BEAR RIVER COMPACT COMMISSION

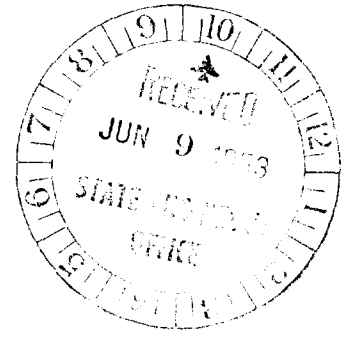
MINUTES OF MEETING, SALT LAKE CITY, UTAH, NOVEMBER 7, 1952

A meeting of the Bear River Compact Commission was held in the Governor's Board Room, November 7, 1952. The following Compact Commissioners, Assistant Compact Commissioners and Advisors were present:

E. O. Larson, Federal Representative and Chairman
L. C. Bishop, Compact Commissioner for Wyoming
Joseph M. Tracy, Compact Commissioner for Utah
Fred Cooper, Chairman, Idaho Compact Commission

A. L. Merrill
Mark R. Kulp
W. N. Jibson
W. V. Iorns
E. J. Skeen
J. A. Howell
David P. Miller
F. B. Myers
H. B. Carlisle
J. Warren Sirrine
Melvin Lauridsen
C. R. Nate
E. J. Baird
J. L. Weidmann

A. D. Smoot
L. B. Caine
V. T. Wilson
M. T. Wilson
O. A. Christensen
A. Ross
E. K. Thomas
Gerald Irvine
E. G. Thorum
Lon Hopkins
L. B. Johnson
Emil C. Gradert
S. Reed Dayton
Robert E. Smylie




Chairman E. O. Larson presided and called the session to order at 9:00 a.m.

At the request of the Chairman, Mr. Skeen read the statement made by Mr. Cooper at the October 16, 1952, meeting. Based upon that proposal the engineering committee made some studies set forth in Report No. 26. Mr. Jibson explained that the Report is really not a committee report but has been prepared by the Logan office of the U. S. G. S. He then discussed the report.

Mr. Jibson explained in connection with Plate 8 of Report No. 26, that the storage is at or above Woodruff Narrows. He said the total amount of storage

is not entirely depleted; that for 30,000 ac. ft. we have estimated that 28,500 is actually depleted or is consumed. That would be the consumptive use.

MR. TRACY: The annual return flow would be 2,200 to the Lake?

MR. JIBSON: That would average 1400, I believe.

MR. TRACY: That is small for return flow.

Mr. Iorns explained the only way was for them to use the most extreme condition. He said that the flow that is going to be released there is going to be dribbled out and spread out over the country.

Mr. Tracy: What is the ratio of return flow that has been used in your consideration of the problem?

MR. IORNS: Well the return flows average from as high as 60 to 70 percent of the water that is diverted for irrigation, during the early part of the season down to 30 or 40 percent as at the very tail end. The 30 or 40 per cent "feathers out" into the most extreme condition.

MR. JIBSON: In column 4 we have the net water available and in the columns farther over we adjust for this depletion of upstream storage. Mr. Iorns has suggested that maybe it would clarify this to jump over to columns 15 and 16. Columns 15 and 16, we call that Past Operation, and that is the storable flows used for power at Cutler and used for irrigation. If you compare the sum of the two with the annual releases, it may clarify this table as we go. In column 5 we subtract our estimated depletion in column 3 from the net water supply available in column 4, and we get what we call an adjusted supply which in the first year is 378,700. The adjusted storage or storable flow is listed in column 6. In order to try to cut out a little space we left out some of the columns that were used in Report No. 25. The way we handled this adjustment for storable flows or storage used for power at Cutler was to say that when our past power releases were great enough to take care of this increased depletion, we reduced

the power water by that amount. That will be true each year until the content of the Lake falls down to this irrigation reserve. For the first three years during this period power releases were sufficient to permit deduction from the actual power release the amount of depletion due to new storage and the result is in column 6. From 1926 the contents of the lake passed through the irrigation reserve and as it passed through the reserve then we assumed there could be no power releases.

In column 7 we call the "Adjusted Content of Bear Lake." Column 7 is arrived at by taking the contents of the lake on Sept. 30 of the previous year and adding to this the adjusted supply that we have in column 5, minus the adjusted power releases in column 6,

Then we go from the storage period into the storage delivery period. Column 8 is the deficiency in the water supply due to evaporation losses. Mr. Iorns found in his studies in Report No. 10 that the lake just about balances out for the entire year over a period of years. However, during the delivery period the losses are greater so the contents of the lake are diminished during the delivery period by the amount released for irrigation, and for power and for evaporation and other losses. The evaporation loss or deficiency is recorded in column 8, being the difference between change in content and power plus irrigation releases. In column 9, we again adjust the storage.

MR. TRACY: Taking the year 1926. In 1926 our storage period ended April 30 --

MR. JIBSON: In referring it back to report #25 which refers in turn back to report #10, it is clarified.

In column 9 we adjust our storable flows used for power at Cutler again. We did that in column 6. Now we do that again in column 9. Mr. Thorum brought out the point in past engineering committee meetings that they could

not always operate the lake efficiently, so we allowed a 12,000 ac.-ft. cushion. We find that this varied all the way from practically zero to more than 12,000. In column 9, during the delivery period, if Bear Lake contents were above 787,500 ac. ft. this release was left as it actually occurred. One of the premises of this study is that we take this 25-year period, start with the lake contents actually occurred, and bring it back to its actual content at the end of the 25-year period. Now in 1926 you will notice the adjusted content of the lake in column 7 was 901,600 and the adjusted content in column 12 at the end of the period was 668,500. That means that the lake during the delivery period actually passed through this limit of 787,500 so we made a straight proportionate adjustment on power water in column 9.

In column 10 we have taken the storage releases used for irrigation directly out of report No. 25, and also out of report No, 10. In column 11 we show the decrease in these irrigation releases due to upstream storage. We did not have to decrease these releases until 1935. In 1935 the contents of the lake reached zero and power water releases that year were not sufficient, after being adjusted for this upstream storage, to take care of this depletion. So we had to decrease the irrigation releases by 94,100. An average for 25 years gives us the 3,700 referred to in the previous tables.

In column 12 we have the adjusted content of the lake at the end of the period. This would be as of September 30 each year. We get that by taking column 7, which is our adjusted content at the end of the storage period in the spring, and subtract from that the sum of our evaporation and other losses in column 8, plus the power water, plus the irrigation water that was used during the storage delivery period. That is our adjusted content.

It came down to zero in 1935. There is where the principal difference comes in this study and in our report No. 25. We set our limit in report 25 so

we did not have to adjust this water, and therefore our figure was higher. Now, on an annual basis we have computed column 13, and 14. We have taken column 6 and column 9, added the two together and that is our adjusted storage or storable flow for power at Cutler for the entire year. We can get a better comparison now between the adjusted figure and the actual figure. The actual releases are in column 15. In column 14 we have taken the adjusted figure for irrigation which was only adjusted in one year, and carried over that figure from column 10. There again you can get a comparison in column 14 with column 16. The 25-year summary or average in column 15 is 103,000. That is power water.

MR. IORNS: The important part here is a comparison of columns 13 through 16. Columns 13 and 14 would have been the power water and the irrigation water available with upstream storage of 30,000 ac. ft. and the limitation on Bear Lake of 5914.5 feet elevation. You can see the thing we are interested in first is the irrigation water. What would be the adjusted amount if these two stipulations were put into the contract and they had the full amount of 30,000 ac. ft. in storage upstream would be indicated in column 14. They are the same in all years except 1935. In 1935 the lower irrigators used 120,000 ac. ft. In other words in 1935 there would have been a shortage on the downstream irrigators of 94,100 ac. ft. The effect on power is indicated in columns 13 and 15. Column 15 shows the amount available and actually used for power; column 13 shows what would have been available for power by this Bear Lake storage limitation of 5914.5 ft. above sea level. You get down to 1930, and under this restriction they would not have been able to produce any power with Bear Lake water until 1948, while in their actual use of it they used some water for power in 1931 and a little bit in 1939 and 1943 and then it begins to increase on up with quite a little in 1947. That would be the net effect on the downstream users. It would not be an average annual but it would be a shortage of 94,100

acre ft. in 1935, a year when they would only receive 25,900 as that would have been all that would have been available in that year. That is with the stipulations as in effect for the 30,000 ac. ft. upstream storage and the 5914.5 limitation on Bear Lake.

Mr. Iorns then explained Plate 9, which shows operation of the lake adjusted for upstream storage based on supplies at Woodruff Narrows during the period Oct. 1 to April 30 and an irrigation reserve in Bear Lake set at an elevation of 5914.5 ft. based on 36,000 ac. ft. allowable upstream storage. This is based upon the water at Stewart Dam that would have been storable. I have assumed that every bit of the water would have been stored in Bear Lake.

MR. TRACY: Colums 13, 14, 15 and 16 are what we are concerned with in this study?

Yes, sir.

MR. IORNS: That would give 884,000 ac. ft. of reserve capacity in Bear Lake. And turning over to Plate 9, this plate is set up and determined in a similar manner as Mr. Jibson described, for 36,000 ac. ft. with limitation of 787,500 ac. ft. for reserve capacity in Bear Lake. Now assuming that this 36,000 ac. ft. had been actually installed and had been used historically during this period, we would have available for downstream users the quantities shown in column 14 on this page of Plate No. 9. Now if we compare that with column 16, which is what the downstream irrigators actually developed, we find they are the same except in the year 1935, and in that year they developed 120,000 ac. ft. but they would only have had 16,200 available and there would have been a shortage of 103,800 ac. ft. So to wipe out that deficiency it would require very close to 900,000 ac. ft. reserve space in Bear Lake.

MR. CARLISLE: What amount of water passed Bear Lake 1948 through 1952 that has not been stored? This survey goes to 1948.

MR. IORNS: There has been a large amount of water but with this limitation you could have stored the water above Bear Lake. The period 1941 through 1948 is a period of surplus water.

MR. COOPER: Mr. Chairman, these figures in all of these reports are made in the 25-year period between 1923 and 1948. The exceptional case would be in the case Mr. Carlisle asked about from 1948 to 1952. These are the only figures that have been asked for up to now. Consequently the figures submitted are the only figures that have been requested.

MR. JIBSON: I might say in addition, that the engineering committee discussed this period quite thoroughly in two previous meetings and it was decided that this was a representative period even though it had a drouth period in it. It was the consensus of opinion in the engineering committee that this period was the most representative. We could have extended it further and got into more good water years in those before 1925, but this was a representative period and should be used in this study.

MR. IORNS: There would be no need for upstream storage if you had years like 1948 to 1952.

MR. BISHOP: No matter how much water there is, the downstream users get the water but we are limited.

MR. JOHNSON: Could we have the blackboard? I think there are some shots in the dark in this report that we don't know anything about. It does not coincide with previous reports. The actual consumption of water was about 1/6th and if you apply 1/6 to 30,000 ac. ft. you won't come up with 28,000 ac. ft. of loss. There are some physical things that have been disregarded and I should like to draw the thing from south to north in the river. In the Uintah-Evanston stretches we find some grade in the river and that continues to the Narrows. We come down to Woodruff Narrows - Sublet section which will hardly

run a spinner so that water can be measured; we have a very low grade and so we take our canals out. Very low grade - due for a slow down just as soon as the river does. Then the next main canals come out about at the Reese ranch and this is the R & W and it takes 15 miles to reach the foothills. Then we have the Randolph-Sage which goes right down to follow almost parallel the river; and with the meander of the rivers there are about five dozen ranches - that takes down to Copper Mountain and it has all the grade that there is in the valley.

Then I would like to tell you why we can't go along with this compact. This R & W at its flood will take about 250 ft. and I think it might cover 8,000 acres of land, but supposing on a 10" grade and 8,000 acres of land to water, that we take a flow of one to fifty acres. That will only half fill that ditch. It will take 100 or 125 ft. in a deadlevel country to irrigate these lands, we would have to put steps here, and here, and here to get it up to the land. These are not hillside canals. After we come to the period where vegetation will grow, it grows rapidly as soon as the water warms up. There is nowhere in the mountains that I know that the canals have to parallel the river to get any grade at all. So suppose we had a reservoir at Woodruff Narrows, we would have to put it right on top of that flow or it won't do us any good. You put three or four stops above us and there won't be any water get there at all. It will be so inadequate that there will be no return flow. So if we had 30,000 ft. you think we would dribble it out. We could not do it that way. It would not do us any good. So as the river would decline and these folks in Uintah County needed that water, and they ought to have it, we could use this and keep these canals right at their full flow as long as we could. And when we could not we would let the country dry up and take the hay off of it. In our peak flow we have only been consuming 1.6 acre ft. per acre on that land.

This loss on a 30,000 storage is a plain shot in the dark. Unless we abandon that flat 35 miles of country there we have to have water in large quantities while we have water at all. If you limit us we just as well abandon it because it can't be done. If you folks could see our picture you could see why we could not possibly accept regulation. We can't get that water out on the hills because there is no grade to go on. We can't change it, there is no way to change it, because we are on a flat. And our only answer is to retain the right that we now have, to take all the water we can while the water is there, and we let it go on the land and let it flow over.

We have a system here, and for miles and miles we have a levee. On the west side nature did freak things and made a tip-off to the west and so a natural slough throws the water to the foot hills, but over there where there is 7,000 acres of good land there is no way in the world to water it but with a lot of water. You can't dig it, you can't get it out of the canal. It is almost a dead level. So the type of irrigation we have practiced is the only irrigation we can practice. We are not mulish about this thing, and we can't believe that any storage here will deplete the Bear Lake to the extent that you folks think it will because we have to put it on the top of the river or it is no good to us. And so I think that the nature of the thing just warrants the position we have to take. We simply have to take it. Whatever period we can have that water it must be a lot of water, and we must have a lot of water if it is only for 15 days or 30 days, but better still 90 days. And if it was any good, it has to go down there in fifteen days to keep the canals full and give us all some water. This tremendous loss in that stored water I cannot agree with. We can't see it. There is not a heavy loss in that river on our land. You can bring it up to 2 ac. ft. of actual consumption and then it is considerably below any consumption in the Bear River Basin.

MR. MERRILL: Do I understand your position is that you have a right to take from the natural flow of the river all the flow you want?

MR. JOHNSON: Yes, sir. We built it up over the years.

MR. IORNS: When I worked up that report I followed right along as you have outlined. Here is the supply as it comes down to Woodruff Narrows. The annual supply as it has been in the past. I questioned you people. How late, what date do you want your full water supply up to? You told me about July 15th. If you had a full water supply up to July 15, that was all you would ask for. So going back and taking the historical records, and the records we have, I took the years you had a good water supply for July 15 and that is about the way you diverted your water. On the basis of that I worked up a flow diagram, or requirement you might say, on what you wanted your headgate to fit these conditions. I used these on that basis, and went up and superimposed this diagram, on the historical records, and I determined the amount of water that you needed here at Woodruff Narrows to give you this full supply which was the same amount that you used in the years when you had plenty of water. I determined what is called the storage requirements at Woodruff Narrows to meet the demands for a full water supply to July 15th. Now the question came and I suggested a provision for upstream storage to meet this need, to be emptied by July 15th. You said you wanted to see if you had any left for fall pasture.

MR. JOHNSON: We don't try to irrigate that for fall pasturage.

MR. IORNS: Now the return flows that come from water that is applied early is high. If certain conditions were set up for the delivery of [illegible] as indicated in the past, we could come very close to what it would be. [illegible] Big Creek and Dry Creek [illegible] over there, we can use this same requirement and use the same ratio. It was only an attempt to arrive at what is needed.

MR. JOHNSON: I don't think this commission should presume to tell the water users what they would like. We have had too many figures and too little contact with the water users.

MR. IORNS: How much water do you need to fill up your reservoirs for additional storage to take care of all your needs and that is what is figured in this study.

MR. BISHOP: Mr. Chairman, I would like to ask Mr. Iorns a question. I think several of us are not exactly clear. Do you contemplate in these ditches of cutting Mr. Johnson down considerably from the amount that he is now using, or taking care of the needs in the same manner as they have been?

MR. IORNS: There is nothing in this [illegible]

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MR. IORNS: There is nothing in this present draft of the compact that puts any limitation on any of these canals except when the water cuts down to the point that a canal in the Upper Section in Wyoming is going to take away from the Central Utah section. There is nothing in the compact that sets excess diversion except when it gets to 400 sec. ft. at border. When it gets below 400 sec. ft. you don't have much water above.

MR. JOHNSON: You raise that to 700 sec. ft. in the storage month.

MR. IORNS: The flow in your section goes down faster than at Border. Border is maintained by Smith's Fork. So that would not put a limitation on any practice you have had in the past.

MR. BISHOP: Is it true under the laws of your state, Mr. Tracy, they can divert any amount they want?

MR. TRACY: Under our adjudication we allow them to divert what they have been diverting in the past. In our adjudication in Summit County we allowed them a maximum of 3 ac. ft. per acre.

MR. IORNS: So if you applied that 2.7 you would get it either from annual flow or from supplemental storage, and you would have your 2.7 in every year with about 20,000 ac. ft. at Woodruff Narrows.

MR. JOHNSON: I think we would like to talk to the Wyoming users. This figure seems quite unacceptable to us and we would like to see how they feel about it.

CHAIRMAN LARSON: Would this commission like to adjourn until one o'clock?

MR. TRACY: Have you finished full discussion on these tables?

MR. JIBSON: We have not discussed the other proposal you made on the 30,000 and 36,000.

MR. TRACY: Why don't we discuss this other then first?

MR. IORNS: That would be the last sheet, page 16.

MR. JIBSON: The other proposal that we had to study here is in part 5. Mr. Tracy suggested that we study the availability of water and effect of a proposal to store 36,000 ac. ft. above Bear Lake when the flow of the river at Border exceeds 700 sec. ft.. It was brought out in the last meeting by Mr. Thomas that we had the availability of that water at Woodruff Narrows pretty well studied in report #25. Time was limited us on this report and as a result I didn't go into it in as much detail as in part 2. Report #25 gives the flows available at Woodruff Narrows under the conditions as suggested and Table 12 summarizes this estimate.

In the first part of Table 12, we have taken the flow at Woodruff Narrows in column 2 from Oct. 1 to Apr. 30. It is the same figure we have been using. The flow in column 3 is the flow at Woodruff Narrows when the river at Border is above 700 sec. ft. We took the amount in excess of 700 and listed it in column 3. You will notice that there are about four or five years that

we have no flow at this time. In other words, after April 30, Bear River at Border didn't get above 700 sec. ft. in these years. Column 5 shows the deficiency prior to April 30th based on 30,000 ac. ft. allowable storage up to April 30. We find there are four years, same as this other set, that we would have a deficiency in filling the full 30,000 ac. ft. The same as in the previous study. In column 6 we give deficiency after April 30th. There would be fifteen years of full supply and ten years that we would have some deficiency. The deficiency ranges all the way from 2300 up to the full 6,000. Now if you take the available storage and limit it to 36,000 we would find in column 7 it would average 33,200 for the 23 year period. In column 8 we have used the same ratio again in estimating this depletion. This study could have been carried out probably a little further but inasmuch as it was pretty well covered in report 25, and since time was limited, I thought this might suffice.

MR. JOHNSON: How do you arrive at column 8?

MR. JIBSON: Mr. Johnson, in our previous study we figured that the water that was used would be reused two or three times before it got to Bear Lake. That is why this is higher. We figured that if that water were applied and used two or three times again the net effect on Bear Lake or below Bear Lake would be about the same as we have shown it here. Mr. Thomas sat in on these discussions and I thought at the time that he had more experience on storage than we did and got his suggestions on it. He probably originated the estimate that was used by the engineering committee.

CHAIRMAN LARSON: Mr. Thomas do you want to say anything more?

MR. THOMAS: There were about 27 diversions below the area that would use water from Woodruff Narrows and we felt that the depletion would be high because of that fact. The water, after it got back into the river from Woodruff Narrows would come down at these different diversions and be picked up again. The engineering committee thought that was a sound idea. That is about all I can say.

MR. TRACY: The average 31,000 and 33,200 on page 16 would be an average of 2,200 returned to Bear Lake?

MR. THOMAS: Yes, according to that schedule.

MR. JIBSON: That completes my report.

MR. TRACY: You have another part on the Francis Lee Canal.

MR. JIBSON: But the question was on this part 2 and part 5. We can take that up if you wish.

MR. COOPER: Let us go ahead and carry on with it.

MR. CARLISLE: This return flow shown is 5 per cent.

MR. IORNS: We can trim that figure down a lot. These figures are not directly on Bear Lake storage but on the supplies arriving at Stewart Dam.

MR. CARLISLE: For the upper river storage the figure is 30,000 ac. ft. It would be necessary for the upstream storage district to guarantee all of this other water to the users of Bear Lake and below including the power use. Including a deficiency of 31,300 in the year 1934 for evaporation and losses for which Bear River was not chargeable. To gain a possible 30,000 ac. ft. of storage we must guarantee everything below.

MR. JIBSON: That was a computation figure.

MR. CARLISLE: I understand it.

MR. JOHNSON: Is the storage that is now established over and above this figure?

MR. JIBSON: Yes. This additional storage over and above what we have now.

MR. SKEEN: Those figures of 30,000 or 36,000 would be storage with priority ahead of Bear Lake.

MR. JIBSON: There was one other point in connection with storage. A study of storage exchange between users on Bear River and Francis-Lee Canal.

I believe it was suggested by Mr. Tracy. We have it briefly summarized on page 13. It was suggested that storage studies in this report include possibilities of exchange-storage by the Upper users in a reservoir at Woodruff Narrows in connection with the Bear River and Francis-Lee Canals.

We took the patterns of actual diversions when they had sufficient water and the requirement pattern up to July 15, and except for these four years the time would not exceed 25 days when they would need this storage water.

MR. JOHNSON: Should we have it limited to these two canals, Mr. Jibson?

MR. JIBSON: These were the two that would serve first from Woodruff Narrows and would have exchange storage available. These two canals are included in the upper Wyoming section. They (Upper Wyoming) are responsible, as set up in the present draft of the compact, for the Francis-Lee and the Bear River canals but not for anything else. The allocation would come from the Wyoming adjudication.

MR. IORNS: There are two canals, the Bear River and the Francis-Lee. Wyoming has to furnish the water for these. Consequently they will have to deliver down at this point here not less than 32 c.f.s. to fill this right. But any water that they deliver past this point that goes to make up this allocation, they would not be entitled to, and that is a hard thing to figure there. In fact in our determination so far, if there is any water available I have not been able to find it. Now if we construct a reservoir which we will call Woodruff-Narrows at this point, Wyoming will have to divert water here and release water out of the reservoir to these canals in the amount of 32 c.f.s. The amount of about 1600 ac. ft. would take care of the maximum amount that could be exchanged on such a basis according to the historical records. So that in this reach of the river, say that you have 500 sec. ft.,

each one of the states is entitled to, upper Wyoming about 50 percent, in other words 250 sec. ft. There could be diverted in this section here about 40 percent. In other words about 200 sec. ft. There has to be another quantity for Wyoming and the Beckwith-Quinn lands, or 50 sec. ft. has to be available for these people.

MR. JIBSON: That is the extent of the study and I think Mr. Iorns has explained pretty well the premises behind it.

MR. BISHOP: There is a situation where two canals are getting their waters in spite of anything that Wyoming might do. There never has been a regulation on what they might do.

MR. IORNS: Oh, yes, it occurs very often.

CHAIRMAN LARSON: How long do you want to recess now?

MR. BISHOP moved that the commission recess until 1:30 p.m. which was seconded by Mr. Cooper and carried.

Recessed to 1:30

Reconvened at 1:45

CHAIRMAN LARSON: It has been suggested that we let Mr. Jibson finish on part 1.

MR. JIBSON: Let us come back to the first part of the report found on page one. We will discuss part I which was to make a comparative study of compact deliveries in the Central division with the following alternative proposals for division of divertible flow: (a) 43% to Wyoming and 57% to Idaho; (b) 35% to Wyoming and 65% to Idaho; and (c) relative priority of rights as determined and listed in Report #16. Tabular and graphical analysis of suggested compact deliveries are shown in tables 1 to 7 and Plates 1 to 7, respectively. This analysis is based on the water years 1944, 1946 and 1948, as being representative of the period in which diversion records are available

1944-48. If time had permitted, 1945 and 1947 water years would have been included. We did have a lot of this data listed for 1944, 1946 and 1948. These years are representative of this period.

MR. MERRILL: What is meant by revised upper Idaho accumulation rights?

MR. JIBSON: This table was taken directly out of report #16 in which all of the rates were set on a one to fifty basis, so that they would be on the same basis.

MR. IORNS: In the report of analysis of water rights in the Bear River Basin, I gave the dates of priority and acreages as indicated in some of the affidavits that are on file in the courthouse at Paris. The rights shown in the decree were established by stipulation and do not represent what actually occurred historically. But by taking these affidavits which are the water users' claims at the time that they started to use the water, taking the irrigated acreages as outlined in the decree under the various canals and assigning these various dates of priority to these various acreages I worked out in that earlier report a determination of what the rights might have been if they had used the affidavits. I won't say all the affidavits were correct, but they are the evidence as indicated by the affidavits. Applying these affidavits with their dates of priority to the lands as described in the decree above Stewart Dam, I worked up a priority of rights schedule which is given in one of the earlier reports. And then applying to this acreage described, a cubic foot per second for each 50 acres, I worked up that table and I used the rights as actually recorded in the lower Wyoming section, and adding to what I had in the previous adoption other rights on tributaries, etc. to where they fitted in their proper order, I worked up the rights in the lower Wyoming section that you see here. And by adding these accumulative rights across we work up what it would have been if these had been the conditions. In the first depletion tabulation for

the lower division - in Report #16 I have a graph that I want to say is an illustration. The solid line shows this same adjusted water rights based on the affidavits that I have the relation of these two. The dotted line shows the relation of the two lines as they are actually recorded in the decree. The only difference it makes is that it deducts a little bit from Idaho, you might say 300 sec. ft. of divertible flow. There is no difference in the relation.** It does not on the major part indicate that the Idaho rights are too far out of line. Below 300 sec. ft. it would not make any difference. And above 600 it would not make any difference. A lot of the affidavits classed as 1877 water which is not all 1877 water. A lot of it came in between 1877 and 1895.

MR. JIBSON: Upper Idaho rights included those from Bear River above Stewart Dam. So if we take any particular date, the total divertible flow in the entire division for that date can be fit right back into the table. On a straight priority, Wyoming would be entitled to do much and Idaho so much.

MR. TRACY: I do not understand Table I.

MR. JIBSON: The cumulative rights are the cumulative rights for each date. At 1877 the cumulative amount of water to the nearest second foot would be 2 sec. ft. of water. Following on down, by adding in each one of these individual rights as it occurs, we get the cumulative right for Wyoming. If you move over to Idaho, you get a cumulative right in Idaho. Thus, if you add the cumulative right in each section you get the cumulative right in the Central Division. These are the figures that you would line up with your divertible flow in determining how much each section would be entitled to. So if you had a divertible flow of 810, Idaho would be entitled to 453, and Lower Wyoming to 357 on a priority basis.

On page 5 is the beginning of this tabulation. We have tabulated by sections for each of the two years. The date that the total divertible flow

in both sections, drops below 810 is the date that we would start regulation and it is that period each year, from that date to September 30th that we are interested in studying these diversions. In 1944, the total divertible flow was 811 on July 18th. We have listed the total divertible flow for both sections.

In the next column I have listed Wyoming diversions as they actually were on July 18 366 sec. ft. diverted in Wyoming. The next column is 43 percent of the divertible flow. The next is 35 percent of it and the final column is the priority of rights schedule. Right at 811 we would be at a priority of rights schedule where Wyoming would get 357. In 1944 the total divertible flow averages 452 sec. ft. In connection with the tables, if we turn over to plate 2 you get a better picture. Plate 2 for Lower Wyoming users is the 1944 picture. We have the date that the divertible flow falls below 810 and that is the date we start plotting the diversions. The solid line is the diversions as they took place; the dashed line just below it is 43 percent of the total divertible flow. In other words the amount Wyoming would get under the present draft. The dotted line is 35 percent which Wyoming would get under the proposal at our last meeting; and the dot-dash line is on a priority of rights. You notice the pattern in 1944. In 1946, Plate 3, we get just a little bit different picture in that the actual diversions in Wyoming for August and September fell below what they would get under a 43 percent diversion. In 1948 we see the picture again that we had in 1944. In it the actual diversions are the highest, and then the 43 percent, the 35 percent and the priority of rights. I have the averages here. They do not amount to much but I have listed them here. On Plate 5, we see the same situation for Upper Idaho. In this case you notice reversal of the various elements plotted. For 1944 our dash-dot based on priority of rights would give them the highest amount for practically the entire season. Next to that would be the dotted line which is 65 percent of the divertible flow. Then

the dashed line down below is 57 percent of the divertible flow which conforms with Wyoming where they get 43 percent, and the solid line is the divertible flow. The amount passes Stewart Dam in addition to the diversions. The Idaho Divertible is what they diverted plus the amount passing Stewart Dam during all three years. The amount passing Stewart, most of it was in the Rainbow Canal, we listed in with Idaho Divertible. The two of them would indicate the divertible flow for any particular date. In 1946 Idaho's pattern changed the same as Wyoming's did. The Idaho Divertible exceeded 57 percent of the total divertible flow during part of the regular period. Then in 1948 we come back to the same 1944 pattern again in which by priority of rights they would receive the greatest amount of water.

MR. TRACY: Why in Plate 6 is the flow so erratic?

MR. IORNS: Two sharp summer storms. The divertible flow would be higher.

MR. TRACY: One July 25th and one August 25th, apparently.

MR. JIBSON: It is pretty well shown in the graphs what actually happened and what would happen under regulation.

MR. MERRILL: On the acreage basis, Idaho would receive from graph on Plate 7, 269 sec. ft.

MR. JIBSON: That would be a daily average through this regulation period.

MR. MERRILL: On 65 percent basis; 307?

But on priority you would get 349. So the 65 is just about half way between, roughly, isn't it?

MR. JIBSON: Yes, if we go back to Plate 1 we get an overall picture of these three methods. This is a similar graph to the one Mr. Iorns was just showing you except that we have three suggested methods here. The solid line

would be the priority of rights division between the two. I plotted the cumulated rights in each state against the cumulated rights in both states. You can see about how the comparison of 65% - 35% and 57% - 43% would be with the straight priority division when the divertible flow was at any particular point. As you get farther up the line there is a crossing over of the rights with these two suggested divisions.

MR. MERRILL: Take Plate #2, 35% equals 158. What is that based on?

MR. JIBSON: 35% of the divertible flow each day.

MR. MERRILL: What would be that flow?

MR. JIBSON: The total diversions in Lower Wyoming.

MR. TRACY: Can you work this on an average?

MR. JIBSON: The average does not mean much. The only reason I put it in is if you want to carry it further.

MR. COOPER: Mr. Jibson, did you say that the average that year was 447 and 35% of that would be 158?

MR. JIBSON: I have it 452 in Table 2, and in Table 5 I started with July 19, which is where I should have started in Table 2. The average is 447 there. They should have been the same. We had three fellows making them up and one of them moved a day ahead.

MR. JIBSON: That is about all I have on that part, unless you have further questions.

MR. CHAIRMAN: Any questions? If there are no further questions then we are back down to the States. You met during the noon hour. I can only canvas to find out. Idaho?

MR. COOPER: We feel that this study that is made by the engineers rather substantiates the position that was taken by Idaho at our last meeting and with the proposed stipulations, and we feel that this recommendation that we made, we can only stay by that after consulting our users. We could only

stay by that provided the upper users are willing to agree to it. If they feel that they cannot accept this proposition, we would have to revert back to our former stand of the 23,000 ac. ft. additional storage. We do not feel that in view of the facts that are revealed in this study that has been recently made, this Report No. 26, that we can concede any more upstream storage than 29,500 ac. ft.

MR. BISHOP: I want to add that Wyoming don't feel that they should go as low as 36,000 but we would be willing to submit that to our people and see what they will do about it.

MR. CARLISLE: I question if the water users would entertain a figure that low.

CHAIRMAN: Any further comments?

MR. TRACY: Utah will take the position after consulting with some of its representatives, of staying with our former proposition of 36,000 additional storage in the Upper Basin. As I view it that amount of water will not materially hurt any irrigators below or the use of water for power. In fact it is questionable whether we can measure it any closer than that when it comes down to actual measurement, and I think it is equitable to both sides. As you know Utah is concerned with a divided situation in the upper and the lower basin, the upper basin having similar interests to those of Wyoming, and as I said before, I think it is better to settle on a compact and avoid litigation and settle up our rights. As an average proposition, what does 6,500 ac. ft. of water measure up to?

MR. BISHOP: What would you fellows think of having six months or a year on this thing? You can't get a compact to the legislature now unless you change.

MR. TRACY: It may be questionable whether we could be able to write a compact in sufficient detail between this date and January 1st to submit to our legislatures, so far as that is concerned.

MR. COOPER: We have agreed on everything except filling in the figures, Mr. Tracy.

MR. TRACY: Substantially.

MR. BISHOP: There are some more items that would have to be changed. One should be able to store it when one wants to store it.

MR. COOPER: If we make it until the latest date of April 30, the priority and uses for natural flow dates to April 20, there is ten days that the rights of the irrigators who have the rights to the natural flow could easily be invaded if we set the date up to the 30th. Our first date calls for April 20th.

MR. BISHOP: We have the right to divert any time water is available. We would not want to restrict that right at all.

CHAIRMAN LARSON: If the states can possibly get together I think it is a big advantage. Things get complicated as we go along and the Bureau has just completed a status report on the Bear River investigations which shows there is potential development down stream for new lands. That could be done at some future time, and I don't think anyone knows what the new developments will look like. The only thing we do know is twenty years ago we had more acres under cultivation in the United States than we now have and it is going down all the time. During the past twenty years about 30 million acres have been devoted to food for human beings that was theretofore used for food for horses and mules. So that for our growing population raising food is going to be more important as the years go on both in this nation and abroad. So this compact should be completed. It will open the door for future

development to the benefit of all three states. That is what we should keep in mind and I think it is of importance to all three states if you could reach a compact. Certainly you are very close together. I don't know how you want to proceed when you are that close, but there should be some way of reaching a compact that you can submit to your state legislatures.

MR. TRACY: Mr. Larson, in your studies of the Bear River Basin, as a practical matter, could the Bureau of Reclamation go ahead on the present setup and really submit any original development there without a compact?

CHAIRMAN LARSON: No, I don't think they can. They cannot go forward without a determination of the rights of the several states to the use of the interstate water and without the right to divert water in one state for use in another state. So I think our studies show all the way through that a compact is necessary.

MR. BISHOP: If you could transmit some power from the Colorado over to the Bear River, then you would not have to waste any water downstream at all. It could all be used for irrigation.

CHAIRMAN LARSON: The government has other interests, the bird refuge- that must be supplied - and this power exchange.

MR. TRACY: Could not some of the power be transferred from the Colorado River storage project to supplement the power on the Bear River? In that way decrease the use of power water and allow it for irrigation.

CHAIRMAN LARSON: The plan is more or less based on that - replacing the power to get the water. That would call for something that would have to come from Congress. We could not speak as to that. The main thing in this compact now is the upstream storage prior to Bear Lake storage. The additional new development is something different again, which I assume would be possible under the present compact and everyone would feel that it would not close the

door. Has any of the three commissioners suggestions as how to proceed in this deadlock?

MR. BISHOP: I would like to talk this over with my group but I would like to study how much water there is that is wasted and used for power and not reused for irrigation and see what the possibility would be of moving it upstream. The engineering commission has given what we have asked for in every case, and I am not criticizing them in any way.

MR. IORNS: What could be moved up there - there is quite a little possibility, and the compact provides for that. But the upstream water users would have to pay for that on a replacement basis. But you would have to pay for it. That is already provided for in the compact.

CHAIRMAN LARSON: They can only repay up to repayment ability under any scheme. It is only worth so much to them and must be within their own means to do it. If they need government help then it is up to them as to how they get subsidized.

MR. COOPER: Do you feel that is provided for in Article 8 of the compact?

MR. SKEEN: Yes.

MR. COOPER: If you would care to adjourn this meeting for six months to give them an opportunity to reconsider and talk with their people, that is agreeable with us.

MR. BISHOP: We will forget all about it in six months - new faces and everything.

MR. COOPER: If you want to make it sooner, it is agreeable with us. If you think thirty days is agreeable, O.K.

JUDGE HOWELLS: I participated in the negotiation of the Upper Colorado River Compact with Mr. Bishop, Mr. Skeen, Mr. Larson, and I couldn't

help being reminded of it as I sat here today. It strikes me that you are in a very similar situation to the one we were in when we met at Vernal just before arriving at the Upper Basin Compact. If you don't mind my injecting a personal note into it. It was on July 9 we were in the same situation as here. It happened to be our wedding anniversary and they decided to have a party for me that night. All of a sudden the Chairman of the Commission, who was more or less disinterested, of course, stated that inasmuch as we were deadlocked he was going to take "the bit in his teeth" and issue an ultimatum. And I am rather inclined to think that if it had not been for that we never would have arrived at a compact on the Upper Colorado so what I am suggesting is that the chairman take this into consideration for a brief time and come forth with a polite ultimatum as to these two matters. While it may not be worth anything, I submit it to you.

CHAIRMAN LARSON: How do you want to proceed? Idaho.

MR. COOPER: I think Judge Howell's suggestion is good if you want to assume that responsibility of suggesting to us what we do.

MR. LARSON: I can assure you I would not issue any ultimatum.

MR. COOPER: If this matter of upstream storage is going to be up for restudy or reconsideration, Idaho will withdraw her recommendation of the 29,500 as a compromise figure and go back to 23,000.

MR. IORNS: Sometime back I suggested a figure of 33,000.

MR. COOPER: We would rather let Wyoming and Utah decide on procedure.

MR. IORNS: Could I make a suggestion, Mr. Chariman? I will just toss this out for something to consider. That Wyoming and Idaho look at the possibility of a division between lower Wyoming and Upper Idaho on 60-40 instead of 35-65, with a figure of 36,000 storage upstream to be allowed with a change on the Bear Lake limitation to what is necessary under existing

conditions and with a graduated scale on up to an amount necessary to take care of the additional depletions as the increase in upstream storage occur. I think we should look at it in this way. We have a demand for upstream storage that may not be built for five years, ten years, twenty-five years. In fact a portion of it may never be installed. So any limitation on Bear Lake should not be on the maximum but should be on the basis of what is now built plus the additional depletions that would occur as the installations were put in. According to Mr. Thomas' study I think what it is at the present time is somewhere around about 750,000 acre feet. You can work it in two ways. You could stipulate in the compact that the Bear Lake irrigation reserve would be increased as the amount of the upstream storage is increased or you could leave it open to the commission to determine what those additional depletions are as they occur and how much the irrigation reserve should be increased.

MR. COOPER: I concur in that statement. However, there is that element in it - if we increase the stipulated amount, or the protective amount in Bear Lake above what it should be - it is going to reduce the efficiency of Bear Lake as a storage reservoir. If we put it too far below then it is not going to protect the lower users.

MR. IONNS: At the present time, according to a statement made here, and I think the power company agrees, at least 750,000 ac. ft. of Bear Lake should be reserved for irrigation. That is what is indicated by Mr. Thomas' study. If it is not the figure, let us kick it around and see what its effect is on existing upstream uses.

MR. COOPER: The reason I brought this out at our last meeting, we agreed that this Article 5 should read, "the water of Bear Lake below elevation 5914.5 shall constitute a reserve for irrigation." I was wondering why the change. This was an accepted figure at the time.

MR. IORNS: That figure took in increased future depletions. So the present amount would be what Mr. Thorum thought would be sufficient for zero additional upstream storage.

MR. THORUM: About 5912.75 elevation.

MR. JIBSON: That is about 671,000.

MR. COOPER: We think the elevation should not go beyond 5914.5.

MR. SMOOT: That would directly benefit the power company.

MR. WEIDMANN: I am like Mr. Smoot. I would like to go to the sugar company and see what they think. They are the ones dealing with the power company.

MR. SMOOT: We are, as the lower basin Bear River valley folks, less concerned about that than the fellows on the Last Chance and the Cache Valley folks because they will be shut off first. I mean at least they would be more concerned with that level than we are. This includes a reserve also for the Last Chance people doesn't it?

MR. IORNS: Yes.

MR. WEIDMANN: I guess all I have done is sit tight and leave it up to the power company and the sugar company. I know what my feelings would be but I have to be mighty careful about sticking my neck out. I would like to know what the power company thinks about these two levels.

MR. KANE: They would be as concerned as anybody. The West Cache and the Bear River pumps are dependent on what the river has in it for their water supply so they would not be agreeable to setting these limits. West Canal has a fairly early priority. Part of their water is used in Idaho and part in Utah. So we are just as concerned as any of these other irrigators. If we have a year of light rainfall - it might be this year - you will find the central part of Cache Valley without water. The people we represent are very

anxious about these things. We hope that the lake will be held to such a point that there will be water there to fall back on. So Cache Valley is very interested in Bear River.

MR. IORNS: If the reserve in Bear had been 671,000 it might have been a little short. According to studies Mr. Thomas has made, he has found it requires approximately 750,000 to have met your needs in those dry years.

MR. COOPER: What would 750,000 amount to on the elevation? What would the elevation be if there was that reserve in the lake?

MR. JIBSON: Just under 14, about 13.95.

MR. WEIDMANN: With the provision that there is an increase - a storage increase, it looks to me that the flood storage would be a protection to us. Would we have the same ratio of protection at 5912 without any upstream storage?

MR. IORNS: I think you are sufficiently protected at 5,912.75 with no upstream storage.

MR. CHRISTENSEN: I do not speak for the sugar company any more. My interest in this problem is personal. However, we have pretty definitely the statement of the attorney of the company who is still the attorney of the company, Mr. Boyle - that they are willing to make no concessions. They have no right to make concessions because the irrigators so far are standing adamant on their contracts. We cannot expect that the water users might make some release which would hurt them if water shortages should occur. So I cannot say anything except to call attention to the position taken by Mr. Boyle, and in speaking with Mr. Boyle, who was here today, I take it that their position will remain about the same.

MR. IRVINE: As long as we have control of the river we will provide the water for the lower users in accordance with contract. Whatever limits are

put on uses by the irrigators won't make any difference to us. If they put any limitations which invalidate the contract, that is their business. But we will never fail in our agreement with the Sugar Company. We will take care of these companies so long as it is in our power to do so. We don't agree with that figure at all, but I am just expressing a personal opinion.

MR. WEIDMANN: I think it is unfortunate that one of the main parties in this deal is not present. I think the Sugar Company should be contacted and should pass on that. I am just going to ask Mr. Christensen if he doesn't think that it is proper that the Sugar Company should answer that question instead of us?

MR. CHRISTENSEN: I can speak now as being totally disconnected and I think it is a mistake that the Sugar Company is not represented here. The press of other business has taken Mr. Boyle away.

MR. IORNS: Well, to remove what might be a possible objection, the Power Company has indicated that it does not like the 5912.75 elevation. Mr. Boyle has indicated to me that he does not like any limitation placed on Bear Lake storage. The downstream water users that are depending on the lake feel that they should have some assurance that the compact will not invalidate their contracts. I wonder if it would not be possible for the Power Company and the Sugar Company to prepare an appendum or supplement to their contracts. Could that be worked out, Mr. Irvine?

MR. IRVINE: I don't think so. I think if that limitation is to be in, it should be in the contract and not in the compact.

MR. IORNS: That is what I am suggesting, that this limitation be attained not in the compact but by a supplement to the existing contract. That would give the lower users the protection that they are demanding in the compact.

MR. WEIDMANN: I am inclined to rather favor that. We do not like too much of this control from Washington, and I am not too anxious to get under the control of a river commission. I would rather have a little bit more home rule. Just on the spur of answering that, I would rather invite that - that the sugar company and the power company could agree on a limit amount that they could draw water on as a matter of protecting us for two or three years of drought - the less people that mixes up under that the better. I would not be averse to recommending that. However, I proposed this thing several different times and I hope to keep repeating these things, but I would like to see something in writing, and not depend on some of us old guys who may leave either by promotion or otherwise. I think Mr. Irvine has the key to the thing. That would suit me.

MR. SMYLIE: With Mr. Cooper's permission, I would like to make a motion that the compact commission instruct the commissioner from Utah to exercise his good offices to get the power company and the sugar company together to prepare, if possible, an agreement such as has been discussed at this meeting, and to insert a protection for the lower Utah water users in the contract in order to avoid the necessity of placing it in the company.

Seconded by Mr. Miller of Wyoming.

CHAIRMAN: You have heard the motion, seconded by Mr. Miller of Wyoming, do you want to discuss it?

MR. TRACY: I certainly do. I don't think that means a thing. Mr. Weidmann, an elevation of 5914.5 with a storage of 750,000 ac. ft. is a pretty good figure for your protection in the lower basin.

MR. WEIDMANN: I agree with that.

MR. TRACY: We have been trying to -- Do I understand you prefer the contract with the power company in preference to being in the compact?

MR. IRVINE: Mr. Weidmann cannot speak in that behalf. If anything in this compact would invalidate our contract with the Sugar Company, the water users would not go along with it. While speaking on that, we might not agree sometimes with Mr. Johnson but there is a lot of ironing out in this state before it will ever get through our legislature. If he talks to Mr. Hopkins, these two men could kill it dead as a doornail in our legislature. I know if one farmer gets up and makes an objection, it does not get anywhere. I think we have a lot to do in the state even if the Power Company and the state would go up to 36,000.

MR. TRACY: Mr. Smoot, let me clear my thinking. You are not representing anyone but yourself and speak your own personal views. You would prefer not to fix the elevation of Bear Lake? This has been presented today on a different slant. I have never heard from the Power Company if that elevation was set, or any elevation, it would invalidate your contract with the Power Company. That is new as far as I am informed - maybe by a clause in their contract an elevation could be set between the Power Company and the water users which would not invalidate the contract. Maybe that is the way it should be done.

MR. MILLER: If this is going to be a stumbling block, as far as Wyoming is concrened, I don't think we have any interest in maintaining that lake at any particular level as long as we are given the right to store the water. If it is going to be an issue, I think we should avoid it.

MR. WEIDMANN: As stated on the floor this morning, it may be it looks like you are guaranteeing us some water. Maybe it should not be in there.

MR. CHRISTENSEN: Might I say for the benefit of Mr. Boyle or anyone else, they are only reflecting the attitude of those people on the lower

river - that is not their personal opinion. That is a reflection of the water users in that area.

JUDGE HOWELL: May I make a suggestion - I don't know that this commission has any power to instruct the Commissioner what he should do.

CHAIRMAN: We will have it amended to read, "request" instead of "instruct."

MR. SMYLIE: With the elevation limitation so designed solely for the protection of the lower water users, Mr. Weidmann said he would rather have that in the contract with the lower water users than in the compact itself. It seems to me that the matter is substantially a Utah problem and not a tri-state problem and therefore inappropriate for disucssion in a compact commission.

MR. MERRILL: How could these people contract for maintenance of certain elevation when this commission is compacting and so much water may be held in storage that they could not maintain the lake? They would be contracting with expectation. The manner of maintaining the elevation in that lake depends very largely on upstream storage.

MR. IORNS: The power company would work out in that contract that if there is upstream storage, that the reserve that would be agreed to would be increased to take care of that depletion due to upstream storage.

MR. SMOOT: If we should make a contract with the Power Company as a supplement to the compact, it would not help those upper fellows at all. So I can't see why it is not still a problem of Idaho and Utah.

CHAIRMAN LARSON: Why should it not be in the compact and the contract?

MR. COOPER: I had that in mind when I raised the question. When the recommendation was made by us in these stipulations, we proposed the removal of that provision in there. That was Idaho's thinking upon the advice

of our engineering and legal advisors. And after talking it over with users in Box Elder County, this figure was agreed upon. And that was proposed at this table, and agreed upon, that that should pass as it was written in Article 5. So we had in mind the Idaho users including, of course, the Power Company. They are Idaho users along with the Last Chance and the West Cache, and the Cache Valley users. We had all these in mind.

CHAIRMAN LARSON: You have heard Mr. Smylie's motion. Unless someone wants to amend -

MR. TRACY: I am willing, but what is it going to amount to?

MR. CHRISTENSEN: Thinking along the line of Mr. Tracy's statement, I cannot see that if another contract has priority by reason of earlier dating, we could get our water out of Bear Lake with a level much lower than that. I don't know as it would get us anywhere to put a provision in the contract. It would be disputed by other interested users. They would do everything in their power to protect the contractual rights of the lower Bear River users and I think we would expect them to do that.

MR. IORNS: I just wonder if it should not be advisable also to include in that a recommendation that the Utah Commissioner use his good offices in a similar way to add any stipulations or protections that are necessary in regard to existing contracts for the same objects so far as Idaho lands are concerned.

MR. SMYLIE: We have no objection to that. I assume you meant to say the Idaho Commissioner.

MR. IORNS: I meant the Idaho Commissioner.

MR. SMILIE: I have no objection.

CHAIRMAN LARSON: Well, we have the motion. It has been seconded and discussed.

MR. MILLER: I have been attending these meetings and this question keeps coming up about this contract and I think eventually this question should be settled. Each time it comes up and I think most certainly an effort should be made to arrive at a solution if it presents a problem; but I believe it could be said that the adoption of this compact by all the states and by the congress would correct this contract that is in existence. But certainly a solution should be attempted before we proceed too much further.

MR. COOPER: That would necessitate the Power Company and Sugar Company agreeing to that. This commission could not set this up as a mandate. The only mandate could be set up as an agreement among the states, then it would be a mandate; but as long as no agreement has been reached, status quo remains.

MR. TRACY: Whether it is 30,000 ac. ft. of storage upstairs or 36,000 that is coming into the picture - and it seems that we are stymied right there. Let us have a tentative motion and then you can go to the people.

MR. SMYLIE: It seems to me that this is your position, at least as far as the State of Utah is concerned, you are a house divided against yourself, and I would say with confidence I think that I could agree with Mr. Carlisle that it is conceivable that there would be strenuous opposition to be a figure of 36,000 in the Utah Legislature. That being the case, let us face it. Let us get one of these things ironed out at least.

MR. TRACY: I do not see why this particular item is my responsibility any more than the rest of the commission, but if you gentlemen want me to go ahead on that basis, I will do the best I can.

MR. SMYLIE: In order to remove any concern, I had Mr. Miller's consent to suggest the addition of Mr. Cooper in order to treat with the Idaho people in the same connection.

CHAIRMAN LARSON: You have heard Mr. Smylie's motion, seconded by Mr. Miller - all in favor? Idaho - Yes. Utah - Yes. Wyoming - Yes. Motion carried.

MR. MILLER: Mr. Chairman, I would like to follow that up with another suggestion although contingent on other things. I would like to put out the suggestion that Idaho reconsider her figure that she has seemed to limit herself to, to come up to a figure of 36,000 acre feet of storage above Bear Lake upon which the other two states seem to have agreed upon among themselves.

MR. COOPER: Well, we are not objecting to the proposition where it is giving opportunity of the Utah-Idaho sugar people and power people meeting with the State Engineer from Utah and representative from Idaho to see if they can determine the level of the lake.

CHAIRMAN LARSON: Have you any suggestion on this upstream storage?

MR. COOPER: You mean on this changing the amount of storage?

CHAIRMAN LARSON: Is there any chance for the three states to close up the gap?

MR. COOPER: We feel that in view of this report, and admitted fact, with no future storage, we feel that we have yielded on the upstream storage when we stated 29,500. That is just as far as we can go.

MR. IORNS: If in this you can work out an agreement that will guarantee all your irrigation water in Bear Lake, that the depletion will come from power water, where are you hurt?

MR. COOPER: Well, we are open to compromise if the users, the Power Company, Sugar Company and the lower users in Box Elder agree to it, but we understood there should be some protection in there. As stated, we haven't any contract.

MR. IORNS: That is why I suggested that you be included in that meeting. It would enable you to work that out in writing rather than have it in the compact, and if you can agree taking it out of this compact it will clear up one of the major stumbling blocks. If that is done, what would you have against 36,000?

MR. COOPER: The only reason is that it reduces the ability of the Power Company to fulfill its contract. And furthermore, to provide for the users also.

MR. IORNS: Well, the only way that they will protect themselves in this is by raising the storage in Bear Lake. That is the only assurance you have at the present time, if we have this increased upstream storage, and it would cut down the total storable in Bear Lake. If you can get them to put that in writing without having us put that in the compact, would that not remove the objection that you have in increasing the upstream storage?

MR. COOPER: We would not care to increase it unless it was agreeable both to our users and to these people. You understand that we are working in behalf of our users and our interests and they have given us this limitation. We made it as a recommendation, and we put it up to them. It is beyond our authority to make an agreement here increasing it until we very carefully consider it with our users and all the people involved.

MR. IORNS: That is what I am getting at. If you can work it out with your users and the Power Company with the water users dependent on that storage will be satisfied with such an agreement, what objection would you have to increasing the storage above Bear Lake?

MR. COOPER: Well, of course, our present position is that we feel that it would have damaging effects in case we did increase it any more than 29,500. Consequently we expect to sit on that figure until there is some other

agreement reached between us. It would have to be cleared up.

MR. IORNS: On your average year with the regulation on the river there can only be one result from it and that is that you will have more water passing Stewart Dam.

MR. COOPER: In spite of these changes we would not be willing to agree to imposing anything on the people who are with us, namely the Box Elder users and the Power Company. We would not impose any hardship on them. We would, of course, be willing to consider it with them. But my statement now would be that we sit firmly on the 29,500. If they are willing to consider another figure, and our users, the Idaho users, and the advisors on this commission feel that it is worthwhile to make further concessions, if that could be done - but we would have to consult with all of the people concerned before we change. We did agree to recommend this other figure, and we felt that we were coming half way. We had nearly reached the figure of your recommendation of the 33,000, and we figured that by coming along and by guaranteeing them, giving them permission to take that much water each year, that we were not at all out of line, and that we had made considerable concession.

MR. IORNS: I felt that one of the stumbling blocks, and the reason why you did not go on up to 36,000 might be this limitation on Bear Lake, but by the removal of that, fixing it so that it can be more of a flexible arrangement and permitting better use of Bear Lake by not writing a strict figure on it in the compact, I thought possibly we could get around that and maybe you could meet these other people. If you can't, then the next thing is to see if the Upper people are going to come down.

MR. COOPER: We gave this matter of raising from 23,000 to 29,500 due consideration and it took a lot of work and a lot of effort, and we felt that we were making quite a concession, and we still think so, in view of the

facts. We will be perfectly willing to talk the thing over and see how the users feel about it. But now our position is exactly as it was set up by reason of the fact that that was the thing agreed upon, and I would not make any agreement or any personal arrangement unless it was agreed to by these people who were advising me and by our water users.

MR. TRACY: Would five or ten minutes' time be enough to consider it?

MR. COOPER: That would not be time enough. It involves too much of a concession to agree upon in five or ten minutes. If you want to give us tonight to consider it.

MR. TRACY: No, would you be willing to discuss it, to talk it over with the Power Company and the Sugar Company?

MR. COOPER: Why, certainly I would be willing to discuss it with them. If it was your recommendation that we recess for ten minutes and come back in ten minutes, we are willing to do that.

MR. TRACY: I move that we recess.

Seconded and carried.

CHAIRMAN: We will recess for ten minutes.

The meeting reconvened.

CHAIRMAN LARSON: Which one of you has something important to report?

MR. COOPER: The Idaho group have met and, as they consider the proposition to date, we have consented to common duty of water, we have yielded on priorities, we have made various and other concessions in our endeavor to bring about a compact, and as we see it now, we will stand on the amount of 29,500 ac. ft. additional upstream storage. However, we will be willing to discuss the question in a meeting with the State Engineer of Utah, representatives of the Utah-Idaho Sugar Company and the Utah Power & Light Company at an early date, and at their convenience. We would, of course,

expect to stand on the four points that we recommended in our previous statement.

CHAIRMAN LARSON: But you would discuss this also?

MR. COOPER: We would discuss this also, certainly.

CHAIRMAN LARSON: I think we have arrived at the point of adjournment pending that meeting.

MR. MERRILL: I think it would be tragic to adjourn it for six months or anything like that. It has been my experience in my litigation work that if you are going to get a compromise you are going to gather and cut it down, and the longer you leave it the worse it gets. You will have to reactivate it. Furthermore, if you are going to get a compact and get it in the legislatures of the three states that are meeting, we should do it.

MR. SMYLIE: How soon can this meeting be arranged?

MR. TRACY: Mr. Irvine, how soon can you meet?

MR. IRVINE: I will be away for a week but someone in our company can meet any time.

MR. TRACY: I will be away next week.

CHAIRMAN LARSON: What about the 19th for you people and the 20th for the commission?

MR. MILLER: May I suggest that we defer fixing a definite date for the commission at this time and set a tentative date, subject to call of the Chairman.

It was agreed that the commission would meet on the 17th and 18th of December.

Adjourned.