

MINUTES  
RESOURCES AND ENVIRONMENT COMMITTEE

MARCH 4, 1985

Room 433, 1:30 P.M.

PRESENT Chairman Noh, Senators Beitelspacher, Budge, Carlson, Crapo, Horsch, Little, Peavey, Ringert and Sverdsten. Senator Chapman was excused and Senator Kiebert was absent.

The meeting was called to order by Chairman Noh.

Wayne Haas Mr. Haas, Department of Water Resources, explained Policy 32 of the State Water Plan, section by section, pointing out the various changes and the reasoning behind them. (See resolution attached)

In Policy 32A, Water Held in Trust by the State, Senator Ringert asked what "deemed appropriated" meant. Pat Costello, Governor's office, believed it referred to the state recognizing Idaho Power had a valid water right up to 8400 cfs. Other parties could still pursue legal arguments that Idaho Power does not have a valid water right.

In response to Senator Ringert's question, Mr. Kole, Attorney General's office, said the wording in effect would give the state a shield through the trust system to deny water permits that the state does not feel are valid--to get around a problem of appropriating unappropriated water. Senator Ringert wanted to know if this was to get around other parties using as an argument the abandonment and forfeiture, etc. and Mr. Kole said no.

Senator Crapo questioned Mr. Haas if Policy 32B would include thermal cooling and he said yes. He also asked if there was a policy decision being made here to restrict the amount to less than in the past. Mr. Haas explained in looking at the needs for the near future, it is felt the 150 cfs is adequate and the Board could look at the amount five years down the road if conditions change. Mr. Haas could see nothing in the policy to discourage development at INEL.

Senator Crapo had further questions regarding surface storage with regard to rebuilding the Teton Dam. As he understood the policy, that dam would not be subject to the policy if it was to be rebuilt. Mr. Kole said their understanding in looking at an "approved project," is that it is approved if the state permit is cancelled or not. Mr. Nelson was in agreement.

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Senator Ringert expressed concern about protecting the water at the source of diversion, mentioning the fish hatcheries along the Snake. Mr. Haas believes the water right is protected but the user may have to "chase the water." The language does not represent a policy change.

Senator Crapo commented he wasn't sure why the state should get involved in acquiring water for storage. Mr. Haas said by having this cushion it would make it easier for the state to manage the minimum flow and give the state some flexibility in management.

Sherl  
Chapman

Mr. Chapman, from the Water Users, said they did have some concerns over the modifications of the Water Plan Policy but they are minor compared to the problems there would be if the agreement fails. He believes the Board has been fair and that the Water Users can work with the Board to solve any problems. He urged the committee to pass the legislation.

MOTION

Senator Budge moved and Senator Peavey seconded the bill go out with a "do pass" recommendation. Motion carried.

HB 142

RELATING TO THE DISTRIBUTION OF FUNDS COLLECTED BY THE STATE DEPARTMENT OF FISH AND GAME; TO INCREASE THE MONEYS DISTRIBUTED TO THE PREDATORY ANIMALS ACCOUNT FROM TWELVE THOUSAND DOLLARS TO FIFTY THOUSAND DOLLARS.

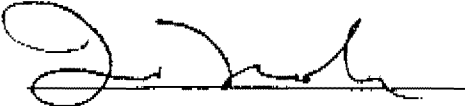
The proposed legislation would change the amount of the distribution of funds collected by the Department of Fish and Game allotted to the predatory animals account from \$12,000 to \$50,000.

There was no discussion on the bill.

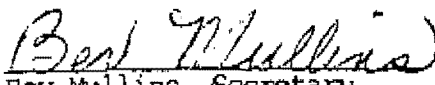
MOTION

Senator Peavey moved and Senator Little seconded the bill go out with a "do pass" recommendation.

The time for the meeting having run out, the committee was adjourned.



Laird Noh, Chairman



Bev Mullins, Secretary

For Monday - Res.

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF )  
POLICY 32 OF THE )  
STATE WATER PLAN )  
\_\_\_\_\_ )

A RESOLUTION

WHEREAS, pursuant to Chapter 17, Title 42, Idaho Code, the Idaho Water Resource Board (Board) has the power and duty to adopt a comprehensive State Water Plan; and,

WHEREAS, portions of the Snake River Water Rights Agreement (Agreement) entered into by the Governor, the Attorney General, and the Idaho Power Company on October 25, 1984 are not in accord with the State Water Plan; and,

WHEREAS, the Board has conducted 12 formal hearings in affected areas of the state on proposed changes to Policy 32 of the State Water Plan;

NOW, THEREFORE, BE IT RESOLVED that, the Idaho Water Resource Board under its authority to establish water policy amends Policy 32 of the State Water Plan to read as follows:

Policy 32 - Snake River Basin

It is the policy of Idaho that the ground water and surface water of the basin be managed to meet or exceed a minimum average daily flow of zero measured at the Milner gaging station, 3900 cfs from April 1 to October 31 and 5600 cfs from November 1 to March 31 measured at the Murphy gaging station, and 4750 cfs measured at the Weiser gaging station. A minimum average daily flow of 5,000 cfs at Johnson's Bar shall be maintained and an average daily flow of 13,000 cfs shall be maintained at Lime Point (river mile 172) a minimum of 95 percent of the time. Lower flows may be permitted at Lime Point only during the months of July, August, and September.

Waters not held in trust by the State in accordance with Policy 32A shall be allocated according to the criteria established by Idaho Code 42-203A.

The minimum flows established for the Snake River at the Murphy and Weiser gaging stations are management constraints; they further insure that minimum flow levels of Snake River water will be available for hydropower, fish, wildlife, and recreational purposes. The establishment of a zero minimum flow at the Milner gaging station allows for existing uses to be continued and for some new uses above Milner. The zero flow established at Milner means that river flows downstream from that point to Swan Falls Dam may consist almost entirely of ground-water discharge during portions of low-water years. The Snake River Plain aquifer which provides this water must therefore be managed as an integral part of the river system.

The minimum flows established for Johnson's Bar and Lime Point are contained in the original Federal Power Commission license for the Hells Canyon hydropower complex. By adopting these flows, the Idaho Water Resource Board recognizes the importance of minimum flows to downstream uses and makes their maintenance a matter of state water policy. Article 43 of the power license provides that:

"The project shall be operated in the interest of navigation to maintain 13,000 cfs flow in the Snake River at Lime Point (river mile 172) a minimum of 95 percent of the time, when determined by the Chief of Engineers to be necessary for navigation. Regulated flows of less than 13,000 cfs will be limited to the months of July, August, and September, during which time operation of the project would be in the best interest of power and navigation, as mutually agreed to by the Licensee and the Corps of Engineers. The minimum flow during periods of low flow or normal minimum plant operations will be 5,000 cfs at Johnson's Bar . . . . "

SNAKE RIVER FLOWS ABOVE THE HYDROPOWER RIGHT AT ANY IDAHO POWER FACILITY ARE CONSIDERED UNAPPROPRIATED AND THEREFORE ARE NOT HELD IN TRUST BY THE STATE. THIS DISTINCTION IS FURTHER ADDRESSED IN POLICY 32A.

#### Policy 32A - Water Held in Trust by the State

It is the policy of Idaho that water held in trust by the state pursuant to Idaho Code 42-203B be reallocated to new uses in accordance with the criteria established by Idaho Code 42-203A and 42-203C.

The agreement between the state of Idaho and Idaho Power Company dated October 25, 1984 provides that Idaho Power's

claimed water right of 8400 cfs at the Swan Falls dam may be reduced to 3900 cfs. The claimed water right of 8400 cfs is deemed appropriated and the amount above the minimum flow established in Policy 32 up to the 8400 cfs is held in trust by the state. The agreement further provides that Idaho Power's claimed water rights at facilities upstream from Swan Falls shall be considered satisfied when the company receives the minimum flow specified in Policy 32 at the Murphy gaging station. The 8400 cfs claim of the power company has not historically been available during summer months.

The 8400 cfs claimed right is reduced by the agreement to that flow available after satisfying all applications or claims that demonstrate water was beneficially used prior to October 1, 1984 even if such uses would violate the minimum flows established in Policy 32. Any remaining water above these minimum flows may be reallocated to new uses by the state providing such use satisfies existing Idaho law plus criteria the Legislature is requested by the agreement to establish as Idaho Code 42-203C. These additional criteria supplement Policy 1 of the Water Plan which urges that conformance with the State Water Plan be considered evidence of the public interest. The Idaho Water Resource Board recognizes that the specific criteria for defining public interest established by Idaho Code 42-203C are to be used in addition to the criteria set forth in Policy 1 for the reallocation of of hydropower rights.

Policy 32B - Domestic, Commercial, Municipal and Industrial (DCMI)

It is the policy of Idaho that 150 cfs of water for consumptive purposes held in trust by the state pursuant to Policy 32A be reallocated to meet future DCMI uses in accordance with state law.

While most DCMI uses are nonconsumptive or only partially consumptive, future growth in Idaho's population and commercial and industrial expansion will require an assured supply of water.

A continuous flow of 150 cfs provides approximately 108,600 acre-feet of water per year. This volume of water is assigned to consumptive uses within the basin for domestic, commercial, municipal, and other industrial purposes. Industrial purposes include processing, manufacturing, research and development, and cooling.

Adequate records should be kept and reviewed so that this reallocation can be modified as necessary. Increases in the

DCMI allocation, if necessary, will reduce the amount of water available for agricultural uses. The allocation will be reviewed as part of every Water Plan update.

#### Policy 32C - Agriculture

It is the policy of Idaho that appropriated water held in trust by the state pursuant to Policy 32A, less the amount of water necessary to provide for present and future DCMI uses as set forth in Policy 32B, shall be available for reallocation to meet new and supplemental irrigation requirements which conform to Idaho Code 42-203A, 203B, 203C, and 203D.

The policy allows for new and supplemental agricultural development through the reallocation of water held in trust by the state. The 1982 State Water Plan allocated water for a minimum level of new irrigation development of 850,000 acres plus supplemental water for 225,000 acres by the year 2020 over that which existed in 1975. This policy rescinds the 1982 allocations since there are no acres specified in that the type, location, and amount of use is unknown as is the effect of the evaluation called for in Policy 32A.

During the 8 year period from 1975 to 1983, about 140,000 acres of new development occurred within the basin. While the amount of new acreage varied significantly from year to year, the average was approximately 17,500 acres. Data are not available to estimate the number of acres that received supplemental water during this period. Idaho Code Section 42-203C limits the rate of new development in the basin above Murphy gaging station to 80,000 acres in any four year period. Therefore, the maximum development to the year 2020 above Murphy gaging station assuming no water supply constraint is 700,000 acres. Criteria placed on the reallocation of hydropower rights, limits on the rate of new development, plus the requirement that approval of new storage projects that divert water between November 1 and April 1 from the Snake River between Milner Dam and Murphy gaging station must mitigate the impact of diversions on hydropower generation (Policy 32I), will undoubtedly limit development to less than 700,000 acres.

#### Policy 32D - Hydropower

It is the policy of Idaho that hydropower use be recognized as a beneficial use of water, and that depletion of flows below the minimum average daily flows set forth in Policy 32 is not in the public interest.

The 1982 State Water Plan allocated 170,000 acre-feet for consumptive use in cooling thermal power plants. By establishing a minimum daily flow of 3300 cfs at Murphy and 4750 cfs at Weiser, stabilized flows were guaranteed for hydropower generation. The minimum daily flows for hydropower generation are now increased as stated in Policy 32. In addition, this policy specifically recognizes hydropower generation as a beneficial use of water and acknowledges the public interest in maintaining the minimum river flow at key points. Any water depletion for thermal power generation would now come from the block of water allocated to DCMI uses.

#### Policy 32E - Navigation

It is the policy of Idaho that water sufficient for commercial and recreational navigation is provided by the minimum flows established for the Snake River.

Commercial navigation enroute to Lewiston via the Columbia River and Lower Snake River can be accommodated with the flows leaving Idaho in the Snake River at Lewiston. Above Lewiston, commercial and recreational navigation should be accommodated within the protected flows on the Snake River and tributary streams.

#### Policy 32F - Aquaculture

It is the policy of Idaho that water necessary to process aquaculture products be included as a component of DCMI as provided in Policy 32B. The minimum flows established for the Murphy gaging station should provide an adequate water supply for aquaculture. It must be recognized that while existing water rights are protected, it may be necessary to construct different diversion facilities than presently exist.

Aquaculture can expand when and where water supplies are available and where such uses do not conflict with other beneficial uses. It is recognized, however, that future management and development of the Snake River Plain aquifer may reduce the present flow of springs tributary to the Snake River, necessitating changes in diversion facilities.

Policy 32G - Fish, Wildlife, and Recreation

It is the policy of Idaho that the minimum flows established under Policy 32 are sufficient and necessary to meet the minimum requirements for aquatic life, fish, and wildlife, and to provide water for recreation in the Snake River below Milner Dam. Streamflow depletion below the minimum flows is not in the public interest.

The policy reiterates the view that the minimum flows established in Policy 32 will protect fish, wildlife, aquatic life and recreation within the Snake River Basin at acceptable levels and that this is in the public interest. State law provides for the Water Resource Board to apply for a water right for unappropriated water for minimum flows necessary "for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality." The minimum stream flow legislation, where appropriate, can be used on the Snake River and tributary streams to enhance these values. Tributary streams in the Snake River Basin which the Board has identified as key river segments needing protection are identified in Policy 7.

Policy 32H - Water Quality and Pollution Control

It is the policy of Idaho that the use of water to provide pollution dilution is not a beneficial use of water.

Existing state and federal water quality programs should be sufficient to protect the current high water quality associated with streams within the basin. Any allocation of water for minimum streamflow is directed towards meeting fish, wildlife, and recreational needs, not to the dilution of pollution.

Policy 32I - New Surface Storage

It is the policy of Idaho that applications for large surface storage projects upstream from the Murphy gage be approved when it is determined that those projects are needed to meet new uses after consideration of then existing public interest criteria. Approval of new storage projects that would divert water from the mainstem of the Snake River between Milner and the Murphy Gaging station during the period November 1 to March 31 should be coupled with provisions that mitigate the impact such depletions would have on the generation of hydropower.



This policy addresses the approval of new surface storage in the basin but does not apply to already approved projects. A study of all existing social, legal and economic constraints on allocation and use of water in existing storage facilities will be made to determine whether new storage projects are needed. An attempt will be made to modify those constraints that are found to prevent reasonably full use of existing storage. Such study shall not delay applications for new storage projects. In addition, permits for these new projects may be issued during the study period, if they are found to be in the public interest. Public interest as used within this policy does not include the provisions of § 42-203 (c) Idaho Code.

"Large surface storage projects" are those which have the potential for significantly impacting existing uses. Projects for which approval is required under § 42-1737, Idaho Code, would be such projects. Smaller projects could also have significant impacts, but stock water ponds, and waste water re-pumping ponds would not be included, for example.

New storage projects that would divert water from the Snake River between the Milner and Murphy gaging stations during the November 1 to April 1 period are subject to the requirement that the impact such depletions have on hydropower generation is mitigated. Mitigate is defined as causing to become less harsh or hostile, and is used here rather than compensate which connotes equivalence. Methodology will be developed by the Water Resource Board for use in calculating impacts on hydropower generation.

#### Policy 32J - Stored Water For Management Purposes

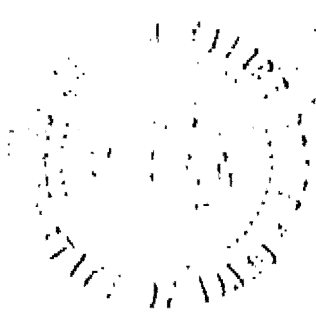

It is the policy of Idaho that reservoir storage be acquired in the name of the Idaho Water Resource Board to provide management flexibility in assuring the minimum flows designated for the Snake River.

The Department of Water Resources is expected to allocate the unappropriated waters and the power rights held in trust by the state in such a manner as to assure minimum flows at designated key points on the Snake River. The impacts of ground-water use within the basin on the timing of aquifer discharge to the river is such that at some time stored surface water may be necessary to maintain the designated minimum flows.

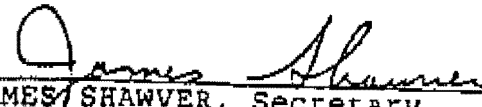
At this time there is unallocated reservoir storage within the basin which could be acquired by the state. These waters would provide flexibility for management decisions and provide assurance that the established minimum flows can be maintained.

The state should act to acquire sufficient reservoir storage for this purpose. In the future no unallocated stored water will be available and it may be impossible to acquire sufficient water to satisfy river demands. Until such time as these waters are needed for management purposes, they shall be credited to the Water Supply Bank and funds obtained from their lease or sale shall accrue to the Water Management Account.

PASSED AND APPROVED this 1st of March, 1985.

  
  
GENE M. GRAY, Chairman

ATTEST:

  
JAMES SHAWVER, Secretary

The foregoing is a true and certified copy of  
the document on file at the department of  
Water Resources.

Signed this 1st day of MARCH, 1985  
