

BEAR RIVER COMPACT MEETING

SHIRLEY-SAVOY HOTEL, DENVER, COLORADO

November 12, 1945

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Minutes of the meeting of Bear River Tri-State Committee.

A meeting of the Bear River Tri-State Committee was held at the Shirley-Savoy Hotel, Denver, November 12, 1945, at 10:00 a.m. The following were present:

L. C. Bishop, Cheyenne, Wyoming  
Mark R. Kulp, Boise, Idaho  
Robert Follansbee, Denver, Colorado  
C. S. Howard, Albuquerque, New Mexico  
Berkeley Johnson, Santa Fe, New Mexico  
John H. Gardiner, Tucson, Arizona  
F. M. Cooper, Grace, Idaho  
Gerald Irvine, Salt Lake City, Utah  
John C. Beebe, San Francisco, California  
Wm. R. Wallace, Salt Lake City, Utah  
M. T. Wilson, Salt Lake City, Utah  
Ed. H. Watson, Salt Lake City, Utah  
Louis J. O'Marr, Cheyenne, Wyoming  
G. L. Parker, Washington, D. C.  
W. V. Iorns, Logan, Utah  
Frank Langley, Boise, Idaho  
A. L. Merrill, Pocatello, Idaho  
Roy B. Heilman, Alamosa, Colorado  
John W. Server, Jr., San Francisco, California

Ed. H. Watson, State Engineer of Utah, presided, and M. T. Wilson acted as secretary.

Mr. Watson opened the meeting with an explanation that since the June meeting several attempts had been made to have the Attorneys General of the States of Idaho, Utah, and Wyoming meet to consider the legal aspects of the proposed Bear River Compact. However, all of the scheduled meetings were postponed because one or more of the Attorneys General were unable to attend

at the time set for the meeting. As a result of the most recent meeting scheduled at Salt Lake City on November 9 (but which was again postponed), an informal discussion was held by A. L. Merrill, Attorney, Pocatello, Idaho, E. J. Skeen, Attorney, Bureau of Reclamation, Salt Lake City, E. W. Clyde, Assistant Attorney General, State of Utah, engineers representing the Utah State Engineer's office, and engineers of the Geological Survey. At that informal conference it was concluded that additional stream flow information on the Bear River was desirable but that sufficient records were now available for detailed consideration of a Tri-State Compact. It was agreed that the next important procedure would be for the Attorneys General of the three States to consider the general legal principles to be followed in developing the Compact. Three possibilities were suggested:

- (1) A compact based on priorities disregarding State lines.
- (2) A compact allocating a definite amount of water or percentage of total flow to each one of the States based on engineering data now available, and irrigated acreage.
- (3) A compact based on a combination of both principles noted above.

It was also noted that other principles for an equitable distribution of the water should be taken into consideration.

The desirability was discussed of having an unbiased engineer consultant, preferably residing outside the area of the three States, make a detailed study of the engineering information and after obtaining legal advice, prepare a tentative compact for consideration of the State representatives. Such a consultant could be hired jointly by the three State Engineers.

The meeting was continued by Mr. W. V. Iorns, Project Engineer, U. S. Geological Survey, making a progress report on his hydrographic work in the Bear River Basin. In his oral report it was explained that the 1944 stream flow information was now completed and that his formal report would be sent to the interested parties by the end of the month. He emphasized that the report was a presentation of basic run-off data without attempting to give any interpretation to information collected as that duty is clearly a function of the three States involved. He discussed in considerable detail how the water supply records were compiled for each section of the main stem and its tributaries so that it could be easily and advantageously used by all of those interested in the Bear River Basin.

From earlier records collected on the Bear River it was noted that the 1944 runoff was slightly above normal. Stream flow for the 1945 water year just completed was considerably above normal because of the heavy spring precipitation. That unusual condition delayed irrigation diversions by several weeks.

A detailed map of the Bear River Basin was presented showing, among other things, location of all gaging stations, diversions, and physical features of the Basin. At the request of the Chair Mr. Iorns reported on the personnel assigned to the Bear River work and outlined the various sections of the river covered by each hydrographer and gage reader.

A financial report was then read by Mr. Iorns. The following is a summary of the salient facts:

CASH FUNDS FOR FISCAL YEAR ENDING JUNE 30, 1945

|   |                  |
|---|------------------|
| Idaho   | \$ 3,799.99      |
| Utah  | 3,770.83         |
| Wyoming   | 4,500.00         |
| Balance in State Funds June 30, 1944                | 1,325.15         |
| Geological Survey                                   | 10,487.49        |
| Balance in Geological Survey Funds<br>June 30, 1944 | 169.84           |
| Bureau of Reclamation                               | <u>11,683.25</u> |
| Total   | \$35,736.55      |

DISTRIBUTION OF EXPENDITURES JULY 1, 1944 TO JUNE 30, 1945

| <u>Salary</u> | <u>Sub-</u><br><u>sistence</u> | <u>Travel</u> | <u>Office,</u><br><u>Supplies,</u><br><u>Equip.</u> | <u>Mater-</u><br><u>ials</u> | <u>Gage</u><br><u>Readers</u> | <u>W. O.</u><br><u>Pro-Rate</u> | <u>Total</u> |
|---------------|--------------------------------|---------------|---|------------------------------|-------------------------------|---------------------------------|--------------|
| 17,863.76     | 1,655.36                       | 4,904.41      | 2,392.04  | 700.53                       | 7,307.47                      | 707.60                          | 35,531.17    |

The Bureau of Reclamation made the following payments to the Geological Survey to adjust their total disbursements to twenty-five percent of the total cost.

|                   |
|-------------------|
| \$ 576.47         |
| 908.92            |
| 749.79            |
| 672.45            |
| <u>\$2,907.63</u> |

This adjustment resulted in the following net disbursements:

|                        |                  |
|------------------------|------------------|
| U. S. G. S. and States | \$23,847.92      |
| Bureau of Reclamation  | <u>11,683.25</u> |
| Total                  | \$35,531.17      |

At the end of the hydrographic report the Chairman asked for questions and discussions from those in attendance and noted that the meeting would be open to a round-table discussion.

Several in attendance emphasized the necessity or desirability of having the Attorneys General outline the basic principles to be used in consideration of the Bear River Compact; also the advantages that would be gained by the three States employing a consulting engineer to study the basic engineering information and draft a preliminary compact. In consideration of an unbiased individual to handle the work, Mr. L. S. Wing of the Federal Power Commission was suggested.

Mr. G. L. Parker, Chief Hydraulic Engineer, Geological Survey, was called upon for remarks. He discussed general principles of river compacts and noted that division of water was generally made between the States involved and not by individual water rights.

Mr. J. C. Beebe of the Federal Power Commission was also requested to comment on river basin compacts. He emphasized the value of the basic water-supply data now being collected in the Bear River Basin in comparison with that available on the Yellowstone River when a compact was being considered for that Basin.

Mr. F. M. Cooper of Grace, Idaho, noted the desirability of having records for a low water year before final terms of the compact were formulated.

Mr. L. C. Bishop, State Engineer of Wyoming, discussed the necessity of obtaining the consent of Congress by the three States in order to negotiate and enter into a compact for the division of the waters of the Bear River and its tributaries.

After the following Bill was read it was moved, seconded, and unanimously approved that the Bill should be sent to Congressional representatives of the States of Wyoming, Idaho and Utah in Washington, D. C.

"S. R. \_\_\_\_\_

IN THE SENATE OF THE UNITED STATES

A B I L L

"Granting the consent of Congress to the States of Utah, Idaho and Wyoming to negotiate and enter into a compact for the division of the waters of the Bear River and its tributaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That consent of Congress is hereby given to the States of Utah, Idaho and Wyoming to negotiate and enter into a compact providing for an equitable division and apportionment among the said States of the waters of the Bear River and all of its tributaries in the three States, upon condition that one suitable person, who shall be appointed by the President of the United States, shall participate in said negotiations as the representative of the United States and shall make report to Congress of the proceedings and of any compact entered into: Provided, That any such compact shall not be binding or obligatory upon any of the parties thereto unless and until the same shall have been ratified by the legislature of each of said States and approved by the Congress of the United States.

"SEC. 2. There is hereby authorized to be appropriated a sufficient sum to pay the salary and expenses of the representative of the United States appointed hereunder: Provided, That such representative, if otherwise employed by the United States, while so employed shall not receive additional salary in the appointment hereunder."

Mr. A. L. Merrill, Attorney, Pocatello, Idaho, entered the meeting near its conclusion and was therefore asked by the Chair if he desired to make any comments. Mr. Merrill discussed general principles to be used in consideration of a river compact and outlined the desirability of having a meeting of the three State Attorneys General and reviewed several of the subjects discussed in the informal meeting held at Salt Lake City on November 9.

The meeting adjourned at noon subject to call of the Chairman for another meeting to be held in the near future at Montpelier, Idaho, and with the understanding that discussions would be continued by the three State Engineers and the two State Attorneys General after luncheon.

ED. H. WATSON, CHAIRMAN

Temporary Secretary,

M. T. Wilson

*Approved by the Board of Engineers on Nov. 12, 1945*

LEGAL PHASES OF THE PROPOSED BEAR RIVER COMPACT  
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*Consider part of Minutes Nov. 2, 45*

Several years ago, the State Engineers of Utah and Wyoming and the State Reclamation Engineer of Idaho, organized what is known as the Bear River Tri-State Committee for the purpose of assembling necessary engineering data and negotiating a compact for the division of the water of the Bear River system among the three states.

Cooperative agreements were made with the Bureau of Reclamation and the Geological Survey for stream gaging. The actual stream gaging work under such cooperative agreements was commenced under the direction of Thomas Curtis of the Bureau of Reclamation and was continued under the supervision of T. B. Iorns of the Geological Survey. A written report is being prepared by the Geological Survey for submission to the committee.

At a meeting of the committee held in Denver on November 13, 1944, a resolution was passed requiring the three states to compile and submit to the chairman for distribution a list of water rights on the Bear River and tributaries showing:

1. the names of the water users;
2. priority dates;
3. quantity of water appropriated;
4. points of diversion, and
5. description of use of water which, in case of irrigation use, shall include a description of the land irrigated.

The basic engineering data and the lists of water rights should soon be available. Certain legal phases of the problem of drafting a compact should now be examined. They include:



1. Statutory authority for the establishment and execution of compact;
2. The basis for division of water, and
3. The administrative provisions for entering a compact.

MEMORANDUM FOR THE PRESIDENT

Article I, Section 10 of the Constitution of the United States requires the consent of Congress before any two or more states may enter into any agreement or compact. It provides:

"No state shall, without the consent of Congress, . . . . .  
 enter into any agreement or compact with another state  
 . . . . ."

It is recommended that a bill of introduction be prepared by the joint sub-committee for submission to the congressional delegations of the three interested states with the request that prompt action be taken to obtain its passage.

The President of the United States, General Dwight D. Eisenhower, has represented the government in the negotiations for the Colorado River Compact and following that precedent a representative has been appointed to meet with the state officials in subsequent negotiations of river compacts. A request should be made for the designation of a representative of the United States to meet with the interstate committee.

The State Engineer of Colorado, C. C. Johnson, Section 100-1-101, 1921, authorized to represent the State of Colorado . . . . . in all interstate conferences held for the purpose of negotiating and entering into compacts between the State of Colorado and other sister states for the division of the waters of interest in rivers, lakes or other sources of supply; provided, however, that no such compact entered by the State Engineer shall not become binding upon the State of Colorado if it has been

ratified and approved by the legislatures of Utah and the legislatures of other states which are, vice versa.

Chapter 102, Session Laws of 1911, L. 2, authorizes the State Engineer to act as commissioner in the construction of canals for the division of the waters of interstate streams, several rivers, including the Bear River and its tributaries, are specifically mentioned in the act. It is further provided that cooperation be obtained by the State Engineer and not by the State Engineer, which is authorized by its legislature, the legislative council of Colorado, the Utah State and the Congress of the United States.

Division of the Bear River

Below are some proposed provisions for the division of the water, if necessary to be made between the three states which are divided among the three states. The proposed division of the water is based on the case of *Winters v. Utah*, 237 U.S. 47, 1915, 1916, 1917, which is a case in which the stream flows are divided among the three states. It is not easy to deal with such a case, but it is frequently difficult to find a practical way to divide the water. The division of the water among the three states should be divided on the basis of the rights of the three states, but arranged according to the agreement in each state, or upon a division of these of water. The water should be divided and should be equal in the amount of water in each state, and on the line of flow in the river in each state, or should the drafters treat the river system as a reservoir in each of the three states.

with its amount or acre feet of water, or a certain percentage of the water yielded on some suitable basis.

Where similar problems have confronted the courts, what has been the solution?

Cases involving the conflict between the rights of individuals to the use of the water of interstate streams have been decided on the basis of the doctrine of appropriation, and for the purpose of the adjudication boundary lines have been disregarded.

*King v. Locks*, 21 Opinions, 100, 101, 102;  
*Wright v. Neelant*, 10 Opinions, 77, 78, 79;  
*Albion-Idaho Land Co. v. Nat. Irrigation Co.*, 99 Opinions, 107.

In conflicts between parties over the water of interstate streams, the Supreme Court of the United States has used the equitable apportionment of water among the states and has applied the doctrine of appropriation if the states involved in the controversy had adopted such doctrine by legislation or court decisions.

*Wright v. Neelant*, 10 Opinions, 77, 78, 79;  
*King v. Locks*, 21 Opinions, 100, 101, 102;  
*Washington v. Oregon*, 99 Opinions, 107;  
*Albion-Idaho Land Co. v. Nat. Irrigation Co.*, 99 Opinions, 107.

In the *Albion-Idaho Land Co. v. Nat. Irrigation Co.*, 99 Opinions, 107, the Supreme Court recognized that in determining the equitable rights of parties, Colorado and Nebraska should be treated as the riparian states. . . . The doctrine of appropriation is the guiding principle, and the equitable apportionment of water among the states and other riparian states is the primary consideration. . . . The physical and climatic conditions, the comparative use of water in the several sections of the river, the extent and rate of return flows, the extent of establishments using the water, the availability of storage water, the practical effect of wasteful uses on upstream users, the damage to upstream users as

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LEGAL PHASES OF THE PROPOSED BEAR RIVER COMPACT

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*Consider part of Minutes Nov 24 45*

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Cooperative agreements were made with the Bureau of Reclamation and the Geological Survey for stream gaging. The actual stream gaging work under such cooperative agreements was commenced under the direction of Thomas Curtis of the Bureau of Reclamation and was continued under the supervision of W. B. Iorns of the Geological Survey. A written report is being prepared by the Geological Survey for submission to the committee.

At a meeting of the committee held in Denver on November 13, 1944, a resolution was passed requiring the three states to compile and submit to the chairman for distribution a list of water rights on the Bear River and tributaries showing:

1. the names of the water users;
2. priority dates;
3. quantity of water appropriated;
4. points of diversion, and
5. description of use of water which, in case of irrigation use, shall include a description of the land irrigated.

The basic engineering data and the lists of water rights should soon be available. Certain legal phases of the problem of drafting a compact should now be examined. They include:

1. Statutory authority for negotiating and executing a compact;
2. The basis for division of water, and
3. The administrative provisions for enforcing a compact.

STATUTORY AUTHORITY FOR COMPACT

Article 1, Section 10 of the Constitution of the United States requires the consent of Congress before any two or more states may enter into any agreement or compact. It provides:

"No state shall, without the consent of Congress, . . . . .  
enter into any agreement or compact with another state  
. . . . .".

It is recommended that an appropriate bill be prepared by the legal sub-committee for submission to the Congressional delegations of the three interested states with the request that prompt action be taken to obtain its passage.

The President of the United States appointed Herbert Hoover to represent the government in the negotiations for the Colorado River Compact and following that precedent a representative has been appointed to meet with the state officials in subsequent negotiations of river compacts. A request should be made for the designation of a representative of the United States to meet with the Tri-State Committee.

The State Engineer of Utah is, by Section 100-2-6 U.S.C.A. 1943, authorized to represent the State of Utah". . . . . in all interstate conferences held for the purpose of negotiating and entering into compacts between the State of Utah and one or more sister states for the division of the waters of interstate rivers, lakes or other sources of supply; provided, however, that any such compact signed by the State Engineer shall not become binding upon the State of Utah until it has been

ratified and approved by the legislature of Utah and the legislatures of other states which are parties thereto."

Chapter 102, Session Laws of Wyoming, 1941, authorizes the State Engineer to act as commissioner in the negotiation of compacts for the division of the waters of interstate streams, several rivers, including the Bear River and its tributaries, are specifically mentioned in the Act. It is further provided that compacts negotiated by the State Engineer are not binding upon the State of Wyoming until ratified by its legislature, the legislatures of all other interested states and the Congress of the United States.

#### LEGAL BASIS FOR DIVISION OF WATER

Before any real progress can be made in the drafting of a compact, it is necessary to determine the basis upon which water shall be divided among the three states. The Supreme Court of the United States held in the case of Kansas v. Colorado, 206 U. S. 46, that states through which an interstate stream flows are entitled to an equitable apportionment of its water. It is easy to talk about equity and equality of right, but it is frequently difficult to find a practical basis for the division of water. The drafters of the compact should determine whether the water of Bear River should be divided upon the basis of priority of the existing rights in the various states, the irrigated acreages, the potential development in each state, or upon a combination of these or other bases. Should the state lines be disregarded and should a compact in the nature of a decree in equity be made, based on the law of "first in time is first in right", or should the drafters treat the river system as a reservoir and allocate to each of the three states a

definite number of acre feet of water, or a definite percentage of the water yielded on some equitable basis?

Where similar problems have confronted the courts, what has been the solution?

Cases involving the adjudication of the rights of individuals to the use of the water of interstate streams have been decided on the basis of the doctrine of appropriation, and for the purpose of the adjudication boundary lines have been disregarded.

Willey v. Decker, 11 Wyoming 496, 73 P. 210;  
Taylor v. Hewlett, 15 Idaho 265, 97 P. 37;  
Albion-Idaho Land Co. v. Naf Irrigation Co., 97 F (2d) 439.

In contests between states over the water of interstate streams, the Supreme Court of the United States has made an "equitable apportionment" by disregarding the state lines and applying the doctrine of appropriation if the states involved in the controversy had adopted such doctrine by legislation or court decisions.

Wyoming v. Colorado 259 U.S. 419; 66 L. Ed. 999;  
Wyoming v. Colorado 286 U.S. 494; 76 L. Ed. 1245;  
Washington v. Oregon 297 U.S. 517;  
Nebraska v. Wyoming 89 L. Ed. 1355.

In the last cited case decided June 11, 1945, the Supreme Court recognized that in determining the relative rights of Wyoming, Colorado and Nebraska to water of the North Platte River ". . . priority of appropriation is the guiding principle", but held that in making an equitable apportionment among the states many other factors should be considered including ". . . . the physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, the damage to upstream areas as

compared to the benefits to downstream areas if a limitation is imposed on the former."

Although, of course, the states involved are at liberty to write a compact providing for the division of the water on any basis they see fit, it may be helpful to consider in connection with the court decisions cited the various compacts heretofore made involving the apportionment of interstate water.

Colorado River Compact, November 24, 1922.

This compact divided the river basin into two parts, an upper basin and a lower basin, and allocated to each in perpetuity the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum. The lower basin was given the right to increase its beneficial consumptive use of water by 1,000,000 acre feet per annum. The states of the upper division (Colorado, New Mexico, Utah and Wyoming) agreed that the flow of the river at Lee Ferry would not be depleted below 75,000,000 acre feet for any period of 10 consecutive years, beginning with October 1 next succeeding the ratification of the compact. It was provided that further equitable apportionment of water could be made after October 1, 1963 if and when either basin had made beneficial consumptive use of all water allocated to it.

La Plata River Compact, November 27, 1922.

This compact between the states of Colorado and New Mexico divided the water of the La Plata River, a tributary of the San Juan. Each state is given unrestricted use of water within its boundaries between December 1 and the 15th day of the succeeding February and at all other times when the flow of the river at a certain gaging station is 100 s.f. or more. When the river flow is below 100 s.f. at such station, the State of Colorado is required to deliver to New Mexico one-half of the mean flow measured at a definitely described point.



Whenever the flow is so low that in the judgment of the State Engineers of the two states the greatest beneficial use of its water may be made by distributing all of the water of the river to each state at alternating periods, the State Engineers are authorized to rotate the use. They are also given authority to promulgate rules and regulations for carrying out the provisions of the compact. It is apparent from the provisions of the compact, although it is not expressly stated, that the allocations to the two states were based on priority of appropriation.

Rio Grande Compact, February 12, 1929 (46 Stat., at Large 767).

The states of Colorado, New Mexico and Texas, by compact, agreed to a temporary plan for division of the water of the Rio Grande, pending the construction of additional storage facilities and further studies of the river.

South Platte River Compact, April 27, 1923 (44 Stat. at Large 195).

This compact between Colorado and Nebraska divides the water of the South Platte River largely on the basis of priority of appropriation. Many provisions are made for the administration of the river, including a provision for distribution from interstate canals. This compact should be studied carefully in connection with the drafting of the Bear River Compact.

Republican River Compact, December 31, 1942 (57 Stat., 86).

Definite allocations of water in acre feet are made to the three states of Colorado, Nebraska and Kansas. The allocation to each state is divided among various named tributaries and the quantity of water from each tributary in acre feet is indicated. There is nothing in the compact which indicates definitely the basis upon which the allocations are made.

Belle Fourche River Compact, February 18, 1943. Ratified by Wyoming, Session  
Law of 1943, Chapter 117.

This compact between Wyoming and South Dakota divides the unappropriated water of the Belle Fourche River on a percentage basis and provides that existing rights, together with additional appropriations within the percentage allotted to each state ". . . are agreed to be an equitable apportionment between the states of the waters of the Basin."

It is not my purpose to suggest a detailed plan for the division of the water of the Bear River. All that I propose to accomplish by this paper is to present for discussion by the engineers on the committee and by their technical advisers several basic ideas which must be studied before such progress can be made in the actual drafting of the compact. The engineering data must be analyzed with a definite purpose in view. If possible, the committee should tentatively decide upon some general plan for the division of water without further delay. Several plans for dividing the water should be considered.

Plan No. 1.

Expressly provide in the compact that for the purpose of distributing water, the state lines will be disregarded and water will be distributed in all three states by a water commissioner appointed by and representing the state engineers of Utah and Wyoming and the Reclamation Engineer of Idaho. Distribution shall be made in accordance with existing and future decrees in the various states. The rights of the large water users could well be set out in the compact. Under this plan there would be no allocation of water to the various states either on an acre feet or percentage basis. Controversies between water users and between states would be settled by the three

state officers, subject to review by the proper federal court. The compact should authorize the diversion and storage of water in one state for the use of water users in other states and should expressly provide that it is the policy of all three states to conserve and use the water of the basin to the fullest possible extent for domestic, irrigation and power purposes in accordance with a comprehensive plan of development to be formulated without regard to state lines.

#### Plan No. 2.

A determination should be made from engineering data now available and to be made available of the irrigated acreage in the three states and the duty of water. An allocation of water in acre feet could be made to each state for use in definitely described sections of the river. Gaging stations should be established and maintained and a formula worked out for delivery of water to the states in quantities sufficient to fill the quota allotted to each. The compact should provide that in the event of a water shortage there would be a rotation in the delivery of water. Distribution would be made under the supervision of a committee consisting of the state officer charged with the administration of water in each state. Under this plan, there would be no priorities as between states but the water would be distributed to the individual water users in each state out of the state allocation on the basis of priority.

#### Plan No. 3.

This plan is a combination of the other two. An allocation would be made to each state based on irrigated acreage and duty of water. The average priority in each section of the river would be determined and the water would be delivered to the various sections in accordance with the doctrine of appro-

priation. In the administration of the river, the upper sections with junior priorities would not be required to release water to the senior priority sections on the lower river unless there is sufficient water in the stream to provide such lower sections with a flow substantial enough in quantity to justify the release. This provision would be based on the rule of law which is now applied in all three states. Unappropriated water should be divided in accordance with a plan for the comprehensive development of the river.

General provisions which should be included in any compact drafted are as follows:

1. Definition of terms;
2. Gaging stations shall be maintained on a cooperative basis and all records should be made available to all states;
3. There should be a provision authorizing the construction and maintenance of interstate canals and ditches and the right should be given to each state to acquire by eminent domain or otherwise rights of way and property necessary for the construction, operation and maintenance of canals and storage facilities. (See South Platte compact.)
4. All three states should consent to the appropriation and diversion of water in one state for storage and use in another state. Provision should be made that a copy of water applications filed in one state must be filed in the office of the State Engineer in other states interested. (See Belle Fourche Compact.)
5. The physical and other conditions peculiar to the Bear River constitute the basis for the compact and none of the signatory states concede that the execution of the compact establishes any precedent or principles with respect to interstate streams.
6. Nothing in this compact shall be construed to prevent any state from instituting or maintaining an action in any court for the protection of any right under this compact or for the enforcement of its provisions.

7. Nothing in this compact shall be deemed

- (a) to impair or affect any rights or powers of the United States, its agencies or instrumentalities, in and to the use of water on the Bear River, nor its capacity to acquire additional rights;
- (b) to subject any property or rights of the United States to the laws of the states which were not subject thereto prior to ratification of this compact;
- (c) to subject any property of the United States to taxation by the states or any subdivision thereof, nor to obligate the United States to pay any state or subdivision thereof for loss of taxes;

8. Any beneficial use of water made by the United States within a state shall be considered part of the allocation to such state, and shall be taken into account in determining the extent of use therein.

#### ADMINISTRATIVE PROVISIONS

The details of administration cannot be worked out until some definite plan for division of water has been adopted. However, certain general provisions may be outlined.

The compact should provide for a Bear River committee to consist of three members, the State Reclamation Engineer of Idaho, the State Engineer of Utah and the State Engineer of Wyoming. The committee should be given by compact general supervisory authority over the distribution of the water of the Bear River and its tributaries, including the establishment, maintenance and control of gaging stations and major diverting works. It should be authorized to employ one or more water commissioners to act under the orders of the committee in carrying out the terms of the compact. Copies of all water applications filed to appropriate or to change the point of diversion of water on the Bear River and its tributaries should be filed with the committee and an opportunity given to protest. Plans for the comprehensive

development of the Bear River system should be submitted to the committee and the committee should be authorized to approve, suggest modifications or reject such plans. The committee should have authority to cooperate with Federal agencies in stream gaging and investigational work. The expenses of the committee should be borne by the three states on a pro rata basis.