

ORIGINAL

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Page 1		Page 3
RECORDING ENTITLED	1	offering all the people pardon me, and
"TWIN FALLS-1"	2	affecting all the people.
	3	We have such expressions as public
	4	good, public welfare, public health, public trust,
Dublic Information Manting	5	all of which referred to the public at large. The
Thursday, May 23, 1985	6	concept of the public interest stands in contrast
Twin Falls Idaho	7	to private interest for particular individual's
1 WM 1 WHO, 1940/0	8	benefit from some action or policy
	9	Ideally, all actions of the policy
* * * *	10	could serve both the public interest and the
	11	private interest. There should be an equitable
TRANSCRIPT OF PROCEEDINGS	12	balance between the two However when we come
	13	into conflict public interest should prevail
* * * *	14	consistent to that document's greatest good to the
	15	greatest number of people
	16	The concept of public interest is very
	17	old and can be traced back to English common law
	18	and even to Roman law. It certainly goes back to
	10	our own Constitution. In the Preamble of the
Transcribed by	20	Constitution appears the phrase "To promote the
Dianne E. Cromwell	20	constitution appears the phrase To promote the
CSR No. 21	21	promoto the welfare of the public at large
	22	The term "nublic cood" encours in the
	23	Declaration of Independence. The term "mublic
	24	trust" approach also in the Constitution. So the
	25	uust appears also in the Constitution. So the
Page 2		Page 4
MALE SPEAKER: Viewing global public	1	idea of government being concerned with protecting
interest of the board of directors of the	2	the public's interest is well established in our
corporation felt should be whatever this be, I'll	3	history and traditions.
read it to you.	4	The concept of public welfare and
MR. YOUNG: Good. And will you submit us a	5	public interest is based on the government's
copy of it too?	6	relationship with its citizens. One of the
	Page 1 RECORDING ENTITLED "TWIN FALLS-1" Public Information Meeting Thursday, May 23, 1985 Twin Falls, Idaho ***** TRANSCRIPT OF PROCEEDINGS ***** Transcribed by Dianne E. Cromwell CSR No. 21 Page 2 MALE SPEAKER: Viewing global public interest of the board of directors of the corporation felt should be whatever this be, I'll read it to you. MR. YOUNG: Good. And will you submit us a copy of it too?	Page 1RECORDING ENTITLED1"TWIN FALLS-1"3Public Information Meeting Thursday, May 23, 1985 Twin Falls, Idaho678*****10TRANSCRIPT OF PROCEEDINGS11*****1415161718Transcribed by Dianne E. Cromwell CSR No. 2120Page 222MALE SPEAKER: Viewing global public interest of the board of directors of the corporation felt should be whatever this be, I'll read it to you.1MR. YOUNG: Good. And will you submit us a copy of it too?6

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6	copy of it too?	6	relationship with its citizens. One of the
7	MALE SPEAKER: Yes.	7	principal duties of the government is to look out
8	MR. YOUNG: Very good.	8	for the interest of all its citizens. We think
9	MALE SPEAKER: I'm here now representing the	9	that it is in the public interest to protect and
10	Hagerman Valley Citizens work. Our group might	10	preserve our habitat, the places we live and the
11	well be defined as a citizenship group whose main	11	places our children and grandchildren will live.
12	concern is the public interest.	12	We believe that it is in the public
13	We are usually, if not always,	13	interest to take the long view and the broad view
14	supporting positions that will benefit the public	14	when it comes to taking care of our natural
15	at large. As a group we are mainly concerned with	15	resources.
16	maintaining the healthful and attractive community	16	We have no problem in defining local
17	in which to live.	17	public interest for Hagerman Valley. We are
18	Our own articles of incorporation, our	18	concerned with the quality of the water coming
19	purpose is stated: To secure and enhance the city	19	from the springs, flowing in our rivers, and the
20	from social welfare, the residents and visitors of	20	natural beauty it surrounds. We certainly hope
21	Hagerman Valley.	21	that the Department of Water Resources will take
22	Our purpose on being here tonight is to	22	such concern into consideration when writing new
23	state our position regarding the definition of	.23	rules for issuing water permits.
24	local public interest. The word "public" is	24	Thank you.
25	defined in Websters as that remaining to and	25	MR. YOUNG: Thank you. The department's

1 (Pages 1 to 4)

Twin Falls 1

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1	philosophy is to issue those initial decisions on	1	development informs through a staged development
2	the local public interest. Your question is very	2	policy of up to 20,000 acres per year, or 80,000
3	timely. That is I think the next slide.	3	acres in any four-year period.
4	Those are the five and again, I'm	4	So those are the five public interest
5	paraphrasing, let's make them short, and you've	5	criteria and will be affecting the
6	got the exact language on the last page of the	6	(unintelligible).
7	bill that was handed out to you, the legislation.	7	We're asking for your suggestions as we
8	If the project that you suggested meets	8	draft the rules on how details should be defined.
9	all of the first five criteria, the historic five	9	If we follow the lead of the federal government,
10	criteria, and could be approved under those five	10	as they've gone through project studies, we
11	criteria, including the local public interest, and	10	perhaps would have to have an environmental impact
12	then you look at it and you find that it, along	12	study, principles of standard level
13	with other water uses, is going to reduce the flow	14	(unintelligible) as you look at the economics and
15	to the hydro power right significantly, then you	15	guidelines as to what is acceptable or not. If
16	five questions, and late just go through those in	16	that is what is being proposed here, then we
17	exact language of the statute	17	should draw from this? Or is this a cursory
18	If the answer the director considers	18	review of where (unintelligible)
19	and I say this carefully this is one of the	19	MR. WAYMENT: Those are regulations designed
20	questions also.	20	to solve all development, to make criteria so high
21	A VOICE: Where are we at?	21	that you cannot meet it?
22	MR. YOUNG: The very last page of the bill	22	MR. YOUNG: I think that's what we have to
23	under Item 2 under 42-203C, there are five	23	be so careful about here. As the rules and
24	criteria. This is the public infrastructure,	24	regulations are adopted, that they make a
25	really the heart of the rules that will be, to be	25	reasonable requirement. So as the information is
	Page 6		Page 8
1	Page 6 adopted, the director is asked to consider.	1	Page 8 available and the director is able to make a
1 2	Page 6 adopted, the director is asked to consider. And on the first five criteria, the	1 2	Page 8 available and the director is able to make a decent judgment, they're not to simply make a
1 2 3	Page 6 adopted, the director is asked to consider. And on the first five criteria, the historic one, he is asking the cause and	1 2 3	Page 8 available and the director is able to make a decent judgment, they're not to simply make a project infeasible because you can't afford to
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	Page 9		Page 11
1	MR. YOUNG: That goes back to this question,	1	Michaud Flats irrigation is another.
2	the point about the delay between when you pump	2	MODERATOR: Well, I'm not sure I understand
3	the water and when the spring flow reduces. First	3	the question well enough to respond to it. One of
4	it would have that would be information you	4	the issues is raised, and we'll talk about is
5	would need to have in order to decide whether you	5	Issue No. 7. And this question: Permit condition
6	had a significant reduction on hydro power rights.	6	in mitigation.
7	So you need that data for that decision.	7	I think what you're referring to is the
8	I suspect you would need it in order to	8	department's approval that interim permits, while
9	determine the impact on the availability and price	9	this is being developed and rules and regulations
10	of electric energy, the question of promotion of	10	are being developed, require an exchange of
11	full economic and multiple use of the water.	11	historic [unintelligible].
12	I suspect I ought to put these in terms	12	I'll take it from there on how your
13	of questions but that's not the so as part of	13	question
14	the Swan Falls agreement [unintelligible], there	14	MR. CORLESS: Well, I'm wondering if you're
15	is additional hydrologic data being gathered so	15	going to go back in the past. The city of
16	that models of the aquifer can computer models	16	Pocatello has a case in point, the state has not
17	of the aquifer may be defined to help us and to	17	recognized that as a valid consideration,
18	help the applicants feel to answer that question.	18	exchanging storage water for groundwater
19	MALE SPEAKER: Do they take and consider the	19	withdrawal. And I'm wondering
20	aquiter recharge, then?	20	MODERATOR: You're actually moving
21	MODERATOR: The return to the aquiter	21	retroactive?
22	MALE SPEAKER: On the recharge, like the	22	MALE SPEAKER: Yean. Are you going to go
23	MODED ATOP: The models do yes	23	back and look into those and there are several
24	MODERATOR. The models do, yes.	24	Taton Bosin and other places in the state
2J	WIALE ST LAKER. What I mean, mough, whi	2.5	recon basin and once places in the state.
	Page 10		Page 12
1	that still be classified as trust? In other	1	MODERATOR: I'm glad you're not expecting an
2	words, the winter flow and the summer flow are	2	answer to that. [Unintelligible] that is a policy
3	different, and et cetera, and the stream flow is	3	question.
4	different in the winter. I mean, in other words,	4	Yes, sir?
5	all water applications, no matter for what or	5	MR. WAYMENT: Seems to me that that second
6	where will be classified as one, in other words;	6	criteria there could effectively delay any further
7	that bill against the trust availability, in other	7	development for years to come if Idaho Power or
8	words.	8	somebody else wanted to say, well, we don't have
9	MODERATOR: For all practical purposes, that	9	the studies back on the impact of availability of
10	is correct. Now, for example, some of the	10	water to supply electricity or to generate
11	existing storage projects, specifically at Teton,	11	electricity and that could in effect stall any
12	I think we need to look at that as to whether that	12	development for years conceivably.
13	would be trust water or not.	13	How long is it going to take to get the
14	Yes. As we reprocess those undeveloped	14	study back to the aquifer ten miles south of
15	permits and new applications, basically we're	15	Burley and three miles east or somewhere else?
16	talking about having to go through these types	16	How are we going to know and when? There's a lot
17	[unintelligible] if there's a significant	17	of ground to cover.
18	reduction.	18	MODERATOR: There really is. The additional
19	Do you have a question about it?	19	data, having put in the data being gathered this
20	MALE SPEAKER: Apparently on this	20	year, every year we get will help us confine it.
21	groundwater you are recognizing in effect that the	21	But I think the decisions will just have to be
22	ractual exchange type thing, how is that going to	22	made on perhaps an interim basis subject to
23	affect prior exchange type rights that the state	23	revision as the data improves.
24	has not recognized in the past? In the city of	24	I don't know that we can wait 20 years
25	Pocatello, Palisades being a case in point,	25	until we get all the data necessary to prove the

3 (Pages 9 to 12)

Twin Falls 1

	Page 13		Page 15	
1	point one way or the other, and that's a good	1	said the applicant had the responsibility of	
2	question. When I give my idea. I'll ask you.	2	providing plans and specifications in sufficient	
3	MALE SPEAKER: So in effect we don't know.	3	detail that the project can be built, describe the	
4	4 We don't know.		operation of that, at the time of the protest	
5	5 MR. YOUNG: When do we have sufficient data		here.	
6	5 to make those kind of decisions.		In other words, before the department	
7	7 MR. NELSON: The point that might be made		had made a decision, you must have the project	
8	there would be that part of the statute placing	8	described with sufficient detail to be built and	
9	the burden in that instance on the protestant. So	9	operating. Is that what we're asking for? In	
10	0 whoever wants to protest a particular new use has		that particular case, it required the engineer's	
11	11 the burden to produce the information necessary to		plans and specifications.	
12	make the protest stick. So if he has got a	12	2 Is that what we need to have as a	
13	20-year study, he is not going to be ready for the	13	portion of our application? It might be very	
14	protest and he'll lose.	14	reasonable to just turn around ideas again on a	
15	MALE SPEAKER: If the applicant doesn't	15	very large project. But should we take a ten-acre	
16	have the burden of proof is upon the	16	irrigation project to an engineer?	
17	protestant. So if it takes him 20 years to prove	17	The 1700 permits that I believe are	
18	it, he can pay it out in ten and so be it. So	18	being re-massaged and fail to file the proof by	
19	what. Is that what you're saying?	19	July I, I've already got an application. When	
20	MR. NELSON: I'm saying if the protestant	20	should they be required and how much time should	
21	isn't ready, the applicant is going to win.	21	they be given to submit whatever additional	
22	MALE SPEAKER: I see. Okay. Or mey can	22	how to respond? You have some thoughts on that	
23	Just hold it up until they do decide.	23	now to respond? You have some moughts on that	
25	(Simulatious taking.) MR_VOUNG: The burden of proof which again	24	MALE SPEAKER: Are you saying though that	
	De no. 14			
	Page 14		Page 16	
1	is a legal term, it simply says, who has to	1	have already have used prior to that date in	
2	provide the greater evidence, the greater proof on	2	198 when is it, October of '84, July of '84	
3	the issue, is switched for these five criteria	3	are you saying that there is going to be	
4	than what has historically been considered on the	- 4 E	opportunity for profest upon that, or does that	
5 6	first five criteria. It usually said the		latter not state that all worker wood hefers that	
0	and i and has the same multility to make that his	5	letter not state that all water used before that	
7	applicant has the responsibility to prove that his	6 7	letter not state that all water used before that point would be automatically granted? MR_VOUNG: The way the statute reads that	
7	applicant has the responsibility to prove that his project met the first five criteria.	5 6 7 8	letter not state that all water used before that point would be automatically granted? MR. YOUNG: The way the statute reads, that to the extent that the project hasn't been	
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7 8 9 10	applicant has the responsibility to prove that his project met the first five criteria. Here the statute specifically says the protestant has that responsibility. That particular statement of legislative intent	6 7 8 9 10	letter not state that all water used before that point would be automatically granted? MR. YOUNG: The way the statute reads, that to the extent that the project hasn't been developed. MALE SPEAKER: Has not been developed.	
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	Page 17		Page 19
$\begin{array}{c} 1 \\ 2 \\ 3 \\ 4 \\ 5 \\ 6 \\ 7 \\ 8 \\ 9 \\ 10 \\ 112 \\ 13 \\ 14 \\ 15 \\ 16 \\ 17 \\ 18 \\ 9 \\ 20 \\ 22 \\ 22 \end{array}$	Page 17 MR. RAY: In these plans that have to be submitted, for an established industry, you would submit detailed plans for a new use trial merit [unintelligible], and I don't care what you submit at the start of it, you not going to get nothing for that. Now, if you were going out to build a trout farm, nothing around, detailed plans would be submitted. Most of them are drawn up after the farm has been built [unintelligible]. But if you are going out to raise sturgeon, which there's a lot of interest in California and will be here in Idaho, there's not a commercially-established farm, and the best system is not developed yet. You're going to build one pond, and the next year you're going to build another, and you've got to change it. By the time you add on, it's going to be something different. And it's not going to be going out and building the thing, drawing up a set of plans in detail and building it to those plans. It's going to be built in one pond, and changing the thing	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 19 three checks out of five, does that mean you prove it? If it gets one [unintelligible] check, does that mean you don't prove it? Is there perhaps a rating scale that ought to be applied? If it fully complies with the criteria, giving perhaps a ten, under each of these criteria, a full compliance would eight to ten, a full noncompliance would give a minus ten, and algebraically sum up the rating that the director gives based upon the information submitted. And if it comes up to zero or above, it's an approval. Is that what happens? Or is it some other ideas of how that should be applied? Again, how that is determined will have a major impact on what the projects are through [unintelligible]. So my comments on that particular we talked about that. The final issue is this question of mitigation and, perhaps you could say, permit approval conditions in general. You have an Issue No. 7. is it in your
22 23	to be built in one pond, and changing the thing the next year and adding to it, and changing it	22 23	You have an Issue No. 7, is it, in your issue paper? Yes. It addresses one idea of
24	again the next year. The project will be	24	mitigation. The State Water Board, in revising
25	successful. [Unintelligible] leads to flexibility	25	the Snake River Policy 32 of the water plan, which
		l	
	Page 18		Page 20
1	Page 1.8 [unintelligible]. MB. VOLNG: It's a good comment. Many times	1	Page 20 was amended in March, in accord with the Snoke River Agreement and the legislature
1 2 3	Page 1.8 [unintelligible]. MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project	1 2 3	Page 20 was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation
1 2 3 4	Page 1.8 [unintelligible]. MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some	1 2 3 4	Page20was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level for pumping
1 2 3 4 5	Page 1.8 [unintelligible]. MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some indication that they're going to have a dual	1 2 3 4 5	Page20was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level for pumping projects taking water out of the main stem of the1
1 2 3 4 5 6	Page 1.8 [unintelligible]. MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some indication that they're going to have a dual permit. Pretty tough to put that much money up	1 2 3 4 5 6	Page20was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level for pumping projects taking water out of the main stem of the Snake River between Milner Dam and Murphy.
1 2 3 4 5 6 7	Page 1.8 [unintelligible]. MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some indication that they're going to have a dual permit. Pretty tough to put that much money up front.	1 2 3 4 5 6 7	Page20was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level for pumping projects taking water out of the main stem of the Snake River between Milner Dam and Murphy. If it takes the water in the
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1 2 3 4 5 6 7 8 9	Page 1.8 [unintelligible]. MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some indication that they're going to have a dual permit. Pretty tough to put that much money up front. So to ask that there may be some kind of a balance in here, we're certainly entertaining your ideas on what balance pends to be struck and	1 2 3 4 5 6 7 8 9	Page20was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level for pumping projects taking water out of the main stem of the Snake River between Milner Dam and Murphy. If it takes the water in the nonirrigation season through off-season storage, that particular kind of project is singled out and mitigation is asked for. Wall what level of
1 2 3 4 5 6 7 8 9 10	Page 1.8 [unintelligible]. MR. YOUNG: It's a good comment. Many times people are reluctant to fully design the project and spend the money necessary in order to get some indication that they're going to have a dual permit. Pretty tough to put that much money up front. So to ask that there may be some kind of a balance in here, we're certainly entertaining your ideas on what balance needs to be struck and by type and size. And I skipped over this slide	1 2 3 4 5 6 7 8 9 10	Page20was amended in March, in accord with the Snake River Agreement, and the legislature ratified it, it was in place, calls for mitigation of lost hydro power for high level for pumping projects taking water out of the main stem of the Snake River between Milner Dam and Murphy. If it takes the water in the nonirrigation season through off-season storage, that particular kind of project is singled out and mitigation is asked for. Well, what level of mitigation should we incorporate in our rules?
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5 (Pages 17 to 20)

Twin Falls 1

	Page 21		Page 23
1	thing we have talked about is perhaps if a project	1	of this [unintelligible], one of the gentlemen at
2	of that type were offstream storage and were	2	last night's meeting felt that this mitigation was
3	approved, that would be written in as a condition	3	just not far enough or wide enough and suggested
4	of the permit, that on low flow periods in cold	4	that the law changed so that the fish could be
5	weather, if the power company really needs the	5	mitigated in the April or May/June flows also.
6	hydro generation, the diversion would be	6	And so you're going to have to put in
7	suspended. Is that sufficient?	7	your suggestions for the mitigation if you want to
8	They're talking here about not just	8	balance out some of it because they really are
9	having to mitigate for the 30 to 40 minimum flow	9	suggesting very, very strongly that the mitigation
10	impact, if you took the flow at the Murphy Gauge	10	hearings is much too narrow and needs to be spread
11	below 3900 or 5600. I should say. We're talking	11	to fish flows in June also.
12	here about making up for the impact for taking	12	MODERATOR: The Northwest Power Planning
13	trust water. So this is unique.	13	Council's fish watch, which probably would occur
14	MALE SPEAKER: How does this affect any	14	on dry years in the April to June period. And the
15	proposed offstream artificial recharge of the	15	suggestion would be made as to projects, in order
16	aquifer. It appears to me that that would be a	16	to be in the public interest, might have to be
17	conflict. Does that affect it? We have a project	17	envisioned to make up water for that fish watch.
18	over here, the north of here, doing that now: in	18	That was how broad that person viewed the public
19	fact, putting water into the acuifer. How is that	19	interest criteria.
20	going to work?	20	Again, that's what we're asking for.
21	MODERATOR: Well, again, would there be a	21	Tom?
22	recharge project proposing to take water out of	22	MR. NELSON: One thing, Norm, on this
23	the main stem of the Snake River below Milner	23	gentleman's example. I don't think that the
24	MALE SPEAKER: Oh, below Milner.	24	surface water diversions for recharge above Milner
25	MODERATOR: And above Swan Falls. If you	25	are part of the trust waters. To be part of the
	Page 22		Page 24
٦	did and it was going to nume through or take it	1	trust waters the water has to be made evoluble
2	out during the ponigrigation season. I think it	2	hust waters, the water has to be made available
2	would probably apply in that area. But when	~	d the subort me subort matter provision, and
~	would probably apply in that case. But when	2	- * * * * * * * * * * * * * * * * * * *
Λ	voules show Milnor you're probably taking trust	3	there's no water right at Milner. That's a zero
4 5	you're above Milner, you're probably taking trust	3 4 5	flow under the state water plan. So the surface
4 5 6	you're above Milner, you're probably taking trust water, you're probably going to have to look at the five oritoria, whether the trust griteria	3 4 5 6	flow under the state water plan. So the surface water diversion above Milner would not be subject
4 5 6 7	you're above Milner, you're probably taking trust water, you're probably going to have to look at the five criteria, whether the trust criteria	3 4 5 6 7	flow under the state water plan. So the surface water diversion above Milner would not be subject to those criteria.
4 5 6 7 8	you're above Milner, you're probably taking trust water, you're probably going to have to look at the five criteria, whether the trust criteria empty significantly reduce the flow of the hydro power line, but you wouldn't be subject to this	3 4 5 6 7	flow under the state water plan. So the surface water diversion above Milner would not be subject to those criteria. Now, the EPA may have something to say
4 5 6 7 8	you're above Milner, you're probably taking trust water, you're probably going to have to look at the five criteria, whether the trust criteria empty significantly reduce the flow of the hydro power line, but you wouldn't be subject to this mitigation	3 4 5 6 7 8 9	flow under the state water plan. So the surface water diversion above Milner would not be subject to those criteria. Now, the EPA may have something to say about it, but I don't think this is the problem under the surgement
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6 (Pages 21 to 24)

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	Page 25		Page 27
1	water right because they allowed the later guy to	1	That one is the question being, one,
2	go first.	2	if you now issue permits with the understanding
3	Is there some way that we can get	3	that our data shows 600 cfs of firm trust water,
4	around the first-come, first-serve doctrine in	4	and we issue permits for ground water pumping on
5	order to process the emergency cases and the	5	the aquifer, if that 600 cfs was not properly
6	5 smaller cases, or are we bound by law to go		calculated or if there's a worst year, or a
7	7 first-come, first-serve no matter what?		sequence of years in terms of dryer than we
8	8 MR. NELSON: Well, I don't think that the		expected in that analysis, and we indeed with
9	9 priority doctrine operates strictly on trust		these new filings that are issued, that were
10	waters. My view is, everything else being equal,	10	issued with the 600 cfs trust water, filed alone
11	the older of two projects, one of which can	11	at 3900 cfs or the 5600 cfs [unintelligible]
12	develop and one of which can't, should develop.	12	forward, how is the state going to then augment
13	But it you look at full economic	13	the river flow so we don't violate that?
14	development and benefit to the state and local	14	And it could be as an attorney told us
10	economy and all the criteria, it seems to me that	15	last night, the state could have some financial
17	what you want to end up with is probably the best	17	nability if that happened. Do we look to the
+/ 10	I den't know how you can make that	19	applicants, the permit holders, and we issue the
19	decision ahead of getting a record made. In other	10	the flow in case that happens?
20	words. I don't know what creates an emergency for	20	As your issue paper says, it may be a
21	30 acres of development. But until you have some	21	number of months or a number of years before the
22	kind of a record on which you can base a better.	22	effect of shutting off a well is felt in the
23	best, and terrible analysis. I think you'll just	23	river. So just shutting off the junior user when
24	have to wait until you get started.	24	the river starts below the minimum flow doesn't
25	MS. MARTIN: Well, I think we kind of agree	25	help. You've got to have a way of augmenting.
	Page 26		Page 28
1	Page 26	1	Page 28 The funintelligible] conditions will
1 2	Page 26 that the best projects should be the one that hits the ground, period. But how do we get around all	1 2	Page 28 The [unintelligible] conditions will require that, force people as a condition of the
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1 2 3 4 5 6 7 8 9 10 11 2 13 4 5 6 7 8 9 10 11 2 13 14 15 6 7 18 9 20 1 22 3 24	Page 26 that the best projects should be the one that hits the ground, period. But how do we get around all the lawsuits that the guy earlier can have if he doesn't get his chance to prove he was best and fight for it? MR. NELSON: Well, my feeling is that age has to be one of the criteria that you use to sort the first cut. I think distance from the river would be another. And we may have to give the older projects a shot at proving they are the best or you're going to run into that very problem. But to me, the ultimate cutting edge is the best, not the earliest. MS. MARTIN: And you think we can stay out of court if we give them some guidelines [unintelligible]. MR. NELSON: We won't stay out of court. We just might have a better chance of making it stick if that's the way you work it. MODERATOR: Very well put. Now, the mitigation that you were describing for the pumping to offstream storage that is talked about in Policy 321 of the amended water plan is not the mitigation that is addressed	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 28 The [unintelligible] conditions will require that, force people as a condition of the permit to provide water to the water bank, to buy the money for approval, for seeking funds to be available to buy water rights; pay for the damages. How do you respond? MR. LEMMON: I would like to speak to this recharge situation and the flow of the Snake River, if I may. Our water is dropping off this year down below what it was last year. In other words, we're approaching an all-time low in our aquifer discharge. Now, when A and B Irrigation, isn't it, that is planning on a large increase in pump water, or is it some other irrigation district up here in the central, over the aquifer? MR. CORLESS: There is a plan to develop 12,000 acres within the boundaries of A and B, yes. MR. YOUNG: Yes, the application has been made. MR. LEMON: That is basically appropriated water as far as Hagerman Valley is concerned, that they'll be interrupting. We had a higher flow

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1	looked like we were about to approach the low flow	1	the Snake River, which holds in the runoff from
2	that we've had for the last 20 years.	2	the spring and is not put back into the aquifer.
3	Now, if they're allowed to take that	3	And we need to get some method of getting that
4	water out of our water, we feel that they should	4	water back in to even the flow of the Snake River,
5	join the aquifer lower Snake River aquifer	5	because the springs maintain that water flow for
6	recharge and put the same amount of water back	6	the power production in the summertime and make it
7	into the aquifer that they removed from it.	7	even flow so that their power plants can utilize
8	There's several advantages to recharging that	8	that water that is going down there instead of it
9	aquifer and maintaining an even flow for hydro	9	going past as overflow.
10	power generation provisions for fish movements and	10	MR. HOFFMAN: There is another situation
11	another things.	11	because the people who are losing their water
12	MR. YOUNG: Now, the water rights you're	12	rights there in Hagerman Valley are taxing
13	saying would be impacted and not the hydro	13	themselves and spending that money to recharge the
14	rights of Idaho Power.	14	aquifer so that the guys up on top can pump it
15	MR. LEMON: I'm saying our water rights will	15	back out free and use it again.
16	be affected.	16	The people who are depleting the
17	MR. YOUNG: Your irrigation and fish	17	aquifer are not willing to participate in the
18	propagation from the springs themselves.	18	recharge program, the majority saying that some of
19	MALE SPEAKER: Yes.	19	these projects developed up there and pumped that
20	MODERATOR: And so under the law that's in	20	water out should have an obligation to participate
21	effect today and will remain in effect in July,	21	in that recharge, if the guy that is losing his
22	from the old original criteria said will the	22	water rights already participated in it.
23	project impact an existing right? So we'll	23	MODERATOR: So I hear suggested that perhaps
24	need the judgement will need to be made by the	24	as permits are issued, there ought to be
25	director as to whether it will indeed impact that	25	conditions required of participation of the
	Page 30		Page 32
1	right, and if so, then it could not be approved	1	recharge.
2	without conditions	2	MR. HOFFMAN: Yes. I would say it would be
3	MR. LEMON: In the past, we have not been	3	vigilant to have a fee on these new water rights
4	able to prove that this well affects this stream	4	or recharge. And this project has been before the
5	and have not been in court been able to protect	5	state for years; very feasible, just haven't had
6	our water rights. So we have got to have some	6	the money to do it, had a good source of money to
7	protection from somewhere, and we don't want to	7	do it. And it's people who is going to be using
8	stop development. That isn't our trying at all.	8	it, pay for it.
9	But this excess water that is going	9	MODERATOR: It's probably a good legal
10	down the Snake River over Milner Dam should be put	10	question, whether that's something that can be
11	back into the aquifer to bring that water flow	11	done without additional statutory authority.
12	back up to maintain an even flow on the river.	12	There is a proposed water marketing bill that was
13	Now, here is a peculiar thing that has	13	printed last legislative session, House Bill 233,
14	been happening that most people don't understand.	14	that was not approved. But there's an interim
15	Every time a sprinkler system goes in over that	15	study committee from the legislature that is
16	aquifer, it evaporates a larger percentage of the	16	looking at water marketing, and this idea of
17	water that they use, whether it comes from well	17	augmentation is a part of that bill.
18	water or whether it comes from canal water.	18	So it may take additional legislation.
19	And that water goes in the air, and it	19	But to the extent that you can see how these rules
20	is transported back up to the mountains in the	20	could be used to resolve that kind of problem, we
21	Southeast Idaho where it falls back on the ground,	21	would like your suggestion.
22	comes back down to the river instead of coming	22	I've been through the legislation with
23	down the aquifer.	23	you. I think I've pretty well touched everything

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In other words, every time a sprinkler

25 is put in, it transfers water from the aquifer to

24

24 that is in the issue paper with you this evening.

25 With the target date, trying to put together a

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 5 6 7 8 9 20 21 22 23 24 25	draft to come back to you with for adoption in the Administrative Procedures Act is June 15. That's a Saturday, so June 17. If you've got ideas that you haven't shared with us, to the extent you have shared with us tonight, you've got the record on the tape, we'll use those ideas and consider them as we form this draft. If you've got other ideas, mail them to us. If you get them here by the 17th, they'll for sure be considered. If you get them in after that date, we'll consider them if we're not too far along. The legislation is effective July 1. The issue paper talks about emergency rules, and there is a provision under the Administrative Provisions Act or Administrative Procedures Act to adopt emergency rules. An agency would be stepping into a meat grinder to adopt emergency provisions, rules if it wasn't very clear-cut of what those rules needed to say. So we won't do that unless [unintelligible]. Even if we did, we would have to immediately start to form a process under the Administrative Procedures Act and have it completed in 120 days. So they're only good for	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 5	REPORTER'S CERTIFICATE I, Dianne E. Cromwell, Official Court Reporter, County of Ada, State of Idaho, hereby certify: That I am the reporter who transcribed the proceedings in the above-entitled matter directly into typewriting from an audio recording and with the assistance of the Affidavit of Norman C. Young, attached hereto; and That the foregoing transcript contains a full, true, and accurate record of the proceedings had in the above and foregoing matter, which was heard in Twin Falls, Idaho. IN WITNESS WHEREOF, I have hereunto set my hand October 13, 2008. Dianne E. Cromwell, Official Court Reporter CSR No. 21
25 1 2 3 4 5 6 7 8 9 10 11 12	completed in 120 days. So they're only good for Page 34 120 days. I don't expect to see them adopted [unintelligible]. It is mentioned. MS. HOFFMAN: Norm, there are signup sheets so everybody can get a copy. MODERATOR: We can stop right here. (Proceedings concluded.) -00000-	25	
13 14 15 16 17 18 19 20 21 22 23 24 25			

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solve 7:20	successful 17:25	times 18:2	visitors 2:20	29:2 32:5
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Twin Falls 1



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1	<u>REPORTER'S CERTIFICATE</u>
2	
3	
4	
5	I, Dianne E. Cromwell, Official Court
6	Reporter, County of Ada, State of Idaho, hereby
7	certify:
8	That I am the reporter who transcribed
9	the proceedings in the above-entitled matter
10	directly into typewriting from an audio recording
11	and with the assistance of the Affidavit of
12	Norman C. Young, attached hereto; and
13	That the foregoing transcript contains a
14	full, true, and accurate record of the proceedings
15	had in the above and foregoing matter, which was
16	heard in Twin Falls, Idaho.
17	IN WITNESS WHEREOF, I have hereunto set
18	my hand October 13, 2008.
19	
20	
21	$-\alpha$ · (α α α
22	Dianne E. Cromwell Official Court Beporter
23	CSR No. 21
24	
25	

LAWRENCE G. WASDEN Attorney General

STEVEN L. OLSEN Deputy Attorney General Chief, Civil Litigation Division

KARL T. KLEIN (ISB # 5156) MICHAEL C. ORR (ISB # 6720) SHASTA KILMINSTER-HADLEY (ISB #7889) Deputy Attorneys General

>)) ss.

700 West State Street, 2nd Floor P.O. Box 44449 Boise, ID 83711-4449 (208) 334-2400 Attorneys for The State of Idaho

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

)

)

In Re SRBA

Case No. 39576

Consolidated Subcase no. 00-92023 (92-23)

AFFIDAVIT OF NORMAN C. YOUNG

STATE OF IDAHO COUNTY OF ADA

NORMAN C. YOUNG, being first duly sworn upon oath, deposes and states as follows:

1. I was an employee of the Idaho Department of Water Resources ("the Department") from 1969 to 2003. In 1985 I held the position of Administrator of the Resources Administration Division and was responsible state-wide for the Department's

water-related regulatory programs. My normal duties and responsibilities in this capacity included conducting public information meetings regarding the Department's water-related regulatory programs. These meetings were typically tape recorded on audio cassette tapes.

2. In May of 1985, as part of and in the course of my normal duties and responsibilities as Administrator of the Resources Administration Division, I conducted several public information meetings to obtain public comment, input and suggestions for purposes of assisting the Department in drafting administrative rules and regulations for water appropriation. These meetings were typically recorded on audio cassette tapes.

3. In October 2008, I was contacted by the Idaho Office of the Attorney General and asked to review the documents attached hereto as **Exhibit A**, to inspect the audio cassette tapes shown in the photocopies attached hereto as **Exhibit B**, and to review the recordings on the audio cassette tapes. The Idaho Office of the Attorney General informed me that the documents in **Exhibit A** and the audio cassette tapes shown in the photocopies in **Exhibit B** had been obtained from the files of the Department.

4. I reviewed the documents attached hereto as **Exhibit A**, inspected the audio cassette tapes that are shown in the photocopies attached hereto as **Exhibit B**, reviewed all of the recordings on the audio cassette tapes labeled "Twin Falls-1" and "Twin Falls-2," and reviewed part of the recordings on the audio cassette tape labeled "Pocatello."

5. Based on my personal knowledge and memory of the public information meetings I conducted in May 1985, and my review and inspection of the documents and audio cassette tapes as described above in paragraph 4, I have concluded the following:

- a. that the handwriting on the labels for the audio cassette tapes that are shown in the photocopies attached hereto as Exhibit B is mine;
- b. that the audio cassette tapes labeled "Twin Falls 1" and "Pocatello" shown in the photocopies attached hereto as Exhibit B contain recordings of public information meetings I conducted in May 1985 to obtain public comment, input and suggestions for purposes of assisting the Department in drafting administrative rules and regulations for water appropriation;
- c. that the audio cassette tape labeled "Twin Falls-1" shown in the photocopies attached hereto as **Exhibit B** contains a recording of the public information meeting held in Twin Falls, Idaho, on May 23, 1985.

6. I recognized several speakers' voices in the recording on the audio cassette tape labeled "Twin Falls-1," including my own. As I was listening to the "Twin Falls-1" recording, I wrote the names of the speakers I recognized in the corresponding locations of a draft transcript of the "Twin Falls-1" recording. At the top of the draft transcript for the "Twin Falls-1" recording I also wrote: "Public Information Meeting, Thursday, May 23, 1985, Twin Falls, Idaho." A true and correct copy of the draft transcript of the "Twin Falls-1" recording with my edits is attached hereto as **Exhibit C**.

7. I also recognized my voice and the voices of several other speakers while reviewing the recording on the audio cassette tape labeled "Twin Falls-2." As I was listening to the "Twin Falls-2" recording, I wrote the names of the speakers I recognized in the corresponding location in a draft transcript of the "Twin Falls-2" recording. I cannot be sure of the date or purpose of proceedings recorded on the "Twin Falls-2" audio cassette tape, however. A true and correct copy of the draft transcript of the "Twin Falls-2" recording with my edits is attached hereto as Exhibit D.

Further your affiant sayeth naught.

I

DATED this 10 day of October, 2008.

ORMAN C. YOUNG

SUBSCRIBED AND SWORN to before me this day of October, 2008.



Notary Public for Idaho Residing at: <u>Buse TD</u> My commission expires: <u>8-/8-//</u>

Affidavit of Norman C. Young

<u>Exhibit A</u>



State of Idaho DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

A. KENNETH DUNN

Mailing oddress: Statehouse Baise, Idaho 83720 (208) 334-4440

May 6, 1985

Dear Interested Party:

Enclosed is a copy of an announcement advising that the Director, Idaho Department of Water Resources intends to promulgate rules and regulations and requests input into the process.

Comments are requested by June 15, 1985 since much of the enabling legislation is effective July 1, 1985.

Additional copies of the announcement are available from any of the department's regional offices located in Boise, Idaho Falls, Twin Falls and Coeur d'Alene.

Sincerely,

DIRECTOR Idaho Department of Water Resources

Enclosure

REQUEST FOR COMMENT AND NOTICE OF INTENT TO WRITE AND ADOPT RULES AND REGULATIONS FOR WATER APPROPRIATION

The director of the Idaho Department of Water Resources hereby announces his intention to write and adopt rules and regulations for the allocation of water resources in Idaho. The legislature enacted Section 42-1805(8), Idaho Code, which will be effective on July 1, 1985, imposing a duty on the director to adopt rules and regulations implementing and effectuating the powers and duties of the department. Also, effective on July 1, 1985 are the changes to the water allocation provisions, (Section 42-203, Idaho Code) enacted in Senate Bill 1008 which place in trust some waters previously appropriated for hydropower generation purposes and authorize reallocation of this trust water to consumptive purposes found to be in the public interest.

The director believes that rules and regulations are needed to provide a uniform and orderly procedure for processing pending and future applications for the trust water made available and for reprocessing existing undeveloped permits under the new public interest requirements. In addition, there is a need to describe more fully the criteria that will be used to decide whether an application or a permit subject to reprocessing will be granted.

- 1, -

All rules and regulations will be adopted in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, which provides for full public participation. The director has determined that public comment is needed to provide a basis for developing the draft rules and regulations and requests public input and suggestions. The director specially requests input on the following issues:

1. What criteria should be used to determine the order of processing the backlog of pending applications and for reprocessing existing undeveloped permits?

In December 1982 the department ceased processing applications to use water for consumptive purposes from the Snake River drainage upstream from Swan Falls Dam. Over \$2,000 applications; nearly all for irrigation purposes, are now being held. Additionally, an estimated 1,700 permits; nearly all for irrigation purposes, remain undeveloped in this area. The Snake River Water Rights Agreement as authorized by Section 42-203B, Idaho Code, allows development that is in the public interest to reduce the flow of Snake River near Murphy gauge but not below a flow of 3900 cubic feet per second (cfs) in the summer or 5600 cfs in the winter. This reduction has been estimated at 600 cfs below the existing low summer flow on a dry year. One hundred fifty (150) cfs of this flow is reserved for domestic, commercial, municipal and industrial (DCMI) uses. Existing applications and undeveloped permits exceed the firm water supply

- 2 -

available.

Should applications and permits for reallocation of trust water be processed in order of priority or should the order of processing be determined by other criteria which may be administratively more efficient, produce more immediate development, optimize the location and type of development, or distribute development? Should preference be given to new applications filed for development that took place after the mandatory filing dates. (May 20, 1971 for surface water and March 25, 1963 for ground water) and before the November 19, 21982 Supreme Court Decision?

2. What should be the requirements for the timing and scope of information to be submitted by the applicant?

The statement of legislative intent for S.B. 1008 indicates that the burden of proof for the public interest criteria of Section 42-203C is to be on the protestant. The applicant must, however, submit sufficient information to allow the protestant to respond to the proposed project.

Should the applicant be required to supply a detailed plan of development including operational details? Should applicants for smaller projects, unprotested applications, or projects proposing uses such as DCMI be exempted from this requirement? If so, what size or type of project should be

- 3 -

exempt?

3. What factors are appropriate in the consideration of "local public interest"?

All applications to appropriate water must comply with the local public interest criteria of Section 42-203A, Idaho Code. The statutes define local public interest as the "affairs of the people in the area directly effected by the proposed use". Should local public interest be restricted to effects directly associated with water diversion and use such as instream values, and water quality or should it be broadly interpreted to include general land use concerns such as property value declines due to a reduced streamflow? Should downstream effects on anadromous fish and hydropower production be considered?

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

Section 42-203C, Idaho Code, requires that if an application to appropriate trust water will significantly reduce water available to a hydroelectric facility, the applications must be evaluated using public interest criteria.

What parameters should be used to evaluate a significant reduction? Should cumulative impacts be evaluated considering depletion of all trust waters down to the minimum flow or only

the increment predicted to be depleted during some planning period?

Should applications proposing small diversions, or certain uses such as DCMI and those that are not protested be exempted? If so, what size and types of projects?

5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

Section 42-203C, Idaho Code, requires the director to consider five criteria to evaluate the public interest of reallocating trust water. Should rules and regulations be adopted providing detailed guidelines for evaluating the positive and negative impacts of proposed projects on the state and local economy, on utility rates, on the family farming tradition, and on the full use of Idaho's water resources? How can remote indirect impacts be adequately evaluated? Should the value of potential future uses, which are foregone if the application is approved, be considered?

6. What rating scale should be used to balance the five public interest criteria?

Section 42-203C, Idaho Code, states that no single public interest criteria is entitled to greater weight than any other criteria. Does this require a simple check off that the

- 5 -

proposed project complies with the criteria and that a project complying with a majority of the criteria is to be approved, or should a rating system be adopted which recognizes the degree to which a project meets a proposed criteria with each criteria having the same potential maximum value?

7. Should permits issued for new consumptive uses from ground water require maintenance of the capability to mitigate flow reductions in the rivers as necessary to maintain the adopted minimum flows?

The lag time between starting and stopping pumping of a well and the corresponding change in the discharge rate of springs flowing from the aquifer makes curtailment of pumping of junior priority ground water rights ineffective for managing short-term stream flow functuations. Holders of permits issued for ground water development could be required to have a source of water for release to insure that the adopted minimum stream flows can be maintained. As an alternative, should the state assess permit holders to purchase storage water or other resources for insuring that minimum flows are met?

The public welfare requires that any rules and regulations necessary to implement the changes to Idaho water statutes be effective July 1, 1985. It may be necessary to initially adopt the rules on an emergency basis in order to meet this public welfare requirement.

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All comments and suggestions provided will be reviewed and considered by the director in the process of implementing the new and amended legislation relative to the Swan Falls agreement.

Public information meetings will be scheduled and held by the department as follows:

Tuesday, May 21, 1985 - Bonneville County Courthouse, Room 101, 605 N. Capital, Idaho Falls, Idaho, at 7:00 p.m.,

Wednesday, May 22, 1985 - Pocatello Municipal Airport, Conference Room, Pocatello, Idaho, at 7:00 p.m.,

Thursday, May 23, 1985 - College of Southern Idaho, Room 101, Vo-Tech Building, 315 Falls Avenue, Twin Falls, Idaho at 7:00 p.m. and

Friday, May 24, 1985 - Hall of Mirrors, East Conference Room, 700 W. State St., Boise, Idaho at 1:00 p.m.

Comments should be mailed to Director, Idaho Department of Water Resources, Statehouse, Boise, Idaho 83720 to be received prior to June 15, 1985.

Copies of this notice may be obtained from the regional offices located at the following addresses:

Western Region, 450 W. State St., Boise, Idaho 83720, Eastern Region, 150 Shoup, Idaho Falls, Idaho 83401, Northern Region, No. 5, Box 4055 Government Way, Coeur d'Alene, Idaho 83814 and

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Southern Region, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301.

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BOISE---The Idaho Department of Water Resources (IDWR) will conduct four public information meetings this month to get citizen comments on suggested content of rules and regulations to be drafted dealing with allocation of water resources in Idaho.

According to A. Kenneth Dunn, IDWR director. these rules and regulations are needed to guide department action in the reprocessing of existing water right permits, administration of the public interest criteria and in the allocation of trust water made available through the Swan Falls settlement negotiations.

Meetings have been slated in:

Idaho Falls, Bonneville County Courthouse, Room 101, 605 N. Capitol,

7 p.m., May 21,

Pocatello, Municipal Airport, Conference Room, 7 p.m., May 22, SCANNED Twin Falls, College of Southern Idaho, Room 101, Vo-Tech Building, JAN 04 2007 315 Falls Ave., 7 p.m., May 23, and

Boise, Hall of Mirrors (State Office Building), East Conference Room, 700 W. State St., 1 p.m., May 24.

Those wishing to submit written comments should mail them to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720 before June 17, 1985.

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

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A brief description of subject matter to be addressed in the proposed rules and regulations is available upon request from any of the IDWR offices in Boise, Idaho Falls, Twin Falls or Coeur d'Alene.

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Kay Weaver

Information Specialist

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The foregoing is a true and certified copy the document on file at the dopartment Water Resources, Signedunia Langay of Tanuary on D

State of Idaho, Statehouse, Boise, Idaho 83720 Carry

Phone: (208) 334-4440

NEWS RELEASE

FOR IMMEDIATE RELEASE May 17, 1985

Idaho Department of Water Resources to conduct meeting for water users

HOISE - - Water users near Idaho Falls are reminded of the public information meeting slated by the Idaho Department of Water Resources on May 21, 1985, at the Bonneville County Courthouse, Room 101, 605 North Capital, Idaho Falls at 7 p.m. According to A. Kenneth Durn, IDWR director, the agency wishes to get a clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. Written comments may be sent to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720 and must be received by June 17.

Durn seeks hpublic input on seven issues in particular. These questions are:

1. What criteria should be used to determine the order of processing the SCANNEL backlog of pending applications and for reprocessing existing, undeveloped JAN 0 1 200 rights?

2. What should be the requirements for the timing and scope of information to be submitted by the applicant?

3. What factors are appropriate in the consideration of "local public interest?

4. What constitutes a "significant reduction" in water available to a hydroelectric facility?

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5. What guidelines are needed to evaluate the "public interest" for relocating trust water?

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6. What rating scale should be used to balance the five public interest criteria?

7. Should permits issued for new consumptive uses from groundwater c_1 require maintenance of the capability to mitigate river flow reductions if necessary to maintain the adopted minimum stream flows?

Other information meetings are slated in Pocatello, Twin Falls and Boise. Copies of the notice to draft rules and regulations may be obtained from any IDWR regional office in Coeur d'Alene, Idaho Falls, Twin Falls or Boise.

After the information meetings have been completed, agency staff will draft the rules and regulations, incorporating comments obtained either at these meetings or from written testimony. Once the rules and regulations have been written, the public will have an opportunity, probably in July, to review them and make comments on the drafts, as required by the Administrative Procedures Act. Final drafts, which may be adopted this fall, will be submitted to the Idaho Legislature for review by the lawnakers.

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Kay Weaver Information Specialist

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



BOISE- Water users near Pocatello are reminded of the public information meeting slated by the Idaho Department of Water Resources on May 22, at the airport conference room, Pocatello, at 7 p.m. According to A. Kenneth Dunn, IDWR director, the agency wishes to get clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. Written comments may be sent to the Director, Idaho Department of Water Resources. Statehouse, Boise, ID 83720, and must be received by June 17.

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IDWR meeting page 2

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Kay Weaver

Information Specialist


FOR IMMEDIATE RELFASE May 22, 1985 State of Idaho, Statehouse, Boise, Idaho 83720

NEWS RELEASE

Water users in southwestern Idaho are reminded of the public information meeting slated by the Idaho Department of Water Resources (IDWR) on May 24, Hall of Mirrors, East Conference Room, 700 W. State St., Boise, at) p.m.

According to A. Kenneth Dunn, IDWR director, the agency wishes to get clear direction from the public on rules and regulations governing water appropriation in the public interest. This water has been made available as a result of the Swan Falls settlement signed by the State of Idaho and Idaho Power.

Anyone wishing to testify is encouraged to attend the meeting. However, written comments may be sent to the Director, Idaho Department of Water Resources, Statehouse, Boise, ID 83720, and must be received by June 17.

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IDWR meeting

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REQUEST FOR COMMENT AND NOTICE OF INTENT TO WRITE AND ADOPT RULES AND REGULATIONS FOR WATER APPROPRIATION

The director of the Idaho Department of Water Resources hereby announces his intention to write and adopt rules and regulations for the allocation of water resources in Idaho. The legislature enacted Section 42-1805(8), Idaho Code, which will be effective on July 1, 1985, imposing a duty on the director to adopt rules and regulations implementing and effectuating the powers and duties of the department. Also, effective on July 1, 1985 are the changes to the water allocation provisions, (Section 42-203, Idaho Code) enacted in Senate Bill 1008 which place in trust some waters previously appropriated for hydropower generation purposes and authorize reallocation of this trust water to consumptive purposes found to be in the public interest.

The director believes that rules and regulations are needed to provide a uniform and orderly procedure for processing pending and future applications for the trust water made available and for reprocessing existing undeveloped permits under the new public interest requirements. In addition, there is a need to describe more fully the criteria that will be used to decide whether an application or a permit subject to reprocessing will be granted.

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In December 1982 the department ceased processing applications to use water for consumptive purposes from the Snake River drainage upstream from Swan Falls Dam. Over 1,000 applications, nearly all for irrigation purposes, are now being held. Additionally, an estimated 1,700 permits, nearly all for irrigation purposes, remain undeveloped in this area. The Snake River Water Rights Agreement as authorized by Section 42-203B, Idaho Code, allows development that is in the public interest to reduce the flow of the Snake River near Murphy gauge but not below a flow of 3900 cubic feet per second (cfs) in the summer or 5600 cfs in the winter. This reduction has been estimated at 600 cfs below the existing low summer flow on a dry year. One hundred fifty (150) cfs of this flow is reserved for domestic, commercial, municipal and industrial (DCMI) uses. Existing mapplications and undeveloped permits exceed the firm water supply

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Should the applicant be required to supply a detailed plan of development including operational details? Should applicants for smaller projects, unprotested applications, or projects proposing uses such as DCMI be exempted from this requirement? If so, what size or type of project should be

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All comments and suggestions provided will be reviewed and considered by the director in the process of implementing the new and amended legislation relative to the Swan Falls agreement.

Public information meetings will be scheduled and held by the department as follows: <u>Tuesday, May 21, 1985</u> - Bonneville County Courthouse, Room 101, 605 N. Capital, Idaho Falls, Idaho, at 7:00 p.m., <u>Wednesday, May 22, 1985</u> - Pocatello Municipal Airport, Conference Room, Pocatello, Idaho, at 7:00 p.m., <u>Thursday, May 23, 1985</u> - College of Southern Idaho, Room 101,

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Comments should be mailed to Director, Idaho Department of Water Resources, Statehouse, Bolise, Idaho 83720 to be received prior to June 15, 1985.

Copies of this notice may be obtained from the regional offices located at the following addresses:

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Southern Region, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301.

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The longoing is a true and certified copy of the document on file at the department of Autor Resources

Signed this 44 Day of KINUAN 2010

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PUBLIC INFORMATION MEETING

Thursday, May 23, 1985, 7:00 p.m.

Twin Falls, Idaho

ROSTER OF ATTENDANCE

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Twin Falls, Idaho

ROSTER OF ATTENDANCE

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Kenneth Pelk	in Rt. 3 Buhl	Ida 83316
- Manne to Marthal	1 Box 743, Castleford	Id. 83321
Billy Taylor	_3.5.3 7th Ave. F.	Twin Falls Id. 83301
Jake F. Prudek	RT #1 Box 104	Buhl Idaho
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PUBLIC INFORMATION MEETING

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ROSTER OF ATTENDANCE

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. . . , TWIN FALLS

Alan Robertson

NELSON: One thing, Norm, on this gentleman's example. I don't think that surface water diversions for recharge above Milner are part of the trust waters. To be part of the trust waters, the water has to be made available by reason of subordination condition and there is no water right at Milner. That's at zero flow in the State Water Plan. So, surface water diversions above Milner would not be subject to those criteria. Now, EPA may have something to say about it, but I don't think they can (file for a grievance.) (file under their agreement.)

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

Signed this 10 day of October, 2008

Affidavit of Norman C. Young

Exhibit B

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Affidavit of Norman C. Young

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Exhibit C

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1 2 **RECORDING ENTITLED** MALE SPEAKER: Viewing global public 1 "TWIN FALLS-1" 2 interest of the board of directors of the Public Information Meeting Thursday, May 23, 1985. TWIN FALLS, IDAHO 3 corporation felt should be whatever this be, I'll 4 4 read it to you. 5 $5 \cancel{MCY}$ MODERATOR: Good. And will you submit us a 6 6 copy of it too? 7 MALE SPEAKER: Yes. 7 8 **8** $M \subseteq \mathcal{L}$ MODERATOR: Very good. 9 MALE SPEAKER: I'm here now representing the 9 TRANSCRIPT OF PROCEEDINGS 10 Hagerman Valley Citizens work. Our group might 10 11 11⁻ well be defined as a citizenship group whose main 12 12 concern is the public interest. 13 13 We are usually, if not always, 14 supporting positions that will benefit the public 14 15 at large. As a group we are mainly concerned with 15 16 maintaining the healthful and attractive community 16 17 in which to live. 17 18 Our own articles of incorporation, our 18 19 purpose is stated: To secure and enhance the city 19 20 from social welfare, the residents and visitors of 20 21 NCY = Norman C. Yours 21 Hagerman Valley. 22 22 Our purpose on being here tonight is to Transcribed by 23 state our position regarding the definition of Dianne E. Cromwell 23 local public interest. The word "public" is CSR No. 21 24 24 25 25 defined in Websters as that remaining to and

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1	offering all the people – pardon me, and	1	idea of government being concerned with protecting
2	affecting all the people.	2	the public's interest is well established in our
3	We have such expressions as public	3	history and traditions.
4	good, public welfare, public health, public trust,	4	The concept of public welfare and
5	all of which referred to the public at large. The	5	public interest is based on the government's
6	concept of the public interest stands in contrast	6	relationship with its citizens. One of the
7	to private interest for particular individual's	7.	principal duties of the government is to look out
8	benefit from some action or policy.	8	for the interest of all its citizens. We think
9	Ideally, all actions of the policy	9	that it is in the public interest to protect and
10	could serve both the public interest and the	10	preserve our habitat, the places we live and the
11	private interest. There should be an equitable	11	places our children and grandchildren will live.
12	balance between the two. However, when we come	12	We believe that it is in the public
13	into conflict, public interest should prevail,	13	interest to take the long view and the broad view
14	consistent to that document's greatest good to the	14	when it comes to taking care of our natural
15	greatest number of people.	15	resources.
16	The concept of public interest is very	16	We have no problem in defining local
17	old and can be traced back to English common law	17	public interest for Hagerman Valley. We are
18	and even to Roman law. It certainly goes back to	18	concerned with the quality of the water coming
19	our own Constitution. In the Preamble of the	19	from the springs, flowing in our rivers, and the
20	Constitution appears the phrase "To promote the	20	natural beauty it surrounds. We certainly hope
21	general welfare," and this is interpreted to mean	21	that the Department of Water Resources will take
22	promote the welfare of the public at large.	22	such concern into consideration when writing new
23	The term "public good" appears in the	23	rules for issuing water permits.
24	Declaration of Independence. The term "public	24	Thank you.
25	trust" appears also in the Constitution. So the	25	$\mathcal{N}^{\mathcal{O}l}$ MODERATOR: Thank you. The department's

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1	philosophy is to issue those initial decisions on	1	adopted, the director is asked to consider.
2	the local public interest. Your question is very	2	And on the first five criteria, the
3	timely. That is I think the next slide.	3	historic one, he is asking the cause and
4	Those are the five and again, I'm	4	determination, "shall find and determine." On
5	paraphrasing, let's make them short, and you've	5	these he is asked to consider, is there a
6	got the exact language on the last page of the	6	different level of consideration between the five
7	bill that was handed out to you, the legislation.	7	criteria? That may be a legal question.
8	If the project that you suggested meets	8	But he must consider whether the
9	all of the first five criteria, the historic five	9	project would, as it affects the existing hydro
10	criteria, and could be approved under those five	10	power right when you're taking the water away,
11	criteria, including the local public interest, and	11	would be potential benefits both direct and
12	then you look at it and you find that it, along	12	indirect, that the proposed use would provide the
13	with other water uses, is going to reduce the flow	13	state and local economy.
14	to the hydro power right significantly, then you	14	Second one is, the economic impact the
15	have ask the director has to ask himself these	15	proposed use would have on electric utility rates
16	five questions, and let's just go through those in	16	in the State of Idaho and the availability,
17	exact language of the statute.	17	foreseeability, and cost of alternative energy
18	If the answer, the director considers,	18	sources to ameliorate such impact.
19	and I say this carefully, this is one of the	19	Three, the promotion of the family farm
20	questions also.	20	tradition.
21	A VOICE: Where are we at?	21	Four, the promotion of full economic
22	/ 64 MODERATOR: The very last page of the bill	22	and multiple use development of water resources in
23	under Item 2 under 42-203C, there are five	23	the State of Idaho.
24	criteria. This is the public infrastructure,	24	And five, in the Snake River Basin
25	really the heart of the rules that will be, to be	25	above the Murphy Gauge, whether the proposed

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1	development informs through a staged development	1	available and the director is able to make a
2	policy of up to 20,000 acres per year, or 80,000	2	decent judgment, they're not to simply make a
3	acres in any four-year period.	3	project infeasible because you can't afford to
4	So those are the five public interest	4	make a study for necessary approval.
5	criteria and will be affecting the	5	Yes, sir?
6	(unintelligible).	6	MALE SPEAKER: Does this include groun
7	We're asking for your suggestions as we	7	water also under the same provisions, all this?
8	draft the rules on how details should be defined.	8	NCY MODERATOR: Yes. We're talking here ab
9	If we follow the lead of the federal government,	9	in the Snake River Basin, above Swan Falls and
10	as they've gone through project studies, we	10	Murphy Gauge for sure, the water is the makeup
11	perhaps would have to have an environmental impact	11	the Snake River. And our belief is that the river
12	study, principles of standard level	12	is made up of all the sources. Statutorily and
13	(unintelligible) as you look at the economics and	13	case law, that is true. And the spring being the
14	sociologic impacts and come up with very detailed	14	expression of groundwater, yes.
15	guidelines as to what is acceptable or not. If	15	MALE SPEAKER: Then in other words, the
16	that is what is being proposed here, then we	16	groundwater would be included in the trust wate
17	should draw from this? Or is this a cursory	17	In other words, it would be classified as trust
18	review of where (unintelligible)	18	water indirectly.
19 ⁵	MALE SPEAKER: Those are regulations	19	NMMODERATOR: That's right.
20	designed to solve all development, to make	20	MALE SPEAKER: What about in the event
21	criteria so high that you cannot meet it?	21	percolations of the groundwater, since we all just
22,	W_{CY} MODERATOR: I think that's what we have to	22	maintain so it takes a thousand years for ten
23	be so careful about here. As the rules and	23	miles in the some areas, et cetera, are you still
24	regulations are adopted, that they make a	24	going to hold that this study with a theory that
25	reasonable requirement. So as the information is	25	it's all part of the trust water of the rivers?

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1	$\mathcal{N}^{\mathcal{M}}$ MODERATOR: That goes back to this question,	1	that still be classified as trust? In other
2	the point about the delay between when you pump	2	words, the winter flow and the summer flow are
3	the water and when the spring flow reduces. First	3	different, and et cetera, and the stream flow is
4	it would have that would be information you	4	different in the winter. I mean, in other words,
5	would need to have in order to decide whether you	5	all water applications, no matter for what or
6	had a significant reduction on hydro power rights.	6	where will be classified as one, in other words;
7	So you need that data for that decision.	7	that bill against the trust availability, in other
8	I suspect you would need it in order to	8	words.
9	determine the impact on the availability and price	9	MODERATOR: For all practical purposes, th
10	of electric energy, the question of promotion of	10	is correct. Now, for example, some of the
11	full economic and multiple use of the water.	11	existing storage projects, specifically at Teton,
12	I suspect I ought to put these in terms	12	I think we need to look at that as to whether that
13	of questions but that's not the so as part of	13	would be trust water or not.
14	the Swan Falls agreement [unintelligible], there	14	Yes. As we reprocess those undeveloped
15	is additional hydrologic data being gathered so	15	permits and new applications, basically we're
6	that models of the aquifer can computer models	16	talking about having to go through these types
7	of the aquifer may be defined to help us and to	17	[unintelligible] if there's a significant
8	help the applicants feel to answer that question.	18	reduction.
9	MALE SPEAKER: Do they take and consider the	19	Do you have a question about it?
20	aquifer recharge, then?	20	MALE SPEAKER: Apparently on this
!1	MODERATOR: The return to the aquifer	21	groundwater you are recognizing in effect that the
22	MALE SPEAKER: On the recharge, like the	22	factual exchange type thing, how is that going to
23	winter recharge to an aquifer.	23	affect prior exchange type rights that the state
24	MODERATOR: The models do, yes.	24	has not recognized in the past? In the city of
25	MALE SPEAKER: What I mean, though, will	25	Pocatello, Palisades being a case in point,

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4	Mishey d Elete invinction is enother		MODERATOR. I'm alad waw're nat awnating an
	Michaud Flats irrigation is another.		MODERATOR: I'm glad you re not expecting an
2	MODERATOR: Well, I'm not sure I understand	2	answer to that. [Unintelligible] that is a policy
3	the question well enough to respond to it. One of	3	question.
4	the issues is raised, and we'll talk about is	4	JARR Yes, sir?
5	Issue No. 7. And this question: Permit condition	5 ₀	MALE SPEAKER: Seems to me that that second
6	in mitigation.	6	criteria there could effectively delay any further
7	I think what you're referring to is the	7	development for years to come if Idaho Power or
8	department's approval that interim permits, while	8	somebody else wanted to say, well, we don't have
9	this is being developed and rules and regulations	9	the studies back on the impact of availability of
10	are being developed, require an exchange of	10	water to supply electricity or to generate
11	historic [unintelligible].	11	electricity and that could in effect stall any
12	I'll take it from there on how your	12	development for years conceivably.
13	question	13	How long is it going to take to get the
14	MALE SPEAKER: Well, I'm wondering if you're	14	study back to the aquifer ten miles south of
15	going to go back in the past. The city of	15	Burley and three miles east or somewhere else?
16	Pocatello has a case in point, the state has not	16	How are we going to know and when? There's a lot
17	recognized that as a valid consideration,	17	of ground to cover.
18	exchanging storage water for groundwater	18	MODERATOR: There really is. The additional
19	withdrawal. And I'm wondering	19	data, having put in the data being gathered this
20	MODERATOR: You're actually moving	20	year, every year we get will help us confine it.
21	retroactive?	21	But I think the decisions will just have to be
22	MALE SPEAKER: Yeah. Are you going to go	22	made on perhaps an interim basis subject to
23	back and look into those and there are several	23	revision as the data improves.
24	of those exchange-type agreements on the	24	I don't know that we can wait 20 years
25	Teton Basin and other places in the state.	25	until we get all the data necessary to prove the

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1 point one way or the other, and that's a good	1 is a legal term, it simply says, who has to
2 question. When I give my idea, I'll ask you.	2 provide the greater evidence, the greater proof on
3 MALE SPEAKER: So in effect we don't know.	3 the issue, is switched for these five criteria
4 We don't know.	4 than what has historically been considered on the
5 NM MODERATOR: When do we have sufficient data	5 first five criteria. It usually said the
6 to make those kind of decisions.	6 applicant has the responsibility to prove that his
7 Tom MALE SPEAKER: The point that might be made	7 project met the first five criteria.
8 there would be that part of the statute placing	8 Here the statute specifically says the
9 the burden in that instance on the protestant. So	9 protestant has that responsibility. That
10 whoever wants to protest a particular new use has	10 particular statement of legislative intent
11 the burden to produce the information necessary to	11 describes that the idea was not to force the
12 make the protest stick. So if he has got a	12 applicant to have to come forward with all of the
13 20-year study, he is not going to be ready for the	13 information.
14 protest and he'll lose.	14 But as you think through that a little
15 MALE SPEAKER: If the applicant doesn't	15 bit, the applicant probably has to describe his
16 have the burden of proof is upon the	16 project with sufficient detail so that the
17 protestant. So if it takes him 20 years to prove	17 protestant knows how to respond. So what
18 it, he can pay it out in ten and so be it. So	18 constitutes sufficient information, what level of
19 what. Is that what you're saying?	19 information is needed on various types and sizes
20 To MALE SPEAKER: I'm saying if the protestant	20 of projects, to be fair to the protestant?
21 isn't ready, the applicant is going to win.	21 Historically, you can fill out a
22 MALE SPEAKER: I see. Okay. Or they can	22 department application, an essentially two-page
23 just hold it up until they do decide.	23 document; a minimal amount of information is
24 (Simultaneous talking.)	24 required. Is that all that is required? In a
25 んぴ MODERATOR: The burden of proof, which again	25 recent district court case, the district court

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1	said the applicant had the responsibility of	1	have already have used prior to that date in
2	providing plans and specifications in sufficient	2	198 – when is it, October of '84, July of '84 –
3	detail that the project can be built, describe the	3	are you saying that there is going to be
4	operation of that, at the time of the protest	4	opportunity for protest upon that, or does that
5	here.	5	letter not state that all water used before that
6	In other words, before the department	6	point would be automatically granted?
7	had made a decision, you must have the project	7	MODERATOR: The way the statute reads, that
8	described with sufficient detail to be built and	8	to the extent that the project hasn't been
9	operating. Is that what we're asking for? In	9	developed.
10	that particular case, it required the engineer's	10	MALE SPEAKER: Has not been developed.
11	plans and specifications.	11	MODERATOR: Has not been developed. Looking
12	Is that what we need to have as a	12	here at 42-203D, that it would be subject to a
13	portion of our application? It might be very	13	reprocessing under these criteria.
14	reasonable to just turn around ideas again on a	14	MALE SPEAKER: But if it has been
15	very large project. But should we take a ten-acre	15	developed
16	irrigation project to an engineer?	16	MODERATOR: Then it would not be
17	The 1700 permits that I believe are	17	MALE SPEAKER: Subject to the second set of
18	being re-massaged and fail to file the proof by	18	criteria, but the first set of criteria is still
19	July 1, I've already got an application. When	19	subject it.
20	should they be required and how much time should	20	MODERATOR: It's already been through those.
21	they be given to submit whatever additional	21	MALE SPEAKER: But it has not been filed
22	information you need so the protestant will know	22	yet.
23	how to respond? You have some thoughts on that	23	$\mu \mathcal{C}$ MODERATOR: Okay. If it has not been filed
24	issue?	24	on a new application, subject to those first five
25	MALE SPEAKER: Are you saying, though, that	25	criteria, yes, that's right.

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	MALE SPEAKER: In these plans that have to		
2	be submitted, for an established industry, you		Med MODERATOR: It's a good comment. Many times
3	would submit detailed plans for a new use trial	3	people are reluctant to fully design the project
4	merit [unintelligible], and I don't care what you	4	and spend the money necessary in order to get some
5	submit at the start of it, you not going to get	5	indication that they're going to have a dual
6	nothing for that.	6	permit. Pretty tough to put that much money up
7	Now, if you were going out to build a	7	front.
8	trout farm, nothing around, detailed plans would	8	So to ask that there may be some kind
9	be submitted. Most of them are drawn up after the	9	of a balance in here, we're certainly entertaining
10	farm has been built [unintelligible]. But if you	10	your ideas on what balance needs to be struck and
11	are going out to raise sturgeon, which there's a	11	by type and size. And I skipped over this slide.
12	lot of interest in California and will be here in	12	The next line after the five criteria, the last
13	Idaho, there's not a commercially-established	13	stage of the legislation says: No single factor
14	farm, and the best system is not developed yet.	14	enumerated above shall be entitled to greater
15	You're going to build one pond, and the next year	15	weight by the director providing this
16	you're going to build another, and you've got to	16	determination.
17	change it. By the time you add on, it's going to	17	How does the director use that "no
18	be something different.	18	greater weight" idea as he looks at those five
19	And it's not going to be going out and	19	criteria? It's been suggested that it's simply a
20	building the thing, drawing up a set of plans in	20	checkoff. He looks at the proposed project. He
21	detail and building it to those plans. It's going	21	says yes, it has benefits. He gives a check.
22	to be built in one pond, and changing the thing	22	Yes, it will reduce electricity,
23	the next year and adding to it, and changing it	23	availability, and raise power rates. So no, it
24	again the next year. The project will be	24	doesn't get a check for that. But it is in the
25	successful. [Unintelligible] leads to flexibility	25	family farm tradition, et cetera. And if you get

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1	three checks out of five, does that mean you prove	1	was amended in March, in accord with the
2	it? If it gets one [unintelligible] check, does	2	Snake River Agreement, and the legislature
3	that mean you don't prove it?	3	ratified it, it was in place, calls for mitigation
4	Is there perhaps a rating scale that	4	of lost hydro power for high level for pumping
5	ought to be applied? If it fully complies with	5	projects taking water out of the main stem of the
6	the criteria, giving perhaps a ten, under each of	6	Snake River between Milner Dam and Murphy.
7	these criteria, a full compliance would eight to	7	If it takes the water in the
8	ten, a full noncompliance would give a minus ten,	8	nonirrigation season through off-season storage,
9	and algebraically sum up the rating that the	9	that particular kind of project is singled out and
10	director gives based upon the information	10	mitigation is asked for. Well, what level of
11	submitted.	11	mitigation should we incorporate in our rules?
12	And if it comes up to zero or above,	12	Could that be a replacement power?
13	it's an approval. Is that what happens? Or is it	13	Yes, ma'am.
14	some other ideas of how that should be applied?	14	FEMALE SPEAKER: Norm, define mitigation.
15	Again, how that is determined will have	15	What is mitigation?
16	a major impact on what the projects are through	16	MODERATOR: Well, I could give you my
17	[unintelligible]. So my comments on that	17	definition, but that's really the purpose of why
18	particular we talked about that.	18	we're here. Give us your idea of what constitutes
19	The final issue is this question of	19	mitigation. Is it a full replacement, or is it
20	mitigation and, perhaps you could say, permit	20	just making
21	approval conditions in general.	21	FEMALE SPEAKER: Is it money?
22	You have an Issue No. 7, is it, in your	22	MODERATOR: Is it?
23	issue paper? Yes. It addresses one idea of	23	FEMALE SPEAKER: Is it just public interest,
24	mitigation. The State Water Board, in revising	24	or what is it?
25	the Snake River Policy 32 of the water plan, which	25	MODERATOR: Replacing the hydro power? One

	21		22
1	thing we have talked about is perhaps if a project	1	did and it was going to pump through or take it
2	of that type were offstream storage and were	2	out during the nonirrigation season, I think it
3	approved, that would be written in as a condition	3	would probably apply in that case. But when
4	of the permit, that on low flow periods in cold	4	you're above Milner, you're probably taking trust
5	weather, if the power company really needs the	5	water, you're probably going to have to look at
6	hydro generation, the diversion would be	6	the five criteria, whether the trust criteria
7	suspended. Is that sufficient?	7	empty significantly reduce the flow of the hydro
8	They're talking here about not just	8	power line, but you wouldn't be subject to this
9	having to mitigate for the 30 to 40 minimum flow	9	mitigation.
10	impact, if you took the flow at the Murphy Gauge	10	MALE SPEAKER: But then you're coming right
11	below 3900 or 5600, I should say. We're talking	11	again in conflict. It seems to me that they're
12	here about making up for the impact for taking	12	after the groundwater pumpers, and it appears that
13	trust water. So this is unique.	13	that type of project would enhance that rather
14	MALE SPEAKER: How does this affect any	14	than diminish it if their criteria for pumping it
15	proposed offstream artificial recharge of the	15	out is correct.
16	aquifer. It appears to me that that would be a	16	MODERATOR: And if you went back to the five
17	conflict. Does that affect it? We have a project	17	public interest criteria, if it indeed was in the
18	over here, the north of here, doing that now; in	18	public interest to take the water away from hydro
19	fact, putting water into the aquifer. How is that	19	generation during that winter period and put it
20	going to work?	20	into the groundwater for recharge, then it should
21	MODERATOR: Well, again, would there be a	21	be approved [unintelligible] public interest
22	recharge project proposing to take water out of	22	criteria.
23	the main stem of the Snake River below Milner	23 _{/5}	Elaine?
24	MALE SPEAKER: Oh, below Milner.	24	FEMALE SPEAKER: Just maybe for interest of
25	MODERATOR: And above Swan Falls. If you	25	those people that were thinking about doing some

	23		24
1	of this [unintelligible], one of the gentlemen at	1	trust waters, the water has to be made available
2	last night's meeting felt that this mitigation was	2	by reason of the subordination provision, and
3	just not far enough or wide enough and suggested	3	there's no water right at Milner. That's a zero
4	that the law changed so that the fish could be	4	flow under the state water plan. So the surface
5	mitigated in the April or May/June flows also.	5	water diversion above Milner would not be subject
6	And so you're going to have to put in	6	to those criteria.
7	your suggestions for the mitigation if you want to	7	Now, the EPA may have something to say
8	balance out some of it because they really are	8	about it, but I don't think this is the problem
9	suggesting very, very strongly that the mitigation	9	under the agreement.
10	hearings is much too narrow and needs to be spread	10	$\mathcal{N}\mathcal{U}\mathcal{U}$ MODERATOR: Good. I'm glad it's on tape.
11	to fish flows in June also.	11	That makes it easy.
12	MODERATOR: The Northwest Power Planning	12	FEMALE SPEAKER: Norm, we had one lawyer in
13	Council's fish watch, which probably would occur	13	the audience last night. We've got another one
14	on dry years in the April to June period. And the	14	tonight. Could we ask him how he would use the
15	suggestion would be made as to projects, in order	15	first-come, first-serve doctrine?
16	to be in the public interest, might have to be	16	MODERATOR: Will you yield?
17	envisioned to make up water for that fish watch.	17	MALE SPEAKER: Sure.
18	That was how broad that person viewed the public	184	FEMALE SPEAKER: It has really helped. A
19	interest criteria.	19	lot of us would like to say, there are some small
20	Again, that's what we're asking for.	20	projects [unintelligible] that are in the
21	Tom?	21	emergency situation, that we're talking of 10, 20,
22	MALE SPEAKER: One thing, Norm, on this	22	30 acres, that really need to be processed. But
23	$\frac{1}{2}$ gentleman's example. I don't think that the	23	that if a larger project earlier says, well,
24	surface water diversions for recharge above Milner	24	that's all right, go ahead and process them first,
25	are part of the trust waters. To be part of the	25	then they're speculative. And they lose their

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1 water right because they allowed the later	uy to 1 agree that the best projects should be the one
2 go first.	2 that hits the ground, period. But how do we get
3 Is there some way that we can ge	3 around all the lawsuits that the guy earlier can
4 around the first-come, first-serve doctrine	4 have if he doesn't get his chance to prove he was
5 order to process the emergency cases and t	e 5 best and fight for it?
6 smaller cases, or are we bound by law to g	6 Tom MALE SPEAKER: Well, my feeling is that age
7 first-come, first-serve no matter what?	7 has to be one of the criteria that you use to sort
870m MALE SPEAKER: Well, I don't think	that the 8 the first cut. I think distance from the river
9 priority doctrine operates strictly on trust	9 would be another. And we may have to give the
10 waters. My view is, everything else being	qual, 10 older projects a shot at proving they are the best
11 the older of two projects, one of which can	11 or you're going to run into that very problem.
12 develop and one of which can't, should de	elop. 12 But to me, the ultimate cutting edge is the best,
13 But if you look at full economic	13 not the earliest.
14 development and benefit to the state and le	cal 14 ECAINE MONTOFEMALE SPEAKER: And you think we can sta
15 economy and all the criteria, it seems to me	that 15 out of court if we give them some guidelines
16 what you want to end up with is probably	ne best 16 [unintelligible].
17 project out of the whole gamut.	17 $\int_{\partial M}$ MALE SPEAKER: We won't stay out of court.
18 I don't know how you can make	nat 18 ^{MWe} just might have a better chance of making it
19 decision ahead of getting a record made. I	other 19 stick if that's the way you work it.
20 words, I don't know what creates an emerg	ncy for 20 MODERATOR: Very well put.
21 30 acres of development. But until you have	some 21 Now, the mitigation that you were
22 kind of a record on which you can base a b	tter, 22 describing for the pumping to offstream storage
23 best, and terrible analysis, I think you'll jus	23 that is talked about in Policy 32I of the amended
24 have to wait until you get started.	24 water plan is not the mitigation that is addressed
25 Elin FEMALE SPEAKER: Well, I think w	kind of 25 in your Issue 7.

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1	That one is the question being, one,	1	The [unintelligible] conditions will
2	if you now issue permits with the understanding	2	require that, force people as a condition of the
3	that our data shows 600 cfs of firm trust water,	3	permit to provide water to the water bank, to buy
4	and we issue permits for ground water pumping on	4	the money for approval, for seeking funds to be
5	the aquifer, if that 600 cfs was not properly	5	available to buy water rights; pay for the
6	calculated or if there's a worst year, or a	6	damages. How do you respond?
7	sequence of years in terms of dryer than we	7	MALE SPEAKER: I would like to speak to this
8	expected in that analysis, and we indeed with	8	recharge situation and the flow of the
9	these new filings that are issued, that were	9	Snake River, if I may. Our water is dropping off
10	issued with the 600 cfs trust water, filed alone	10	this year down below what it was last year. In
11	at 3900 cfs or the 5600 cfs [unintelligible]	.11	other words, we're approaching an all-time low in
12	forward, how is the state going to then augment	12	our aquifer discharge.
13	the river flow so we don't violate that?	13	Now, when A and B Irrigation, isn't it,
14	And it could be as an attorney told us	14	that is planning on a large increase in pump
15	last night, the state could have some financial	15	water, or is it some other irrigation district up
16	liability if that happened. Do we look to the	16	here in the central, over the aquifer?
17	applicants, the permit holders, and we issue the	17	MALE SPEAKER: There is a plan to develop
18	permits to provide some mechanism for augmenting	18	12,000 acres within the boundaries of A and B,
19	the flow in case that happens?	19	yes.
20	As your issue paper says, it may be a	20	NCH MODERATOR: Yes, the application has been
21	number of months or a number of years before the	21	made.
22	effect of shutting off a well is felt in the	22	MALE SPEAKER: That is basically
23	river. So just shutting off the junior user when	23	appropriated water as far as Hagerman Valley is
24	the river starts below the minimum flow doesn't	24	concerned, that they'll be interrupting. We had a
25	help. You've got to have a way of augmenting.	25	higher flow last year than we had the year before,

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1	but it looked like we were about to approach the	1	right, and if so, then it could not be approved
2	low flow that we've had for the last 20 years.	2	without conditions
3	Now, if they're allowed to take that	3	MALE SPEAKER: In the past, we have not been
4	water out of our water, we feel that they should	4	able to prove that this well affects this stream
5	join the aquifer lower Snake River aquifer	5	and have not been in court been able to protect
6	recharge and put the same amount of water back	6	our water rights. So we have got to have some
7	into the aquifer that they removed from it.	7	protection from somewhere, and we don't want to
8	There's several advantages to recharging that	8	stop development. That isn't our trying at all.
9	aquifer and maintaining an even flow for hydro	9	But this excess water that is going
10	power generation provisions for fish movements and	10	down the Snake River over Milner Dam should be put
11	another things.	11	back into the aquifer to bring that water flow
12	MODERATOR: Now, the water rights you're	12	back up to maintain an even flow on the river.
13	saying would be impacted and not the hydro	13	Now, here is a peculiar thing that has
14	rights of Idaho Power.	14	been happening that most people don't understand.
15	MALE SPEAKER: I'm saying our water rights	15	Every time a sprinkler system goes in over that
16	will be affected.	16	aquifer, it evaporates a larger percentage of the
17	MODERATOR: Your irrigation and fish	17	water that they use, whether it comes from well
18	propagation from the springs themselves.	18	water or whether it comes from canal water.
19	MALE SPEAKER: Yes.	19	And that water goes in the air, and it
20	MODERATOR: And so under the law that's in	20	is transported back up to the mountains in the
21	effect today and will remain in effect in July,	21	Southeast Idaho where it falls back on the ground,
22	from the old original criteria said will the	22	comes back down to the river instead of coming
23	project impact an existing right? So we'll	23 ·	down the aquifer.
24	need the judgement will need to be made by the	24	In other words, every time a sprinkler
25	director as to whether it will indeed impact that	25	is put in, it transfers water from the aquifer to

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1	the Snake River, which holds in the runoff from	1	recharge.
2	the spring and is not put back into the aquifer.	2/	MALE SPEAKER: Yes. I would say it would be
3	And we need to get some method of getting that	5	vigilant to have a fee on these new water rights
4	water back in to even the flow of the Snake River,	4	or recharge. And this project has been before the
5	because the springs maintain that water flow for	5	state for years; very feasible, just haven't had
6	the power production in the summertime and make it	6	the money to do it, had a good source of money to
7	even flow so that their power plants can utilize	7	do it. And it's people who is going to be using
8	that water that is going down there instead of it	8	it, pay for it.
9	going past as overflow.	9	MODERATOR: It's probably a good legal
10/	MALE SPEAKER: There is another situation	10	question, whether that's something that can be
11″	because the people who are losing their water	11	done without additional statutory authority.
12	rights there in Hagerman Valley are taxing	12	There is a proposed water marketing bill that was
13	themselves and spending that money to recharge the	13	printed last legislative session, House Bill 233,
14	aquifer so that the guys up on top can pump it	14	that was not approved. But there's an interim
15	back out free and use it again.	15	study committee from the legislature that is
16	The people who are depleting the	16	looking at water marketing, and this idea of
17	aquifer are not willing to participate in the	17	augmentation is a part of that bill.
18	recharge program, the majority saying that some of	18	So it may take additional legislation.
19	these projects developed up there and pumped that	19	But to the extent that you can see how these rules
20	water out should have an obligation to participate	20	could be used to resolve that kind of problem, we
21	in that recharge, if the guy that is losing his	21	would like your suggestion.
22	water rights already participated in it.	22	I've been through the legislation with
23	MODERATOR: So I hear suggested that perhaps	23	you. I think I've pretty well touched everything
24	as permits are issued, there ought to be	24	that is in the issue paper with you this evening.
25	conditions required of participation of the	25	With the target date, trying to put together a

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1	draft to come back to you with for adoption in the	1	120 days. I don't expect to see them adopted
2	Administrative Procedures Act is June 15. That's	2	[unintelligible]. It is mentioned.
3	a Saturday, so June 17.	3	FEMALE SPEAKER: Norm, there are signup
4	If you've got ideas that you haven't	4	sheets, so everybody can get a copy.
5	shared with us, to the extent you have shared with	5	MODERATOR: We can stop right here.
6	us tonight, you've got the record on the tape,	6	(Proceedings concluded.)
7	we'll use those ideas and consider them as we form	7	-00000-
8	this draft. If you've got other ideas, mail them	8	
9	to us. If you get them here by the 17th, they'll	9	
10	for sure be considered. If you get them in after	10	
11	that date, we'll consider them if we're not too	11	
12	far along.	12	
13	The legislation is effective July 1.	13	
14	The issue paper talks about emergency rules, and	14	
15	there is a provision under the Administrative	15	
16	Provisions Act or Administrative Procedures Act to	16	
17	adopt emergency rules. An agency would be	17	
18	stepping into a meat grinder to adopt emergency	18	
19	provisions, rules if it wasn't very clear-cut of	19	
20	what those rules needed to say. So we won't do	20	
21	that unless [unintelligible].	21	
22	Even if we did, we would have to	22	
23	immediately start to form a process under the	23	
24	Administrative Procedures Act and have it	24	
25	completed in 120 days. So they're only good for	25	

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<u>REPORTER'S CERTIFICATE</u>

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I, Dianne E. Cromwell, Official Court
Reporter, County of Ada, State of Idaho, hereby
certify:

8 That I am the reporter who transcribed
9 the proceedings had in the above-entitled action
10 in machine shorthand and thereafter the same was
11 reduced into typewriting under my direct
12 supervision; and
13 That the foregoing transcript contains a
14 full, true, and accurate record of the proceedings
15 had in the above and foregoing cause, which was

16 heard at Boise, Idaho.
17 IN WITNESS WHEREOF, I have hereunto set
18 my hand October 6, 2008.
19

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Affidavit of Norman C. Young

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<u>Exhibit D</u>

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· 1	RECORDING ENTITLED	1	MR. MODERATOR: Cfs at Swan Falls, yes. In
2	"TWIN FALLS-2"	2	the winter that's the minimum flow.
3		3	MODERATOR: Is there or has there been
4		4	historically water available for recharge above
5		5	that 5600?
6	* * * * *	6	M / M MR. MODERATOR: The 5600 is the minimum flow
7		7	that we anticipate if the summer flow would
8		8	develop under one set of conditions down to 3900
9	TRANSCRIPT OF PROCEEDINGS	9	on a dry year. So on other years, besides the
10		10	very dry year, yes, there is water that could be
11		11	looked at under the trust water provision if
12	* * * *	12	necessary. As long as you're above Milner, you'll
14		13	have to look at that. I still want to discuss
15		14	that with Tom, and see.
16	C V	15	I believe that yes, there is water
17	No kongen C. Burn	16	above that most years. It's just the extreme year
18	NOT = 1000	17	that there wouldn't be.
19	,	18	Yes, sir?
20		19	MALE SPEAKER: I have a question about the
21	Transcribed by	20	trust water. Now, is the trust water up to Idaho
	Dianne E. Cromwell	21	Power's 8400 second-feet, that anything above
22	CSR No. 21	22	that, is that still trust water clear to 25,000,
23		23	or does that end at their water right?
24		24	MR. MODERATOR: It ends at their water
25		25	right.

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1	MALE SPEAKER: 8400 second feet.	1	MR. MODERATOR: Okay. The contract, the
2	MR. MODERATOR: If you're looking at Swan	2	Swan Falls contract, not the agreement, the
3	Falls, it's apparently 8400 cfs. If you're	3	contract, says that Idaho Power recognizes and
4	looking at Bliss	4	subordinates to those projects that were applied
5	MALE SPEAKER: 15,000 or 17,000.	5	for before November 19, 1982 and were developed,
.6	MALE SPEAKER: That's the springs	6	water was actually diverted or there was
7	[unintelligible].	7	substantial investment before that date,
8	MALE SPEAKER: Do we still have to supply	8	November 19, 1982.
9	anything back on this here deal with the	9	So you should be eligible for release,
10	Idaho Power if you have your permits and	10	and it may have already been released in the
11	everything in order before 8400? Do we have to	11	lawsuit. The thing that triggered that is if you
12	answer anything legally?	12	had filed the proof of beneficial use document
13	MR. MODERATOR: Okay. Let's use yours as a	13	this is where we came in the proof of
14	specific. Give me the details. You have a	14	beneficial use document before November 19, 1982.
15	project that was developed	15	You should have been automatically released in the
16	MALE SPEAKER: We had seven different	16	first release.
17	permits, that they were all approved. Say, the	17	If you hadn't filed it, you should have
18	last one is a permit, it's not adjudicated.	18	received from Tom Nelson's office a letter saying
19	MR. MODERATOR: It's a permit that is	19	file a Form A or a Form B. If you withdrew your
20	issued, applied for	20	[unintelligible] by November 19, 1982, file Form A
21	MALE SPEAKER: Probably in '75.	21	and you will be.
22	MR. MODERATOR: Okay. Before November 19,	22	MALE SPEAKER: Then any that have not been
23	1982. When was the development?	23	proven up as of now, where do they stand? They've
24	MALE SPEAKER: Probably about that same	24	been applied for, but they've not been proven up
25	time.	25	on.

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1	MR. MODERATOR: Any undeveloped permit that	1	this evening at all.
2	is going to rely on trust water is to be	2	MALE SPEAKER: But you don't have to do
3	reprocessed to the extent it has not been	3	nothing with
4	developed under the public interest criteria.	4	MR. MODERATOR: You shouldn't have probably
5	MALE SPEAKER: This has been applied for	5	been named in the lawsuit.
6	before 1982. It was not through the	6	MALE SPEAKER: It wasn't. And that's why I
7	MR. MODERATOR: The indicator that the	7	was wondering if there was any
8	department has indicated we will use to determine	8	MR. MODERATOR: Just not an issue here or
9	whether it has to go under this new criteria or	9	not, we could get over into the question of the
10	not, is have you filed the proof of beneficial use	10	adjudication, then you'll need to file
11	document on that permit by June 30 of this year.	11	MALE SPEAKER: I'm not talking about I'm
12	If you haven't, then we're going to	12	talking about decree.
13	assume that you have to be re processed. Maybe	13	FEMALE SPEAKER: The Form A's and B's do
14	it will come in [unintelligible], maybe develop	14	have to be in by June 30. Right?
15	and get out of it. But we're gong to assume that	15	MALE SPEAKER: That's per the department's
16	without that, yes, you will be re-processed	16	personnel. I don't care when I get them.
17	MALE SPEAKER: You have to reapply?	17	FEMALE SPEAKER: Okay.
18	MR. MODERATOR: No. You won't have to	18	MR. MODERATOR: We just need some kind of a
19	reapply, but that is one of the issues that we	19	date that says, hey, you have to file by this
20	raised, is, what information should you have to	20	date, and we're going to see if you need to be
21	[unintelligible].	21	reprocessed. And not that you can't get out of
22	MALE SPEAKER: How about water that has been	22	it, but you're going to have to provide some
23	adjudicated and will never enter into this thing?	23	indication, proof that you did have
24	It was adjudicated through the courts.	24	[unintelligible].
25	MR. MODERATOR: Really not an issue here	25	FEMALE SPEAKER: What happens to the

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1	"Trout Co." Draw? That thing has been in limbo	1	entire, the new public interest criteria, as they
2	for the seven years that's before the Supreme	2	should not cause a significant impact on
3	Court now. Will they have to go back through this	3	hydropower.
4	reprocessing?	4	They'll have to be looked at because
5	MR. MODERATOR: Well, the Trout Co. water	5	some of them are fine. You could have a
6	is, and correct me if I'm wrong, fish propagation	6	nonconsumptive use [unintelligible] around,
7	and hydropower.	7	hydropower. Not even sure you subordinate that
8	FEMALE SPEAKER: Yes.	8	particular one.
9	MR. MODERATOR: They need to go through	9	Another question? Yes, sir.
10	those first five criteria [unintelligible] in the	10	MALE SPEAKER: On the geothermal wells, this
11	first place. If they get through those, then they	11	is geologic water, been locked in for centuries,
12	look to see, will that cause a significant	12	has not been contributing to hydropower in the
13	reduction in hydropower rights downstream, and if	13	river system. Does it fall under the same
.14	it is a nonconsumptive use, the answer will be no,	14	classification as the aquifer over here that does
15	does not significantly reduce, so you don't have	15	contribute to power generation, or should it be
16	to go through the five criteria.	16	excluded from wells in the geothermal aquifer?
17	FEMALE SPEAKER: Would that apply also to	17	MR. MODERATOR: I guess that comes down to
18	fish propagation filings that are in the process	18	the question of showing that indeed the
19	now under with the five-year period, all fish	19	relationship doesn't exist. Now, where you show
20	propagation? Because it is a non-consumptive use.	20	that, under the first five criteria under the
21	MR. MODERATOR: That's correct.	21	significant reduction, public interest new
22	FEMALE SPEAKER: So you would not have to go	22	public interest criteria is probably something
23	through	23	that needs to be scoped out in the rules and
24	MR. MODERATOR: Non consumptive uses should	24	regulations. But to the extent that they do not
25	get filter out of having to go through the	25	affect hydropower, they should be not subject to

9 the new criteria. REPORTER'S CERTIFICATE 1 1 2 MALE SPEAKER: And then if it was 2 nonconsumptive use on that, then that it would not 3 3 be subject --4 I, Dianne E. Cromwell, Official Court 5 MODERATOR: As long as it didn't affect 5 Reporter, County of Ada, State of Idaho, hereby 6 downstream hydro, a significant reduction. 6 7 certify: 7 The address to send your comments to That I am the reporter who transcribed 8 are on the screen. If you have further comments, 8 the proceedings had in the above-entitled action 9 suggestions, I would be happy to sit here and 9 in machine shorthand and thereafter the same was 10 listen to them. After quite a while 10 11 reduced into typewriting under my direct [unintelligible]. So I appreciate your comments 11 supervision; and 12 you have made. I hope that your understanding of 12 13 That the foregoing transcript contains a 13 where we're trying to go with these rules and full, true, and accurate record of the proceedings 14 regulations is such that you'll be able to give us 14 had in the above and foregoing cause, which was 15 a new direction. We appreciate that. 15 16 heard at Boise, Idaho. Thank you. 16 IN WITNESS WHEREOF, I have hereunto set 17 17 (Proceedings concluded.) 18 my hand October 6, 2008. 18 -00000-19 19 20 20 21 21 22 22 Dianne E. Cromwell, Official Court Reporter 23 23 CSR No. 21 24 24 25 25