

F. M. Bell, Denver, Colorado  
T. R. Newell, Boise, Idaho

Dec. 27, 1951

M. T. Wilson, Salt Lake City, Utah

Bear River Compact Commission Meeting - Salt Lake City, Utah,  
December 20-21

The Fifth meeting of the Bear River Compact Commission since its formal organization when the Federal representative was made chairman of the Commission, was held at Salt Lake City on December 20-21. This is a brief report of the proceedings as I was the only member of the Geological Survey's committee of District Engineers in attendance.

All of the official Compact Commissioners were in attendance throughout the two days' session, supported by several legal, engineering, and irrigation advisors. Representatives from the Federal agencies included Mr. Murphy of the Department of Agriculture, Mr. Olsen of Fish and Wildlife Service, Messrs. Larsen, Skeen, and Thomas of the Bureau of Reclamation (some local employees of the Bureau attended different periods of the two days' session), and Messrs. Iorns, Harris, Jibson, and myself from the USGS. Several water users and their representatives from all three states were in attendance.

The meeting was called to order by Chairman Larsen at about 10:15 a.m. on December 20, with a brief outline of the agenda for the meeting. Minutes of the previous meeting were read by Mr. Skeen, legal representative from the Bureau of Reclamation, and approved as read. Copies of minutes for the fourth meeting had previously been distributed to all the commissioners and many of their representatives.

Mr. Iorns, Chairman of the Engineering Committee, was then requested to give a brief report covering the work and progress of his committee. Likewise, Mr. Vernon, Chairman of the Drafting Committee, was requested to report on the procedures of his committee. Following these brief statements Chairman Larsen commented on the following: (a) Interest of the Federal Government in river compacts. (b) The large amount of valuable basic information now available for the Bear River Basin. (c) The fact that Mr. Iorns is being considered for transfer to Oklahoma but would be available to return for future Compact Commission meetings. (d) The importance of continuing water users' meetings and compact commissioner meetings in order to discuss problems and arrive at satisfactory solutions for developing the Bear River Compact.

Mr. Fred M. Cooper, commissioner for Idaho, noted some changes in the Idaho commission and representatives. Likewise, Commissioner Joseph M. Tracy from Utah noted appointments made by the Governor of an Advisory Committee for the State of Utah. Following this Mr. Bishop, commissioner from Wyoming, noted members of the Wyoming commission and advisors, but apparently no recent changes have been made in their representatives.

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It was then concluded by the Commission that Mr. Vernon should read the last draft of the Compact prepared by the Drafting Committee, dated Aug. 1, 1951, but substituting a re-draft of Articles, IV, V, VI, and IX, dated Dec. 19, 1951 (copies of which are enclosed), recently prepared by his committee. Draft of Compact, dated Aug. 1, had previously been furnished to the commissioners and some advisors; however, this circulation was rather limited and sufficient copies were not available for those in attendance at the meeting. The re-draft of the Articles noted above, however, was mimeographed in quantity and available for all those in attendance.

It was noted by Mr. Vernon that these Articles contained the principle points of possible controversy. Following a complete reading of this material each Article was then considered in detail. Articles I, II, and III were discussed with only minor corrections in language. As anticipated, Article IV developed considerable discussion. Under A-1 of this Article it was contended by some of the representatives, including Federal employees, that restrictions in the upper basin should not apply to acreages, but to the use of water since restrictions on an acreage basis would be contrary to Article VI. It was pointed out that restrictions on an acreage basis would not be for the best development of the land and water resources of the basin. A restriction on acreage may make it impractical to use salvaged water or encourage irrigators to make better use of their water supply. It was concluded by the Commission that this part of Article IV should be referred back to the Drafting Committee for re-drafting.

Under B-1 of Article IV water is divided on a percentage basis in accordance with acreage irrigated. Representatives from Idaho contended that more consideration should be given to priority of rights. After considerable discussion and explanations by State advisors and Federal representatives noting, (1) that division of water between States has generally been made on an acreage basis, and (2) that Wyoming irrigators have been using water contrary to priority rights for some 40 years without serious objection from lower water users, it was proposed by the Idaho delegation that they would accept the percentages as suggested if the provision in Article ~~III~~ <sup>Section C-3</sup> was deleted. Article III provides that 207 second-feet may be diverted in Wyoming when water is still available, although contrary to the division on an acreage basis. Representatives from Wyoming were not willing to concede this point without time for additional study to see what affect it would have on diversions in the Cokeville area. Article V, covering existing storage in the upper basin, was then discussed in considerable detail.

Since some of the representatives had reservations for leaving Salt Lake City during the early evening the meeting was postponed at about 4:15 p.m. on the second day for a tentative date of January 17-18, 1952.

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In the opinion of the writer reasonably good progress was made at this meeting. Probably too much time was consumed in discussing minor details that could have been referred back to the Engineering or Legal Committees. This is the first meeting, however, where controversial questions were given serious consideration. If compared to a boxing match, previous meetings would come in the category of cautious sparring during the first rounds. At this meeting actual blows were delivered and counter blows followed. An optimist may be hopeful that the 9th or 10th round has been staged for Jan. 17-18.

All the commissioners and representatives seem to be very anxious at this time to have a compact satisfactorily formed for consideration by their respective State legislatures which will be convening in about one year from now.

District Engineer

cc: W. V. Iorns ✓  
Chief Hydraulic Engineer

Encl.

MTW/js

Meeting No. 5

MEETING OF BEAR RIVER COMPACT AND COMMISSION

SALT LAKE CITY, UTAH

Governors Bd. Meeting

December 20, 1951

" 21 1951

AGENDA

1. Approval of minutes of last meeting. ✓
2. Report of Engineering Committee. ✓ *Howe*
3. Report of Drafting Committee. ✓ *Vernon*
4. Statement of Chairman. ✓ *Lawson*
5. Consideration of draft of Compact. ✓ *Vernon*
6. Statements from interested agencies and water users' groups.
7. Consideration of future action on Compact.

USED AT THE MEETING OF THE BEAR RIVER  
COMPACT COMMISSION ON DEC 20-21-1951

RI Day of  
#5 MEETING

December 20, 1951

A. M. Session - Bear River Compact

(proper title)

The meeting reconvened at \_\_\_\_\_ a.m.

Minutes read by E. J. Skeen and approved.

Motion was made by \_\_\_\_\_ and passed unanimously.

*Mr. Larson called* Chairman *upon* Mr. Iorns of the ~~Engineering Committee~~ *submitted Engineering Committee*

Mimeographed copies of reports of the Engineering Committee dated December 12th and December 20th, 1951. He also made a brief oral report.

~~Short on~~ copies of Engineering Committee report in letter to Mr. Larson of September 12th. Will furnish extra copies on request.

Read report "Nov. 1 and 2 at Logan, accomplished great deal of work. Worked out formulation of recommendations of Engineering Committee to the Compact Commission. Transmitted to Mr. Skeen, titled Recommendations of the Engineering Committee dated Nov. 11 or 12, together with some suggestions from Mr. Iorns.

*Mr. Larson requested Mr. Vernon to report on the work of the Drafting Committee.* Report from Mr. Vernon, Chairman of the Drafting Committee. Mr. Vernon reported they had held four meetings and had prepared a draft of compact. Copies were distributed following 2nd meeting of the drafting committee, Mr. Skeen and Mr. Iorns to do some work on proposed draft.

~~Articles 4 and 5 under discussion.~~

Brief statement with respect to interest of the United States in the Compact.. Under Constitution of United States, sovereign states have no authority to enter into compacts without consent of Congress. Article X, Sec. 3.

~~Fred Cooper made announcement.~~

*Mr. Cooper:* Mr. Hatch who was formerly one of the representatives from Idaho on the Bear River Compact Commission sold his ranching interests and left the state and the Governor has appointed *Mr. Melvin Lauridsen.* in his place on the Bear River Commission, ~~Mr. Mel Laurenson(?) (spell)~~ *Mr. Maxwell is my legal advisor and Mr. Baird and \_\_\_\_\_ ing?* from ~~\_\_\_\_\_ man,~~ *Secretary* ~~\_\_\_\_\_~~ *Mr. Chandall are my engineering advisors* and ~~Mr. Laurenson.~~

*Mr. Tracy:* ~~Mr. Tracy of Utah~~ reported The Governor of the State of Utah has appointed six members as advisory members of the State Engineer: L. B. Johnson, ~~Mr.~~ *and Lane* Hopkin of the Upper Basin; ~~Mr. Lane~~ *Mr. Lane*

*E.M.*  
and ~~Mr.~~ Van Orden of the Middle Basin; ~~Mr. Woodman~~ *and G.L. Weidmann and* and ~~Mr.~~ *A.F.*  
Smoot of the Lower Basin, ~~all appointed to assist the State~~  
Engineer in ~~formulating decisions made by the State of Utah.~~

Wyoming - L. L. Bishop, Mr. H. B. Carlisle, Sage, Wyo-  
ing and ~~\_\_\_\_\_~~ Mr. Merrill as legal adviser, Mr. E.  
J. Baird, Engineering and Lynn Crandall, Engineering adviser.

Mr. Tracy: Might each state name at this time who  
they are. I would like to submit my statement that the Attor-  
ney General of Utah is the legal adviser and C. O. Roskelley  
Engineering adviser.

*Mr. Bishop: the following are representing Wyoming:*  
~~Wyoming: L. C. Bishop, David P. Miller, Assistant~~

Compact Commissioner, E. B. Hitchcock, Assistant Compact  
Commissioner, P. W. Spaulding, Assistant Compact Commissioner,  
H. T. Person, ~~Adviser,~~ *Adviser,* H. S. Harnsberger, Attorney General of  
Wyoming: E. C. Gradert, Assistant Compact Commissioner: S. R.  
Dayton, F. B. Myers, H. B. Carlisle.

Mr. Vernon read Articles prepared by the Drafting  
Committee:

Going back to the August 1, 1951 draft -  
Article VII  
Read Article IX

Suggestion by Mr. Merrill - to attach to redraft a map  
showing boundaries of division so that when presented to various  
water users they will understand. Let it be attached to the  
Compact. Suggested map be prepared for study.

Mr. Spaulding: We did not make the proper change in  
paragraph B-1 of changing the word lay - he, it or she -  
Article IV B-1 6th line: also on page 5 in two places.

Adjourned to 1:30

Dec. 20. 1951.

P.M. Session (Bear River

*(was not in at the beginning of this)*

\* \* \* \* \* compile and transmit a report covering the work of the Commission to the governors of the secondary states and the President of the United States on or before April 1 of the year following the end of each water year (insert) which shall be that period beginning.

MR. LARSON: Is there agreement now on D-1 as amended?

Paragraph D-2 - no comments. E. What is your desires, should we strike it from the compact? For the time being strike it out and refer it to the Legal Committee or the Drafting Committee for further consideration and see if they would recommend it go back in? What is your pleasure with reference to E?

Paragraph E has been stricken and will be referred to the Drafting Committee for further study and possible suggestions.

Article IV paragraph A. Moved that we insert definition of annual flow into this draft.

(Read by Mr. Iorns:) The term "annual flow" means the usual and ordinary flows in the natural water courses and includes flood waters and such return flows as enter the natural water courses but excludes storage waters.

MR. LARSON: "waters released from storage" instead of what you have.

MR. COOPER moved definition for annual flow be inserted in Article II. Seconded by Mr. Tracy. passed unanimously.

Mr. Vernon asked that we decide now on definition.

Instead of storage water it excludes "water released from storage."

MR. LARSON: Any other comments as to A?

Insert before 1 "provided, however, that".

MR. MERRILL: Shouldn't there be added in there, "annual flow and stored water"?

MR. IORNS: Would you read that again Mr. Bishop?

MR. BISHOP: No more land developed above -

MR. IORNS: Except as hereinafter provided in this compact, or limited by this compact. I want to call your attention to what you just said is based on adjudicated rights as they exist of record today. There is going to be instituted in this compact an adjustment, an interstate adjustment of the rights of the Chapman Canal. What you are saying in this is going to preclude what you have in mind because it is a right of record and it has been adjudicated.

MR. BISHOP: I don't know whether they have been adjudicated yet or not.

MR. IORNS: My objection is removed, Mr. Bishop, by the way that really reads.

MR. VERNON: Will you check this, Mr. Bishop: "covered by water rights with priority dates earlier than Dec. 31, 1951."

MR. BURTON: I think that is inconsistent with provisions of Article VI. We want to be permitted to develop a more economical use of our water and if we cannot bring in the rest of this acreage, I think paragraph number 1 is entirely contrary to Article VI.

MR. IORNS: I would think, Mr. Burton, that in this article, so far as it exists, so far as diversion right to storage, to what you are entitled to, or what you have used in the past up to the maximum amount is not jeopardized and it does not limit a more beneficial use of your storage right. Whatever your direct flow, or your natural flow right is good when you are irrigating, you certainly have more land than you can spread that water over. And if you are going to put any additional land, it will have to be through more beneficial use from your water storage end, depending on the amount of the storage developed in the past and the storage right which you are entitled to. I do not think it jeopardizes anything there.

MR. BISHOP: There never has been any water developed for -- ~~the~~ reservoir that was put in there - that was incidental for the water that was being used for direct flow. It has a priority

of 1905; then you are going to shut off users of 1906.

MR. CARLISLE: According to this the only people that could benefit by that would be people below the Stewart Dam. What is the consideration for making direct benefit to them and excluding those below?

(discussion)

ARTICLE VI provides as I read it that use can be made if they have water, but states that the policy of the secondary states in regard to this "to obtain maximum beneficial use with minimum of waste." By salvaging water upper river users should be encouraged to put it to beneficial use, and with this provision in here it discourages any water user from making better use of the water and salvaging the water because he could not use it above Stewart Dam but only below.

MR. IORNS: One of the objects, one of the purposes of this Compact is to place a ceiling on upstream development and consumptive uses of the waters of Bear River. The users below Beaver River, that own the storage rights in Bear Lake and that are dependent on water stored in Bear Lake for irrigation purposes, and I think one of the things that the Compact should provide for is placing a ceiling on the increased depletion of Bear River by expanded irrigation above Bear Lake. The suggestion I had at first in reference to that was in irrigated acreage. My suggestion was that no valid right as existing on a certain date should be increased or should diverting water. I suggested a second foot to 35 acres. In the drafting committee they recommended that that be changed over to irrigated acreage. It is of little concern to me whether based on irrigated acreage or maximum rate of flow, but there is a definite need for a limitation on increased consumptive use above Bear Lake because this definitely affects storage rights in Bear Lake and rights available for use down stream. In accordance with this, the water consuming plants - doing away with them so that they can save water - I agree with that theory and very thoroughly - but there is nothing that I can see on Bear River that you can

measure such a thing whereby anyone could create a new right. If you based it on priority rights, it would be ruled out. There are some cases where through water saving people can gain a priority right to water that they have saved through the elimination of a loss. If we could set up on the Bear River Basin a system to where we could limit the number of people that they would not deplete the supplies originating in that section below a certain amount, I think that would be a fine principle. I have tried to figure out how much they depleted the river but I do not use a measuring stick by which you can divide the waters.

MR. WILSON: Why not limit the bringing in of new ground?

MR. IORNS: We can put a limitation or piece in there "no more land served by waters shall be increased from the natural flow - in other words, direct diversion." If you want to increase the acreage through the use of storage water, I do not think there is anything that prohibits that. If the people of Bear Lake would want to buy out any particular interest or water right in the lower part of the river: - replacement project in connection with the lower part of the river that they can move back upstream - sure they can put additional acreage under. Nothing in the compact that prohibits that - placing lid on upstream consumptive use and supply use, we can protect downstream rights as they exist and are being increasingly interfered with by increasing acreage upstream in the use of water. I would like to have an expression from the Utah Power & Light Company on how they feel with regard to increased uses upstream beyond what they now exist - would it impair their rights in the river: - and from the people who are dependent on Bear Lake storage in the north part of the river.

MR. BISHOP: Is it not a fact that Bear River is overappropriated and there won't be any more use.

MR. IORNS: That is literally true.

MR. BISHOP: If we can get a reasonable amount of storage, that would take care of it. I think the limit should be on the amount of water we can store, not on where we are going to use it.

(further discussion) 11:15 AM

MR. IORNS: Responding to Mr. Thomas, it is my conclusion that the ..... drops below 700 sec. ft., the Bear Lake storage rather has been cut, or will be cut - : that the 700 sec. ft. at border is the time when the 1912 rights go off on the river, and when the flow of Beaver River at border is 700 sec. ft. or greater in ----- shall divert for beneficial use more than \_\_\_\_\_ sec. ft. for each acre under irrigation. No canal on Beaver River shall divert water at a rate greater than a second foot for every 35 acres. You can only base it on the right of flow.

MR. MURPHY: The Department of Agriculture during the last year or two have begun studies on Mountain Meadows and they are finding that on an acre for acre basis with introduction of irrigation and nitrogen, they are able to increase production of feed. But the results ultimately will be applicable in a great many places, and I know, speaking for the folks at the land grant colleges and soil conservation service, we would be very sorry to see anything introduced here which would tend to discourage the application of improved agricultural methods which would tend to increase our production of feed per man hour or per acre. I would commend to the commission that they keep these possibilities of improved irrigation and husbandry in mind in this connection.

CHAIRMAN: Extension of new areas at the expense of present rights somewhere?

MR. MURPHY: If strict interpretation was put upon it, it would mean that an owner who was irrigating 100 acres could - possibility of using same amount of water- could irrigate 150 acres and will increase his output of feed by four times by means of better methods of husbandry. Might be stymied by a strict interpretation. . . Other facts involved in the use of land, not a limiting factor.

MR. BISHOP (reads)

MR. TRACY: Your section would limit him to the present land irrigated with the same amount of water.

MR. BISHOP reads again - "No more land served by water developed from Bear River or tributaries shall be irrigated than the land irrigated -

MR. IORNS: In the State of Wyoming your water right is dedicated

Mr. Murphy reported that the Department of Agriculture during the last year or two had begun studies which indicated that by better methods of husbandry crops could be increased four-fold, and with the same amount of water more acreage could be irrigated.

~~Mr. Bishop read from the Wyoming water law.~~

MR. IORNS: In the State of Wyoming your water right is dedicated to a certain specified piece of land and you cannot take that water and expand the use of it and apply it on to more land without taking a water right of a later date.

MR. SMOOT: From the farmer standpoint, I know if you spread water over two acres it takes a lot more consumptive use than if you leave it on one acre, and that just makes sense. It looks like we have two problems in the Lower Basin. We have either got to arrive at a compact and give in this compact, maybe some of our storage water to move upstream there, and we have been lead to understand that that was supplementary water for land that is already being farmed- but may extend out the season or something like that. We either have to do that in exchange in the compact for farming up the rights that we already have and stop the further use of storage through a compact, or proceed to stop that further use of water that we are dependent on in the Lower Basin by some other method, by court procedures, injunctions and so on. I am of the opinion that it would be the best way through a compact to give and take a little by you fellows upstream, farming up our rights by limiting further consumptive usage of water in exchange for some storage water to lengthen out your season and supplementary water for what you already have. And I think this is very important to leave it in there. But you can't use what you haven't got, no matter which way you twist it around.

MR. LARSON: Mr. Skeen, read your statement again please.

MR. SKEEN: "No appropriation of water for direct flow use shall be initiated after " (I had "the effective date of compact" but we could put "1951". )

MR. THORUM: I don't object to any more beneficial use above there but only practical limitation is by limitation of irrigated area as against new land. It is very hard to put limitation on water rights except as against new lands.

MR. BURTON: You say you are not able to make any satisfactory conclusions as to consumptive use.

MR. IORNS: Oh, I can tell you what the consumptive use is: if you know how dry and how warm and how much rainfall is going to be you can tell. But there is this much about it, the people below Bear Lake are very dependent on the water that arrives at Stewart Dam for their vested rights below Bear Lake. Their increased depletion upstream will be detrimental to Lower people. As Mr. Murphy spoke about it, it is a grand idea to be able to irrigate ten acres when <sup>with</sup> your present water supply you can only irrigate five acres, but increase it to ten acres through better land management and better irrigation and other things that he spoke of, it will increase the consumptive use ~~below~~ <sup>above</sup> Bear Lake that will have a detrimental effect on the people below Bear Lake. As I look at the Upper Bear River Basin, the water comes back now because the soil is filled to its utmost and I think through increased - - - - - you can develop some water that is now lost, but tying that in with priorities you will be fifty years trying to work out a compact on that basis. And I think it is an impossible situation.

MR. LARSON: I will ask the Commissioners what they want to do.

MR. BISHOP: It suits me alright.

5-minute recess.

MR. COOPER: No more land served by water diverted above Stewart Dam shall be irrigated with natural flow water than the acreage covered covered by water rights with priority dates earlier than December 31, 1951.

MR. LARSON: Same as Mr. Bishop except it does not limit Stewart Dam - and yours has.

MR. IORNS: There has been to my knowledge no new priorities issued in the Lower part of the river for years on end. Let us take for instance the water right of the River Canal Company - December 1914 right to divert water from Bear River, to my knowledge, and I think Mr. Baird will verify it, that the Culp River Canal has never been able to start its pumps early enough to divert a 1914 natural flow water from Bear River. There are a few years in these high water years that if the Bureau of Reclamation under its present project plans permitted water storage waters and surplus waters that exist in the lower part of the river, that they would possibly, technically, be diverting natural flow water, but the period of time that it would be available would be very, very minor. I don't think it would accomplish anything below Bear Lake except to possibly place some restriction on water for lands below Bear Lake. The Bureau of Reclamation would have to build a reservoir and place that water actually in storage.

MR. BISHOP: Mr. Cooper, I would be glad to compromise with you if you would give us 100,000 feet of storage.

MR. COOPER: We can't go along this time.

MR. LARSON: Any comments from Utah.

MR. TRACY: I want to read it first.

MR. LARSON: What about Wyoming, what is your suggestions?

MR. BISHOP: I included the ~~Bear~~<sup>Bear</sup> River. (reads) "No more lands served by water diverted from ~~Bear~~<sup>Bear</sup> River or tributaries shall be irrigated with natural flow water than the acreage covered by water rights with priority date earlier than December 31, 1951."

MR. MERRILL: Where does it affect you in any sense of the word below Stewart Dam. It can't. And if they don't want it, I don't see why it should affect anyone else.

MR. LARSON: Any further comments from Wyoming at this time. I don't like it even though I suggested it.

MR. TRACY: We will tentatively approve Idaho's suggestion on this item.

MR. LARSON: The attorneys have brought to my attention, this covers irrigation, but what about some big industrial users that may come in?

MR. IORNS: In regard to possible industrial uses above Bear Lake, the waters of Bear River are entirely appropriated - over appropriated, and the only source of water they would be able to obtain would be to condemn an existing right or purchase a right down stream and move it up stream to the extent that they would divert the water below Stewart Dam, and I think Article VI would take care of that.

MR. LARSON: Utah and Idaho is the same, and Wyoming, the only difference is they have Stewart Dam and you don't.

MR. IORNS: Mr. Bishop, in order to have additional water upstream, would you be willing to participate or obtain additional water upstream for participation in these water saving projects which are going to be tremendous in cost to save the water that

Q. How much is wasted? ~~Varying-amounts~~

A. Varying amounts.

Q. Mr. Thomas, do you recall that?

A. For what period? From 1924 to 1938 it is up close to a million acre feet.

MR. LARSON: Part of that is covered by rights.

MR. THORUM: From 1911 to 1940 no water originated above Bear Lake that went into Great Salt Lake.

MR. WEETMAN: We are not wasting water. We are getting efficient use of water.

MR. IORNS: During period of August and September you are drawing out from one to one fifty-

MR. WEETMAN: On an average basis, if we get that efficiency out of water we challenge anyone to compete with us. We don't waste anything we can use, Mr. Bishop. - There is no place to put it, it is just going down the river. In that lower basin. I would like to make one other comment on this return stream flow. Ordinarily, we don't soak our land only down two or three feet. You don't have any return flow. That is soil infiltration. That is the way we irrigate, and there is stored little return flow in the river. When you saturate it, and it has to get out somewhere, that makes a great deal of difference in the return flow.

MR. LARSON: Have you any further comments, Mr. Bishop?

MR. IORNS: Mr. Chairman, Judte Howell has just suggested a thing that might solve this -

people are quite dependent on. If you decrease it through other uses, it is going to affect their rights and that is all there is to it.

MR. IORNS: I would like to pass on to the commission something that Judge Howells just suggested. Why don't the commission at this time, if they can't decide on the wording, decide on a principle and then with further study may be I can work out a solution. The only principle that I think of that can apply would be that the uses upstream will not be such as to decrease the supplies that have been available in the past at Stewart Dam for downstream users. New upstream uses will not be such as to decrease the supplies available at Stewart Dam for downstream users.

MR. BISHOP: What is a reasonable amount that would be available up there, and if we could get that we won't object to this. We believe that our equitable share of the water of this interstate stream is something more than a recognition of a fifty per cent right that we have in the direct flow of the river. You have made studies on this Mr. Irons. I should not say that without consulting with you because you know pretty well what is the percent of the total available supply for water rights on Bear River, and you tell me.

MR. IORNS: You mean that is up above, or that is consumed? Well I don't have the figures but I could perhaps work it out. I agree with you thoroughly on that. Because of the crop pattern that now exists and the length of the irrigation season and so forth - it is only available on the lower stream because they have constructed works to make it available to them. The consumptive use is less on the upper reaches of the stream than on the lower.

(more discussion)

MR. IORNS: I will try another way to get around this deadlock. I think any Compact, and I think any court would work it out the same way with vested interests in a river system in a compact having to be protected and considered in the compact. You can't destroy in any compact, and it would never get past Congress if it destroyed a vested interest. Now the people below Bear Lake, and dependent on Bear Lake storage, in whom the Bear Lake storage right is vested, have made the proposition to the people of the

Upper Basin that within reasonable limits they will let them have some free rights - in violation of their rights, they will let them take a reasonable amount of water upstream if the people want more water upstream. It is not denied in the compact, as we now have it conceived, that they will be denied getting the water up there, but I don't think they have the right to have it as free water, but by participating in having that water transferred upstream and by ----- by storing water that belongs to Bear Lake and that now wastes into Great Salt Lake - that is the only way that I feel that it can be approached. I think it all ties in and has a part in what we are considering now and what we consider as new or additional storage above Bear Lake. It does not say that there is nothing that prohibits increased amount from anticipating projects.

Q. Is it possible for storage in the Upper Bear River that will not seriously affect the Lower Bear River?

MR. IORNS: When you speak of seriously you are getting off into the lawyers' grounds. Say generally. Any storage above Bear Lake will affect existing water rights below Bear Lake. Yes. While you are storing it is when you are going to be impairing it.

~~After further discussion regarding possibility of building additional dams for storage, exorbitant cost, etc. Mr. Vernon suggested advisability of going on from this point to some other point with the idea that the respective delegations would think this problem over with the thought it would perhaps meet with more approval tomorrow.~~

MR. LARSON: It may be it would be best to get more familiar with ~~what we are trying to do and to pass it up until tomorrow.~~

MR. VERNON: Are there any comments on A-2 then of Article IV? May we have comments on B-1?

Mr. Merrill suggested change of words. **they are to he is or lower users** <sup>are.</sup>

MR. VERNON: In the 6th line, the words "they are" should be changed to "he is", and in the next line to "he is", and in line following the comma should be taken out. Make it lower users. The comma should be taken out after "thereof" and should be after

\_\_\_\_\_ : Can I ask you a question? You speak of the Upper Basin participating in this work of storing down below. Does that carry implication that the Lower Basin would participate in the storage up above?

MR. IORNS: Would you answer that, Mr. Skeen?

MR. SKEEN: If you want to go over into the Interior theories - what I have said is this: That if you want storage in this upper part, in excess of some reasonable amount that the people down here are willing to give you free of charge, why the only way that that storage can even be available for the people in the Lower part of the project is by building this Cutler Dam. And then that water is now being supplied to these lands to a great extent by storage in Bear Lake - you can take that water that should go into Bear Lake and store it back up here, but I don't believe that you would be able to convince these people that they would participate in a project where they are going to pay your reservoir cost in addition to their part of it down here. Does that answer it? It is expensive water, I can tell you that. It is going to be expensive to build this project to put it out on the lands in the immediate area.

MR. VERNON: Mr. Chairman, would it be advisable to go on from this point to some other point with the idea that the respective delegations would think this problem over - that it would meet with more approval tomorrow.

MR. LARSON: It may be would be best to get more familiar with what we are trying to do and to pass it up until tomorrow.

MR. IORNS: This idea is not new. The people in Wyoming in order to gain possible future storage upstream, it is specified they can gain it by buying storage sites or - . In your compact with Idaho you were given certain amount of water that fills all your current needs and with reasonable expansion, but if you want to go counter with you can go beyond providing that you buy some space or pay for part of the downstream storage so that it can be moved upstream. And the same is evident here or would be a part of this compact.

MR. TRACY: Is that substantially correct, Mr. Culp?

A. Yes. He is referring to the Snake River compact, where you

buy rights in the Lower and exchange it for water up above.  
MR. BISHOP: I don't like to see the Bureau build all these plants. I want to see some rugged individuals build some. What we need is quite a few dams, not just one, and I wonder if that is something to think about. I suggest we go on to the next point.

MR. VERNON: Are there comments on A-2 then of Article IV?  
May we have comments on B-1.

"exists". Are there any questions down to subparagraph (a): if not can we take up paragraph (a) then.

MR. BISHOP: For the benefit of our people we would like to have an explanation of what the basis was.

MR. IORNS: I prepared and sent out to everyone a short time back a tabulation of the irrigated acreage in each section of the river and that is dated Dec. 7, 1951. These percentages are based on the irrigated acreages. We have in arriving at that, placed all the lands that are irrigated by diverse, and including Hilliard, ~~Second~~ <sup>Kay</sup> Fork, West Side and ~~Lannon~~ ---, in what is called Upper Wyoming Sections, but excludes lands here in Utah from the Francis Lee. One per cent are lands irrigated in Utah above Wyoming State line and used entirely in that area. I have just now described the area included in this section. The area includes the Chapman Canal lands as their allocation is included in the allocation to the Upper Wyoming Section but it does not include the Lee and the Bear. It includes the Lannon. The area on which the percentages are based for the Lower Wyoming section are the lands irrigated by the Pixley, BQ, East side and West Side. The BQ dam and the lands that are served by the canals that divert just above Pixley Dam on the East and West sides of the rivers. The BQ West Side ditch is included in the Utah diversion. But it is not mentioned. That is one of the things we will have to take care of in Article IX. I think the place to take care of that is in Article IX. The Chapman Canal is included because there is a question on the water rights included in that canal in the Wyoming adjudications that are used in the State of Utah. We mention the Francis Lee because that adjudication, now recorded in Wyoming Book of Adjudications is now incorrect. Through error it shows only the 154 acres in Wyoming and does not include the lands in Utah that have always been irrigated. In Article IX we say that "all other rights to the use of water" (reads on)

MR. VERNON: Are there further comments on B-1, subparagraph (a) on page 2? If not, are there any comments on B?

MR. BISHOP: I have a comment on (a) - last line of (a) - I would say diverting in Utah and serving lands in Wyoming.

MR. VERNON: After the word "land" <sup>line</sup> you would say, "diverting water

in Utah"?

MR. BISHOP: No, crossing said state line and say "diverting in Utah and serving land in Wyoming" changing "serving" to "irrigating" lands in Wyoming.

MR. IORNS: The divertible flow in the upper division shall be the sum of the following items - we only had two items, and it read this way: (reads)

We have four individual river divisions here with each one of them given a different percent. There is nothing in the way the Engineering Committee did that can identify which one of these the percent is going to apply to.

A. L. MERRILL: I would say: "(a) The total divertible flow in the Upper Utah section consisting of the sum of etc. Make same addition to each.

MR. IORNS: I agree with you that that is better.

MR. VERNON: What would you do with (e), just leave it?

(e) is alright. Is there any further comment on (a) now?

MR. IORNS: There is one thing we have left out there, Millcreek. While we are dealing with the Upper Division, we should also consider the interstate possibilities on Millcreek and on Yellow Creek. In my suggestions that I sent out dated Nov. 12, 1951, I had this in reference to Millcreek: (reads:) "When the flow of water across a state boundary line in Millcreek or in Yellow Creek is insufficient to satisfy water rights on these streams in a lower state, any aggrieved water user may file a petition with the Commission alleging that by reason of diversions in the upstate stream state they are being deprived of water to which they are justly entitled and that by reason thereof a water emergency exists and requesting that interstate division of water in accordance with this compact. If the commission finds that a water emergency exists and that interstate control of water on the stream and/or streams is necessary, it shall put into effect water delivery schedules based on priority of rights and prepared without regard to state boundary lines."

Mr. Vernon: Immediately following (e), and would be No. 2.

ADJOURNED TO 9:00 a.m. TOMORROW.

2ND DAY OF  
# 5 MEETING

December 21, 1951

9:30 A.M.

The Chairman called the meeting to order and asked that we go back to A-1. Further suggested that if no agreement had been reached since last evening that there were two suggestions before the group, one made by Mr. Iorns on the water limitations in the Upper Basin and one by Mr. Skeen, made on the basis of limitation of rights; one that Idaho and Utah meet on the land limitation above Stewart Dam, and the one that Wyoming made with regard to land limitation way down the river. Suggested all plans be explored for background.

Q. What are the practical differences, what is the practical effect - while in the upper valley most of the offered lands are all irrigated now but there is a chance to save quite a bit of water from excess evaporation by drainage and may be better control, so there is that opportunity. Then we have at least one canal that has not expended their full right yet, but there is not much opportunity to cover many acres of new land unless new long canals are built, and they would never be advisable without storage up there so they would be tied in with storage. Then going on down the river there may be some chance for extension of surplus water over the ..... range maybe in Cache Valley, at least for certain areas on the South Fork of the Bear, but even that don't amount to much unless it is tied in with storage, so there again we come in to storage on these larger projects so that from the practical standpoint I don't think there is . . . . . On the next question, Is there a chance of getting a modified provision in there that deals with both land and water. If there is a chance to encourage better use of water in the Upper Basin and at the same time protect the people on Stewart Dam - indeed the question is, do you still want to pass up this paragraph A-1 and go back to it later on, or have the Drafting Committee try to work out some new language for presentation? How would you like to proceed?

MR. TRACY: Mr. Chairman, how would it be to combine the A-1 and the article later on for the storage above Bear Lake in one section under the same location in the draft?

December 21, 1951 - 9:30 A.M.

MR. IORNS: This is the annual flow and you are tying your area only to your storage area until ..... is common property, and I would suggest that a principle - but there has been several suggestions made - I think that is going to require a little more study - it might go over into consumptive use, and I think instead of having one at the present time that we make up a list of all these different suggestions and give that a little future study with the Drafting Committee, and for the Engineers and everyone to give it a real thought. I have another I would like to add to the list. Mr. Skeen approved it when I showed it to him. It reads like this: "No increase in total land acreage over the acreage irrigated by natural flow water rights with priority dates earlier than December 31, 1951, shall be allowed above Stewart Dam." That is considerably more specific than the others; it is in conformity with the laws in Idaho in which you can abandon one piece of ground that becomes soured or useless and apply the water to another piece of ground so long as you don't injure a downstream water user. I don't think in the Upper Basin that there is going to be any large or material increase in total acreage by storage, but I do feel that there are areas up there now in which the soil is of very poor character; it is very clayey, has considerable alkali. Pour water into these areas, of course, it does not consume all of the water by any means, but they could possibly abandon that and put the water over onto another piece of land and I don't think the land available will materially increase the consumptive use. We can describe exact pieces of ground and say that it has got to be exactly that. So long as the total application is not increase, I do not think it is going to...

MR. BISHOP: We make these changes under our state laws. The trouble is it is like the Chapman canal - it is like taking 120 second feet -

MR. IORNS: I am in disagreement with the Chapman Canal laws. Their total acreage has not increased materially until they have a sudden burst in the last two or three years to put additional land under. Now if there is anything to increasing the capacity of the canal that is going to have a detrimental effect.

MR. BISHOP; We need to be making better use of the water. We can irrigate more land and raise more crops and I think they should be allowed to do that, but they should not be allowed to take another second foot of water, but I don't want to prevent them from increasing the area. It is the amount of water we want to get at and I don't see any better way than to describe the appropriations.

MR. IORNS: If that would trim down their land \* \* . I don't believe the Chapman - I don't believe they would be outside of the spirit of the laws established by this Compact in increasing their acreage. Other people are not quite so \_\_\_\_\_ I know as they are.

MR. BISHOP: I think we should have an agreement rather than have a lawsuit to settle it. The water as far as we know was diverted for direct flow irrigation.

MR. IORNS: I think the Chapman Canal has proved that they can establish a storage right in any court whether it is on your books or not.

MR. BISHOP: Do you think they should have any better right herein than .....

MR. IORNS: No sir.

MR. BISHOP: If they are recognized now they will fill that reservoir with 1905 priority and that would not be right.

MR. IORNS: They have complied with all the Wyoming requirements for the issuance of a permit but the State Engineer was precluded from giving that to them because it was a reservoir located outside of the State and the State Engineer could not issue them a permit. However, he did issue them a certified letter saying they had complied with all the requirements and it would serve as an instrument of proof that they had complied with Wyoming requirements in an interstate settlement of the waters up there.

MR. LARSON: Well, how do you want to proceed? We could take suggestions from each state and work out an article. Is there any other way you would rather proceed? Idaho?

----- Mr. Chairman, I move we hold the final decision on this in abeyance, that we refer it to the Drafting Committee and let them use the recommendations that have been presented and let them draft a new article.

MR. LARSON: You have heard the motion, is there a second?

Seconded by Mr. Spaulding.

Utah - Aye.

Wyoming - Aye.

MR. LARSON; Question on A-2, Article IV. How will that affect the precedent given Taylor Decree? In regard to Muddy rights?

MR. IORNS: The agricultural rights or muddy rights as they have been set up under those canals, or in that decree - it states that these canals will be allowed to divert up to about a second foot to every 33-1/3 acres prior to July 1st, provided there is sufficient water. At that date they shut down. These states here, when it gets down to 700 sec. ft. will shut down to the agricultural right which is a second foot to each 50 acres. I don't believe that you want to use this figure hopped up to over 40 acres. It is up to you. This might trim down what the court has given them somewhat, but I don't think it will be any material amount.

MR. VERNON: May we have your comments then on C-1 on page 3 of the draft?

MR. MERRILL: Question concerning the general theory of C. The Drafting Committee had followed the theory that C would be handled just as the other divisions were handled but on a priority rights basis. That was the way the draft was made in August, 1951, the August 1st draft; and that when the waters reached a certain level there would be an emergency declared to exist, and they then would put in their schedules and operate the divisions in accordance therewith. Now there has been, for some reason, a complete departure from that theory and it seems to me to be back into rather uncertain form in having one theory applied to two divisions and another theory applied to one division and it is incongruous to me. I have not been able to understand why that theory was abandoned with respect to the central division and a new theory adopted, and I would like to know why the departure.

MR. IORNS: Well, I would like to pass the answer of that first on to Mr. Persons.

MR. PERSONS: In the August 1st draft on the Central Division we had the depletion on the upper division, we had the divertible flow and at Mr. Crandall's suggestion, which I concurred with, we changed them all to convertible flow.

MR. MERRILL: But the fundamental theory and the priority of rights is abandoned in this theory in the Central Division according to these reports here. \* \* Why don't you put in all of the amount that it would require to fill the first rights in Idaho? Why couldn't we have the Central Division on the basis originally conceived, namely, that when the water reached a certain level, there would be an emergency existing and the water within that division would then be distributed irrespective of state lands under direction of the commission in accordance with priority rights? Now that was the original concept we worked on for years.

MR. PERSONS: Now if we are going to do that we will still have to have the 207.

MR. MERRILL: Well let us forget the 207.

MR. PERSONS: Oh no, oh no!

MR. MERRILL: Now getting back to my original question - it was this - when we have been working on this matter with the idea that in each division when a crises arises then the Commission would take charge and distribute the water in accordance with schedules prepared. Now there is complete departure from that as set up in this Central Division. There is not even anything there giving the Commission the power to operate when it reaches a certain point, so many percentages go to one state and so many to another, which is entirely different to the concept of priority of right.

Q. What is the difference?

MR. MERRILL: There is a tremendous difference, and when the water rights down below 400 feet - these lower rights - begin to lose in Idaho, and they are the oldest rights in the section, and at that point you take away 43 per cent of it. I don't see why we

don't get back on the original concept we had. That is what I wanted to raise first.

MR. IORNS: If I may I will try to explain that again. It has been noted all the way through, stated at first, it has been re-stated, that the State of Wyoming will not agree on a strict schedule based on priority rights.

MR. MERRILL: That is not my question what they will do.

MR. IORNS: If they are not going to agree, you will have to find something they will agree to. In the original terms I don't think it has been inconsistent. And follow that through on down through the other methods that have been suggested, I don't believe there has been a great deal of departure. It is merely this, as I stated yesterday, the original terms upon which I figured we could divide the river - recommended that the river be divided up into three different divisions.

(Mr. Iorns read from "Report on Comparisons", etc. dated December 7, 1951, at page 1, beginning - "The original terms was as follows" - copy pp 1, 2, 3, 4 and the first short paragraph following.)

You agree with that? Taking out all the tributaries, the rights that now exist on the tributaries as compared to the supplies available in those tributaries. The rights are not filled at as early date as can be filled in June on the main stem of the river. Here is point No. 2. The main stem of the river above Smith's Fork can be operated separately from the balance. \* \* \* \* and with these reasonable limitations and then in addition with a second foot to fifty acres, your later dated rights on the lower part of the river are protected, and after it gets past that point, the water is insufficient to take care of the rights. Now in regard to Smith's Fork in relation to the lower part of the river, (reads)

That is the second basic principle that I believe applies.

MR. MERRILL: Yes, and they have the first right.

MR. IORNS: Well, that area as a whole in regard to the area below Stewart Dam. The supplies in this area are not sufficient, etc.

(continues reading)

Following on over and treating the Middle Division, I shall read from my first tentative draft presentation. Now we agree with you on the basis of priorities. (reads)

Then we come later on into the principle on which we operate for awhile - the depletion method, when Wyoming stated that she would not consider any division based on a purely priority principle, we tried to work out the depletion method. Here is the general principle underlying the depletion method. "Only if the upstream user consumes all of the water diverted would the water diverted be a measure of ... (reads)

Now, as you will recall, I worked out quite an extensive study on that \* \* and we almost reached an agreement, when again, the upstream users said we will not compact using the depletion method. Then has come as suggested by Mr. Persons, the Wyoming representative and concurred in by Mr. Crandall. There is another method on which this water can be divided, a method commonly used by the courts, and that is as given in my last report. Let me read the general principle set out in that. This is December 7, 1951. Wyoming interests have divided on the basis of irrigated acreage. This is a method sometimes used by courts in the past for determining the states' shares. They say we will consider priority of rights and of supplies available and character of the land and then they turn around and give a man allocation based on irrigated acreage. Now to people in this - and I don't believe there is anything wrong with the division on the basis of irrigated acreage so long as we keep within the general premises of the conditions that set it up whereby we can operate this individual unit by itself. The people in this area - in a purely technical sense there is some ..... on the people below. The people in this Coneville(?) area for 30 or 40 years have been diverting the water, all the water they want, and they have not been stopped. There have been no protests. These people in that area, I think,

have established a right by adverse use. I don't know just what it is. You would have to have it defined. The only way to get it defined is to take it to the Supreme Court and they have a definite right and they are not going to give it up. I think the Wyoming people and the upstream people in Utah would take a very similar attitude. What we have followed through, we have not ignored priority rights, we have worked long and hard on them and we have found there is no basis of agreement on them. And we have tried to find what the equitable share of each is to the water of the river and it has to be by some method that has a reasonable basis. This has a reasonable basis and has been used by courts in the past and probably will be used by courts in the future. Thank you.

~~probably will be used by courts in the future. Thank you.~~

MR. LARSON: Any further comments?

\_\_\_\_\_ : Yes, my question was just on the transfer from one theory to another and Mr. Iorns has explained why he recommended it.

MR. IORNS: I have not recommended it, this commission as a whole recommended it. \* \* Certainly got to the point where they would not even look at it any more. Instead of literally putting the Wyoming relative rights in the tentative draft they were set up something like this \* (indicates on blackboard) Now that gives them in here generally 25 per cent of the first 400 sec. ft. of water and above that ) ) Now Wyoming was not agreeable to that. Now we have gone over to the basis to divid it on the basis of 43 per cent. It ties it in here but it is above at this point. Well now let us consider the effect of the 43 per cent of the total divertible flow that comes into this area. It is not 43 per cent of the water - - it is based on the water that comes in and returns to the stream, the total amount that can be taken out.

MR. MERRILL: You said there were about 17,000 acres in Wyoming and 23,000 in Idaho; then when the water gets below a certain point, 43 per cent to Wyoming and 53 per cent to Idaho notwithstanding the large number of prior rights in Idaho. You disregard the priority rights and that cannot be done; - not unless these percentages can be adjusted to give some consideration to prior prior rights.

MR. IORNS: It was agreed to by the Idaho representative and the Wyoming representative.

MR. MERRILL: We would be giving up a great deal, and at that crucial period it would be--

MR. IORNS: So long as you don't have a compact it is on the basis of 90 and 10. That is what you have been on when it begins to get a short water year. She has been taking 90 per cent in the short water years. Idaho, yes. She has created a right to it. You cannot shut off every stream in Wyoming and dry them up drier than a bone. You cannot do it.

MR. SKEEN: Is that figure 90 per cent and 10 per cent an estimate or an actual study?

MR. IORNS: I would say that would be fairly close. More in 1934.

\* \* Percentage of loss pretty much the same all over that area.

MR. MERRILL: What was your idea of changing the 400 to 810, Mr. Iorns?

MR. IORNS: In studying the records in the past, I found that when the river at border drops down to about 400 sec. ft. the divertible flow that is available in this area here is right close to 810.

Measured at what points?

At the Stewart dam. The 810 is the sum of all the diversions from Smith Fork, the main stem of the river in Idaho, and going on past. When that gets past and drops to 810, the flow here is close to 400 sec. ft. Some years a little above, some years a little below. When it gets to 810 cu. ft. per sec. divertible flow, all these 40,000 acres has one sec. ft. to 40 acres. Then we go on a proportional basis with Idaho getting the same as Wyoming.

MR. MERRILL: Irrespective of priority rights?

MR. IORNS: Yes, irrespective of priority rights.

MR. MERRILL: If you take in priority of rights and consider them along with acreage, we may be able to get together.

MR. BISHOP: What it amounts to is this. We are going to be shut off under this compact and heretofore we have not been.

MR. MERRILL: Where is there any priority when you are taking these percentages entirely on acreage basis? There is no priorities there.

MR. BISHOP: We want to find out what is fair and the right thing to do.

MR. MERRILL: That is exactly what we want to do.

MR. LARSON: Is there any chance that you two states could talk this over and try to get together by yourselves on that article?

MR. IORNS: Mr. Merrill, your headgate diversion of the 43% - a good portion of that returns to the river and is available for use, and

passes on down to the river. In your dry years, Idaho is going to get 57 per cent of that total divertible flow.

MR. IORNS: I have tried to set up several equations. It varies considerable over different times of the year and I am somewhat concerned in using figures on diversion. I have regretted them in the past for this reason - for the reason when the water begins to get short, when we can conform, the water available on a good many of the canals in the Wyoming area are through irrigating and they run it down their canal a short distance or varying distances and waste it back to the main stream through a continuing swail. I have not measured all these wastes that come back. That is 100 per cent return flow. When they apply it to the land and it comes back, then it is a lesser return flow, or consumptive use. I would say in round figures possibly fifty per cent of the 43 per cent that will be applied to the land in an irrigation season will return to the river. In other words, that is pushing their

MR. PERSONS: A thought occurs to me, instead of using that 810 divertible flow, when it becomes 400 sec. ft. no regulation above that and 207 -

MR. IORNS: 65-35 without the divertible flow and cuts to 400?

Yes.

Well, I will have to look at it.

(Mr. Iorns draws on blackboard) Now this shows roughly Wyoming's water right as compared to the total divertible flow. The basic principle would have given Wyoming for the first 400 sec. ft. 25% from first to 400 sec. ft. of the total divertible flow, and then it changes the rate of the slope so that at this point here it is receiving 28% of the total divertible flow at 631 sec. ft., and then when it gets on up to 810, Wyoming is 43%. Now that is about the ratio of it there. As it changes the slope at this point here of the first 400 sec. ft. Wyoming would be entitled to 25% and then to 28% of 631 with the amount in between on a proportional basis.

MR. MERRILL: Now that is based on what?

MR. IORNS: That is the tentative draft that is based on curtailed priorities; here it is the same above 400 sec. ft. The tentative draft and Wyoming priorities would be just the same below that point

I would say, as I feel that I don't believe anybody would dry Wyoming up, so I have said that any court, or reasonable distribution of the water would give Wyoming some water down in there and I said 25%; Idaho gets 75%, but that was not agreeable so now Wyoming gets 45% all the way up.

MR. LARSON: Where would line be with them - if parity in good years?

MR. IORNS: Wyoming has diverted as much water as Idaho if not a little more.

MR. MERRILL: Is not that figure of 810 reached every year?

MR. BAIRD: Yes.

MR. IORNS: Yes. It gets down there every year.

MR. BAIRD: In 1931 200 was the greatest, in '32 1400 was the greatest but by August dropped to 240; in June of '33 about 1200 main flow, then dropped down to about 300 for July. In '34 the greatest was about 100. In '35 only one month we got over 800 and that was in June. '36 was April, May and June very high, up to 2200 to 3000 but dropped to just over 400. By '41 it was over 800; '43 over 800 in April, May and June and then dropped down to 600; in '45 only one month the amount was over 800.

Mr. Chairman, Idaho would like to recess ten minutes and we can talk it over among ourselves.

MR. LARSON: Agreed to recess for ten minutes.

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Readings by Mr. Iorns:

- (1) Report on Comparisons of Suggested Methods, etc., dated Dec. 7, 1951, page 1 - "The Original terms was as follows" - pp 1, 2, 3 and 4 and the 1st short paragraph following.
  - (2) From Report on Presentation of Tentative Draft of Bear River Compact at Jackson, Wyoming, on June 28, 1948 - p. 19 from the middle of the page over to end of second paragraph on page 20. (copied on attached sheet)
  - (3) Report on Daily Stream Flow Depletions in Upper and Central Divisions of Bear River Basin, dated May 22, 1951, beginning with the third paragraph on page 1, and ending with balance of paragraph on next page.
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R.F.  
Dec 21 1951  
to the (Supt) office

Report to Bear River Compact Commissioners  
on Bear River Compact and Analysis of Stream  
Flow Records, June 23, 1948 - by W. V. Iorns  
Project Engineer, U.S.G.S.

In this division according to the listing of water rights on Plat 3, the Idaho section would receive practically all of the first 300 second-feet of divertible flow. There has been considerable development in the Wyo. section during relatively recent years. These later day developments have been principally on Smiths Fork or on the river bottoms where Smiths Fork waters have been utilized. In normal years supplies are more than sufficient to fill the needs of these two sections and no material cutting of rights are necessary. However, drouth years which have been experienced many times have caused much concern in the Idaho section.

To, allocate the first 300 cubic feet per second to the Idaho section, would in drouth years, put the Wyoming section in dire straits. There must therefore, need be a deviation from the purely priority principle in the allocations, which must be equitable, but at the same time give consideration to the Idaho rights. No well based formula is offered as to how a division should be made as in the end the division will be made by agreement between the commissioners and water users of the two states.

We have recommended that Wyoming be allowed 73 sec. ft. when Idaho receives 295 sec. ft. For lesser divertible flows the division will be proportional to these figures. This Wyoming allotment is approximately one fourth of its total right and one fourth of Idaho's first right.

Reconvened at 11:20 a.m.

MR. LARSON: Is there anything to report from Idaho and Wyoming?

MR. MERRILL: We will make you this proposition - If you want to go 60-40 or 810 to 400 and 70-30 after it gets below 400, we may get on. And that would have to mean also the elimination of paragraph 3. That is based on simply a time to compromise. Our position is that you take the 17,000 acres and the 23,000 acres without any consideration to priority rights in reaching your 43 and 57 per cent. We gave some consideration to priority of rights and so make the figure, and it is just a figure for an attempted compromise instead of 43-57 make it 40-60 down to 400; if it gets below 400, then make it 30-70 and eliminate this No. 3 which has to do with that 207 feet for reasons that can later be explained.

MR. PERSONS: I don't think you can write figures by taking figures out of the air. If you are going to change this figure, I think Idaho and certainly Wyoming should submit it to their engineers. etc.

MR. VERNON: If a matter of this kind is to be referred to an engineering committee, it would be very helpful if they could hold their meetings while Mr. Iorns is available so whatever is going to be done on that will have to be done very quickly.

MR. LARSON: When could this commission meet again and see if Mr. Iorns could meet with us?

MR. VERNON: If committees immediately set to work, and meet as early in January as possible - let us put forth a concerted effort to see if we can come to an agreement rather than drag it back into the Spring and not have Mr. Iorns here.

MR. IORNS: I sometimes question the referrals of these matters back to the committee for study until there is a basic principle set up. Now the Engineering Committee can meet and what will it accomplish unless it is working towards or in agreement with a

basic principle in agreement. Unless the commission outlines a basic principle on which it can recommend a division, -if we are going to divide it on the basis of irrigated acreage, let irrigated acreage be the basic principle. If we are going to divide it on the basis of irrigated acreage and priority rights etc. why there are more solutions than you can write in the rest of your days, so I think it has got to be fairly well tied down before I will want to see it referred back to the Engineering Committee because that is literally putting it back into the hands of the Engineering Committee to establish a policy and that is not the duty of the Engineering Committee.

MR. SKEEN: How reliable are your figures 23,000 and 27,000 - all the land on the tributaries, or just your best estimate? Do you think your figures are within three per cent of being correct?

MR. IORNS: The figure takes in your land irrigated by the streams as defined by divertible flow which follows shortly after that. And the acres and the streams named there define the lands that are involved in that. In the report that I put out here dated December 7, 1951, for the Central Division, I have a tabulation of irrigated acreages by canals on page 7.

DEC. 21 A.M.

by canals on page 7. In that I have shown the figures of adjudicated acreage as described in the adjudication, decrees, etc. Also shown are the preliminary acreage that we have determined to be irrigated by these respective canals from the land use maps. Now I would not say that these are correct - I have not done all of them. Other men worked in my office that have long been gone and they might have included some land that apparently should not have been; maybe left out some land, but the total for the Wyoming portion is 17,492 acres adjudicated. Total preliminary acreage is 17,784, a difference of about 700 acres. In Idaho the total is 22,674 acres of decreed acreage; preliminary acreage determined from our map is 23,278. The early photographs were made in about 1936, were they not, Mr. Thomas?

MR. THOMAS: 1937-38.

MR. IORNS: Mr. Thomas' ..... permit or use map and covered period from 1938 up to about 1944-45, as period of time in which you worked on land use maps. In other words, the map date is 37 through 39 - well that is 12 years ago. If it is exactly that today I would not say. But when we put these figures down and compare them they are not far apart. Wyoming is 43.56 - I have recommended 43 per cent as being a possible average. Idaho is 56.44 per cent on the adjudication acreage basis, 58.10 on the basis of preliminary acreage. I have recommended an average of 57 based on these two - total 100%. I think the figures insofar as the acreage are in fair agreement and you can either use preliminary acreage or adjudicated acreage, which ever you want.

MR. MERRILL: Why don't you go a little further and work out the priority rights and get an average percent there?

MR. IORNS: If you had taken time to go through my report of May 22, 1951, stream flow and depletion, on pages 8 and 9, you would find the water rights by years. That covers the same lands, shows total accumulated water rights all the way from 1870 up to 1939. To my knowledge, none dated since 1939. I think the best thing to do is to take the average for other parts of the graff as I have indicated here. I would like to point out one other thing, that if

we are going to depart from this acreage basis of division between the two states, we are going to add to the arguments of the other states for retention of some water which has already come into the picture of the 207 feet limitation, and I think that is something that should be definitely considered. If on the basis of 43% it is difficult to compromise, I feel that the Basin could be divided up into three separate units for control and administration and the 207 feet has no place in it. If you approach it on priority basis, that 207 feet very definitely comes into the picture to be a credit to Wyoming. Now which one do you want? Do you want to give or take? I have set up a measure by which that unused water can be computed. Or, it is just irrigated acreage or priority right basis. It just boils down to that.

MR. LARSON: I think if the problem is referred back to the Engineering Commission they have to have some policy to go on or they do not know what they are to do.

MR. PERSONS: I would like to have some explanation from the Engineers of Idaho why we should change this. We had the assignment very definite. Now they pick figures out of the air. We cannot write compacts that way.

----- We feel Wyoming should concede a little. If you go back you will find Idaho has brought no new acres in while Wyoming has brought 5,000 new acres in. We feel Wyoming should concede a little in this percentage.

MR. PERSONS: Now are we trying to write a compact just to get some water away from Wyoming users, or are we trying to write a compact that will protect you in low years? This compact would have helped you in 1934-41 when you needed help. We don't want to write a compact to take water away from Wyoming when there is plenty of water, do we? No.

MR. COOPER: At this engineering committee meeting, Mr. Baird, the man who has been operating with water for Idaho was not at the meeting. He is the man that understands it the best. Our State Engineer was not there, Mr. Culp, and Mr. Crandall agreed that that was the best agreement that he could get with Wyoming. Now these

men are not in accord particularly with this No.3 under A, on page 4. They say that that is not only unjust but it is inoperative. We particularly object to that being written into it. We are not so disturbed against the 43-57 but we do object to this.

MR. PERSONS: The 207?

Yes.

MR. COOPER: The fact that these persons were not present, puts Idaho at a disadvantage.

MR. IORNS: No, they invited the members of the engineering committee. I rather believe in getting down with those that are responsible for a specific task and inviting them, and then after that group, it can come to ....., then take it to larger group and spread on out. But you cannot do constructive work or make progress in large meetings to which all divergent interests and selfish interests have a voice. I know that Mr. Crandall is not familiar with the things in the Bear River Basin; that Mr. Baird is and Mr. Cooper is. And in the meeting at Evanston I pointed out that Mr. Cooper would be included in as the Idaho adviser, and as adviser for Mr. Crandall at any meetings, but after following engineering committee meeting I was going to hold another at which Mr. Cooper would be there, but the time was short and it just was not accomplished. I would like to point out again that again we are departing in this 207 feet. If Utah and Idaho could agree on it it is fine, and change it. I believe, according to my studies, that 207 sec. ft. violates the precepts on which we can operate. And if we were asked for a decision, I would say it had no place in there.

MR. TRACY: You mean all of 3?

MR. IORNS: All of 3.

MR. PERSONS: I suggested the 207 and it was approved by Idaho. When this water gets this low there is never water for this section and Idaho could very easily turn this water down. What we have said is true that there is more water than is needed by that first Idaho section. There is all kinds of water.

MR. COOPER: Mr. Baird tells me that after the 1st of July you don't use that 207 feet.

MR. PERSONS: That is right. But we have rights ahead, Mr. Cooper.

MR. TRACY: Mr. Chairman, I think we are just about ready to agree between Idaho and Wyoming on this proposition and I make a suggestion that we leave it as is and strike No. 3 on page 4.

MR. LARSON: You are making that suggestion to Idaho and Wyoming?

MR. TRACY: Yes, sir, I am making that suggestion to Idaho and Wyoming.

MR. LARSON: Do I hear a second to that? What do you want to do on this? Mr. Tracy has made a suggestion Idaho, what do you want to do with Mr. Tracy's suggestion?

MR. COOPER: Well, Idaho would prefer to take that under advisement because Mr. Merrill made a proposition that the division be on the 40-60 percentage basis and added the provision that when the flow was below 400 feet that it be divided on a 70-30 basis. Now we have not had a chance further to discuss that again and we would like the privilege of awaiting a decision until we talk it over among ourselves before we would second the motion or vote in favor of Mr. Tracy's motion - we want to come to an agreement among the Idaho representatives.

MR. LARSON: After we ask Wyoming to comment, would it help if we adjourned to 2:00 o'clock?

Yes.

What is your comment on the two suggestions made, Wyoming?

MR. BISHOP: We would want to take it under consideration.

MR. SKEEN: I move we adjourn to 2:00 o'clock.

ADJOURNED TO 2:00 p.m.

Dec. 21, 1951.

P.M. Meeting  
Bear River Compact

Reconvened at 2:00 p.m.

MR. SPAULDING: My understanding was that if we went back to the Engineering Committee, we wished an announcement of principle upon which to make the recompilation, but Wyoming is not able to concede 43-57 and Mr. Persons explained Wyoming's attitude why they think they should have the 207. I think there could be a little more discussion on that question.

MR. PERSONS: I think everyone has heard what I said on the 207. I think on the 42-57, the difference in the priorities where Idaho has all the early priorities, they are paper priorities but not actual priorities. The decree was given 1877 priorities but all were not developed in that one year. And they all have 1877 water rights.

MR. IORNS: May I say a word in regard to that. I don't know whether any of you have looked at my report on the analysis of the water right in the Bear River Basin, which has been out for a considerable period of time. In that report I presented information that I had gained to the ownership when I went to the County Recorder's office and reviewed affidavits that were presented. On the basis of the affidavits that had been filed, and not on the basis of the decree, I prepared a tabulation which I outlined in that previous report, and which I showed the results on pages 8 and 9 of Daily Stream Flow Tabulations . dated May 22, 1951. A graph of these same rights shown comparatively I have illustrated in my reports dated December 7, 1951. That is the one I have outlined here on the Bear as being Wyoming's portion and not my estimation. I don't believe that an examination or review of these rights, and basis for the rights would change that figure very much. Idaho would still have practically all of the flow when the total divertible flow was less than 300 sec. ft. Wyoming would build up from 300 sec. ft. on up until all rights are filled. I don't think a re-examination of this would gain but very little.

MR. MERRILL: But none of that is in this compact?

MR. IORNS: No. In this proposed Compact we have departed entirely from priorities and are dealing with irrigated acreage.

MR. LARSON: Idaho made offer of 40-60 per cent figured above 400 sec. ft. and 30 below.

MR. MERRILL: We will make that 43-57 if it is agreeable to the other members here, with 70-30 below 400.

MR. LARSON: Wyoming was to comment on whether they would deal on these lines or not.

MR. PERSONS: We might study the ~~(former)~~ - - provided the priorities are left in, and the next, we will study the 70-30 to see if that is in right proportion.

MR. COOPER: We could not possibly accept that.

MR. PERSONS: 43-57 based on priorities.

MR. MERRILL: No, not on priorities at all, on acreage.

Do you mean Mr. Persons, that if we divided on the basis throughout - on the basis of 43-57, that you would be willing to eliminate the 207 sec. ft. limitation?

MR. PERSONS: No.

MR. IORN: That is what I understand - Idaho's flow to be 43-57 if the 207 sec. ft. were cut out.

MR. PERSON: No. 70-30 on the second block and then you are dealing on priorities.

Q

MR. PERSON: I think our Commissioner should answer that.

MR. BISHOP: Well I would have to do a lot of studying before I would change my mind, and I would not say that I would change it then.

MR. LARSON: I would like to ask just exactly what this provision 3 means regarding the 207 feet.

MR. MERRILL: I admit I don't understand that.

MR. LARSON: Can you explain that, Mr. Iorns?

MR. IORNS: Yes. In my report Below Stream Flow Depletions, dated May 22, 1951, at pages 8 and 9, there is a tabulation which I have prepared which I call Table to Relative Rights in the Central Division. Now this table is based on what I set up as relative rights. It is not the Idaho adjudication. This is what I feel the Idaho Decree should have been if it had been based on the appropriation principle instead of the stipulation as agreed between the water users when the decree was passed down. In other words,

it would put the two states on an equal plane so far if their water rights were decided on the dates they began to use the water. On page 8 of that report you will notice that under the year of 1897, which would be the year priority, the lower Wyoming section has 207 sec. ft. of cumulative water rights of that date and later. Now the Last Chance Canal right, which would be the most likely right to be affected down stream - this earliest dated right is 1897 for 200 sec. ft. Idaho's rights comparable thereto is cumulative of 453 cubic feet per second and the Wyoming 207. Under this 43-57, Idaho would be entitled to 57 - - In other words, Idaho's share under divertible flow would be a total of 330.78 cubic feet per second, in other words 57 per cent of 660. If Idaho were not diverting that 378 cu. ft. per second, but was only diverting 200 sec. ft. of it, there would be 178 sec. ft. passing on down the river past Stewart Dam. That would pass on down as natural flow, and be delivered to the Last Chance Canal people, some of it on down to the canals around Cutler Dam with other water for Box Elder County. There is sufficient inflow normally to take care of the rights of 333 sec. ft. of the Box Elder canals. So the Last Chance Canal right, I rather imagine, and indicated by most of my studies, would be the right that would be seriously affected with this water that should come down the other way and taken back up to Wyoming. Wyoming has 207 sec. ft. of 1897 water and later, literally ahead of the Last Chance right. Now if we were distributing water, that water would be delivered to the lower Wyoming section. They would not be cut below 207 sec. ft. if there was any water that could be diverted back up stream. However, since we are departing from that it is a question of whether they are entitled to that 207 sec. ft. which they would be entitled to under a priority right basis. That is the question. I might point out during the year of 1944 the 43 per cent limitation for Wyoming would have caused Wyoming to release some water during the last part of July and through September. The Idaho canals during the same period of time were only diverting about 50 per cent of their 57 per cent that they were entitled to. In other words, there would be more water going down the river. Idaho has had that amount as making up their normal flow requirement. And, at the same time, if the 207 sec. ft. were allowed back up for the lower Wyoming portion, it would give them a right to

divert more water than they normally have during the good water years when they had plenty.

MR. PERSONS: If you use just this amount in the good water years when no one was short -- Here is one thing I want to point out the records indicate that you would be cut down. I feel that the canals in the lower Wyoming section, - there are records of water that is not applied to the land.

MR. IORNS: In 1944, Mr. Cooper's canal, it was necessary for them to buy storage water to make up their 1897 decree.

MR. COOPER: We had to use supplemental water in 1944, 1945 and 1946.

MR. IORNS: If you are going to divide the water on the basis of irrigated acreage, I personally don't think you are entitled to it. If you are considering priorities, you are entitled to it.

A. We want priorities.

MR. IORNS: Would Wyoming be willing to stand a re-allocation and take what was their water on that basis? Here is another suggestion: Instead of having this on this basis here, to where you are going to have that 207 division, let us combine the Central Division and the Lower Division and we will treat the whole thing on this basis.

MR. COOPER: What percentage of water did you have to buy in 1945?

MR. IORNS: In 1944, the Last Chance - the total quantity of acre feet of all water the Last Chance Canal bought, 17,568 feet of storage.

Q. What per cent is that? In 1946?

A. In 1948, the Last Chance Canal bought 8,126.

In 1948 the Last Chance Canal started cutting on their 1897 water right and by the end of this month they were filling about 75 per cent, and by the end of September about 50 per cent of it.

MR. COOPER: When did we start cutting?

MR. IORNS: Well, you started cutting your first rights close to July 1st. If you were to divide that water from the mouth of ~~Summit Creek~~, Wyoming would not be cut below 207 cu. ft. per sec. in these years of 1944, 1945 and 1947. They are entitled to that on the basis of their priorities while the Idaho section has earlier dated water

rights of 1853. If they are not using that it would go back to Wyoming on a 207 basis.

MR. \_\_\_\_\_: Well, Mr. Iorns, how will that affect the lower folks?

MR. IORNS: On that basis it will affect you this way: The 1880 water right has 333 feet. Now the lower Wyoming section has 177 feet. On the basis of that, if you were going to put it clear down the additional length of the river, the alteration possible should be 177, but I think since your right is earlier than the Last Chance you would either be filling all of that right, or most of it, in these years when it would be applicable so far as the Upper Wyoming section is concerned. But I think it would be a good protection for you and it would be a good thing for you if the 207 feet were stricken out, or 177.

MR. PERSONS: But under the second clause, when we take the other 177, if these people are not satisfied, then the Last Chance would close and we would cut down to 177. There is your priority.

MR. IORNS: Well let us go back to the \_\_\_\_\_ part of the tentative draft. Let us cut below 400 second feet, let us let Wyoming have 25 per cent on 631 sec. ft. total divertible flow: give Wyoming 28 per cent on 810 sec. ft., let Wyoming have 43 per cent and then put in your 207 limitation: that when Idaho is not using all of its share, or the ..... between 6 and 100 per cent, why let Wyoming take that part up stream. Wyoming will have a little better set up in the late part of the season when Idaho is through using its water, but you are going to lose water up here.

MR. PERSONS: We would not want paper priorities. If we are going to liquidate, then we do not want to do it in a hurry. We want to study them.

Q. What about the Central Division?

MR. IORNS: The Central Division can be alright, supported from this other division, so long as each keeps within the separate division. In other words this 45 per cent sets it up to where you have water and the trade in there is nothing more than to trade that part of this trade down in here. This 207. Keep this in mind. If we have a drought - it does not exist. There will be no water. My personal observation is that a good portion of this water during ~~this~~

this low part, where you want that 207 or where you are going to be cut, ran past the gaging station here and wasted back on to the stream again.

MR. PERSONS: That did not hurt any one either.

MR. IORNS: No, and it won't hurt you to cut it off.

MR. PERSONS: The only purpose of the 207 is to keep regulation away when it is not needed. When the upper Idaho water is going by Stewart Dam, the compact 43-57 is not operative.

MR. LARSON: You would not want to say the whole compact is not operative?

MR. PERSONS: No. Only as to the Central Division.

MR. IORNS: I cannot help but view it as a trade in of one end for the other end. How many acre feet per acre do you figure that country up there needs?

MR. PERSONS: I don't have the least idea, but I know they didn't have to buy any water.

MR. IORNS: But because the Covey Canal system has gone in the Stewart Dam has been increasingly depleted and they have been forced to buy more water in the early part of the season. The increase in acreage in the Central Division in Wyoming that has occurred since, I will say 1918, has caused an increased depletion of the supplies that prior to that time were available to the Last Chance Canal for filling their 1897 and 1901 water rights.

MR. PERSONS: We don't want to talk about that. I want to talk about 1948.

MR. IORNS: As a result of that, the Last Chance Canal has had to buy increasing amounts of water, especially in June, July and August. Now when you cut over to where this 207 will affect the Last Chance and the end might possibly be that if you increase our diversions the Last Chance will have to buy more water.

MR. PERSONS: We are not going to increase.

MR. IORNS: This Covey Canal system is running 180 sec. ft. of water. The Covey Canal extension started in 1918. That was when the major expansion took place. So as a result the Last Chance has had to buy more amounts of storage. The Last Chance wants to protect us. They will not have to buy more storage. This 43-57 won't hurt them a bit.

MR. LARSON: Well, where are we at with the Engineering Committee. They can't do anything unless there is a policy furnished. Two phases have been considered: The acreage basis and the priority basis.

MR. IORNS: If the Idaho users don't want to use this and put it on down--

MR. PERSON: I haven't Idaho's except the 43-57.

MR. IORNS: Personally, I think that Idaho could accept 43-57. It is a reasonable deal for them.

MR. COOPER: Well, Idaho will agree to the division on the 43-57 basis provided you take out that 207 clause. That qualification of (c) on page 4.

MR. IORNS: By that do you mean the qualification that we deduct some amount for flow arising below the last Idaho diversion?

MR. COOPER: There may be a small amount that is not divertible.

MR. IORNS: I think that that amount of water is not going to amount to five second feet. I think it is too small for you to even consider. They can by careful caulking decrease that flow to a little less than 5 sec. ft. So I don't think that small amount of leakage or flow passing the station would be anything that would hurt Idaho's portion. So, would you take that out on the basis of what Mr. Baird says, Mr. Cooper?

Mr. Cooper: Yes, we will listen to the advice of our Engineer.

MR. IORNS: Mr. Baird does not think the seepage would be 5 sec. ft.

----- If we have a gaging station 300 ft. down stream the Engineer will have to put in a ..... for the flow between--

MR. SKEEN: You want that to read "passing down stream from Stewart Dam"?

MR. IORNS: Passing down the river channel.

A. All right. "Flow in second feet of stream passing down stream from Stewart Dam."

MR. IORNS: While considering that I noticed here a mistake was made in defining..... the division point between the Upper Division and the Central Division as Pixley Dam, on the top of page 4, the second line now reads "between the mouth of Sublet Creek". It should be "between Pixley Dam - so strike out "mouth of Sublet Creek" and insert "Pixley Dam". Definitions in Article II would have to be

made to conform with that. I do have a suggestion to make there, and that is in regard to paragraph C-1a at the bottom of page 3. I think it should be referred to the Drafting Committee, whether or not to use the definition as given there or the one given in my suggestions, which I think but little better identifies the same water. C-1a on the bottom of page 3. (reads section - "in second feet in Wyoming consisting of all diversions from Gray Creek - and Open Creek Springs, Sublet Creek, the main stem of Smith's Fork and all its tributaries above the mouth of Hobble Creek, and the main stem of Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho state line near -----.") The principal difference is the main stem of Smith's Fork.

MR. MERRILL: You have that same language in No. 1. That is just a little better definition. It means the same and includes the same but removes questions.

MR. LARSON: Have you anything else?

No.

MR. LARSON: Idaho has come a long way since noon. Now what about Wyoming?

MR. IORNS: Mr. Skeen, Mr. Thomas has just called my attention to the way that is written / and it literally excludes Hobble Creek. Why don't we just say above the mouth of Hobble Creek, including Hobble Creek.

MR. PERSONS: Is there any interstate irrigation?

MR. IORNS: No. -"Above the mouth of Hobble Creek, including Hobble Creek."

MR. THOMAS: "Main Stem of Smith's Fork and all of its tributaries down to and including Hobble Creek"?

MR. IORNS: No, we are not considering some lands here within Muddy Creek. The reason I have excluded these lands is that they are very small streams. At the time thought no reclamation would be necessary on this river. The supply from these systems would only supply water on the basis of one second foot by flow - 200 acres of land. On the basis of a sec. ft. to maybe 75 acres or 100 acres. If it was not receiving water on an equal basis or more, I ruled this out. We did not include the lands and we should not include the water.

MR. PERSONS: That is right.

MR. SKEEN: And all its tributaries from this source down to and including Hobbie Creek.

MR. IORNS: No, No. Leave it as I had it before.

MR. LARSON: How many tributaries are there on Smith's Fork?

MR. IORNS: A lot of little ones.

(From Wyoming): Is there a diversion on Hobbie Creek?

MR. LARSON:

Well about 1945 the land had been cleared in the past and there had been a diversion of Meadow but it had reverted back and it was just a mass of weeds. Should we not refer this to the drafting committee? Let us refer the wording of this to the Drafting Committee. Then we can talk to the comments of Wyoming on the offer made by Idaho.

(excused at 3:30)