

1 STATE OF IDAHO

2 DEPARTMENT OF WATER RESOURCES

3 ----- x

4 RE: WATER ALLOCATION RULES AND :  
 5 REGULATIONS HEARINGS. :  
 6 :  
 7 ----- x

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11 TRANSCRIPT OF PROCEEDINGS REQUESTED BY

12 ATTORNEY GENERAL LAWRENCE WASDEN OF AUDIOTAPES HELD AND

13 MAINTAINED BY THE DEPARTMENT OF WATER RESOURCES

14 July 16, 1986, 7:40 p.m.

15 before NORMAN YOUNG, HEARING OFFICER

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17 TWIN FALLS COUNTY COURTHOUSE

18 TWIN FALLS, IDAHO

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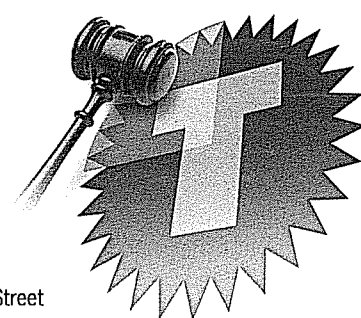
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23 Transcribed by

24 Frances J. Morris

25 CSR No. 696



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JOHN COURTNEY (phonetic)

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 Frances J. Morris  
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1 TWIN FALLS, IDAHO  
 2 July 16, 1986, 7:40 p.m.  
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 4 THE HEARING OFFICER: With me this evening  
 5 is Bob Fleenor from the state office. Bob is in  
 6 charge of our regional office program. Most of  
 7 you know him as the hearing officer and protestant  
 8 on applications.  
 9 My name is Norman Young, and I'm from  
 10 the state office of the Department of Water  
 11 Resources in Boise. I have been asked by Kenneth  
 12 Dunn, the director, to serve as the hearing  
 13 officer this evening in this matter.  
 14 The purpose of the hearing is to  
 15 provide an opportunity for formal testimony or  
 16 statements, either orally or in writing,  
 17 concerning the department's proposed rules and  
 18 regulations for water allocation in the state of  
 19 Idaho.  
 20 There are adopted rules at this time,  
 21 but the rule-making procedure says that the  
 22 director's proposing to repeal them and adopt  
 23 anew. So in that sense they are proposed rules.  
 24 The hearing is required by the  
 25 provisions of the Administrative Procedures Act,

1 APPEARANCES  
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 3 JOHN COURTNEY(phonetic)  
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1 Title 67, Chapter 52 of the Idaho Code and will be  
 2 conducted pursuant to the department's rules of  
 3 practice and procedure. There will not be an  
 4 opportunity to cross examine witnesses; however,  
 5 if there are clarifications in order to clarify  
 6 the testimony, I may take the liberty as hearing  
 7 officer of doing that.  
 8 After the hearing is concluded, we will  
 9 stay around to discuss issues that you want to  
 10 talk about. The rules implement the provisions of  
 11 Chapter 2, Title 42 of the Idaho Code with  
 12 particular emphasis on Section 42-203 of the Idaho  
 13 Code as they were amended during the 1985 and 1986  
 14 sessions of the legislature. Authority for the  
 15 adoption and the duty to adopt the rules comes  
 16 from Section 42-1805(8), Idaho Code.  
 17 A very brief background on how we got  
 18 to this point. The hearings presently being  
 19 conducted are the second round of formal hearings  
 20 being conducted on these rules. The first  
 21 hearings were conducted in January of 1986, and  
 22 the rules were adopted on April 8, 1986, to be  
 23 effective 20 days after that. On the 28th of  
 24 April, Idaho Power Company filed an objection with  
 25 the Department of Water Resources alleging that

1 there was a defect in the promulgation procedure  
 2 and filed a petition requesting that the  
 3 rule-making process be opened with reference to  
 4 Rule 5,2 of the adopted rules. These hearings are  
 5 a direct response to that petition.  
 6 The alleged general defect was that the  
 7 statutes which were to be implemented by the rules  
 8 and regulations were amended by the legislature  
 9 part way through the promulgation process. The  
 10 notice of intent to renew the rule-making process  
 11 announced the director's intention to repeal the  
 12 rules adopted April 8th and to adopt anew those  
 13 same rules. The notice also stayed implementation  
 14 of Rule 5,2 until readopted.  
 15 The notice indicated that, in addition  
 16 to the record being made in these four hearings  
 17 that are being held this week and next -- hearings  
 18 in Twin Falls, Idaho Falls, St. Anthony, and  
 19 Boise, -- that the director would also consider  
 20 the hearing made or the record made in the  
 21 previous round of hearings, including the written  
 22 comment received during that proceedings.  
 23 The notice of intent was published on  
 24 June 12th, 19th, and 26th in the newspapers in  
 25 Boise, Twin Falls, Idaho Falls, and Coeur d'Alene

1 with a corrected notice published the 20th in the  
 2 Boise Statesman. Copies of the notice of intent  
 3 were mailed to all those asking advanced notice  
 4 and to all others requesting them.  
 5 From this point on the general  
 6 procedures is this: We will conduct the hearings,  
 7 the locations I just mentioned. The record will  
 8 remain open through July 31st, 1986. As hearing  
 9 officer, I will prepare a report with  
 10 recommendations to the director concerning any  
 11 revisions to the rules that appear necessary as a  
 12 result of the public input received in this  
 13 process.  
 14 The preliminary schedule indicated that  
 15 we would attempt to adopt, again, the rules on  
 16 August 12th, 1986. Now, that's a pretty ambitious  
 17 schedule. Still hopeful of doing that. The rules  
 18 will then become effective on the 20th day after  
 19 the adoption. In the interim time, all the rules  
 20 are still in effect with the exception of Rule  
 21 5,2.  
 22 Now, are there any matters, preliminary  
 23 matters, that we should take up before we turn the  
 24 microphone over to the citizen testimony?  
 25 Okay. Today is July the 16th, 1986.

1 The time is 7:40. We are in the courtroom in Twin  
 2 Falls, Idaho. And the roster of attendance  
 3 indicates that Mr. Courtney(phonetic) would like  
 4 to make a formal statement.  
 5 Mr. Courtney, if you would come forward  
 6 perhaps to this chair so we can surely get your  
 7 statement. Give your name and address, and then  
 8 proceed with your statement.  
 9 MR. COURTNEY: Okay. My name is John  
 10 Courtney, and I'm on Route Twin Falls. And I'm  
 11 representing myself. And after Norm's  
 12 introduction I may be a little presumptuous here,  
 13 but I made a letter to the director of the Idaho  
 14 Department of Water Resources.  
 15 Dear Sir, I protest the repeal and anew  
 16 of Rule 5,2 contained in Chapter 2, Title 42,  
 17 Idaho Code relative to the appropriation of the  
 18 unappropriated public waters of the state of Idaho  
 19 and the reallocation of hydropower rights held in  
 20 trust by the state of Idaho. My opinion is that  
 21 the Idaho Power Company had ample opportunity  
 22 during prior rule-making and hearing sessions to  
 23 express their desires. To petition for a repeal  
 24 and anew literally before the rule had been put to  
 25 practical use constitutes, in my opinion, an

1 attempt to convert an opportunity into an  
 2 advantage. Sincerely, John Courtney.  
 3 THE HEARING OFFICER: Okay. Mr. Courtney,  
 4 appreciate your testimony, and I see you've  
 5 submitted it to us in writing as well. And that  
 6 will be put into the record.  
 7 MR. COURTNEY: Thank you.  
 8 THE HEARING OFFICER: Thank you.  
 9 Are there others that would like to  
 10 testify at this time? Hearing none, we will then  
 11 close this record at this meeting. And, of  
 12 course, this record will actually remain open for  
 13 written comment through the July 31st of this  
 14 year.  
 15 Thank you, and we will be happy to  
 16 remain and answer any questions and discuss the  
 17 rules as you wish.  
 18 (End of proceeding.)  
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1 REPORTER'S CERTIFICATE

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I, Frances J. Morris, Court Reporter, a  
Notary Public, do hereby certify:

That I am the reporter who transcribed  
the proceedings in the form of digital recording  
in the above-entitled action in machine shorthand  
and thereafter the same was reduced into  
typewriting under my direct supervision; and

That the foregoing transcript contains a  
full, true, and accurate record of the proceedings  
to the extent they were audible and intelligible  
in the above and foregoing cause, which was heard  
in various cities at Twin Falls, Idaho.

IN WITNESS WHEREOF, I have hereunto set  
my hand this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

Frances J. Morris, Court Reporter  
CSR No. 696

## Water Allocation Rules and Regulations Hearings 7/16/1986

<p style="text-align: center;"><b>A</b></p> <p>above-entitled 9:8  accurate 9:12  Act 3:25  action 9:8  addition 5:15  address 7:7  Administrative 3:25  adopt 3:22 4:15 5:12 6:15  adopted 3:20 4:22 5:4,12  adoption 4:15 6:19  advanced 6:3  advantage 8:2  alleged 5:6  alleging 4:25  allocation 1:4 3:18  ambitious 6:16  amended 4:13 5:8  ample 7:21  anew 3:23 5:12 7:15,24  announced 5:11  answer 8:16  Anthony 5:18  appear 6:11  applications 3:8  appreciate 8:4  appropriation 7:17  April 4:22,24 5:12  asked 3:11  asking 6:3  attempt 6:15 8:1  attendance 7:2  ATTORNEY 1:12  audible 9:13  AUDIOTAPES 1:12  August 6:16  Authority 4:14</p>	<p>Company 4:24 7:21  concerning 3:17 6:10  concluded 4:8  conduct 6:6  conducted 4:2,19,20,21  consider 5:19  constitutes 7:25  contained 7:16  contains 9:11  convert 8:1  Copies 6:2  corrected 6:1  COUNTY 1:17  course 8:12  Court 9:4,21  COURTHOUSE 1:17  Courtney 7:5,9,10 8:2,3,7  COURTNEY(phonetic)  2:3 7:3  courtroom 7:1  cross 4:4  CSR 1:24 9:22</p>	<p>Fleenor 3:5  foregoing 9:11,14  form 9:7  formal 3:15 4:19 7:4  forward 7:5  four 5:16  Frances 1:24 9:4,21  full 9:12</p>	<p>literally 7:24  little 7:12  locations 6:7</p> <p style="text-align: center;"><b>M</b></p> <p>machine 9:8  mailed 6:3  MAINTAINED 1:13  matter 3:13  matters 6:22,23  meeting 8:11  mentioned 6:7  microphone 6:24  Morris 1:24 9:4,21</p>	<p>proceeding 8:18  proceedings 1:11 5:22 9:7  9:12  process 5:3,9,10 6:13  program 3:6  promulgation 5:1,9  proposed 3:17,23  proposing 3:22  protest 7:15  protestant 3:7  provide 3:15  provisions 3:25 4:10  public 6:12 7:18 9:5  published 5:23 6:1  purpose 3:14  pursuant 4:2  put 7:24 8:6  p.m 1:14 3:2</p>
<p style="text-align: center;"><b>B</b></p> <p>background 4:17  Bob 3:5,5  Boise 3:11 5:19,25 6:2  brief 4:17</p>	<p style="text-align: center;"><b>D</b></p> <p>day 6:18 9:17  days 4:23  Dear 7:15  defect 5:1,6  Department 1:2,13 3:10  4:25 7:14  department's 3:17 4:2  desires 7:23  digital 9:7  direct 5:5 9:10  director 3:12 5:19 6:10  7:13  director's 3:22 5:11  discuss 4:9 8:16  doing 4:7 6:17  Dunn 3:12  duty 4:15  d'Alene 5:25</p>	<p style="text-align: center;"><b>G</b></p> <p>general 1:12 5:6 6:5  Give 7:7</p> <p style="text-align: center;"><b>H</b></p> <p>hand 9:17  happy 8:15  heard 9:14  hearing 1:15 3:4,7,12,14  3:24 4:6,8 5:20 6:8 7:22  8:3,8,10  hearings 1:5 4:18,19,21  5:4,16,17,21 6:6  held 1:12 5:17 7:19  hereunto 9:16  hopeful 6:17  hydropower 7:19</p>	<p style="text-align: center;"><b>N</b></p> <p>N 2:1  name 3:9 7:7,9  necessary 6:11  newspapers 5:24  Norman 1:15 3:9  Norm's 7:11  Notary 9:5  notice 5:10,13,15,23 6:1,2  6:3</p>	<p style="text-align: center;"><b>Q</b></p> <p>questions 8:16</p>
<p style="text-align: center;"><b>C</b></p> <p>C 2:1 9:1,1  cause 9:14  certify 9:5  chair 7:6  Chapter 4:1,11 7:16  charge 3:6  cities 9:15  citizen 6:24  clarifications 4:5  clarify 4:5  close 8:11  Code 4:1,11,13,16 7:17  Coeur 5:25  come 7:5  comes 4:15  comment 5:22 8:13</p>	<p style="text-align: center;"><b>E</b></p> <p>E 2:1,1 9:1,1,1,1  effect 6:20  effective 4:23 6:18  either 3:16  emphasis 4:12  evening 3:4,13  examine 4:4  exception 6:20  express 7:23  extent 9:13</p>	<p style="text-align: center;"><b>I</b></p> <p>Idaho 1:1,18 3:1,19 4:1  4:11,12,16,24 5:18,25  7:2,13,17,18,20,21 9:15  implement 4:10  implementation 5:13  implemented 5:7  including 5:21  indicated 5:15 6:14  indicates 7:3  input 6:12  intelligible 9:13  intent 5:10,23 6:2  intention 5:11  interim 6:19  introduction 7:12  issues 4:9</p>	<p style="text-align: center;"><b>O</b></p> <p>O 9:1  objection 4:24  office 3:5,6,10  officer 1:15 3:4,7,13 4:7  6:9 8:3,8  Okay 6:25 7:9 8:3  open 6:8 8:12  opened 5:3  opinion 7:20,25  opportunity 3:15 4:4 7:21  8:1  orally 3:16  order 4:5  o0o 8:19</p>	<p style="text-align: center;"><b>R</b></p> <p>R 2:1 9:1,1,1,1  readopted 5:14  reallocation 7:19  received 5:22 6:12  recommendations 6:10  record 5:16,20 6:7 8:6,11  8:12 9:12  recording 9:7  reduced 9:9  reference 5:3  regional 3:6  regulations 1:5 3:18 5:8  relative 7:17  remain 6:8 8:12,16  renew 5:10  repeal 3:22 5:11 7:15,23  report 6:9  reporter 9:4,6,21  representing 7:11  REQUESTED 1:11  requesting 5:2 6:4  required 3:24  Resources 1:2,13 3:11  4:25 7:14  response 5:5  result 6:12  revisions 6:11  rights 7:19  roster 7:2  round 4:19 5:21  Route 7:10  rule 5:4,14 6:20 7:16,24  rules 1:4 3:17,20,23 4:2  4:10,15,20,22 5:4,7,12  5:13 6:11,15,17,19 8:17  rule-making 3:21 5:3,10  7:22</p>
	<p style="text-align: center;"><b>F</b></p> <p>F 9:1  Falls 1:17,18 3:1 5:18,18  5:25,25 7:2,10 9:15  filed 4:24 5:2  first 4:20</p>	<p style="text-align: center;"><b>J</b></p> <p>J 1:24 9:4,21  January 4:21  John 2:3 7:9 8:2  July 1:14 3:2 6:8,25 8:13  June 5:24</p>	<p style="text-align: center;"><b>P</b></p> <p>P 2:1,1 9:1  part 5:9  particular 4:12  petition 5:2,5 7:23  point 4:18 6:5  Power 4:24 7:21  practical 7:25  practice 4:3  preliminary 6:14,22  prepare 6:9  presently 4:18  presumptuous 7:12  pretty 6:16  previous 5:21  prior 7:22  procedure 3:21 4:3 5:1  procedures 3:25 6:6  proceed 7:8</p>	
		<p style="text-align: center;"><b>K</b></p> <p>Kenneth 3:11  know 3:7</p> <p style="text-align: center;"><b>L</b></p> <p>LAWRENCE 1:12  legislature 4:14 5:8  letter 7:13  liberty 4:6</p>		

Water Allocation Rules and Regulations Hearings 7/16/1986

<p style="text-align: center;"><b>S</b></p> <p>S 2:1 9:1  says 3:21  schedule 6:14,17  second 4:19  Section 4:12,16  see 8:4  sense 3:23  serve 3:12  sessions 4:14 7:22  set 9:16  shorthand 9:8  Sincerely 8:2  Sir 7:15  St 5:18  state 1:1 3:5,10,18 7:18  7:20  statement 7:4,7,8  statements 3:16  Statesman 6:2  statutes 5:7  stay 4:9  stayed 5:13  submitted 8:5  supervision 9:10  surely 7:6</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p>T 9:1,1,1  take 4:6 6:23  talk 4:10  testify 8:10  testimony 3:15 4:6 6:24  8:4  Thank 8:7,8,15  time 3:20 6:19 7:1 8:10  Title 4:1,11 7:16  Today 6:25  transcribed 1:23 9:6  transcript 1:11 9:11  true 9:12  trust 7:20  turn 6:23  Twin 1:17,18 3:1 5:18,25  7:1,10 9:15  typewriting 9:10</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p>unappropriated 7:18  use 7:25</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p>various 9:15</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p>want 4:9  WASDEN 1:12  water 1:2,4,13 3:10,18  4:25 7:14  waters 7:18</p>	<p>way 5:9  week 5:17  <b>WHEREOF</b> 9:16  wish 8:17  <b>WITNESS</b> 9:16  witnesses 4:4  writing 3:16 8:5  written 5:21 8:13</p> <hr/> <p style="text-align: center;"><b>X</b></p> <p>x 1:3,6</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p>year 8:14  Young 1:15 3:9</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p>12th 5:24 6:16  16 1:14 3:2  16th 6:25  19th 5:24  1985 4:13  1986 1:14 3:2 4:13,21,22  6:8,16,25</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p>2 4:11 7:16  20 4:23  20th 6:1,18  2008 9:17  26th 5:24  28th 4:23</p> <hr/> <p style="text-align: center;"><b>3</b></p> <p>31st 6:8 8:13</p> <hr/> <p style="text-align: center;"><b>4</b></p> <p>42 4:11 7:16  42-1805(8) 4:16  42-203 4:12</p> <hr/> <p style="text-align: center;"><b>5</b></p> <p>5,2 5:4,14 6:21 7:16  52 4:1</p> <hr/> <p style="text-align: center;"><b>6</b></p> <p>67 4:1  696 1:24 9:22</p> <hr/> <p style="text-align: center;"><b>7</b></p> <p>7:40 1:14 3:2 7:1</p> <hr/> <p style="text-align: center;"><b>8</b></p> <p>8 4:22  8th 5:12</p>			
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R E P O R T E R ' S C E R T I F I C A T E

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I, Frances J. Morris, Court Reporter, a Notary Public, do hereby certify:

That I am the reporter who transcribed the proceedings in the form of digital recording in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing transcript contains a full, true, and accurate record of the proceedings to the extent they were audible and intelligible in the above and foregoing cause, which was heard in various cities at Twin Falls, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of October 2008.

*Frances Morris*

\_\_\_\_\_  
Frances J. Morris, Court Reporter  
CSR No. 696

