. Okay. Now, how about senate
24	bill 1006?
25	Someone care to make a motion on senate
	Page 46
1	bill 1006?
2	SENATOR BUDGE: Mr. Chairman, I move that it
3	go to a do pass.
4	SENATOR BEITELSPACHER: I second.
5	CHAIRMAN NOH: Moved and seconded that we
6	put out senate bill 1006 with a do pass
7	recommendation.
8	Is there any discussion? If not, all
9	those in favor signify by saving ave.

those in favor signify by saying aye. 9

10 (Affirmative response.)

- 11 CHAIRMAN NOH: Opposed, no?
- 12 UNKNOWN PERSONS: No.
- 13 CHAIRMAN NOH: Do you want your votes
- 14 recorded? 15 UNKNOWN PERSONS: Yes. 16 CHAIRMAN NOH: Senators Ringert and Little 17 vote no, and Senator Carlson. 18 Okay. I guess the Senate State Affairs 19
- Committee are going to consider the PUC bills, the
- 20 adjudication bill is up across the way in the
- 21 House. Thank you, troops, you are -- (end of
- 22 tape)
- 23 (Meeting concluded.)
- 24 25

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1 REPORTER'S CERTIFICATE 2 3 I, Roxanne Patchell, Court Reporter, a 4 Notary Public, do hereby certify: 5 That I am the reporter who took the 6 7 proceedings had in the above-entitled action in machine shorthand and thereafter the same was 8 9 reduced into typewriting under my direct 10 supervision; and That the foregoing transcript contains a 11 12 full, true, and accurate record of the proceedings 13 had in the above and foregoing cause, which was 14 heard at , Idaho. IN WITNESS WHEREOF, I have hereunto set 15 my hand this // day of March , 2007. 16 17 18 19 20 Roxanne hell, Coui Reporter 733 21 CSR No. 22 23 24 25