APPEARANCES

JOHN COURTNEY (phonetic)

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1	STATE OF IDAHO	1	TWIN FALLS, IDAHO
	DEPARTMENT OF WATER RESOURCES	2	July 16, 1986, 7:40 p.m.
3	X	3	:
4		4	THE HEARING OFFICER: With me this evening
_	RE: WATER ALLOCATION RULES AND :	5	is Bob Fleenor from the state office. Bob is in
5	REGULATIONS HEARINGS. :	6	charge of our regional office program. Most of
6	.	7	you know him as the hearing officer and protestant
	X	8	on applications.
7 8		9	My name is Norman Young, and I'm from
9		10	the state office of the Department of Water
10	TRANSCOURT OF PROGRESS PROGRESS PAR	11	
11 12	TRANSCRIPT OF PROCEEDINGS REQUESTED BY ATTORNEY GENERAL LAWRENCE WASDEN OF AUDIOTAPES HELD AND	ĺ	Resources in Boise. I have been asked by Kenneth
13	MAINTAINED BY THE DEPARTMENT OF WATER RESOURCES	1-2	Dunn, the director, to serve as the hearing
14		13	officer this evening in this matter.
15	July 16, 1986, 7:40 p.m.	14	The purpose of the hearing is to
	before NORMAN YOUNG, HEARING OFFICER	15	provide an opportunity for formal testimony or
16		16	statements, either orally or in writing,
17	TWIN FALLS COUNTY COURTHOUSE	17	concerning the department's proposed rules and
18	TWIN FALLS, IDAHO	18	regulations for water allocation in the state of
19		19	Idaho.
20 21		20	There are adopted rules at this time,
22	the control of the second of the control of the con	21	but the rule-making procedure says that the
23		22	director's proposing to repeal them and adopt
24	Transcribed by Frances J. Morris	23	anew. So in that sense they are proposed rules.
	CSR No. 696	24	The hearing is required by the
25	Co.	25	provisions of the Administrative Procedures Act,
	Page 2		Page 4
1	APPEARANCES	1	Title 67, Chapter 52 of the Idaho Code and will be
2		2	
3	JOHN COURTNEY(phonetic)	2	conducted pursuant to the department's rules of
	JOHN COURTNEY(phonetic)	l	conducted pursuant to the department's rules of practice and procedure. There will not be an
3	JOHN COURTNEY(phonetic) *****	3	conducted pursuant to the department's rules of practice and procedure. There will not be an opportunity to cross examine witnesses; however,
3	-	3 4	conducted pursuant to the department's rules of practice and procedure. There will not be an opportunity to cross examine witnesses; however, if there are clarifications in order to clarify
3 4	* * * * *	3 4 5	conducted pursuant to the department's rules of practice and procedure. There will not be an opportunity to cross examine witnesses; however, if there are clarifications in order to clarify the testimony, I may take the liberty as hearing
3 4 5	* * * * *	3 4 5 6	conducted pursuant to the department's rules of practice and procedure. There will not be an opportunity to cross examine witnesses; however, if there are clarifications in order to clarify the testimony, I may take the liberty as hearing officer of doing that.
3 4 5 6 7 8	****	3 4 5 6 7	conducted pursuant to the department's rules of practice and procedure. There will not be an opportunity to cross examine witnesses; however, if there are clarifications in order to clarify the testimony, I may take the liberty as hearing officer of doing that. After the hearing is concluded, we will
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3 4 5 6 7 8 9 10 11 12 13 14	*****	3 4 5 6 7 8 9 10 11 12 13	conducted pursuant to the department's rules of practice and procedure. There will not be an opportunity to cross examine witnesses; however, if there are clarifications in order to clarify the testimony, I may take the liberty as hearing officer of doing that. After the hearing is concluded, we will stay around to discuss issues that you want to talk about. The rules implement the provisions of Chapter 2, Title 42 of the Idaho Code with particular emphasis on Section 42-203 of the Idaho Code as they were amended during the 1985 and 1986 sessions of the legislature. Authority for the
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22 22	****	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	conducted pursuant to the department's rules of practice and procedure. There will not be an opportunity to cross examine witnesses; however, if there are clarifications in order to clarify the testimony, I may take the liberty as hearing officer of doing that. After the hearing is concluded, we will stay around to discuss issues that you want to talk about. The rules implement the provisions of Chapter 2, Title 42 of the Idaho Code with particular emphasis on Section 42-203 of the Idaho Code as they were amended during the 1985 and 1986 sessions of the legislature. Authority for the adoption and the duty to adopt the rules comes from Section 42-1805(8), Idaho Code. A very brief background on how we got to this point. The hearings presently being conducted are the second round of formal hearings being conducted on these rules. The first hearings were conducted in January of 1986, and the rules were adopted on April 8, 1986, to be

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there was a defect in the promulgation procedure and filed a petition requesting that the rule-making process be opened with reference to Rule 5,2 of the adopted rules. These hearings are a direct response to that petition.

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The alleged general defect was that the statutes which were to be implemented by the rules and regulations were amended by the legislature part way through the promulgation process. The notice of intent to renew the rule-making process announced the director's intention to repeal the rules adopted April 8th and to adopt anew those 13 same rules. The notice also stayed implementation of Rule 5,2 until readopted.

The notice indicated that, in addition to the record being made in these four hearings that are being held this week and next -- hearings in Twin Falls, Idaho Falls, St. Anthony, and Boise, -- that the director would also consider the hearing made or the record made in the previous round of hearings, including the written comment received during that proceedings.

The notice of intent was published on June 12th, 19th, and 26th in the newspapers in Boise, Twin Falls, Idaho Falls, and Coeur d'Alene Page 7

The time is 7:40. We are in the courtroom in Twin Falls, Idaho. And the roster of attendance indicates that Mr. Courtney(phonetic) would like to make a formal statement.

Mr. Courtney, if you would come forward perhaps to this chair so we can surely get your statement. Give your name and address, and then proceed with your statement.

MR. COURTNEY: Okay. My name is John Courtney, and I'm on Route Twin Falls. And I'm representing myself. And after Norm's introduction I may be a little presumptuous here, but I made a letter to the director of the Idaho Department of Water Resources.

Dear Sir, I protest the repeal and anew of Rule 5,2 contained in Chapter 2, Title 42, Idaho Code relative to the appropriation of the unappropriated public waters of the state of Idaho and the reallocation of hydropower rights held in trust by the state of Idaho. My opinion is that the Idaho Power Company had ample opportunity during prior rule-making and hearing sessions to express their desires. To petition for a repeal and anew literally before the rule had been put to practical use constitutes, in my opinion, an

with a corrected notice published the 20th in the Boise Statesman. Copies of the notice of intent were mailed to all those asking advanced notice and to all others requesting them.

From this point on the general procedures is this: We will conduct the hearings, the locations I just mentioned. The record will remain open through July 31st, 1986. As hearing officer, I will prepare a report with recommendations to the director concerning any revisions to the rules that appear necessary as a result of the public input received in this process.

The preliminary schedule indicated that we would attempt to adopt, again, the rules on August 12th, 1986. Now, that's a pretty ambitious schedule. Still hopeful of doing that. The rules will then become effective on the 20th day after the adoption. In the interim time, all the rules are still in effect with the exception of Rule 5,2.

Now, are there any matters, preliminary matters, that we should take up before we turn the microphone over to the citizen testimony? Okay. Today is July the 16th, 1986.

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attempt to convert an opportunity into an advantage. Sincerely, John Courtney.

THE HEARING OFFICER: Okay. Mr. Courtney, appreciate your testimony, and I see you've submitted it to us in writing as well. And that will be put into the record.

MR. COURTNEY: Thank you.

THE HEARING OFFICER: Thank you.

Are there others that would like to testify at this time? Hearing none, we will then close this record at this meeting. And, of course, this record will actually remain open for written comment through the July 31st of this year.

Thank you, and we will be happy to remain and answer any questions and discuss the rules as you wish.

(End of proceeding.) -000-

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1	REPORTER'S CERTIFICATE	
2		
3		
4 5	I, Frances J. Morris, Court Reporter, a	
5 6	Notary Public, do hereby certify: That I am the reporter who transcribed	
7	the proceedings in the form of digital recording	
8	in the above-entitled action in machine shorthand	
9	and thereafter the same was reduced into	
10	typewriting under my direct supervision; and	
11	That the foregoing transcript contains a	
12	full, true, and accurate record of the proceedings	
13	to the extent they were audible and intelligible	
14	in the above and foregoing cause, which was heard	
15	in various cities at Twin Falls, Idaho.	
16	IN WITNESS WHEREOF, I have hereunto set	
17 18	my hand this day of 2008.	
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21		
	Frances J. Morris, Court Reporter	
22	CSR No. 696	
23		
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1. /

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 8% day of 2008.

Frances J. Morris, Court Reporter

CSR No. 696

