

BEAR RIVER COMPACT COMMISSION

Transcript

of

Meeting

held

December 14 and 15, 1954

Senate Lounge

State Capitol

Salt Lake City

Utah

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BEAR RIVER COMPACT COMMISSIONFEDERAL REPRESENTATIVE AND CHAIRMAN:

E. O. Larson                      Regional Director, Region 4  
    Bureau of Reclamation,  
    Salt Lake City, Utah

COMMISSIONER FOR THE STATE OF IDAHO:

Fred M. Cooper                      Chairman, Idaho Compact Commission  
    Grace, Idaho

COMMISSIONER FOR THE STATE OF UTAH:

George D. Clyde                      Director, Utah Water and Power Board  
    Salt Lake City, Utah

COMMISSIONER FOR THE STATE OF WYOMING:

L. C. Bishop                          State Engineer,  
    Cheyenne, Wyoming

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## SECRETARY:

E. J. Skeen                              Office of Solicitor,  
    Department of Interior  
    Salt Lake City, Utah

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ADVISERS and OTHERS PRESENT

## IDAHO:

Mark R. Kulp                              State Reclamation Engineer and  
    Commissioner, Boise, Idaho

A. L. Merrill                              Attorney,  
    Pocatello, Idaho

J. Warren Sirrine                              Dingle, Idaho

C. R. Nate                                  2336 E. 3400 South,  
    Salt Lake City, Utah

Melvin Lauridsen                              Montpelier, Idaho

UTAH:

Robert B. Porter	Attorney General's Office, Salt Lake City, Utah
Joseph M. Tracy	State Engineer, Salt Lake City, Utah
Jay R. Bingham	Assistant to Director, Utah Water & Power Board, Salt Lake City, Utah
Orson A. Christensen	Utah Water & Power Board, Brigham City, Utah
Gerald Irvine	Utah Power and Light Company, Salt Lake City, Utah
E. G. Thorum	Engineer, Utah Power and Light Co., Salt Lake City, Utah
Ashby D. Boyle	Utah-Idaho Sugar Company, Salt Lake City, Utah
Ford F. Scalley	Utah-Idaho Sugar Company, Garland, Utah
C. O. Roskelley	Engineer, Utah-Idaho Sugar Company, Salt Lake City, Utah
Wilford M. Burton	Deseret Livestock Company Salt Lake City, Utah
W. A. McMurray	Deseret Livestock Company Salt Lake City, Utah
J. L. Weidmann	R.D. 1, Honeyville, Utah
L. B. Johnson	Randolph, Utah
E. M. Van Orden	Lewiston, Utah
Harry Drew	Tremonton, Utah
J. Lawrence Carter	Garland, Utah
L. D. Bodily	Lewiston, Utah
Melvin A. Johnsen	R.D. 1, Brigham City, Utah

WYOMING:

H. T. Person	Dean of School of Engineering, University of Wyoming, Laramie, Wyoming
David P. Miller	Rock Springs, Wyoming
P. W. Spaulding	Evanston, Wyoming

BUREAU OF RECLAMATION:

E. K. Thomas	Area Engineer, Logan, Utah
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U. S. GEOLOGICAL SURVEY:

W. N. Jibson	Hydraulic Engineer, Logan, Utah
W. V. Iorns	Engineer, Tulsa Oklahoma
M. T. Wilson	Salt Lake City, Utah
Albert B. Harris	Logan, Utah

FISH AND WILDLIFE SERVICE:

F. V. Olson	Albuquerque, New Mexico
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PROCEEDINGS

The meeting was called to order by Mr. E. O. Larson, the Chairman, at 9:50 o'clock a.m., on Tuesday, December 14, 1954, in the Senate Lounge in the State Capitol, Salt Lake City, Utah.

THE CHAIRMAN: The meeting will come to order.

(Notice submitted for the record reads as follows:)

"BEAR RIVER COMPACT COMMISSION  
Post Office Box 360  
Salt Lake City 10, Utah

December 11, 1954

Notice of Meeting

The next meeting of the Bear River Compact Commission will be held on Tuesday, December 14, 1954, at 9:30 a.m. at the Governor's Board Room, State Capitol, Salt Lake City, Utah, as scheduled.

E. J. Skeen  
Secretary.

THE CHAIRMAN: When we adjourned the last meeting we had started to discuss the quantity of upstream storage above Bear Lake. I think we had better start by maybe calling on the states for any comments they care to make at this time in trying to arrive at that upstream storage figure. Idaho, do you have any comments to start off with?

COM. COOPER: No, not to start off with. We prefer to have the other states make a statement.

THE CHAIRMAN: Utah?

COM. CLYDE: Mr. Chairman, I made the proposal, which was a tentative proposal, last time, to lump the storage together, the existing storage and the additional storage, in the amount of 50,000 acre-feet. After examining that situation further, I find that the difficulties of administration under a combined quantity are too great. And I would therefore make

this recommendation, that we limit the additional storage above Stewart Dam to 36,000 acre-feet; instead of having a 50,000 total, that we specify that we have here the existing storage, and the additional storage separately.

THE CHAIRMAN: And the other figure to remain at what, the presently existing storage?

COM. CLYDE: I wouldn't care whether it is 14,000 or 14,500. That depends on how you compute it, depends on whether we add the Idaho storage into the figure or whether we don't. I think there is 324 acre-feet of storage in Idaho, so that you might put that at 14,000 or 14,500. I wouldn't argue that point, but I would like to see the other set at 36,000.

THE CHAIRMAN: I take it from your comments you are simply making that as a recommendation and not a motion.

COM. CLYDE: That is my recommendation for discussion.

THE CHAIRMAN: Is that all the comments you care to make at this time?

COM. CLYDE: Yes.

THE CHAIRMAN: Wyoming, do you have any comments at this stage?

COM. BISHOP: The only comment I would make is that I would prefer the 50,000 figure undivided.

MR. PERSON: Why would it be difficult to administer, George?

COM. CLYDE: Because the storage that now exists is in operation; we know what it is, we know where it is. We

don't know what the additional storage will be, or the division of the additional storage. We can't do anything about the storage that is now in; that is fixed, those rights are established. And, therefore, I don't believe it would be wise to combine established rights with rights which are not established. That is my principal reason.

MR. PERSON: Of course that really could be overcome by the suggestion we made that the existing storage be named-- a total not to exceed 50,000, and then name the existing storage. It wouldn't necessarily affect their priorities of rights.

COM. CLYDE: No, it shouldn't affect the priorities of rights by naming them; they could be named. But I still don't see what advantage we get in combining 14,500 or 14,000 of existing storage with the new storage which is proposed and which is not yet in existence. I think it will complicate the situation and the administration.

COM. BISHOP: Mr. Clyde, it looks to me like it would simplify the administration to have a total figure to go to. I don't see where it makes any difference and I think it would simplify it.

COM. CLYDE: Well I can't see where it will simplify it because most of the existing storage is on the tributary streams which are now under regulation, now under operation. Now if we combine them, then we bring those tributary streams into the Compact when they are not now in the Compact.

THE CHAIRMAN: Have you any further comments, Mr.

Bishop?

COM. BISHOP: No---I believe the only comment I have got to make is that I have argued all along to have all the tributary streams left out of the Compact, and I am surprised that Mr. Clyde says they are not in.

COM. CLYDE: This would bring them in, Clark.

COM. BISHOP: If this brings them in--

COM CLYDE: We are trying to leave them out. We have got some storage on Woodruff Creek, for example, existing storage, and that would bring it into the Compact if we combine it. That is one of the reasons why I think we shouldn't combine it. We should leave off all the tributaries, free and separate from the operation of the Compact, if it is possible to do so.

MR. PERSON: Does that mean, George, to you, that the 36,000 acre-feet, if we built a reservoir on the tributaries, wouldn't count?

COM. CLYDE: No. No, after we agree on the upstream storage, then the states concerned could determine where they put that storage. It could be on tributaries or otherwise.

THE CHAIRMAN: Then when you referred to those tributaries not being in the Compact, you mean as far as storage; you don't mean for other reasons?

COM. CLYDE: That is right.

THE CHAIRMAN: Because they are in as far as measuring water and so on.

COM. CLYDE: The tributaries like Randolph Creek and Woodruff Creek are not in the Compact now.

MR. PERSON: Under direct flow rights.

COM. CLYDE: That is right.

MR. PERSON: But they would be on the storage.

COM. CLYDE: They would be on the storage.

COM. BISHOP: How would this bring them in then, George? I just don't understand.

COM. CLYDE: If you combine all of your storage into the 50,000, then they are in the Compact and are administered by the Commissioner. If they are not part of the 50,000, they are administered by the state in which they are located under the conditions that they now exist. It would mean on Woodruff Creek, as I understand it for example, if we make this combined upstream storage, Woodruff Creek would be administered as a part of that upstream storage by the Commissioner, and the storage on it would be affected by that.

MR. PERSON: George, I am just trying to get through my head--as soon as you mention 14,500 existing storage, doesn't that bring it under the Commission?

COM. CLYDE: No, because it says that there is "here-by granted" in addition to such existing direct flow rights and to the existing storage rights. . . . ; anything you do from here on is subject to the existing storage rights, so they are not changed. They operate as they are now operating. And I am afraid if we added it to the 36,000, they would become a

part of and be administered by the Commissioner under the Compact.

COM. COOPER: What would be the objection to having them administered under the Commissioner, Mr. Clyde?

COM. CLYDE: Well, the same objection that we had when we eliminated as many tributaries as possible. That is, when the flow, the water supply from any one of these tributaries, did not reach the main stem and had no effect on the main stem, we felt it was not necessary to bring it into the Compact; it was sort of individual, by itself, and didn't affect anybody and wasn't affected by the operation. Therefore, we kept it out. It is my thinking that that would apply to the storage as well as to the direct flow rights.

THE CHAIRMAN: Do you have any further comments, Mr. Bishop? We will keep going around.

COM. BISHOP: I am thinking of what will happen in case the reservoir is abandoned. It looks to me like these figures shouldn't read "not to exceed", but that should be an amount; the upper river should have a right to store so much water. If somebody abandons a reservoir, it ought to be so somebody else can get that many acre-feet. In other words, it should be a stipulated number of acre-feet and not a statement "not to exceed".

COM. CLYDE: Where are you reading, "not to exceed"? I am lost here (referring to Compact draft).

COM. BISHOP: What I am thinking about is this 14,000.

What if some of these people abandon part of those? Does it mean that we can still keep on allowing other reservoirs and store more water as long as it doesn't exceed that? Or shouldn't it read that we have a right to store 14,000 under one category and 36,000 under the other, if you are going to make it that way, George?

COM. CLYDE: I would interpret that to mean that, "In addition to presently existing storage rights above Stewart Dam, approximating 14,500 acre-feet in the aggregate"--that is a storage right; and if one dam should go out, for example, that dam could be replaced either there or somewhere else as long as---

COM. BISHOP: It wouldn't then be an existing right, you see.

MR. KULP: They can't transfer rights in Wyoming. We could do it.

COM. CLYDE: You mean to say if a man has a reservoir and the dam goes out, he can't put it back?

COM. BISHOP: I mean if it goes out and he doesn't rebuild it again, somebody else ought to have that right to store that amount of water.

COM. CLYDE: I think this will provide that because it says the storage in the amount of approximately 14,500 shall be recognized--I think we could write that language in there if it isn't in.

COM. BISHOP: I think it would have to be clarified

some if it covered what I have in mind. A lot of our people abandon their reservoirs--they have in the past and they probably will in the future. And there should be a stipulated amount there at least that we should have a right to store; and when we get together with Utah, we have got to figure that out specifically, how many acre-feet Wyoming can have and how many the other state can have. That is the reason why I would like to have it read a total of 50,000; then that straightens it all out.

If you want to insert a paragraph that will give the states the right to regulate everything up to a certain priority, that is all right. Would that take care of it?

COM. CLYDE: As I understand you, Clark, what you are concerned about there is that the Compact recognize a total of X acre-feet of existing storage, regardless of whether it is the storage that exists now or storage which might be used to replace some of the storage that exists now?

COM. BISHOP: That is right. We might go through a few years of depression like we have in the past and they would abandon all of their reservoirs; and then the way I interpret it reads, unless they would reconstruct some of those, why the upper river wouldn't be permitted to store that any more because it isn't presently existing priorities.

COM. CLYDE: I don't object to that principle, but I can't write the language right now that will express it.

MR. SKEEN: Isn't that a matter that should be studied

by the Drafting Committee, the matter of preparing a paragraph to take care of the problem Mr. Bishop raises? I think it can be accomplished by drafting.

COM. BISHOP: It would be a little hard for us to go along on that small a figure if it was fixed at that figure. If we were certain of that amount if and when we needed it, we might go along.

THE CHAIRMAN: Is there a chance for the Commission to agree on the principle in the first part of that section and then have the Drafting Committee work it out?

COM. BISHOP: Yes.

COM. CLYDE: Mr. Chairman, I move that the matter of the language referring to the existing storage rights above Stewart Dam and the additional storage that will be provided for in the Compact, be referred to the Drafting Committee with instructions to the effect that the definition of "existing storage rights" or "storage allowance", shall never be less than X acre-feet in the aggregate; and that the additional rights to store shall never be less than 36,000 acre-feet above Stewart Dam.

Now, I might explain that motion a little further. I am trying to see if they can get some language which will protect the upstream storage in the existing allowances regardless of whether the reservoirs remain as they are now or as they might be changed--that is the existing allowances; and that the additional allowances shall be in total not less than 36,000

acre-feet--

MR. MERRILL: Not more than 36,000 rather than less than?

COM. CLYDE: Yes, or make it specifically 36,000-- or not more than 36,000.

COM. COOPER: May I ask Mr. Clyde a question?

THE CHAIRMAN: Mr. Cooper.

COM. COOPER: If we increase the limit of additional storage to 36,000, new storage upstream, you say you are not particular as to whether we put the existing upstream storage at 14,000 or 14,500'. Would you be willing to set the upstream storage at 14,000 and then grant 1,000 acre-feet to Idaho on Thomas Fork?

COM. CLYDE: In addition to the--

COM COOPER: As part of it.

COM. CLYDE: As part of the 14,000, or part of the 36,000?

COM. COOPER: Set it at 36,000 and the existing upstream storage at 14,000--the new storage at 36,000. That would make a difference in the aggregate of 500 acre-feet. And I am asking you, if we are willing to go to 36,000 and make this other concession, are you then willing to have inserted in the Compact that Idaho be permitted to store 1,000 acre-feet on Thomas Fork?

COM. CLYDE: May I ask a question before answering that: Would Idaho's existing storage be included in the 14,000?

MR. JIBSON: It is.

COM. COOPER: It is included as the figures now stand.

COM. CLYDE: It is included in the 14,500.

MR. JIBSON: If we take the date of our report, which was in 1951, 14,500--we recommended that that be reduced because of that reservoir on Woodroof Creek which is entitled to fill ten times yearly. If it were reduced to the one capacity on that one reservoir, 14,000 would be a more accurate figure than 14,500 as of that time.

Since 1951, we know of an additional 400 or 500 acre-feet that has been built at one of the existing reservoirs. But as of that time, a more accurate capacity is 14,000 rather than 14,500.

COM. COOPER: That is what I have in mind.

COM. CLYDE: The situation as of now is 14,416?

MR. JIBSON: That is right, if you are going on the present date. There may be additional storage above that, I don't know about it; but as of the date of the report, which is in November 1951, I say 14,000 is the more accurate figure.

COM. CLYDE: You see, the other day we fixed a date of January 1st, 1955 as the beginning of this thing.

MR. JIBSON: If you are ~~talking~~ about the present date, 14,500 would be closer.

COM. COOPER: We contend that there should be out of this total, some allowance made for Thomas Fork. Those

people have needs for supplemental irrigation on a parallel with some of the cases in upper Utah and Wyoming. Their requests are very reasonable and we feel that they are very definitely entitled to it.

COM. CLYDE: I couldn't argue against that, Fred, because all of these people have the same interests and the same rights. My only argument against it, if I have one, is that in effect it cuts us down to 35,000 acre-feet in the Upper Division. That is the net result of it.

COM. COOPER: Well now, just a minute. If you make it 36,000--

COM. CLYDE: You see, that thousand acre-feet comes off the 36,000, which makes it 35,000.

COM. COOPER: And provided we make it 14,500, that makes a difference of a thousand acre-feet. In other words, Mr. Clyde, we are willing to yield 500 acre-feet provided you are. That is my proposal--we will have to take it under advisement with our people--just for the purposes of negotiation. We would take that under advisement. Would you feel like you could go along with that?

COM. CLYDE: Notice, I am not in a hurry to answer that question; I am trying to think it through too. I don't know right now. Let us take a look at this existing storage again. The difference is small, and I am still confused with the figures that have been given us. The figures that I have here show that Idaho has 324 acre-feet, and since 1951 there

has been 416 acre-feet added, giving us a total of 14,500 which we used, is that correct?

MR. JIBSON: That is correct.

COM. COOPER: Which one of those creeks is that on in Idaho?

MR. JIBSON: We have one reservoir on Sheep Creek and three in Wood Canyon--

COM. COOPER: Oh I see. I have it now.

MR. JIBSON: --aggregating 324.1 acre-feet.

MR. PERSON: I think your Compact, if it is going to mean anything, is going to have to allocate that to states; otherwise, 50 years from now, you will have complete confusion as to where the 14,500 is. What you are trying to do is recognize existing storage rights. I think again you are going to have to say, so many acre-feet in Wyoming, so many acre-feet in Utah, and so many acre-feet in Idaho; otherwise 50 years from now nobody will know what we are talking about.

COM. CLYDE: That would be taken care of if we list the reservoirs.

MR. PERSON: Yes. That would be taken care of if we list the reservoirs. Otherwise, the way we can do it is list quantities by states.

COM. CLYDE: We will have to list the quantities for each state?

MR. PERSON: That is what we are trying to do, is recognize existing reservoirs, 324 acre-feet for Idaho--

THE CHAIRMAN: Let's one talk at a time.

MR. PERSON: I think we are all in agreement on that part: What we are trying to do is recognize existing storage rights that are constructed. And I think we ought to do it by states.

MR. MERRILL: Does that include the storage rights in Bear Lake?

MR. PERSON: Yes. I think we recognize it.

MR. MERRILL: There is nothing said in the Compact about it.

MR. PERSON: We are talking about the Upper Division.

COM. BISHOP: Be careful how far you go recognizing Bear Lake, young man.

COM. CLYDE: Mr. Chairman, I realize that we are talking about something here that we can't very well measure, and frankly, I haven't got too good an argument for pursuing it. But, in view of this situation on existing storage, could we settle this on this basis: That we take 14,500 and put it in that second line; and we take 36,500 and put it in the fourth line and we allow the thousand acre-feet of storage on Thomas Fork? I don't know at this moment just what implication it--

MR. MERRILL: That gives 51,000 acre-feet, an additional thousand to what we have talked about.

COM. CLYDE: That is right. That gives us the thousand acre-feet that I am trying to provide for in connection with Thomas Fork.

MR. MERRILL: Why shouldn't that thousand acre-feet be taken out of the amount we were discussing before, rather than building it up again?

COM. CLYDE: It seems to me we are dividing that additional thousand acre-feet, taking 500 acre-feet into consideration in this existing storage and 500 on the additional storage. That may be one way to look at it.

MR. MERRILL: No, because that 36,000 was predicated on the theory there was 14,000 storage rights existing.

COM. CLYDE: That is my question, whether it is 14,000 or 14,500. I have in my notes, 14,500.

MR. MERRILL: All right. It was 35,500 before, so it would be a total of 50,000 now it is 51,000.

COM. CLYDE: My total was 50,000, I grant you, that I proposed last week. I grant that.

MR. MERRILL: Yes.

COM. CLYDE: You recall when I made the proposal, it was something to shoot at; and my first statement this morning pointed that out and my recommendation was that we make it 36,000 in the fourth line. Now with the introduction of the Thomas Fork thousand acre-feet, and with the question of the actual amount of existing storage, my question is whether or not we could settle on the basis of 14,500 and 36,500. It will make 51,000, I grant you.

MR. MERRILL: It is a thousand more than we ever discussed.

COM. CLYDE: And it provides for the thousand acre-feet on Thomas Fork which has never been in this picture on 36,000 before.

COM. COOPER: Mr. Chairman, in connection with that--- Mr. Clyde, that reduces the amount of flow downstream, takes that water out of the Lake, an additional thousand feet; and inasmuch as we are talking now about an increased amount of upstream storage, and we are only asking for a thousand feet on Thomas Fork, it seems to me like our request is reasonable.

COM. CLYDE: I think the request is reasonable all right; but in the negotiations up to now, as I have understood them, the Thomas Fork has never been included in what we have chosen to call additional upstream storage.

COM. COOPER: It has been suggested a time or two in meeting when you weren't here. Mr. Clyde, Mr. Kulp has made the recommendation, and they have a filing now in the Department of Reclamation; and we feel that it would be unjust and unethical to leave those people out, inasmuch as we are providing for additional upstream storage in Wyoming and in Utah. We don't feel it is fair to leave those people out.

COM CLYDE: I don't think they should be left out.

COM. BISHOP: I don't either; I agree with you.

COM. CLYDE: I don't think they should be left out, but my point is--and I still go back to my original premise--that we should get as much storage upstream as is available without adverse effects, serious adverse effects, on the belief

that when you have got your water upstream, you can always take it down; but you can never take it back up when it gets down. So, I don't think the impact of that additional 500 acre-feet or a thousand acre-feet total upstream storage, including Thomas Fork, will materially affect the rights below Bear Lake.

MR. MERRILL: Except it is just a matter of going up, up, up. We have gone now from twenty--what was it?

COM. COOPER: 23,000 to 35,500.

COM. CLYDE: That is true.

COM. COOPER: That is an increase of 12,500. And we are just asking that there be some storage established on Thomas Fork for 1,000; and it looks to me like that is fair enough.

COM. CLYDE: I will have to tell you a story about this distance I have traveled to. You see, when I came into this picture, they wanted a hundred thousand upstream. I have got them down to 36,500, so I have gone farther than you fellows have.

COM. COOPER: Of course we didn't even consider the hundred thousand because we felt that was just a joke.

COM. CLYDE: I didn't consider it either; I came down that far.

COM. COOPER: We were nice to those fellows and we felt it was a joke and they really didn't mean it themselves.

COM. CLYDE: But, I have had a little trouble to get it down there.

COM. COOPER: I appreciate that.

COM. CLYDE: And the thing that discouraged me a little, our differences are so small I can't very well argue them, so I don't know what to say.

COM. COOPER: That is the way we feel about it. We feel that our people have been reasonable to the "nth" degree, and we are willing to try to get them to go along with this proposal provided you will permit this thousand acre-feet to come out of the amount you propose here, so that the total isn't more than 50,000 upstream storage.

COM. CLYDE: You see, that does this, if you limit the total to 50,000: As a matter of fact, we have got 14,500 now; that cuts us down to 35,500, we take a thousand off that, which cuts us down to 34,500.

MR. MERRILL: Which is plenty.

COM. CLYDE: I don't agree on that.

MR. MERRILL: Furthermore, you are taking it away from water that is now being used.

COM. CLYDE: In what way?

MR. MERRILL: For power purposes.

COM. CLYDE: Of course, then we get back into that argument, which is a controversy. I think we have got to stick to the consumptive uses of the water here, because they are the only ones that are established.

MR. MERRILL: The power rights are established.

COM. CLYDE: Only in one state.

MR. MERRILL: That doesn't make any difference; they are established and they have used it for all those years.

COM. CLYDE: Do you mean to say that the decree in one state is binding on another state if they are not a party to it?

MR. MERRILL: I mean to say it establishes their rights and they have been using that water all that time.

COM. CLYDE: You haven't answered my question.

MR. MERRILL: It may be, yes.

COM. CLYDE: It may be?

MR. MERRILL: Yes, sir, very likely.

COM. CLYDE: That is no saying it is.

MR. MERRILL: Very likely it would be. Judge Johnson so held it in that Yellow Creek matter.

COM. CLYDE: But you admit there is a possible chance that it wouldn't.

MR. MERRILL: No. I am not willing to admit that under the circumstances. You have got to recognize the right, that that water has been used for that purpose during all those years, and decreed by a Federal Court decree.

COM. CLYDE: All I am saying as to that decree question is, as the people in the upper basin were not a party to that suit, I do not think, therefore, that that question is pertinent to the issue here. We are dealing with consumptive uses.

COM COOPER: Lower Utah was a party to that suit,

Dr. Clyde.

COM. CLYDE: That is right, but the upper basin were not.

THE CHAIRMAN: These little discussion, can't we keep them out of the record?

COM. CLYDE: Mr. Chairman, I move we recess for ten minutes and caucus.

COM. COOPER: I will second the motion.

THE CHAIRMAN: We will be in recess ten minutes.

(10.25 a.m. Recess.)

(10:58 a.m. Meeting reconvened.)

THE CHIRMAN: Before any further motions are made, Mr. Clyde, you made a motion about an hour ago, rather a long motion. There was no second. Do you want to withdraw that?

COM. CLYDE: I will withdraw that motion.

THE CHAIRMAN: I thought we had better clear the record on that.

COM. CLYDE: Mr. Chairman, the Utah and Wyoming delegations have been caucusing trying to work out a solution to this situation. We are interested in an agreement but we mustn't lose sight of the fact that we have people in our legislatures to convince before we can get a compact, and we are trying to write this thing in such a way we hope we can get their support.

With respect to this storage, we have gone back into the record with respect to the existing storage, which in Utah and Wyoming totals 14,092 acre-feet. There never has been this

much storage in that series of reservoirs in any one year by somewhat more than a thousand acre-feet. That is a matter of record and it is because there is just not the water there to store. Therefore, a thousand acre-feet, at least, of that storage which exists today has no meaning whatsoever in terms of water use.

Therefore, for the two reasons which I have just cited, I move that the extent of existing storage in acre-feet be recognized by the Compact equalling 14,000 acre-feet--

MR. PERSON: In Utah and Wyoming.

COM. COOPER: Existing storage.

COM. CLYDE: --be recognized as existing in Utah and Wyoming, amounting to 14,000 acre-feet in round numbers; and that the States of Utah and Wyoming under the Compact be authorized a storage allowance of 36,000 acre-feet--

THE CHAIRMAN: Additional?

COM. CLYDE: ---additional---

COM. BISHOP: Above Stewart Dam in Wyoming and Utah.

COM. CLYDE: ---above Stewart Dam in Wyoming, and Utah.

COM. BISHOP: I will second that.

COM. COOPER: What are you going to do about the thousand acre-feet for Thomas Fork?

COM. CLYDE: We would support Idaho in its contention for a thousand acre-feet in addition to its existing storage of 324 acre-feet.

MR. PERSON: In fact, you can have a thousand acre-feet.

COM. COOPER: You remember as we adjourned the last meeting, we made the statement that we would attempt to get our people to concede the 35,500 increased storage above Bear Lake, plus the 14,500; but we would expect to justify the allowance of a thousand acre-feet from that amount for Thomas Fork.

Now then, we feel that, according to the graph in Mr. Thomas' report, Page 31, it shows that if you people were granted 35,500 acre-feet above Stewart Dam, the way the curve levels out there, it would only amount to probably 200 acre-feet for you people--between 200 and 300 acre-feet; whereas, if the storage were built on Thomas Fork where it was usable direct, close to the point of diversion, it would mean a thousand acre-feet to them.

Consequently, our contention is that it doesn't mean a great deal to you people in view of the fact that you are getting this allowance above Bear Lake, additional allowance; but it does mean a considerable amount to Thomas Fork. Therefore, we feel that our request is reasonable and just, and it should be taken from the total amount above Bear Lake.

MR. L. B. JOHNSON: Mr. Chairman, I wonder if Mr. Cooper would state just where the damsite would be on Thomas Fork?

THE CHAIRMAN: Do you care to comment on that, Mr. Cooper?

COM. COOPER: I didn't get the question.

MR. L. B. JOHNSON: The damsite--where do you plan to store on Thomas Fork?

COM. COOPER: Mr. Kulp has that information.

MR. L. B. JOHNSON: Is it in Wyoming or Idaho?

MR. KULP: In Wyoming.

MR. L. B. JOHNSON: That was all, thanks.

MR. PERSON: Would that be junior to all rights below in Idaho? Or, are you going to give it a prior right in this Compact; is that what you are intending to do?

MR. KULP: Just the same as what you are asking for, superior to Bear Lake storage.

THE CHAIRMAN: Mr. Clyde's motion was seconded by Mr. Bishop, I believe, the record will show. Are there further comments?

COM. CLYDE: Mr. Chairman, in answer to Mr. Cooper's statement, I grant that your yield on the reservoir on Thomas Fork is a higher percentage than it is on these other reservoirs; and that is another reason why the storage allowance upstream from Stewart Dam in Wyoming should be increased, because there just isn't enough water to make it a hundred percent yield. And therefore, the only way it can even jack up this average is to have a capacity or an allowance which will enable them to take advantage of the wet years, because there is no water there for them in the dry years. And therefore,

it is giving a little advantage to the upstream users and taking nothing away from the downstream users.

COM. COOPER: It is taking away whatever amount is stored from the downstream users, immediately above Stewart Dam and below Stewart Dam, Mr. Clyde; there is no escape from that.

COM. CLYDE: But the advantage of your storage upstream when you have got capacity to put ~~water~~ in wet years, accrues to the downstream users throughout the length of the system in a diminishing amount; but when you put that storage on the lower end of the river, you never can benefit anybody above the storage. And therefore, again, the use of upstream storage from the standpoint of the overall picture, is in favor of an increased amount upstream.

Those yields, you see, are pretty low. You take a 30,000 acre-foot reservoir and it will yield 22,500 or some, acre-feet of water. You take a 40,000 acre-foot reservoir and it will yield 25,000 acre-feet of water. We never can get up to the storage allowance. Therefore, this effort, and I am frank to say that is the reason I am trying to keep that storage allowance as high as I can, to get that yield up as near as we can to a reasonable figure when you consider it in terms of consumptive uses of water on the river.

COM. COOPER: Dr. Clyde, don't you consider the yield of 200 acre-feet is rather small?

COM. CLYDE: The yield is small, that is true; but

it is costing no one anything.

MR. PERSON: It doesn't cost you anything, and we have got that extra thousand to sell it to our legislature with. It only costs you 200 acre-feet. If you put a thousand on Thomas Fork, we don't care.

COM. COOPER: We have a legislature to satisfy which is probably just as contentious as yours.

MR. PERSON: I think worse.

COM. BISHOP: Mr. Cooper, we don't think we will have any trouble getting our legislature to grant you a right to store water in Wyoming on Thomas Fork; and my feeling about Thomas Fork or any other stream that is as short of water as that stream, is that they should have unrestricted use of the water, it shouldn't be regulated for Bear Lake or anybody else. That is the way I feel about it. But, the whole system is in the State of Idaho and so far as Wyoming is concerned, Idaho can do as they want to and we will give them a permit for the little headwaters, to store water up there, and recognize its priority.

COM. COOPER: In view of the facts before us, we feel that is just as far as we can be permitted to go. That is to say, 36,000 additional storage and 14,000 acre-feet of presently existing storage, and the thousand acre-feet reservoir on Thomas Fork shall be taken from the total, the reservoir to be constructed in Wyoming.

COM. CLYDE: Mr. Chairman, that means simply this

then, that the additional storage allowed upstream users will be 34,676 acre-feet. We cannot go for that figure.

COM. COOPER: Thirty-four thousand what?

COM. CLYDE: --676.

MR. MERRILL: They won't go for that.

COM. CLYDE: Maybe we had better adjourn.

MR. MERRILL: Every time we meet it is that much more.

COM. CLYDE: Question on the motion, Mr. Chairman.

THE CHAIRMAN: I think we will have the reporter read the motion. It was seconded by Mr. Bishop.

(Motion read as follows: I move that the extent of existing storage be recognized as existing in Utah and Wyoming, amounting to 14,000 acre-feet in round numbers; and that the States of Utah and Wyoming under the Compact be authorized an additional storage allowance of 36,000 acre-feet above Stewart Dam in Wyoming and Utah.)

THE CHAIRMAN: You have heard the motion. I will call--

COM. CLYDE: Mr. Chairman, before you put that motion, may I ask for a point of information; How many votes does it take? Are our actions unanimous in this case?

THE CHAIRMAN: Have to be.

COM. CLYDE: I think they would have to be. Well, now, I called for the question; evidently the action will not be unanimous.

THE CHAIRMAN: As Chairman, I wouldn't know. If you want your motion put to a vote--

COM. CLYDE: In view of that, Mr. Chairman, with the consent of the second I withdraw that motion.

THE CHAIRMAN: Do you consent to the withdrawal of the motion, Mr. Bishop?

COM. BISHOP: Yes.

THE CHAIRMAN: All right, your motion is withdrawn. Does anyone of you have another motion? How do you want to proceed.

MR. PERSON: Off the record.

(Discussion off the record.)

MR. L. B. JOHNSON: Mr. Chairman, could I make a suggestion?

THE CHAIRMAN: Yes.

MR. L. B. JOHNSON: That Utah leave it in the position of a motion, but withdraw its request for action on it just now; and that you go on with that same motion. I believe you will come up with something.

THE CHAIRMAN: He has already withdrawn it.

COM. CLYDE: I can make it again anytime. Mr. Chairman, I move that we recess--it is now half past eleven--

MR. MERRILL: A quarter after.

COM. CLYDE: --that we recess until one o'clock. I am interested in getting a solution, I will be perfectly frank with you, but there are limits beyond which even I cannot go;

and I will go back to my people and make another proposal.

If this motion carries, I will be ready at one o'clock to make another motion.

THE CHAIRMAN: Is there a second to Mr. Clyde's motion to recess until one o'clock?

COM. BISHOP: I will second it.

(Thereupon a vote was taken and Com. Clyde's motion carried unanimously.)

(11:16 a.m. Noon recess.)

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(1:13 p.m. Meeting reconvened. All Commissioners present.)

THE CHAIRMAN: We caucused during the noon hour. Have the three Commissioners reached any agreement yet?

COM. COOPER: Mr. Chairman, I move that in Article V, Paragraph B: "In addition to presently existing storage rights above Stewart Dam, approximating 14,000 acre-feet in the aggregate, there is accorded the right to store above Stewart Dam for consumptive use, 35,000 acre-feet, and no more..." The approximated storage shall be 14,000 for the existing constructed storage in the aggregate. And that there shall be allowed to Idaho on Thomas Fork, 1,000 acre-feet.

MR. PERSON: Fred, did you mean the 1,000 in addition to the 35,000?

COM. COOPER: I mean that there shall be accorded to upper Utah and Wyoming 49,000 acre-feet overall.

MR. PERSON: 14,000 present and 35,000 new?

COM. COOPER: That is right.

MR. PERSON: In other words, your 35,000, then applies to Utah and Wyoming.

COM. COOPER: And, in addition, 1,000 acre-feet for Thomas Fork.

THE CHAIRMAN: Is there a second to Mr. Cooper's motion?

MR. PERSON: I can't second that.

COM. BISHOP: No.

COM. CLYDE: Mr. Chairman, a point of order. I would like to make an amendment to that, but can I do it without a second?

THE CHAIRMAN: I don't see how you can if it hasn't been seconded. You haven't a motion to vote on until it is seconded. Would you three Commissioners like to suspend with formalities and caucus further and see if that will help?

COM. CLYDE: With the consent of the other two Commissioners, I would like to make my proposal--it would be an amendment.

MR. PERSON: We might make Fred's motion a proposal since he didn't get a second, and leave it in the record.

COM. CLYDE: Then I can make an amended proposal.

COM. COOPER: That is agreeable.

COM. CLYDE: Is that agreeable, Mr. Bishop?

COM. BISHOP: Yes.

COM. CLYDE: Mr. Chairman, I will then make this proposal, that Article V, B, read as follows: "In addition to presently existing storage rights above Stewart Dam, approximating 14,000 acre-feet in the aggregate in Utah and Wyoming, there is hereby granted the right to store above Stewart Dam for consumptive use in Utah and Wyoming, a total of 35,500 acre-feet, and no more."

The impact of that substitute proposal is simply this: We now stand a thousand acre-feet apart; and the proposal is to split the difference, provide 35,500 acre-feet of storage upstream for Utah and Wyoming, plus a thousand for Idaho, and fix the existing storage in Utah and Wyoming at approximately 14,000 acre-feet.

MR. MERRILL: Of existing constructed storage?

COM. CLYDE: Existing constructed storage. I think that could come in there with the understanding, of course, that if we run into something like we were discussing this morning, a reservoir dam should go out and it had a hundred acre-feet of capacity, the equivalent storage could be somewhere else on the stream, it wouldn't have to be on that particular site. The total storage wouldn't change.

COM. COOPER: Before we act on that motion--

THE CHAIRMAN: That was just a proposal, I take it, not a motion?

COM. CLYDE: That is right.

COM. COOPER: --I have a question here, in connection

with the time the storage may be stored above Bear Lake. That has been discussed in previous meetings on a number of occasions, and I think at one time it was decided that the time could be between the 1st of October and the 15th of April.

MR. KULP: The 30th of April.

COM. COOPER: And the 30th of April. There was some objection to that point of view. Therefore, we feel that there should be a limitation fixed on the storage.

I therefore move that no water shall be stored above Stewart Dam under the right herein granted when the natural flow of Bear River at Border gaging station is less than 750 second-feet.

MR. PERSON: Of course as it is written now, Fred, there is already a limitation: "...such additional storage right shall be subordinate...to existing direct flow rights." Now, what relationship does the 750 have to that?

MR. MERRILL: Just the mechanics; it makes it easier to determine.

MR. PERSON: Then, it should be 600 instead of 750.

COM. COOPER: Oh no.

COM. CLYDE: Mr. Chairman, may I ask Mr. Jibson what the implication of that is? What is the effect of that limitation?

MR. JIBSON: I didn't hear Mr. Cooper's proposal in its entirety. Did you qualify that 750 to the period after May 1st, Fred?

MR. PERSON: Yes, in the irrigation season.

MR. JIBSON: After May 1st. Our previous studies on storage have been based on a requirement of 700 second-feet after May 1st to take care of direct flow rights--I mean, our most recent study, I will put it that way, Report No. 25, And those studies were carried over directly, I believe, in Mr. Thomas' Report No. 29 on that basis, that the storable supplies would be from October 1st to April 30th, plus supplies over 700 second-feet after May 1st.

MR. PERSON: I had a feeling the Engineering Committee arrived at 600 second-feet--I may be wrong.

MR. JIBSON: I believe 700 has been the accepted figure, Dean, most of the time. This figure of 750 at one time was mentioned in one of the reports, I don't recall which one.

COM. COOPER: It was Report No. 18 on page 4.

MR. IORNS: The root of that is Report No. 15; that is what it was derived from. The figure in my Report No. 15 was on this condition: If the condition that downstream rights shall never or rarely be violated is necessary, then a critical flow of about 900 second-feet at Harer must be used. The equivalent flow at Border would be about 750 second-feet. That is the root of that figure.

COM. CLYDE: Is that the source of the figure you used?

COM. COOPER: That is the source of the figure. We are willing to set it at 750 second-feet.

COM. CLYDE: That wouldn't affect the storage in any way during the nonirrigation season from October to May 1st.

MR. PERSON: I am not convinced about the 750 when talking about this provision; I am quite a ways from being convinced. This completely protects your direct flow rights the way it is written in the Compact. With the 750, if it was more than that, it would not protect your direct flow rights. I admit the other is easier to administer; but for full protection for both sides, I think the way the Compact is written is better.

COM. COOPER: Dean Person, that wouldn't interfere with your storage rights upstream. How would it?

MR. PERSON: You mean the Compact as written?

COM. COOPER: No, if this 750 clause was put in there.

MR. PERSON: Of course I am not convinced that is the right number.

COM. COOPER: Okay, are you going to accept the engineering reports?

MR. PERSON: I always questioned the 750. I would accept 700; I think it is a better figure.

COM. COOPER: Well, in the face of the statements that have been made here by--

MR. IORNS: Could I say a word about that?

COM. COOPER: Yes.

MR. IORNS: I would agree with Dean Person on that,

that the better condition to use is the one that is written in the Compact, that is, they can't store at any time that they would be violating the downstream direct flow rights, for the simple reason it is in a way an advantage to the upstream users and yet it does away with questions of forecasting and applying something in the future that has been based on distribution or occurrence of events in the past.

In actual application, if it were to go in based on when the downstream rights would be violated, what it would amount to is, when the first right was cut at Cutler Dam, then the watermaster would immediately stop all storage in the upper basin. Now that may be a few days before this 750 occurs at Border, it ~~may~~ be two weeks later, I don't know; but it will be pretty close in that range.

MR. MERRILL: Wouldn't it take quite a little while to determine whether those rights are interfered with below, during which time the storage is going on? The rights have been interfered with then and there is a loss.

MR. IORNS: I think the day the right is cut at Cutler Dam is known almost to the minute.

MR. MERRILL: Oh yes, at Cutler Dam, but that is down below.

MR. IORNS: You are going to segregate the water moving down the river at all times in order to know when rights are cut. I think it is a safer condition to base it on when the downstream right is violated, rather than to try to

base it on a flow at Border that occurred, as near as we could plot it up graphically as to when these rights were cut in the past.

Another thing, if it is left like it is--I think the Compact would have to say you will give these upstream people the right to store between October 1st and the following April 30th and at any time during the irrigation season when the flow at Border is over 750. But, if you wrote it in there just simply when no direct flow right is violated, then you don't have to specify the winter period or when Border is above the 750. I believe it is automatically taken care of there.

MR. PERSON: You see, the 750, Fred, what I worry about it is purely an estimated figure.

COM. COOPER: Isn't the 700 the same?

MR. PERSON: That is right. That is why I suggest we leave it as it is; it protects both sides. We don't want to interfere with your existing direct flow rights.

COM. CLYDE: Who is going to determine when that is reached?

MR. MERRILL: That is the point.

MR. PERSON: As soon as regulation under direct flow rights--it would be easy to determine. We don't have to reach that figure. You see, you guess 750, but as soon as he starts regulating direct flow rights downstream, then we couldn't store for irrigation.

MR. IORNS: Having available the daily flows into

and out of Bear Lake, the daily flows passing Cutler Dam and into the canals at Cutler, you can determine the day it happens. You can determine when it happens.

MR. PERSON: I think you could determine the exact date and you would have the storage rights shut off there that same date when the Commission was operating the river. The trouble with 750 is--and I agree with you, if I was on your side I would guess it high--but I feel it is too high and I have always felt it should be 700.

COM. CLYDE: Mr. Chairman, may I refer to Report No. 15, page 8. It says: "The equivalent flow at Border would be about 750 second-feet. A study of the hydrographs on Flates 27 and 51 using a limitation of this magnitude shows that upstream storage would only have been possible in about 12 of the 25 years investigated. Such a limitation would make upstream storage unfeasible."

MR. IGNS: For instance, when you say 750, here is the graph at Border and here is the equivalent (referring to hydrograph)--

THE CHAIRMAN: Should this be in the record, these informal discussions, or shall we dispense with the record for the time being?

COM. BISHOP: I think it should have been in the record up to this point.

(General discussion.)

COM. COOPER: All we are asking for is the protection

of 750 second -feet, which protects the water users immediately above Bear Lake and those immediately below. It just simply makes us sure that our rights are protected. If you people took the water at the time of the year we are irrigating, it would very definitely work a hardship on us; there isn't any way out of that.

COM. CLYDE: They would be protected in the statement, "subject to existing rights". I am trying to find out a way of determining when that is. Now, this table, Column 17, is based on 750 second-feet. ( Table 4, Report No. 25.)

MR. JIBSON: It is based on 700 second-feet at Border.

COM. CLYDE: All right. In 1930 there was only 100 acre-feet available for storage with the limitation of 700 second-feet.

MR. JIBSON: That is, available after May 1st.

COM. CLYDE: Nothing in 1931. Nothing in 1934. 1935 there is 3700 acre-feet. It would have been a help to the storage in 1935; without that 700 they would have picked up 3,700 acre-feet. 1939 they would only have picked up 1,400 acre-feet, but the reservoir would have been full anyway. 1940, none available. 1941, it would have helped a little, 1942, it would not have helped then. 1943 and 1944 it wouldn't have helped. 1945, it would. There are only about three years where a limitation of 700 would have helped. Of course, if the limitation had been 600, there would have been more years, and 750, there would have been less years. If you take the

limitation of 750, there wouldn't be any water available during the period May 1st to September 30th.

MR. JIBSON: I don't believe there would be that much difference as between 700 and 750; but it is correct that there are only about three years of the 25-year period in which they actually would have received much benefit from that excess water.

MR. MERRILL: Doesn't it take at least 750 second-feet over Border to fill the rights below?

MR. JIBSON: That is in the neighborhood.

MR. MERRILL: That is why we would like that inserted in there.

MR. JIBSON: I might say that the way it is written, it is also to take care of those same direct flow rights; it is just a question of whether we can arrive at it as easily and accurately one way as another. I think the proponents of putting in an exact flow at Border have done so with the idea it would be much simpler to administer. The other way undoubtedly would be more accurate if we can always tell right down to a day or two when those rights down below are being cut.

COM. CLYDE: You said that it would take 750 second-feet to satisfy the direct flow rights below Border?

MR. JIBSON: In the neighborhood of 700 or 750, whichever way you look at it. Mr Iorns report set 750.

COM. CLYDE: If that be true, there is not more than three or four years in the last period of record where they

would get any benefit at all from the right to store during that summer period.

MR. JIBSON: That is assuming, of course, that they take every drop of water available up to April 30.

COM. CLYDE: What that does by fixing a limit there is to void any opportunity to take advantage of climatic conditions, such as a period of rain when the canals are not taking their capacity because they don't want the water and it goes on down and maybe pours over the dam at Cutler--I say "Maybe"...

Now, it would seem to me better if the Commissioner would determine when regulation goes into effect and protect all direct flow rights and stop storage when that time comes. Of course, he has got to determine a criteria, which we are attempting to fix here at 750--or some other figure; isn't that correct?

MR. JIBSON: That is just a matter of if he is able to determine that.

MR. IORNS: He can determine it in every year with the stream flow records. That is part of his job, to know when the flow is below these critical points and they begin to cut rights below Stewart Dam.

You can very easily, near the 1st of May, have a time when Border is below 750 or 700, or even 500, and they are still filling all rights below Stewart Dam and water is passing into Great Salt Lake. Should we restrict storage upstream then?

COM. CLYDE: And it would restrict it if we put that

limitation in of 750.

MR. PERSON: I think we have to keep in mind this figure of 750 is an estimated figure, because my estimate is quite a bit lower. I don't know if I was influenced or not.

MR. IORNS: I made daily distribution just the same as the watermaster would have to keep track of the lower part of the river and the river system; and when it got down to these certain points and we started delivering storage water past Cutler Dam for the rights to the canal at Cutler, or even Last Chance, then the storage should stop upstream.

In the early part of the studies when I first began the storage study, I tried to determine how much water you could get out by storing the high water runoff above Stewart Dam and yet, at the same time, not be violating any direct flow rights. And the quantity of water I came out with, in years of high runoff when they didn't need much storage, why they could have stored a lot; but the years they needed storage, it wasn't available because it dropped off too fast.

So I then went back and investigated the flows during the wintertime and found there that by storing winter runoff in the upper basin between October 30th and April 30th, why we could accumulate a substantial amount of dependable storage, which is what the upstream people need. They don't need a lot of storage in a year in which they have a lot of runoff and don't need storage water.

MR. JIBSON: For clarification, I would like to ask

a question; Supposing at any particular time after May 1st--we will just take a hypothetical figure--500 second-feet is being diverted to storage. On the day the natural flow rights are cut, regardless of the amount that is cut, is it your interpretation that all of that diversion of storage would cease immediately?

MR. IORNS: Just as fast as regulation could go into effect.

MR. JIBSON: Would you stop all storage, or would you stop just the amount of storage by which these rights were cut? Supposing they are cut by 100 and 500 is going into storage; you would just stop all storage at that time, would you?

MR. IORNS: If they accumulated anything past that point, they would have to release it downstream and reduce their storage to what it was that particular date.

MR. PORTER: That would have to be worked out each year.

MR. JIBSON: What I had in mind in asking that question was the possibility of one single canal along the river somewhere not having sufficient water at its headgate to satisfy its direct flow rights--not necessarily the canals at Cutler, but some individual canal up the river, I am not sure just which one I might be thinking of. There is a possibility of that occurring. Now if some individual canal may not have water at its headgate to fill all the natural flow rights, that would automatically stop all storage as of that date,

even though the amount of water involved would be very minor?

MR. PERSON: That wouldn't be the way I would interpret it. You stop enough storage to satisfy the direct flow.

MR. JIBSON: That is the reason I asked the question.

MR. IORNS: By that you mean you would only restrict the amount going into storage to put enough water downstream to fill the deficiency?

MR. JIBSON: That is the point, or if it is just a blanket cut of all storage.

COM. CLYDE: This provision which says the right "shall be subordinate" to existing flow rights is a mandate to the Commissioner if the Compact were approved, to protect existing rights; and he would have to know what they are and he would have to operate the river so as to protect them. That is the first mandate. The only benefit I could see from any figure being applied to the total flow at Border would be to flag the time when regulation was approaching.

MR. MERRILL: That is valuable, isn't it?

COM. CLYDE: It has certain value in the mechanics of operation, but whether the value there is equal to the disadvantage of fixing that quantity. It destroys the flexibility that the Commissioner has, because the minute it gets down to that point, he has to stop storage even if there are quantities going over Cutler Dam into Great Salt Lake deadwater. And, that is the thing I question, because the Commissioner, if he is going to administer this water, must do it efficiently; he

should not be forced by the Compact deliberately to discharge water into the Lake. And that is what this does if you make that figure too high—it would in some years.

I am just wondering if there is any other way of doing it which would give the Commissioner a little flexibility so that he can administer the river to satisfy Section (1) here, existing direct flow rights. If he does that, nobody can complain. I don't see how we can do it if you limit the time that he closes his gates, because they may or may not be short of water down below when he has to do it.

COM. COOPER: That is correct. Then, may I ask another question, Mr. Chairman?

THE CHAIRMAN: Mr. Cooper.

COM. COOPER: You know that there is a probability that there is water going past Wheelon (Cutler) into the Lake supplied from Cub River, Maple Creek, Little Bear River at Logan, Cottonwood Creek below Cleveland, so that there is water going to waste into the Lake. But at the same time there may be an insufficient amount of water passing Border to satisfy the rights of the people immediately above Bear Lake and the Last Chance Canal Company below there. There have been times when the snow cover in the hills varies, when it will rain a considerable amount upstream and where we will have a dearth of moisture below.

And that is the reason we would like that figure inserted in there, so that it will guarantee during the irri-

gation season provided there is water there--sometimes there isn't--but provided there is water there in the river to take care of the rights of the irrigators immediately above Bear Lake and those immediately below. There is only a difference of 50 feet, but that is important to us because we are accustomed to handling the water very carefully. Fifty feet of water to our system means a very great deal, and I think it probably does to you boys too, doesn't it?

MR. NATE: Yes, it does.

COM. COOPER: If you are privileged to store during the time we are irrigating, it cuts into our supply and that is the reason we would like that in there, gentlemen.

MR. PERSON: Of course, Fred, I think you have better protection the way we have got it under (1) than you would under your 750, because conditions might change. You arrived at that 750 figure on the basis of one or two years.

MR. JIBSON: I think you will admit it is a shotgun figure. You might say 750 and you might say 600.

MR. PERSON: That is right, and somebody else might come along and say 900.

COM. COOPER: I think there is another place it says 810. We are willing to settle on 750.

MR. PERSON: But you will be completely protected the way it is written. That is the best protection you can get and it gives us the chance, if there is a lot of rain and water going to waste, we could store something.

MR. IORNS: Fred, the 750 was based on the date that they first started cutting rights below Stewart Dam. In that I made a study on the flow and distribution of water below Stewart Dam, and determined the date on which rights were cut at Last Chance canals and cut at Cutler Dam. I also looked into the dates on which the rights were cut down in the Riverdale section, but I found those were much later dates than when the rights were cut at the other two places. Taking that date and looking into the flow that was occurring at Border, four days earlier than the date at Cutler Dam or two days earlier than the date that yours was cut, I found that if a figure of 750 second-feet was taken at Border that it would protect you in all cases.

Now there are some cases in which you could have still stored beyond the time it got to 750 and still not violated your right or the Cutler Dam right; and that is the reason I think that Clyde wants to go back to the original definition on which I based that date, which is when the first right was cut below Stewart Dam, and that is essentially what the draft now says. They have to stop storing when a violation of a direct flow right goes into effect.

And so far as your canal is concerned as related to Cutler Dam, I found in all the 25 years from 1924 to 1948 that the date of cutting at Cutler always preceded your date. Sometimes there was only a day or two difference, sometimes as much as a week or two weeks' difference; but they were always

cut at Cutler Dam before it required your cutting.

COM. COOPER: I admit that the performance of that river is unpredictable. You set up a set of figures here and then the next year they may not apply.

MR. IORNS: So I think the best thing to do is to go back on the original definition in which you say they cannot store water above Stewart Dam that would violate any direct flow right below Stewart Dam. You don't store in Bear Lake when storage in Bear Lake would violate a direct flow right.

COM. CLYDE: That means that the minute that any one canal's flow is cut, storage stops or is reduced until that is taken care of.

MR. PERSON: No, is reduced enough to take care of that direct flow right.

COM. CLYDE: I say, or is reduced.

MR. PERSON: Oh, pardon me, I didn't hear that.

MR. JIBSON: As it is worded there, it says "subordinate"; it doesn't mean all storage shall be cut off?

MR. PERSON: It means it will be cut down to satisfy his rights.

COM. CLYDE: Coming back to this table, Table 4 of Report No. 25, from 1924 to 1948, there were only three years when any benefits whatsoever would accrue from storage during the irrigation season out of the entire record, only three years they would have any benefit from storage during the irrigation season. One was 1933, and one was 1935, one was

1941. The total benefits that they would have accrued would have been about 5,000 in 1933, nearly 4,000 in 1935, and 6,000 in 1941, out of the 24 year record. That is the only difference it would have made.

MR. JIBSON: That is true as it applies to storage at Woodruff Narrows.

COM. CLYDE: That is right.

MR. JIBSON: That might be qualified slightly if you consider tributaries which may gain in more years than that by being able to store after May 1st. That is true as it refers to flow available at Woodruff Narrows; the above Woodruff Narrows complete flow, Woodruff Narrows reflects everything. It doesn't reflect your West Side or Twin Creek, which might benefit.

COM. CLYDE: Don't you think on short years that the tributaries will suffer first, because the tributaries have lower elevation of producing area; the main stem has the high producing area. Of course I realize it depends on how it goes off. I think my experience would indicate that the condition may be even worse on the tributaries than it is on the main stem as far as picking up storage in those years when the flow is 750 at Border.

MR. JIBSON: I am thinking of a reservoir which fills in every year except 1954, where if they went to a strict May 1st deadline, it would only fill in three years out of five. That may be a unique situation on that particular reservoir

because it is on a small tributary.

COM. COOPER: During the discussion, I haven't been convinced yet that this 750 second-foot limitation in there would be particularly dangerous or harmful to the upstream storage people. It simply indicates a protection to rights that have been in existence a long time and doesn't handicap materially the storing upstream, except probably in just a few years. You couldn't expect us to be willing to permit storage upstream and let our rights go unprotected. There is only a difference of 50 second-feet there.

COM. CLYDE: I want to make myself clear on that point, Fred, that I certainly wouldn't favor or expect any storage upstream at any time that any canal below had to cut its flow--anytime--I wouldn't care when it was. As a matter of fact, the only thing that limitation does is take away from the Commissioner any flexibility he has to operate the river in those two or three years when it would be effective; it does take away that. Now whether that is justification for inserting it, I don't know; but I do stand on the first premise, that those direct flow rights must be protected in every case.

COM. COOPER: I admire you for that.

COM. CLYDE: You have got to rely on the Commissioner to do it; and I think if he doesn't, he is not carrying out the intent of the Compact.

COM. COOPER: If we were dealing with you all the time, I wouldn't question it; but in the future we may be

dealing with someone else.

COM. CLYDE: I still think most people are reasonable.

COM. COOPER: I agree with that. But, for administrative purposes, I still think it should be inserted there.

COM. CLYDE: I think some of the greatest mistakes that have been made on compacts--and there have been some made--~~has~~ been in tying their hands so they can't operate the river and take advantage of the changes in both requirement and occurrence of precipitation and occurrence of water supply.

Now, as I pointed out, I think the difference is small in terms of total acre-feet--it is very small. The big advantage would be if the Commissioner wanted a flag which tells him when to shut the gates. If he could say, "I shut them whenever that flow gets to 750", that is easy for him to administer.

But, I do not think it is conducive to the most efficient use of the river, because the minute he shuts that down, the total amount of water that is being put in storage will probably never exactly equal the total shortage in the canals below. If you are storing--as somebody pointed out--500 second-feet, the minute the first canal drops below a hundred feet, we have to cut the 500 and turn it down the river to satisfy the 100 second-feet. The Commissioner has no preference; he can't do otherwise.

MR. PERSON: Furthermore, I think as written, (1) is better protection to the lower basin than any figure you could put in there.

COM. CLYDE: If I were in the lower basin, I would say that of all things, that must be in there.

MR. PERSON: I would rather have that than the 750.

COM. CLYDE: As between the two there is no choice. This has to be there regardless of the limitation, I think, if you have full protection.

COM. COOPER: You mean, to read as it is, "to Existing direct flow rights"?

COM. CLYDE: I favor that, they are protected by the Commissioner. I think it would fully protect the rights. If we had some way of setting up a flexible dial here we could turn--but I don't know how we can do it practically unless we give the Commissioner the right to so operate that stream that he satisfies all the direct flow rights before he permits any storage. That means that even if a canal had to drop 10 second-feet, he would have to signal the reservoir to turn 10 second-feet down to make up that difference.

COM. COOPER: I wonder if Mr. Skeen could help us in clarifying this; would you do that, Mr. Skeen?

MR. SKEEN: I will be glad to work on it, yes. I think I know what you have in mind.

MR. MERRILL: The art of drafting helps a lot, I think.

COM. COOPER: "...provided, however, that during the period between April 30th and September 30th of any such year, no water shall be stored above Stewart Dam under the right

herein granted when the natural flow of Bear River at Border gaging station is less than 750 second-feet; such additional storage rights shall be subordinate (1) to existing direct flow rights, and (2) to existing storage rights above Stewart Dam but, it shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam."

MR. MERRILL: That takes care of both of them.

COM. CLYDE: If I understand it--I may be a little confused--but, as I understand it, that is the very statement you made.

COM. COOPER: With some added.

COM. CLYDE: But the crux of it is that whenever the flow at Border gets to 750 second-feet, there shall be no more storage?

COM. COOPER: That is right.

MR. MERRILL: It also goes on that the additional storage right shall be subordinate to the direct flow rights.

MR. PERSON: You had both. You have what is already in here, you had that plus another protection of 750 the way you have it written.

COM. CLYDE: Do you have the draft of that, Mr. Skeen?

MR. SKEEN: I have a draft containing the exact language that was read there, containing both the restriction on the flow, or the indication of the flow when storage should stop, and also the provision making additional storage subordinate to existing direct flow rights.

That was a draft I prepared in a preliminary way and my thought was that it would be a very good guide in administering the river. I have been advised that when the river starts falling at Border, it falls very rapidly. And based on the engineering information I got, I don't think there is much difference between 700 or 750, either way, if you use that as a handy guide in administering the river.

COM. CLYDE: Mr. Chairman, we are right back where we were when we began this discussion, and may I throw in another thought--it may not be worth anything--but I hate to tie the Commissioner's hands as we are tying them in this case. Could we write a proviso here following the language submitted, that no storage shall be permitted upstream after the flow at Border gets below 750 second-feet, "unless in the opinion of the Commissioner such storage will in no way affect the existing rights below that point"?

In other words, let us give the Commissioner a chance to use this water efficiently if there is any possibility. What it does is flag it, you see. Under the normal run of things, the storage stops at 750; but if conditions are such that he has got to discharge a thousand second-feet downstream to satisfy a 50 second-foot deficiency, he should have a right to satisfy that deficiency and still permit a portion to go into storage.

MR. SKEEN: He should have that right, undoubtedly.

COM. CLYDE: If we could write that in, would that

satisfy it?

MR. SKEEN: How would this be: ".....provided, however, that during the period between April 30th and September 30th, of any such year, no water shall be stored above Stewart Dam under the right herein granted when the effect of such storage is to reduce the flow of Bear River at Border gaging station below 750 second-feet". That would provide the flexibility there.

COM. CLYDE: It only provides flexibility down to 750 second-feet, but doesn't provide it below.

MR. SKEEN: Nothing below, that is right.

COM. CLYDE: By my point is, there may be occasions-- according to this record--there may be times when the first canal below Stewart Dam is short 50 second-feet when they are actually putting in storage at Woodruff Narrows 500 second-feet. If this provision is there and that flow reaches 750 second-feet, at that moment, when it is 50 second-feet short, the Commissioner has no choice; he has to cut the 500 second-feet and pass it down the river.

MR. SKEEN: He doesn't in the language I just read.

COM. CLYDE: He does after he gets below 750.

COM COOPER: No. Read it again.

MR. SKEEN: This in effect would afford adequate protection on that matter of releasing more storage than really necessary, I think this would take care of that; but I don't know about below 750. I will read it again. It is just a

thought I had just now: "...provided, however, that during the period between April 30th and September 30th of any such year, no water shall be stored above Stewart Dam under the right herein granted when the effect of such storage is to reduce the flow of Bear River at Border gaging station below 750 second-feet."

In other words, if you had to let 20 second-feet out of storage to firm that up to 750, you could do it here without shutting off all storage above Stewart Dam. But, it doesn't provide the flexibility below 750, I recognize that. If you need flexibility below 750, we will have to work out something else. If it happened to rain, as someone said, and they didn't need the water down there, it would nevertheless require 750 to go down.

COM. BISHOP: Mr. Chairman, it seems to me we can't write it into the Compact to tell the Commissioner how to regulate the river to comply with the terms of the Compact in order of priority and all; it seems to me we are just messing it up by writing in any 750 or 700 or any other figure.

It seems to me that whoever is regulating the river has got to use his own judgment to bring about the regulation in order of the priorities as established by the Compact. It is my understanding that is the way the wording here intended it. If it doesn't, I don't believe we can do it by entering an arbitrary figure in there that is liable to interfere with the order of priority of regulation on the stream. The storage

in those reservoirs, as I understand it, has got to be in order of priority also; I don't see any other way you are going to do it. The first reservoirs that are built under this enlarged storage upstream certainly have the first priority, and the whole thing has got to be handled in order of priority.

COM COOPER: I would be willing to agree to the proposal that Mr. Skeen just made.

COM. CLYDE: I can't see that is any different from the one you read. Is there any great difference there?

COM. COOPER: It gives the Commissioner the flexibility there in regulating in case there is an excessive amount of water downstream.

COM. CLYDE: Until he gets to 750 and then he has to turn it all loose.

COM. COOPER: No, he hasn't got to turn it all loose. All he has to do is to regulate it so it maintains it at that point. You don't have to turn it all loose in the proposal that was made there.

MR. IORNS: Mr. Cooper, if you have the two conditions there--the 750 at Border or violation of existing rights on downstream--you are writing something into the Compact that may conflict. When Border drops below 750, you may be able to continue storage upstream without violating any downstream rights. Also, you can have cases within a few days' time--they would be separated by a few days--when the rights below Border would be cut and Border would still be above 750.

So, I would very much suggest that you write into this Compact, not two phrases that will conflict, but one phrase, the basic phrase on which the regulation is predicated, and that 750 was predicated on the time when existing rights downstream would be violated.

But it isn't true in all the years. I have pointed out in the discussion of that report, there were three years out of the 24 it didn't fit. I said it would be "rarely" violated. There happened to be three years out of the 24 in which downstream rights were cut prior to the time ~~B~~order dropped below 750. So if you write both 750 in there and existing rights, you are writing two conflicting phrases into your Compact.

MR. MERRILL: How could the watermaster determine that, to stop the storage of water above if a water right, say, down in lower Utah wasn't being filled?

MR. IORNS: You are bringing in a question there that is practically impossible to answer, because in a stream the length of Bear River you have a considerable time interval.

MR. MERRILL: That is exactly the trouble.

MR. IORNS: However, I think you are familiar enough with priority right regulation on a stream, that you regulate on the date. In other words, the rights on a stream from one end to the other are cut on the same date. You don't start upstream and start whittling down until you come to the end of the stream in priority regulation. When the 1890 rights are

cut in the stream, they are cut on the stream from one end to the other; you don't cut them up here and ten days later down here.

MR. MERRILL: I know that, but the point is, on your theory it seems to me that it would be necessary for the watermaster to find that all of the rights of the same date of priority are affected.

MR. IORNS: I think that by having the flow records of the canals and the inflow into Bear Lake and the flow at Stewart and so forth, he would have that information.

MR. MERRILL: Some of them might not be affected by the taking of the water upstream.

MR. IORNS: On the basis of the information that was collected on those streams 20 years ago, I was able to determine it for this report, at least within as close as I could correlate it. And if he has the data, he knows what is happening on the river system, he knows what is going to happen. In fact, when he is familiar with his river system, he will know five or ten days before, what is going to happen.

MR. MERRILL: Assuming he is omnipotent. I think that is where our trouble is.

MR. IORNS: If you don't hire a man that can meet those requirements, go find another one I would say.

MR. MERRILL: That is where our trouble will be.

MR. IORNS: I think that what you write into this Compact is what the Commissioner is going to have to abide by,

and it is what the members of the Commission, the continuing organization, will see that he abides by.

MR. L. B. JOHNSON: There is a question I would like to ask Mr. Cooper if I may: Does this 750 feet afford a full water right below Stewart Dam? That is, when there are 750 feet passing Stewart Dam, does that mean a full use of water on the whole system?

COM. COOPER: Oh no, it doesn't.

MR. L. B. JOHNSON: That has been worrying me here for the last half hour.

COM. COOPER: That doesn't afford it, no. That simply takes care of the water rights immediately above the Lake and below Bear Lake. But it doesn't provide a full water right; no, indeed it doesn't. It doesn't take care of the Gentile Valley irrigation, the Budge, the Johnson, the Thatcher irrigation; there are a number of irrigation rights that the 750 doesn't provide for.

MR. L. B. JOHNSON: I would like to ask again: There is no obligation except on storage? That is, there is no obligation on direct flow use above Stewart Dam, it is just on storage, is that right? This 750 feet, that precludes storage, but there is no guarantee other than that?

COM. COOPER: That partially takes care of the irrigation and that is all, the 750. And we are taking a chance on the pickup between the Bear Lake and Soda point to take care of the balance of it. But just as a partial protec-

tion, that is all we are asking for.

COM. BISHOP: That gives you the actual use of around 1,500, 1,800 cfs in your return flow and reuse of your water.

COM. COOPER: You mean below there? We don't realize a return flow below Bear Lake.

COM. BISHOP: Somebody gets to use it; it is certainly there.

COM. COOPER: Very little. During your irrigation season sometimes we get some flow from Nounan Valley, but we don't get an appreciable return flow. (Confers.) It is just 7/12ths of a full right; the total rights is 1,217 and we are asking for 750.

COM. CLYDE: Mr. Cooper, are there any times when the flow at Border would be, say, 900 second-feet when all of your rights wouldn't be satisfied down below?

COM. COOPER: That depends largely upon the weather conditions--

COM. CLYDE: That is what I realize.

COM. COOPER: --upon the weather conditions entirely. There are times when we have a fast runoff; we go right from winter into summer, in other words, and the water runs off there rapidly. Then that might bring about a condition, we would have too much for a short time, and then we would have too little.

COM. CLYDE: And that limitation of 750 second-feet in that case may be harmful to you. In other words, if you

rested on the existing direct flow rights, if you found yourself in that position, even if there was 900 second-feet and it was all required to satisfy your direct flow rights, they couldn't store.

COM. COOPER: What we wanted was, existing direct flow rights, and we wanted this 750 in addition to that. Set the limit at 750 in addition to existing direct flow rights-- we feel that that would protect us.

MR. L. B. JOHNSON: Mr. Chairman, I would like to interrupt again if I could: Don't we elsewhere in the Compact talk about a figure of 1,250 where regulation will begin? I think we people up the river would like it understood that there is no obligation on this 750 feet except to cease storage. We make no guarantees of any water down there except that we won't store water.

MR. PERSON: That is right. I think that is all Fred is talking about.

COM. COOPER: Sure.

COM. CLYDE: I wish we could find some kind of language.

(General discussion.)

THE CHAIRMAN: We will recess for ten minutes.

(2:35 p.m. Recess.)

(3:30 p.m. Meeting reconvened.)

THE CHAIRMAN: Mr. Clyde and Mr. Cooper, have you reached any agreements?

COM. CLYDE: Have we, Fred? I don't know.

COM. COOPER: We have done a lot of talking. It seems we are getting closer together on the amounts. The difficulty now is agreeing on the language in Article V, Section B. I would suggest--I don't know how Mr. Clyde and the Wyoming people feel-- but I think we should give the Legal Committee the chance to analyze this paragraph and come up with some language in the morning that may clarify the situation. I admit that I am just confused at the present time as to whether or not this is the language that should be in here. The amounts I believe we can agree on, both as to the present capacity of upstream storage and the additional upstream storage.

THE CHAIRMAN: And the Thomas Fork storage?

COM. COOPER: Yes. I don't think we are far enough apart there that we need to quibble any farther. But this other thing, I am just not straight on it, to be honest with you. I am confused.

THE CHAIRMAN: Are you talking about B. (1)?

COM. COOPER: I am talking about B of Article V.

THE CHAIRMAN: Yes, but the whole paragraph B or parts of it.

COM. COOPER: Well, in this, " such additional storage rights shall be subordinate (1) to existing direct flow rights, and (2) to said existing storage rights above Stewart Dam, but it shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam." I am confused as

to whether we should add in the 750 second-foot limitation at Border or leave it as it is. I can't decide on it.

COM. BISHOP: Fred, it just seems to me that that is liable to prevent doing the very thing that you set out, that you just read; it seems to me that it could very well accomplish that. And if this doesn't accomplish what you want it to do--which to me it seems it does--why let's fix it so it does.

COM. COOPER: That is what I would like done. But there is a difference of opinion, difference in statements. Mr. Larson has a statement there that I am quite favorable to, but I am just not sure of myself.

COM. CLYDE: Mr. Chairman, may we ask you to read that and explain what that means?

THE CHAIRMAN: Yes. First of all, when I heard Mr. Clyde and Mr. Cooper discussing this, what each was thinking of as a protection to upstream users and downstream users, I thought of the provision in the contract between the United States and the Weber River Project for the building of Echo Reservoir. In that project it is intended that Echo Reservoir be filled and surplus water be diverted to the Provo River for the Provo River Project.

So there is a very simple statement in there that says that the Weber River Project shall fill Echo Reservoir once up to 74,000 acre-feet as against the right to divert up to 1,000 second-feet over to the Provo River. Which means

that in one year if they only needed 40,000 acre-feet to fill Echo Reservoir, then only 40,000 would be prior to diversions to the Provo.

So I just wrote this out for an idea that I thought might answer both of your questions, going back to B. (1) that "such additional storage right shall be subordinate (1) to existing direct flow rights, provided that water shall not be stored in upstream reservoirs"--that is the 35,000 acre-feet-- "above Stewart Dam when the river flow is below 700 " -- or 750, whichever you decided on--"second-feet at Border as against demands of existing direct flow-rights as may be made known to the Commission or Commissioner."

What was meant by that, supposing they were storing water in upstream reservoirs and the flow at Border was only 600 second-feet, and somebody down below, some right, said, "Hay, here, we need 20 second-feet more for beneficial use under our right. We are short 20 second-feet." That demand then is made known and then the Commissioner would say, "Okay, turn down 620 second-feet." Maybe in a few days somebody says, "We need a hundred second-feet more than we have got." Then he would keep on turning down until he gets up to 700 or 750, whatever figure you pick, against the right to store upstream.

That would mean, if you had a wet period of a couple of weeks, maybe 500 or 600 at Border would satisfy everybody and there would be nobody hurt; then they would store upstream. If somebody demanded the water, okay, it is turned down. That

was what that is intended to mean and I think it says that.

COM. CLYDE: I didn't get that interpretation. I am glad to know that is what it means.

THE CHAIRMAN: I think the word "against" threw you.

COM. CLYDE: Does that mean that the flow at 750 and below will be required to go downstream so long as it is needed to satisfy downstream users?

THE CHAIRMAN: It means that the lower users, when they make their demands known, when the flow is less than 700 or 750 at Border, and any existing rights need water -- by making it known, that would require that it come down until they got up to this figure of 700 or 750, whatever you use, and then of course you stop. That I thought would meet your objection for storage in wet cycles, and it would meet Mr. Cooper's point that whenever those rights need it, they could require it to come down to 750 second-feet, whatever you made it.

COM. CLYDE: I would go for that interpretation but I would point this out: There may be some years when that would penalize the lower users, because that would permit the upstream to store any time it was more than 750 second-feet.

THE CHAIRMAN: That was all he was asking for; that is why I did it that way. If that isn't right, that is up to them.

COM. CLYDE: The thing works both ways. There may be years when 750 second-feet won't satisfy the downstream rights.

THE CHAIRMAN: I was taking Cooper at what he said.

He said 750.

COM. CLYDE: It does work both ways; that is the reason I am fearful of limiting it by putting any figure in it. With your interpretation, I say I could go for that without any trouble because that does the very thing we want, except it puts a ceiling on it. It permits the Commissioner to divide the water up at any time it gets below 750. He is the fellow that says how much he will let go down.

THE CHAIRMAN: I did this on the assumption that the 750 did it. If it doesn't do it, that is something else.

MR. IORNS: That would work out, whenever it was above 750 they could store even though there was somebody short downstream.

COM. CLYDE: That is right.

COM. COOPER: That is the point. I accepted Mr. Clyde's explanation at face value. That is the reason I am confused.

THE CHAIRMAN: You don't know whether you are right in being willing to stop at 750?

COM. COOPER: That is right. I can't decide on this thing until it is given a little further thought and study. That is the point with me. I feel that we should think this thing over a little bit farther, and we can give an answer in the morning. And I would want more legal advice in connection with it, gentlemen, before I decided definitely on it.

THE CHAIRMAN: If you think you could reach an agree-

ment on the figures in Article V, how does the Commission wish to proceed from this time on? Do you want to adjourn and meet with your attorneys, or do you want them to meet, or do you want to discuss it further?

MR. PERSON: Have we agreed on the figures?

COM. CLYDE: We haven't made any motion, but I think it is pretty well agreed upon.

THE CHAIRMAN: There was a motion that wasn't seconded, and I believe one by Mr. Cooper.

COM. CLYDE: That was a proposal. You know we agreed by common consent that it be a proposal rather than a motion. I believe we could settle that question and get it behind us, and in order to see if we can do that:

I move that Article V. B read: " In addition to presently existing storage rights above Stewart Dam, approximating 14,000 acre-feet in the aggregate in Utah and Wyoming, there is hereby granted the right to store above Stewart Dam for consumptive use. . . . "

THE CHAIRMAN: You mean "store annually"?

COM. CLYDE: ". . . . the right to store above Stewart Dam. "-----Yes, I will say "annually".

THE CHAIRMAN: A few days ago some of you mentioned that the word "annually" should be in there.

COM. COOPER: That is right.

COM. BISHOP: What is the matter with " any water year"?

THE CHAIRMAN: Excuse me. I see you have " in any water year". I withdraw my statement.

COM. CLYDE: " . . . annually above Stewart Dam for consumptive use 35,500 acre-feet, and no more;"--and then I will stop there because the rest of this we will have to take up later--and add the words, "35,500 acre-feet in Utah and Wyoming and no more;" . . .

Now, gentlemen, that summarizes this way: It gives us a total of 49,500 acre-feet of storage upstream from Stewart Dam exclusive of the thousand acre-feet for Thomas Fork, the existing storage to be that in Utah and Wyoming and the additional storage to be that for Utah and Wyoming in the amount of 35,500 acre-feet.

COM. BISHOP: George, I will go along with you on that if you will agree to take that 500 acre-feet you are reducing it off the equitable share of Utah in dividing the water between Utah and Wyoming.

COM. CLYDE: You want to take my ammunition away from me before I get a chance to shoot it?

THE CHAIRMAN: Is there a second to Mr. Clyde's motion?

COM. COOPER: I think that we should include in there the thousand acre-feet of additional storage to Idaho on Thomas Fork.

COM CLYDE: And make that 51,500 total?

COM. COOPER: That would make it 50,500 total.

COM. CLYDE: I mean, 50,500.

COM. COOPER: If you will include that in your motion I will second the motion.

COM. CLYDE: Fred, I have no objection to including it but it will foul up the language down below here if we continue this division between Utah and Wyoming, because it will be in the total. I wonder if there is some way we could specify it without taking it into the total that will have to be divided sometime between Utah and Wyoming.

COM. COOPER: I want it in the record that Idaho will get a thousand acre-feet for Thomas Fork. This will have to be rewritten anyway; and I want that understanding, that it be 50,500 total with Thomas Fork included for 1,000 acre-feet.

COM. CLYDE: Can the Drafting Committee do that?

MR. SKEEN: Yes, I have made notes of it and I think I can work out the language of it.

COM. CLYDE: There is one other point: Would you like to write that 324 acre-feet of existing storage into it also so you can have here the existing storage in the three states? You see, there is no reference to the 324 acre-feet of existing storage in Idaho; that probably should be in there.

MR. SKEEN: That would greatly simplify the drafting if we could put all three states back in both figures and then make an appropriate division at the end.

COM. BISHOP: To accomplish that, that would figure

out to 36,500 instead of 35,500.

COM. CLYDE: If we added the Idaho storage.

MR. SKEEN: Yes, that is right

(General discussion)

COM. CLYDE: What is next?

THE CHAIRMAN: You made a motion and Mr. Cooper and Mr. Bishop put some "ifs" on it, and I wonder if you have those "ifs" cleared up?

MR. PERSON: I thought Mr. Cooper seconded Mr. Clyde's motion.

COM. COOPER: I seconded the motion.

THE CHAIRMAN: Mr. Clyde, did you amend your motion to meet the "ifs"? He said, if you put a thousand acre-feet in for Idaho on Thomas Fork.

COM. CLYDE: I understood if that was put in it would be added to it and the language worked out by the Drafting Committee; and we were also going to put the 324 in so we would have a complete picture of the existing storage and a complete picture of the additional storage.

THE CHAIRMAN: You have heard the motion.

COM. CLYDE: It is understood the Drafting Committee will prepare the language. We are voting on the principle and the language will be worked out accordingly.

COM. BISHOP: Before I would vote on this motion I would want to take this matter up with our Commissioner from Cokeville, who is now a Senator. To start with he said he

wouldn't go below 40,000. Finally I got him to agree on 36,000, and he said that was absolutely the limit. So I don't feel free to go below 36,000 without calling him and getting his consent--if it is possible. I doubt very much if I can get it, to tell you the very truth about it. Those fellows are the ones that are going to be regulated up there on Smiths Fork. They just won't like it.

MR. PERSON: Dr. Bishop, if they put this to a vote, you wouldn't vote against it, would you, or just withhold your vote?

COM. BISHOP: I wouldn't vote on it.

THE CHAIRMAN: What is your pleasure, Mr. Clyde?

MR. KULP: Not even tentatively?

THE CHAIRMAN: Shall I put this to a vote in view of Mr. Bishop's remark?

COM. CLYDE: I fully appreciate the position Mr. Bishop is in and I don't want to crowd the issue. If we vote under those conditions, it is to be presumed that the mover and the second will both vote "Aye", and there will be no third vote. Now, if that is the fact, I don't see what we will gain by putting it to a vote. So, I suggest, Mr. Chairman, that we table this motion until morning and we proceed with other matters pertaining to the Compact.

THE CHAIRMAN: The Chair will accept that suggestion then. Then with the matters that are left to the Legal Committee, can you take up the next part of Article V. B., relat-

ing to the division of storage between Utah and Wyoming?

COM. CLYDE: That is V. B. ?

THE CHAIRMAN: Yes.

COM. CLYDE: I suggest we give that no further consideration until we satisfy this question of total quantity. That leaves nothing to discuss until that is fixed.

THE CHAIRMAN: All right.

COM. CLYDE: We could take up Item V.C. I think; it is separate and apart from it, and there has been some question relative to it. For example, what do you mean by "domestic purposes"? Does that include industrial water and municipal water?

THE CHAIRMAN: Mr. Skeen thinks that ought to be defined. Usually, in a city when you use water for domestic purposes, it includes miscellaneous industrial uses; but probably here it should be defined. If there is no objection from the other two Commissioners, we could go ahead and discuss C. Go ahead, Mr. Clyde--if you had industrial uses, you are mindful of the fact that it may open it up to large amounts.

COM. CLYDE: You see, that is serious.

COM. BISHOP: That 20 acre-feet limitation pretty near blocks using it for industrial use to any extent.

COM. COOPER: This word "unrestricted", I don't like that.

MR. PERSON: The purpose of that paragraph purely and simply was to protect ranchers and farmers and people with

stock watering reservoirs. It was not a municipal use because actually, if someone is going to use it for domestic purposes in Wyoming, they would have to condemn an irrigation right; we have no excess rights. This wasn't intended for municipal; it was stock watering.

COM. CLYDE: If we could do that, define "domestic" so it would limit it to that.

MR. IORNS: Could you say, "stock watering and farm domestic purposes"?

THE CHAIRMAN: The limitation of 20 acre-feet, the way I read this, is only on storage and is not on direct flow for those two purposes.

COM. CLYDE: That is right.

COM. COOPER: If you had an accumulation of 20 acre-foot reservoirs, reservoirs containing 20 acre-feet, you can take in a considerable amount of water; "unrestricted" gives you that privilege. In your report here, there isn't any place where you have now a stock water reservoir that contains 20 acre-feet; they are all less. I think 11 acre-feet on Sheep Creek is the largest. If you have a number of those reservoirs, they can run into quite a lot of water; and I think that this "unrestricted" should be taken out of there. I think that is vague in its meaning; I think it is dangerous too.

MR. SKEEN: Mr. Chairman, I think that the provision as worded ought to be absolutely clear on the question as to whether this stock water is to be counted in that 36,500 or

whether it is not to be counted. I think it is indefinite as it is now written. That word "unrestricted" is subject to a lot of interpretations.

I think the Commission should first decide whether the stock watering reservoirs should be counted or not counted within the additional storage allocation; and when you arrive at that, I think the language can be greatly improved in that section.

COM. BISHOP: It never has been counted in any compact or in any court decree that I know of. In the North Platte decree it is unlimited use of water for stock and domestic use.

MR. KULP: I would say it was a lousy decree then.

MR. JIBSON: I might say something in connection with those stock watering reservoirs. There are literally hundreds of them in the upper basin. Most, if not all, are under 20 acre-feet. But I believe the purpose for putting it in was to definitely exclude them because it would be an almost impossible problem of administration if you tried to include them. The S.C.S. and other agencies have gone in principally on dry washes that fill with rainfall and sudden storms, and impounded in the large desert areas up there, and I would say there are literally hundreds of them existing.

We investigated most of those which could possibly have been used for irrigation to definitely eliminate them from an irrigation category, but there are probably hundreds we didn't investigate. And for the most part, they are all

intermittent and dry washes and set there to catch your sudden thunder storms, and have very little effect I would say on the flow reaching the river.

MR. MERRILL: Why not leave it out entirely?

MR. JIBSON: Because you say up in Section B. to store "for consumptive use", and actually, the stock watering reservoirs are consumptive use. So, if you leave this Section C. out, then you have automatically included them in Section B.

COM. BISHOP: Mr. Chairman, in the Hiber case in Wyoming, our Supreme Court decided that a landowner could build all the stock reservoirs he needed in his own land, of any size he wants, even against the right of a prior appropriator downstream to store water for irrigation who has a permit. The Court decided they didn't even have to comply with the law in regard to getting a permit. So I don't think there is much use of our trying to overrule the Supreme Court.

MR. KULP: That is what we are writing this Compact for, because we don't believe the Supreme Court would do it right.

COM. BISHOP: It is all right with me to tell the Supreme Court.

COM. CLYDE: Mr. Chairman, I would like to move a substitution for Article V, Section C., to read as follows: "Nothing in this Article shall limit a reasonable use of water for domestic purposes, such use to be subject to existing rights and state laws. . . ." and then define "domestic purposes" to mean

for human consumption and stock watering.

COM. BISHOP: You want to say, "domestic and stock watering"?

COM. CLYDE: I was going to include stock watering in the definition of domestic.

COM. BISHOP: It ought to be in there; it ought to be "domestic and stock watering purposes" to make it consistent with the way our law reads.

COM. CLYDE: I had it written that way first, and then I was advised to take it out and include stock watering in the definition; but either way it will be all right -- "a reasonable use of water for stock and domestic purposes", and then define it.

MR. SKEEN: Without any acre-foot provision?

COM. CLYDE: That is right; let that be covered by "reasonable use".

MR. SKEEN: But now, will that be counted or not counted?

COM. CLYDE: I think it would not be counted as storage.

MR. SKEEN: If it is to be counted it would just be a statement of existing law in the three states anyway, wouldn't it?

COM. CLYDE: You mean, counted in the upstream storage?

MR. SKEEN: Yes, I don't think it would add anything

to the Compact.

COM. GLYDE: I don't think it would add a thing.

MR. MERRILL: Why not leave it out?

MR. PERSON: I think there should be a statement that a stock watering reservoir is not included in the above allocation; otherwise---

COM. BISHOP: Oh yes.

MR. PERSON: --if we don't, it will come back, I promise you that, when we get to the Legislature. It has happened before.

MR. SKEEN: I worked out a revision on C. to cover what I thought it meant, and I will be glad to read it for what it is worth: "Stock watering reservoirs having a capacity of 20 acre-feet or less shall not be included in the computation of existing or additional storage rights above Stewart Dam as provided in Section B. of this Article." That makes it clear that they are not included and I think that is all that has to be accomplished by the Compact provisions because we have the existing laws in each state permitting the development of stock watering reservoirs.

COM. BISHOP: This you are suggesting would be in addition to what we have here?

MR. SKEEN: That would be in lieu of what we have here.

MR. PERSON: I think it would be all right if you add another sentence, "There is no intention in this Compact to

limit use of water for stock watering."

COM. COOPER: I think this is all right as it is.

So do you.

COM. BISHOP: I argued it long and loud to try to get it out of one of the others, and I was overruled on it; and I almost got sold it is necessary. For instance, we have a few that have filed in the Belle Fourche watershed for up to 200 acre-feet for stock.

MR. MERRILL: They must have some big animals.

COM. BISHOP: They claimed it doesn't rain very often and they have to have holdover. Of course we allowed it, but the Compact limits it to 20, so anything over the 20 is charged to the allocation. That is the way it works. It doesn't say that in the Compact but that is the way we administer it. But I can see where there are liable to be applications for large reservoirs for stock watering purposes.

COM. CLYDE: Mr. Chairman, just day before yesterday-- Saturday, I guess it was, or Friday--there came to my office two men who were looking for an industrial water supply, and they wanted a firm flow of 75 second-feet.

THE CHAIRMAN: Apparently they hadn't been in this country before.

COM. CLYDE: Under the ordinary definition of "domestic purposes" they could come in here and wouldn't be restricted.

MR. SKEEN; I don't think the word "domestic" should

be used without a definition, because it is a very vague expression.

COM. CLYDE: I think you are right.

MR. MERRILL: That would be an industrial use, not domestic.

COM. CLYDE: I say, many of the definitions of "domestic use" include industrial. In the Upper Colorado River Compact, industrial uses are included in domestic. So, there is the necessity for defining it so it will mean what we want it to mean in this Compact

COM. COOPER: Mr. Chairman, I see nothing wrong with the suggestion of Mr. Skeen; but I do object to this "unrestricted" use as it is included in Article V, Section C of the Compact. I am willing to concede this statement of Mr. Skeen.

COM. BISHOP: We say up here it is unrestricted, and down here we restrict it to 20 acre-feet; maybe that is not consistent.

COM. COOPER: That is right.

COM. BISHOP: I don't know that "unrestricted" is so important.

MR. PERSON: Why doesn't Ed read it again?

MR. MERRILL: That word "unrestricted", wasn't it decided by the Legal Committee that it should be eliminated?

MR. SKEEN: We discussed it and we decided it should be because it was inconsistent with rest of the section.

MR. MERRILL: That is right.

MR. SKEEN: To read this again: "Stock watering reservoirs having a capacity of 20 acre-feet or less shall not be included in the computation of existing or additional storage rights above Stewart Dam as provided in Section B. of this Article."

THE CHAIRMAN: Can you agree on the general sense of the provision and let the Legal Committee work out the language?

COM. CLYDE: I take it from that then, that there is no interest in the direct diversions for stock or domestic purposes?

MR. SKEEN: No--of course, they would still be subject to existing rights under the law of each state. We don't have to write that in every time we mention it.

COM. CLYDE: I would buy that.

MR. PERSON: Ed, doesn't that leave the stock watering situation completely unsettled?

MR. SKEEN: No. It just simply provides that any impoundments of 20 acre-feet or less shall not count in this allocation of 36,000 acre-feet of storage.

MR. PERSON: Yes, and there would be nothing to keep Idaho from coming up and getting an injunction to keep us from building a stock watering reservoir under the Compact then.

MR. SKEEN: It would permit the construction of stock watering reservoirs only in accordance with state law; and of course if it interferes with direct flow rights, they

would be entitled to come up and stop you.

MR. PERSON: Then we are writing a Compact that doesn't quite settle the river, which we intended to do.

MR. SKEEN: I think the law of the river would still be that vested rights shall have first priority as against future developments; and you can't certainly under any law go in and build stock watering reservoirs that may impair existing direct flow rights. I think that is the law anyway. And if we want to write it in here, why we will have to use better language than we had in C. Maybe we had better.

MR. PERSON: Couldn't it be a combination of what Dean Clyde suggested and yours? That is, the intention of the Compact is not to limit the reasonable use for stock watering purposes.

MR. JIBSON: Under your definition, Mr. Skeen, if they built a stock watering reservoir for 50 acre-feet--which is very possible--would you interpret that then, it had to come off their storage allowance?

MR. SKEEN: Certainly, anything over 20 acre-feet would come off.

MR. JIBSON: But there would be nothing against them building it?

MR. SKEEN: Nothing against them building it except the basic law, except they can't build it if the effect would be to impair existing direct flow or storage rights. I think any new stock watering development has to be subject to the

basic law. It certainly does in the State of Utah.

COM. BISHOP: The Supreme Court says if that is the law, it is bad.

MR. MERRILL: A Supreme Court changes its mind quite frequently.

COM. BISHOP: I hope so.

MR. PERSON: Certainly it is not the intention of the Compact to limit people using water for stock, is it?

MR. SKEEN: Oh, no.

MR. PERSON: And we all grant a man can build a stock reservoir for two or three acre-feet.

COM BISHOP: But if it is 200 acre-feet, then it is part of the allocation.

MR. PERSON: Let us settle the river and not leave it unsettled.

COM. COOPER: We contend 20 acre-feet is too much for ordinary ranchers.

COM. BISHOP: The average is less than five.

COM. COOPER: If we change this 20 acre-feet to five or ten acre-feet, whatever you decide, it is all right; but 20 acre-feet--

COM. BISHOP: People have got in the habit of 20.

MR. PERSON: We should give the stockmen the right to build them with no danger of the law stopping them. They aren't going to build them on the river but in dry washes. Let's give them unlimited use.

MR. SKEEN: That word "reasonable" is a breeder of lawsuits. I think any stock watering development--I am sure in Utah and I think in Idaho--would have to be subject to existing rights.

COM. BISHOP: Ours is subject to existing rights but the courts have held it isn't. But I am willing to put it in.

Mr. Chairman, I would like to suggest a rewording of this Paragraph C. to read: "Subject to existing rights, each state shall have the use of water for domestic and stock watering purposes, and subject to state law shall have the right to impound water for such purposes in reservoirs having capacities not to exceed in any case 20 acre-feet without deduction from the allocation made by Paragraph B. herein."

COM. COOPER: If you will set that at 10-acre-feet--

COM. BISHOP: Listen, I know too well, these fellows-- we have written about seven of these compacts and 20 acre-feet is in the others; and the fellows in the Legislature and all, they would just send somebody else to negotiate their compacts, that's sure.

COM. COOPER: What do you think about it?

MR. KULP: If you use all the 20 acre-feet for stock watering purposes, it would amount to something over six million and a half gallons for the 20 acre-feet, or 365 days, to 17,874 gallons a day; or allowing 13 gallons per day per critter, it would water 1,375 critters for a year.

MR. PERSON: Of course again, this is 20 acre-feet of capacity; and I think anyone who has built stock watering reservoirs out in these desert areas here know they have to carry it over.

MR. KULP: We know they wouldn't drink it all.

COM. BISHOP: This isn't going to increase the capacity by increasing it up to 20; still the average is down around  $4\frac{1}{2}$  acre-feet. But some of them are 200 acre-feet.

MR. KULP: I think 20 acre-feet is a little too high for not counting in the storage. If you have got 20 acre-feet, you are going to try to use it for irrigation.

COM. BISHOP: I am afraid you fellows down in Idaho that have so much water don't know how dry it is in Upper Wyoming. It doesn't rain for months at a time and we have got to have holdover water in our stock reservoirs.

COM. CLYDE: We have a limitation in Utah that limits it to 20 acre-feet. I can see a lot of troubles if we cut it down to ten.

MR. PERSON: In the Snake River didn't we have 20?

MR. KULP: We didn't have any. We even make the Bureau of Land Management appropriate water for stock ponds over an acre foot and a half.

MR. PERSON: I still wonder how we got the Snake River through our legislature.

MR. KULP: That part of Wyoming has just as much water as Idaho does.

COM. BISHOP: The record doesn't show that, Mark.

MR. PERSON: You don't have the Snake River Compact with you, do you?

MR. KULP: No, I don't.

MR. SKEEN: Would you mind reading that last clause, Clark, that you dictated on C. ?

COM. BISHOP: ". . . without deduction from the allocation made by Paragraph B. herein."

COM. CLYDE: Would you read that whole thing again and see if we can get at something here, as you had it?

COM. BISHOP: " Subject to existing rights, each state shall have the use of water for domestic and stock watering purposes, and subject to state law shall have the right to impound water for such purposes in reservoirs having capacities not to exceed in any case 20 acre-feet without deduction from the allocation made by Paragraph B. herein."

COM. CLYDE: Did you make that in the form of a motion?

COM. BISHOP: I will if it is agreeable with you gentlemen.

COM. CLYDE: I will second it if you make it a motion. I second that motion.

COM. BISHOP: Fred, you want to remember I took out that "unrestricted" at your suggestion.

COM. COOPER: That is perfectly all right but you haven't limited the number of reservoirs. If you build enough

of those it would still be dangerous.

MR. IORNS: Fred, they will go broke if they build too many of them. And there are conditions in the Upper Bear River Basin--over most of the area there are live streams and wherever you have an area of live streams and springs and so forth, no rancher is going to put a lot of money into construction of these reservoirs. Neither will the P.M.A. or the government agencies that make the payment, okay the payments for construction of a lot of farm ponds in areas where they are not needed. There are some areas in the Upper Bear River Basin where I think possibly they are very closely approaching the point of saturation now so far as the number of farm ponds or stock watering reservoirs to be constructed.

I don't think this is an item of great water consumption whatsoever. I think the limitation here is quite reasonable. I don't think it is going to deplete your water supplies to the point where it is going to cause any serious trouble.

COM CLYDE: The only time they are going to catch it is after a rain.

COM. COOPER: Let us table that until tomorrow morning.

MR. KULP: Yes. Vote on it tomorrow morning.

(General discussion.)

THE CHAIRMAN: May I ask the Commission members here, is it all right if we let the newspapers have copies of the drafts here, with the instruction of course it is just a draft,

and this Article V hasn't been agreed upon and is up for revision?

COM. COOPER: I think we had better withhold that until we decide on the other questions.

COM. BISHOP: I agree with Fred on it. It is so easy to misconstrue; and some of these other people that are interested, they read it and they think it is probably different than it is. My suggestion would be that we withhold it and not give out any more to the papers other than the fact that we are still able to sit around the same table.

COM. CLYDE: I would go farther than that; I would say we are still making progress.

THE CHAIRMAN: Have you found out whether you can stay over, Mr. Bishop?

(Discussion.)

THE CHAIRMAN: How do you want to proceed the rest of the day here?

COM. BISHOP: I suggest that we try to get as much as we can done today, because I have got to go tomorrow sure. I have an appointment with our new Governor-Elect; I can't pass it up.

THE CHAIRMAN: Do you want to talk about the Bear Lake reserve provision? That is one thing you haven't settled yet, I assume.

MR. MERRILL: I thought that was settled last time.

COM. CLYDE: I have a figure in my book.

THE CHAIRMAN: That is V. A.

COM. CLYDE: Mr. Skeen, do you have a proposal written up on that?

MR. SKEEN: I have a proposal for graduating the reserve as the construction of upstream reservoirs progresses; I did prepare that.

COM. CLYDE: Do you have a proposal on the elevation for the irrigation reserve?

MR. SKEEN: Yes. Yes, I have just a preliminary draft prepared based on some information I got from the engineers.

COM. CLYDE: Mr. Chairman, I suggest that Mr. Skeen read that to us so that we can be thinking about it.

THE CHAIRMAN: Will you read that, Mr. Skeen?

MR. SKEEN: "The waters of Bear Lake below elevation

\_\_\_\_\_"

COM. BISHOP: Where does that come in then?

MR. SKEEN: That would be a substitute for A. as we have it written.

THE CHAIRMAN: In Article V.

MR. SKEEN: " The waters of Bear Lake below elevation \_\_\_\_\_, Utah Power and Light Company datum ( the equivalent of elevation \_\_\_\_\_ mean sea level datum 1927 survey) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release for irrigation, it may

be used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used solely for the generation of power or for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to Section B of this Article, the Commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:" --

And then there would be one column, "Additional storage, Acre-feet", and under that, 5,000, 10,000, 15,000, 20,000; and opposite that, the elevation of the lake surface which would increase the irrigation reserve accordingly.

COM. COOPER: Mr. Chairman, may I ask Mr. Skeen a question?

THE CHAIRMAN: Mr. Cooper.

COM. COOPER: This statement that you made, was that based on the computations that were given us at the last meeting by Mr. Thomas?

MR. SKEEN: Yes. Mr. Thomas furnished me with the revised lake surface elevations and I can read them off to you:

For zero--that is without any additional storage above Bear Lake--it would be 5912.91. For 5,000 it would be 5913.24. For 10,000, 5913.56. For 15,000, 5913.87. For 20,000, 5914.15. For 25,000, 5914.41. For 30,000, 5914.61. For 35,500, 5914.69.

MR. MERRILL: Mr. Skeen, does that mean the elevation shall be at those respective figures when there is stored the quantity of water stated here?

MR. SKEEN: Well the way it is drafted now, it simply increases the irrigation reserve as the upstream storage is developed.

MR. MERRILL: And the water stored?

MR. SKEEN: The way it is worded now it just has, "As new reservoir capacity.... is constructed" above, why the irrigation reserve is increased.

MR. MERRILL: Whether there is any storage or not?

MR. SKEEN: It would be presumed they wouldn't be constructing empty reservoirs up there. This would increase the irrigation reserve. This gives a little more flexibility than it would have if you put a ~~maximum~~ figure in the draft we have now. In other words, the Power Company would not have to maintain as high a reserve to start out with as we discussed before. It wouldn't have to be up to 5914.51 to begin with until the storage had developed above Bear Lake.

MR. MERRILL: I don't notice anything in the proposed Compact now that recognizes storage rights below Wyoming. Shouldn't there be something, some paragraph somewhere, recognizing the rights of storage below? Now we have the rights in Bear Lake; there are other storage rights below that have been used for years, for instance, at Soda Springs, at Oneida, and so forth.

MR. SKEEN: If you get to recognizing and confirming rights below, you will have to do them all, direct flow, storage, and everything else.

MR. MERRILL: Particularly with Bear Lake. Now we have considerable in here with reference to taking water from Bear Lake, and we have suggestions that there are storage rights in Bear Lake, but there is no definite statement to that effect. Don't you think there ought to be something definite on that point, that we do recognize that there are storage rights in Bear Lake pursuant to state laws and decrees--something of that sort?

COM. CLYDE: Mr. Chairman, may I ask Mr. Merrill a question on that?

THE CHAIRMAN: Mr. Clyde.

COM. CLYDE: Would you consider this irrigation reserve in the order of that recognition of a storage right?

MR. MERRILL: It suggests that there is a storage right, but my thought is this: There is no direct statement to that effect and I think there ought to be.

COM. CLYDE: When we rewrite Article V. B., the section we have tabled, I am wondering if we can't write that in there.

MR. MERRILL: I think it could be.

COM. CLYDE: There are places where this question of subordination of storage comes in, and it might be we could get some language in there in connection with irrigation reserve.

MR. MERRILL: It may be, yes. But my point is there ought to be somewhere here, a recognition of the fact that there are storage rights.

COM. CLYDE: That would give us a total irrigation reserve of 820,000 acre-feet at full development, wouldn't it?

MR. SKEEN: I haven't the step-by-step figures on the acre-foot capacity because I thought the lake surface elevations would be the best guide. But Mr. Thomas can answer that.

MR. THOMAS: I will have to study that out for a minute, Mr. Clyde, to see whether that figure would be right or not.

MR. FORD F. SCALLEY: It throws it down at that level to 802,000.

MR. THOMAS: I think you could get the figure from the transcript of the figures I gave you two weeks ago.

MR. SCALLEY: For 40,000, 5914.72 elevation, which would produce 802,100.

MR. MERRILL: That is the way I have it.

COM. CLYDE: Mr. Chairman, may I ask Mr. Skeen what the elevation would be for 36,500. That is the figure we will have, the tops.

MR. SKEEN: That would be 5914.70. Mr. Thomas said he would make the computation and be ready in a few minutes.

MR. THOMAS: Mr. Chairman, I would like to ask Mr. Clyde a question: This 820,000-acre-foot figure I think you mentioned, that was for how much storage allowance? Was that

for 35,500 or 34,500

COM. CLYDE: That is for the 30,000.

MR. THOMAS: I can give you that figure.

COM. CLYDE: That is on your Figure 33.

MR. THOMAS: I could give you the figure for 30,000.

That would be 795,100 acre-feet of irrigation reserve. I think that is in the transcript.

COM. CLYDE: Where are you taking that from? I am taking this from Figure 33.

MR. THOMAS: That is the statement I gave Friday afternoon two weeks ago. It is in the transcript.

COM. CLYDE: Then it is a revised statement?

MR. THOMAS: That is right. It is not in the original report.

COM. CLYDE: My question then is: In your revised statement you reduced your safety factor on 30,000?

MR. THOMAS: Yes.

COM. CLYDE: Mr. Chairman, may I ask Mr. Thomas another question: These calculations are based on actual diversions in the Lower Basin?

MR. THOMAS: They are based on allowances for additional storage above Stewart Dam.

COM. CLYDE: But the depletion of the irrigation reserve calculations were based on actual diversions over the history of record?

MR. THOMAS: Yes, they were based on the 6-year period

in which the maximum net draft on Bear Lake occurred for irrigation below Bear Lake.

COM. CLYDE: Has the acreage irrigated increased materially since 1934-1935, that critical period?

MR. THOMAS: I am sure it hasn't.

MR. SCALLEY: Very definitely it has.

MR. THOMAS: We have aerial photographs of it.

MR. SCALLEY: We have been selling the water ourselves. We are well aware of what has been sold since those years.

MR. THOMAS: I would have a different opinion on that, Mr. Scalley.

COM. CLYDE: That poses a very pertinent question. I think we have ~~got~~ to get those acreages.

MR. ASHBY D. BOYLE: Mr. Clyde, the Sugar Company has contractual commitments for water sold and we would not go along on aerial photographs.

COM. CLYDE: I wouldn't assume a person would buy water, unless he used it; but does the record show the acreage?

MR. BOYLE: There may be water sold that isn't actually used.

COM. CLYDE: How can you sell an irrigation right if you don't use it?

MR. BOYLE: This is a storage right.

COM. CLYDE: But rights are based on use whether they are storage or not. You can't take a right and hold it; you

have got to use it. How can you sell a right which is not used?

MR. BOYLE: We have been selling the rights for 50 years on the assumption that there was a storage right up there.

COM. CLYDE: You sold it on the assumption it was going to be used.

MR. SCALLEY: It has been used. I don't know where that factor is coming from, about it isn't being used. It is being used. The demand for additional water is tremendous. We are being asked constantly for water that we can't even sell.

COM. CLYDE: That should be reflected in the irrigated acreage, shouldn't it?

MR. SCALLEY: It is. That is what I just got through saying. Since these years he speaks of, there has been a very substantial amount of new water rights sold. In other words, the use he speaks of then is not in any way appropriate with today's use.

COM. CLYDE: When was the last census of acreage irrigated made?

MR. SCALLEY: We have a census every year. We are aware of the acreage sold because they have to pay maintenance on it.

COM. CLYDE: I am not interested in the acreage sold: I am interested in the physical acreage irrigated.

MR. SCALLEY: I would say the acreage that is irrigated

is probably way beyond what has been sold; because while we try to limit irrigation to the acreage on which the water is sold, it is very often used on additional land.

COM. CLYDE: That ought to show up in an aerial photograph, I would think. That certainly could be measured in the field. Maybe we ought to go out and measure that stuff.

MR. BOYLE: Mr. Clyde, we have a contract with the Power Company to be drawn from a source which is decreed for either industrial or irrigation use. Our company spent several million dollars developing that reservoir. We assumed that the Power Company has the right to contract for the sale of that.

COM. CLYDE: I am not arguing about that.

MR. BOYLE: Now as we have been able to negotiate sales we have made them.

COM. CLYDE: I am not arguing that point either.

MR. BOYLE: I am not ~~either~~, but I am trying to reflect what you will run into when the Legislature meets. You will have all of Northern Utah astride your necks if you try to cut down their rights.

COM. CLYDE: I am simply asking the simple question: How many acres are irrigated?

MR. BOYLE: You are taking a premise, something I don't conceive.

COM. CLYDE: I am merely asking the question: How many acres are irrigated?

MR. SCALLEY: Right today there is in the neighborhood of 59 to 60 thousand acres that is being irrigated out of that particular canal system.

COM. CLYDE: What was irrigated in 1934?

MR. SCALLEY: A substantially less amount than that.

COM. CLYDE: 50,000?

MR. SCALLEY: I would judge somewhat in there, but I would have to check my figures to know exactly. But there has been a substantial amount of new water sold because I have sold water rights since I have been there.

COM. CLYDE: I think we should have all that information. I am not taking any position; I am just asking the question.

MR. SCALLEY: That is right. But we certainly feel that any assumption that the water that was used in the period of 1930 to 1936 would be any criteria for determining water use today, is certainly not in keeping with the fact.

MR. BOYLE: We will not accept Mr. Thomas' calculations as the basis; we will fight first.

COM. CLYDE: It seems to me that is a measurable quantity, and there certainly are some records somewhere, or we could get them, as to those acreages. I don't think it is any secret.

MR. SCALLEY: No, it is no secret. The thing we find rather strange in this report, on page 20 it speaks of the safety factor and it said that 5,000 acre-feet annually is

considered sufficient. It was not stated that that was considered to be a nice plush figure; it was just considered to be sufficient. Now we find it awfully strange that it can be reduced by 80 percent just on an overnight reconsideration.

COM. CLYDE: You mean the factor of safety was reduced?

MR. SCALLEY: That is right.

COM. CLYDE: Don't you think it is quite important that we know the facts in the case before we make these decisions?

MR. SCALLEY: Most certainly.

COM. CLYDE: I don't want you men to get the impression that I am trying to beat you down. I am after information; I want to know the acreage.

MR. BOYLE: The water users and the Sugar Company will not go along with a reserve which at maximum is less than 820,000. I think they would go along with that figure.

MR. J. L. WEIDMANN: I would like to ask you, Mr. Thomas: The water consumed during those years was the basis you used, per acre; and that is what you figured, that we would use the same amount today?

MR. THOMAS: In our studies, Mr. Weidmann, we set up the river operation and the diversions in the canals diverting at Cutler Dam, and in the studies divert out the same quantities of water that were in the past as a matter of record. And in that critical 6-year period, the largest,

maximum net draft on the Lake that ever occurred, was in that 6-year period, 1930 to 1935. That was the basis for those figures, the water that you actually took in those years.

MR. WEIDMANN: The point is however, Mr Thomas and all of you, that we were watering with about half of the scheduled stream. Instead of having a water turn every week, we had one every two weeks, and even then we didn't get half a stream. So I am like these Sugar Company men, that is not a fair measure of what water we use, because that was over a period of time when we were really cut down.

MR. THOMAS: What the record shows, Mr. Weidmann, is this: That on the average you have diverted 208,000 acre-feet of water for irrigation. Now in one year in that critical period you got down rather low, that is in 1935. As I remember the figure was about 135,000 acre-feet. That is pretty close; it may not be exact.

MR. WEIDMANN: We were low in 1934 too.

MR. THOMAS: However, in at least two of the other years you were above the 208,000 average.

MR. C. O. ROSKELLEY: This is a 6-year average?

MR. THOMAS: No, this is a long period. But at least two years in this critical 6-year period, at least two, they diverted more than the average. But it is very true in 1935 they were lower; they dropped down, as I remember the figure, to about 135,000 whereas the average was 208,000.

MR. WEIDMANN: I would like to ask--if you don't

have the figures, don't bother--how does that relate to the cubic foot per acre?

MR. THOMAS: I don't know that.

MR. WEIDMANN: I could figure that out myself. But I do want to leave this with you: That is not the kind of irrigation we want to practice from here out, like we did during that drouth period.

(General discussion.)

COM. CLYDE: Mr. Chairman, in order that we might get on with this question, as I see it the difference which is existent at the moment is some 19,100 acre-feet of irrigation reserve, if my figures are correct; and that revolves around this question that I put relative to the increase in irrigated acreage which would not be reflected in the measured diversions over the years. That is, the early years measured smaller diversions than the current years because of the increased acreages that are irrigated now.

I wonder if we could get from these engineers by morning, at least a statement if not a stipulation, showing what that effect would be. I don't know what it is, but I think we ought to have something on it. It ties into this factor of safety. The factor of safety was specifically set in the original analysis; and then in the revision of that analysis, it was felt as I understand it that the 5,000 acre-feet per year for each of the six critical years was more than we needed to protect us, and that seems to be the question

right now. We reduced it, you see, in the revised proposal; and that reduction amounts to about 19,100 acre-feet. Mr. Thomas, is that about right, the difference between the original and the current?

MR. THOMAS: Yes, that is correct. Without any safety factor, the reserve required to take the downstream irrigators through the critical period was 676,000 acre-feet, without any safety factor at all.

Now applying a safety factor, at one time the Engineering Committee had used as high as 12,000 acre-feet a year. I thought that was too much when I made Report No. 29; but I didn't have a chance to talk it over with the Engineering Committee and with Mr. Thorum of the Power Company--there just wasn't time--and I hated to come down too far. I did come down to 5,000; but even then I thought it could go lower than that. I was perfectly honest in believing it could go lower.

I still do. I think it could go down to a thousand acre-feet or so a year because of regulation below Bear Lake, Soda, Oneida, and Cutler, with a combined capacity in excess of 40,000 acre-feet. I thought that would take up the slack in any error in releases at Bear Lake, practically all errors. So it would tend to eliminate the need for most of that safety factor.

While originally I did say an annual safety factor of 5,000 in the report was sufficient, I could have said maybe it was too much. I didn't say that in the report; I said it

was sufficient. In the statement I gave at the meeting two weeks ago, I also said I thought a thousand a year would be sufficient, and I am still of that opinion.

MR. WEIDMANN: May I ask what it was based on?

MR. THOMAS: A thousand.

MR. WEIDMANN: Your opinion, what is it based on?

MR. THOMAS: I thought I told you, Mr. Weidmann, because of these reservoirs below the lake. I thought those reservoirs with the regulation they provided, in excess of 40,000 acre-feet, would eliminate the need for nearly all of that safety factor.

MR. WEIDMANN: Where did you get your information? Didn't you get that from the Power Company and Sugar Company? They have daily records of diversions at Cutler Dam; and I don't know how often the Sugar Company has them, but I am sure the Power Company has them. Did you get your information from the Power Company?

MR. THOMAS: We don't have to get them from the Power Company. The ones you speak of are published in the U.S.G.S. water supply papers.

MR. WEIDMANN: What does that indicate during the last three or four or five years? You can take this last period here if you are going to get something to fix a figure. That is what we are going to need in reserve for the next five years or ten.

MR. THOMAS: you can't use the last ten because they

have been in general good water years; and if you used those you would come up with very little. What you want to use is the maximum draft on Bear Lake; that is what did you the damage that made it necessary.

MR. WEIDMANN: I grant that, but we still didn't get the water we should have had. We were cut down to a water turn in two weeks. You know they were pumping less than 500 feet up there.

MR. THOMAS: The point as I see it, Mr. Weidmann: That is the water that you got in 1935. Now if the Compact Commission wants to give you more water than you got in 1935, that would be perfectly all right. That would be up to the Commission, if that is the purpose, to give you more than you have now.

MR. WEIDMANN: We surely want more than we had in 1934 and 1935.

MR. THOMAS: The study was based on the premise you would get the same water supply as in the past.

MR. WEIDMANN: I am not sure that 53,000 acres was right, but it was somewhere around that neighborhood then; now it is about 60,000 as I remember the report between 59,000 and 60,000.

MR. THOMAS: I don't know where the 53,000 figure came from, Mr. Weidmann; but our own aerial maps, as best I can remember, they were checked in the field in 1937-1938, one of those two years, and as I remember the irrigated acreage

was about 60,000 acres in 1937, 1938. That is the way I remember it.

MR. WEIDMANN: I don't know how you work your aerial map, whether on that map it shows irrigation or not. I suppose you check on the owners and then figure it?

MR. THOMAS: We have men in the field. We take irrigated areas. If a field was irrigated, we mark it on the map; if it isn't irrigated, we mark it accordingly. That is the way the survey was made. That is the reason I told Mr. Clyde I didn't believe there had been any substantial increase since 1935. I don't know between 1935 and, say, 1937; but I don't presume there was too much in that short time. But 1937 or 1938, I don't think there has been any substantial increase.

MR. WEIDMANN: There has been a very big increase.

MR. THOMAS: I think there has probably been some, but I wouldn't call it substantial myself.

COM. CLYDE: Does the Sugar Company make an irrigation census every year?

MR. SCALLEY: Sure. We are aware of every acre that is irrigated. We have to set up our schedules.

COM. CLYDE: Do you suppose you could make that record available to us?

MR. SCALLEY: I couldn't by morning, certainly.

MR. ROSKELLEY: What you are asking for is an irrigation census over the 6 year period, and perhaps over a greater

period since that time?

COM CLYDE: The question now seems to hinge around what is irrigated. I don't know. I would like to know.

MR. ROSKELLEY: If that information is given you, then it satisfies your inquiry concerning the number of acres that are irrigated under the system?

COM. CLYDE: Yes. The proposal was made here, as I understand from Mr. Boyle and Mr. Scalley, that there has been a substantial increase in acreage since this record was started; and, therefore, it throws into error the conclusions that were drawn on the recorded measurements of diversions.

MR. ROSKELLEY: And in addition to the acreage, you are interested in the diversions at the head of the canal systems?

COM. CLYDE: Yes. I would like to know if the actual use as measured by the diversions have increased materially since 1935 over the years. I am sure those records are available. And if the acreage has increased materially, say 10, 15 percent, it certainly would be reflected in increased diversions at the headworks of those canals throughout the irrigation season. It seems to me those records ought to tell us the story. All I am after is information to help us in drawing conclusions here.

MR. SCALLEY: The biggest expansion in irrigated acreage, of course, has taken place since, you might say, the war years, since these farmers started making some money to buy

additional water.

COM. CLYDE: I would suspect that is right.

MR. SCALLEY: That is actually the case.

COM. CLYDE: If we had those figures and if we could see what the trend had been and project them, then we would be in a better position to say what the needed irrigation reserve is.

MR. SCALLEY: Probably we can get you the diversion records by morning. Is there any particular advantage to having them on a monthly basis, or is an annual basis satisfactory?

COM. CLYDE: I think the annual basis will show us the trend. That is all I am interested in, if we diverted 100,000 or 200,000 this year, and X hundred thousand in 1934.

MR. SCALLEY: I remember you mentioned a monthly basis a little while ago, which would take quite a lot of work.

COM. CLYDE: I think the annual would be sufficient to show the direction it is going.

MR. ROSKELLEY: May I ask, have you tabulated the diversions in the Logan office?

MR. JIBSON: I am sure the Bureau of Reclamation have them tabulated in the Bureau office. Right offhand I think all we have is our water supply papers on that. It wouldn't take long to run it down in Salt Lake so that we can give you the annual figures for the last 25 years or 30 years.

MR. THOMAS: Yes.

(General discussion.)

COM. CLYDE: Mr. Chairman, I move that we recess until in the morning at nine o'clock.

COM. COOPER: I will second the motion.

THE CHAIRMAN: It has been moved and seconded we recess until nine o'clock in the morning. (Thereupon a vote was taken and Com. Clyde's motion carried unanimously.)

(5:15 p.m. Recess.)

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Senate Lounge  
State Capitol  
Salt Lake City, Utah  
December 15, 1954  
9:00 o'clock a.m.

(The following figures were placed on the blackboard by Mr. Thomas:)

1924 - 234.3	)	
1925 - 182.9	)	
1926 - 220.4	)	Average
1927 - 217.4	)	216.8
1928 - 229.0	)	
1925 - 1929	210.7	)
1926 - 1930	218.7	)
1927 - 1931	218.5	)
1928 - 1932	217.5	)
1929 - 1933	217.0	)
1930 - 1934	216.6	)
		Average
		216.5

1931 - 1935	207.3	
1932 - 1936	203.5	
1933 - 1937	201.0	
1934 - 1938	197.3	
1935 - 1939	200.6	
1936 - 1940	208.1	
1937 - 1941	206.2	
1938 - 1942	205.2	
1939 - 1943	204.9	
1940 - 1944	209.6	
1941 - 1945	196.1	
1942 - 1946	201.8	
1943 - 1947	203.4	
1944 - 1948	203.5	
1945 - 1949	206.0	
1946 - 1950	209.0	
1947 - 1951	206.4	
1948 - 1952	211.4	
1949 - 1953	215.8	
OVER-ALL-AVERAGE		209.3
1949 -	208.6	
1950 -	204.3	
1951 -	209.2	
1952 -	227.7	
1953 -	229.3	

(General Discussion until Noon Recess.)

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(1:30 p.m. Meeting reconvened. All Commissioners present.)

THE CHAIRMAN: For the record, Mr. Cooper this morning withdrew his motion on the 750 second-feet passing Border. Mr. Clyde with Mr. Cooper's consent withdrew his motion on the upstream storage existing, and the additional storage. Mr. Clyde then suggested that we discuss Article V, and without making any motion, the Commission discussed informally the provisions of the revised draft of Article V, trying to fill in the blanks before a motion is made.

(General discussion.)

THE CHAIRMAN: Now we are ready to go. During the noon hour, Utah and Wyoming were going to try to divide the water under that one figure. Did you reach an agreement?

COM. BISHOP: No, sir.

COM. CLYDE: I will propose a 50-50 division.

COM. BISHOP: I can't justify a 50-50 division when we have got way more land that needs the water than you do, and the figures show it.

COM. CLYDE: I don't think the figures do show it.

(General discussion.)

THE CHAIRMAN: Do you think you can get together, Mr. Clyde and Mr. Bishop, or should we go on to the next item?

COM. BISHOP: Well, we ought to try to get together

on this if we can. I want to get clear on what George's proposal is now.

(General discussion.)

COM. BISHOP: I don't want to talk to my people about that small a figure, but I will give it consideration.

THE CHAIRMAN: What is the next item you would like to discuss?

MR. MERRILL: I thought the next item was Mr. Clyde's suggestion relative to that below Stewart Dam.

COM. COOPER: The Legal Committee was to come in with some language.

MR. SKEEN: We came in with some language. I will be glad to read it with the appropriate blanks. After the words, "Stewart Dam", in the seventh line following the table, the following language is suggested: "But additional storage shall not be limited in any water year because of existing storage rights in Bear Lake except at times when the water surface elevation of Bear Lake falls below \_\_\_\_\_. While the water surface is below such elevation, the additional water stored in any water year shall not exceed \_\_\_\_\_ acre-feet."

COM. CLYDE: We have got to put some figures in there, haven't we?

MR. PERSON: Would you read that again, Ed?

(General discussion.)

COM. CLYDE: I would like to ask Mr. Thomas, how much do you take out of Bear Lake each year on an average for

irrigation, 200,000?

MR. THOMAS: It would be less than 200,000 average.

I don't have the figure.

COM. CLYDE: Just in round numbers.

MR. THOMAS: I can get it out of the report here if you will just wait a second.

COM. CLYDE: This figure we have been talking about would be three years then if you didn't have any replenishment.

MR. THOMAS: On the basis of 1924-54, 92,700 were taken out for irrigation; that would be the figure.

COM. CLYDE: In one year?

MR. THOMAS: That is the average.

COM. COOPER: What is your evaporation?

MR. THOMAS: I don't know exactly the evaporation alone, but the storage losses were 54,400.

COM. CLYDE: That would be 150,000 acre-feet, total losses.

MR. SCALLEY: What period is that?

MR. THOMAS: That was 1924-54.

COM. CLYDE: And that was 92,000?

MR. THOMAS: 92,700.

COM. CLYDE: Plus 54,500. It would be about 150,000 total loss.

MR. THOMAS: You don't have to consider that lost because that is automatically taken care of. It hasn't been in the past; it is reflected in the record.

COM. CLYDE: It would cancel out in either case because it would be on both sides. How much is the annual replenishment?

MR. THOMAS: By "replenishment" I presume you mean the storable flow?

COM. CLYDE: That is right.

MR. THOMAS: That for the same period is 273,800 acre-feet.

COM. COOPER: What about the years 1934, 1935? Take a dry cycle, for example; what is your replenishment then?

MR. THOMAS: Starting with the year 1930, under present conditions, the water supply storable--well, if you refer to Report No. 29 you can read them right off.

COM. COOPER: I don't have it with me.

MR. THOMAS: I will read from the table on page 16 of Report No. 29. For 1930, under present conditions, the water supply storable in Bear Lake would be 206,100 acre-feet--1930. 1931, 94,700. 1932, 279,800. 1933, 176,600. 1934, 27,800. 1935, 89,800.

COM. COOPER: (Examining report) 1940, it is 36,100. Those are the years we were looking at to set this protective limit so there is a proposition of share-and-share-alike. We don't feel that within these critical years, when we get to this point, when we get down to this 5912.91, that we should be the only ones that the water is taken away from. We feel it should be a share proposition--not that we intend to cut

you down below what is a reasonable amount--but we don't feel that you should take all the water; and that is exactly what would happen according to these figures, and you can see it as well as we can.

COM. CLYDE: The point I was trying to bring out there was that the record here shows for those five short years the depletion is about 92,000 exclusive of your loss, and that would cancel out--your recovery in 1930 would be equal to it so it would come back up. But in 1934, it wouldn't nearly come back up.

COM. COOPER: No.

COM. CLYDE: And in 1940 it wouldn't come back up, and in 1941 it wouldn't come back up. But I was trying to get in my mind a figure that would represent the number of such years we could have before we would deplete this thing. This looks like it would take at least six years of those worst situations--it would take more than that.

The question I want to ask is this: Would it be better for both sides to go down to some point near depletion with no limitation, and then cut off the storage completely until you recover? You see, one way is to share going down and share coming back. The other would be to go down and cut off and not share coming back. Your recovery would be faster to a small degree if there was no storage during the recovery period. I think in either event we would come out with about the same answer. We could share going down and share coming back;

or we could go down without sharing and then cut off and come back

Now the second would mean that there might be two or three years when there would be no storage in the upper streams, and that would be serious. I don't know whether it would be advisable to work it that way, or whether it would be better to work it partial. I am throwing that out as something to think about.

COM. COOPER: How would you work this thing?

COM. CLYDE: My original thinking, as I stated, was to start down and share. As I say, I don't know. I have been trying to reconcile my own mind all day, and I haven't come to a solution. For example, supposing you put 30,000 acre-feet in there; when you got down to 5912.91, that in effect would cut off in round numbers 5,000 acre-feet a year, which would reduce the upstream storage all years of record when the elevation of the Lake was below 5912.91. That is the effect of it. Whenever the lake level is below 5912.91, the storage allowance upstream would be 30,000 acre-feet.

COM. COOPER: You mean the total storage allowance?

COM. CLYDE: Not total, new--the new storage allowance.

COM. COOPER: I don't know whether 30,000 would take care of it.

COM. CLYDE: I say, if we did use that figure.

COM. COOPER: It seems to me that 25,000 would be a better figure to use, Dr. Clyde.

COM. CLYDE: I used 30,000 there as a figure. I am not sure I could go with you on 25,000. Maybe 30,000 isn't right. But in any event, that would be the effect whenever you put a figure in that limits your storage allowance for all the time the Lake is below 5912.91.

COM. COOPER: And that is the way we feel about it.

COM. CLYDE: Do we have any information that would indicate the number of years when the Lake would be down below 5912.91 under the controls we are proposing? Is there any information on that?

MR. THOMAS: There can't be any information. You can't go on the past record on a thing like that. That will depend on the operation of the reserve and the future operation of the Power Company, which will be different under this Compact than it was in the past.

But I do wish to point out this; That use of the reserve will not be an abnormal thing; it will be a normal thing. In other words, it will be a customary thing that the Lake level will be below the top limit of the reserve, and that is going to happen normally, that will be a normal situation. That is the reason the reserve was set up, for use as a protection; so it is to be expected the reserve will be used for protection.

COM. CLYDE: Then we have only got a hundred thousand acre-feet to play with, and you may knock that out every year; you may have the irrigation reserve at the end of every year

at 5912.91.

MR. THOMAS: That places a terrific handicap on upstream storage; and as far as I can see it would be needless because you still have the reserve to provide protection for the downstream users.

COM. CLYDE: In other words, this could be operated under that kind of an arrangement so we would never be able to store 25,000, if that were the figure.

COM. COOPER: I will tell you the proposition here. Your figures this morning indicated that the people in Boxelder County are irrigation conscious. The people on Bear River that irrigate are all now conscious of the fact that it is uneconomical and it is useless to not use wisdom in applying irrigation water. When I first came to our Valley there was a ridiculous wastage of irrigation water, but they have discontinued all of that. Now they take better care of it.

There isn't anybody that is going to indiscriminately waste water, but there should be some kind of a reasonable figure set in here so that when it gets down to this critical point, there should be a share-and-share-alike so that the people in Boxelder wouldn't have to practice strictest economy and so that the people in our vicinity shouldn't have to practice strictest economy while the people above for whom this new storage is created fill their reservoirs completely.

COM. CLYDE: Mr. Chairman, let us take a look at the probable operation of this system, assuming that Article V were

approved. We have got 800,900 acre-feet as your ceiling. There will be an effort to operate as close to that line as possible, to take advantage of as much water above that for power-making purposes as possible. In any one season we will draw out close to a hundred thousand acre-feet of water, and that is going to put you right close to this zero point. It is entirely possible then to operate within good, sound practices, and every year end up just a little bit below 5912.91, which would limit your capacity to whatever we fixed here. Now that is possible and you would be operating with good practice on the Lake.

I don't think we can stand that. I think that would in effect be the same as saying we can't store more than 25,000 acre-feet upstream. I believe that would be the effect of it.

MR. MERRILL: Wasn't this entire matter your proposal?

COM. CLYDE: Not quite. My proposal was that we go down; and as we go down, we increase and we don't start to operate until we get down pretty well. That is the thing I have been trying to reconcile, as to how we could write that so we could reasonably protect the upstream storage in a fair amount and at the same time remove this question of subordination of storage to the upper users.

I think I have been consistent in saying that it is a difficult thing to do, and I don't know what the answer is. But I tried to work out a sliding scale down, so as we went down we would increase our decrease in storage. But if we

look this thing over, if we stop at that point, we can limit every year--I don't think there is any question at all. My question is, I believe it would be consistent if we went all the way down, or say, down within a hundred thousand acre-feet. That gives us one full year before we start to cut. Then when we recover, we step aside and help recovery take place before we start storing upstream. Of the two, I think that is the lesser of the two evils.

COM. COOPER: Let's see what you would recommend then; when it got to this critical period, you shut the whole thing off upstream? Wouldn't that work more of a hardship than to start economy before it reached that critical area?

COM. CLYDE: If we made this critical point the depletion of the reserve, then that would be true; if you made that point the depletion, then we would cut off at that point and store no more. That is going to work a hardship on the upstream people.

COM. COOPER: Where would you set this first figure then? You want to set it at 5914?

COM. CLYDE: There would only be one figure, that would be the depletion of the reserve. That would be the bottom of the trough. In other words, we would use up the reserve and then we would quit storing until the reserve was recovered. That is a harsh remedy, I admit. I am not recommending it; I am talking it through to see if we can find a solution. In that case we would share in the storage all the

way down; and when we got to the bottom, then we would say, "We have got to replenish the prior storage before we can start picking up storage upstream."

COM. COOPER: In my proposal, that is all we are asking you to do, asking you to share in the storage all the way down. When we get to 5912, you know as well as I do that things are beginning to get critical.

COM. CLYDE: The thing is, if we fixed it at 25,000 and we fixed the beginning point at 5912, I say every year we can so operate this Lake, and be in good, sound practice, and hit that 5912. That means we wouldn't store in any year more than 25,000, anytime.

COM. COOPER: What we are trying to do, we are setting it at 5914.70, and what we are asking is for a general reduction when it gets two feet below there.

COM. CLYDE: You are asking for a reduction when it gets there, aren't you?

COM. COOPER: No, when it gets to 5912. Now we set this level tentatively at 5914.70, haven't we? Didn't we agree on that?

COM. CLYDE: No, that is for full storage.

COM. COOPER: That is for full storage, that is right.

(General discussion.)

THE CHAIRMAN: Let us recess for 15 minutes.

(2:58 p.m. Recess.)

(3:17 p.m. Meeting reconvened.)

COM. CLYDE: Mr. Chairman, in this draft of Article V, Paragraph C, change it to read: "Subject to existing rights, each State shall have the use of water for farm and ranch domestic and stock watering purposes. . . ." I believe that covers it. With those amendments, Mr. Chairman, I move that Article V be approved.

COM. BISHOP: Mr. Chairman, before you go any further on that, I would like to suggest that at the end of the paragraph where it says, " Paragraph A herein", I just wonder if that shouldn't read, " Paragraph A of Article V herein"?

MR. SKEEN: Or " Paragraph A of this Article."

MR. MERRILL: ". . . of this Article."

COM. CLYDE: With those amendments, I move that this article be approved.

MR. MERRILL: Why is that line stricken out (indicating)?

COM. CLYDE: My reason is I don't know what to put in there. We can't reach any agreement on that particular phase.

COM. BISHOP: You have got 50 percent for Utah but you don't give Wyoming any.

COM. CLYDE: That would be also 50 percent in the second blank, the same as we put in the first. My reason, Mr. Merrill, is this: That question has got to be reconciled some way. Apparently we have no language to do it. And I

thought we could at least get the rest of this stuff out of the way and then we can take a shot at that separately. There seems to be agreement in principle; but when we reduce it to writing, defining it in such a way that it can be applied from a practical standpoint and administered, it becomes more difficult.

(General Discussion.)

COM. BISHOP: Are you through with your motion?

COM. CLYDE: Yes, I am through with the motion.

COM. BISHOP: I will second the motion with due apologies to Dr. Clyde and all the other experts.

COM. CLYDE: Don't "Dr." me. I am just plain Clyde to you.

COM. COOPER: I think I have got this clear, but we don't have anything in here defining the rights in Bear Lake in B and I am wondering.

COM. CLYDE: In D.

COM. COOPER: Yes.

(General discussion.)

COM. CLYDE: Mr. Chairman, may I withdraw that motion and make it all over again, just for the record here.

THE CHAIRMAN: Mr. Bishop seconded it.

COM. BISHOP: I might change my mind, but go ahead.

THE CHAIRMAN: All right, it is withdrawn.

COM. CLYDE: I move that Article V reading as follows be adopted:

"A. Existing storage rights in reservoirs heretofore constructed above Stewart Dam are as follows:

Idaho	324 acre-feet	} 14,324 OK in final
Utah	11,850 acre-feet	
Wyoming	2,150 acre-feet	

In addition to such existing storage rights there are hereby granted the right to store, in any water year, above Stewart Dam 35,500 <sup>OK in final</sup> acre-feet of water and no more for use in Utah and Wyoming, and the right to store in a reservoir in Idaho or Wyoming on Thomas Fork, 1,000 acre-feet of water and no more for use in Idaho. Such additional storage rights shall be subordinate to and not be exercised when they will impair or interfere with (1) existing direct flow rights, and (2) said existing storage rights above Stewart Dam, but it shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. One-half of the said 35,500 acre-feet allocated to Utah and Wyoming of additional storage above Stewart Dam is hereby allocated to Utah, and the remaining one-half thereof to Wyoming, but in order to attain the most beneficial use of additional storage consistent with the requirements of future water development projects, the Commissioners of Utah and Wyoming are hereby authorized to modify by written agreement the allocations of additional storage.

B. The waters of Bear Lake below elevation 5912.91, <sup>OK in final</sup> Utah Power and Light Company datum ( the equivalent of

elevation \_\_\_\_\_ mean sea level datum 1927 survey) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release for irrigation, it may be used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used solely for the generation of power for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to Section A of this Article, the Commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:

<u>Additional storage Acre-Feet</u>	<u>Lake Surface Elevation UP&amp;L Co. Datum</u>
5,000	5913.24
10,000	5913.56
15,000	5913.87
20,000	5914.15
25,000	5914.41
30,000	5914.61
35,500	5914.69
36,500	5914.70

C. Subject to existing rights, each State shall have the use of water for farm and ranch domestic and stock watering purposes, and subject to state law shall have the

right to impound water for such purposes in reservoirs having storage capacities not in excess, in any case, of 20 acre-feet, without deduction from the allocation made by Paragraph A of this Article.

D. The storage rights in Bear Lake are ~~herely~~ recognized and confirmed subject only to the restrictions hereinabove recited."

I move the adoption of that Article.

COM. COOPER: Mr. Chairman, I will second Mr. Clyde's motion.

THE CHAIRMAN: Is there any discussion on the motion? We will call for a vote by states. Idaho?

COM. COOPER: Aye.

MR. MERRILL: Just a minute--pardon me. My attention was just called by Mr. Iorns to this wording on the first page, " . . . and the right to store in a reservoir in Idaho or Wyoming on Thomas Fork, 1,000 acre-feet . . . ", the suggestion being, "the right to store in reservoirs in Idaho or Wyoming", because they may not get it all in one reservoir.

COM. BISHOP: Why say "reservoir"? Let them store in tanks or however they want to.

MR. MERRILL: We have reservoirs elsewhere.

COM. BISHOP: Whatever it is, it is all right.

MR. MERRILL: " . . . the right to store in Idaho or Wyoming. . ." We have got, "existing storage rights in reservoirs heretofore constructed. . ."

THE CHAIRMAN: Is there any further discussion on the motion? If not, we will call for a vote by states. Idaho I believe has voted "Aye." Utah?

COM. CLYDE: Aye.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: That is a spot we have been trying to reach for how many years?

MR. SKEEN: Perhaps we should make a note of the time, 3:41.

(General discussion)

THE CHAIRMAN: I think it is very fine you reached an agreement on those points. At this point does the Commission wish a brief statement from the Legal Committee on the revised draft of the Compact? Do you want some comments from Mr. Skeen on the draft, or is there some other item you would like to take up? He has two or three points he thinks he should call to the attention of the Commission.

COM. CLYDE: I think we should hear Mr. Skeen and then we should start from the front and read this thing through, I imagine.

THE CHAIRMAN: Then if there are no objections, we will have Mr. Skeen give a brief report from the Legal Committee and the points he had in mind.

MR. SKEEN: The Legal Committee held a meeting on November 16th, 1954, and revised in some minor particulars the

draft of Compact dated July 8th, 1954, and I won't go into all the detail because time will not permit. But I would like to call the attention of the Commission to certain matters which I consider very important.

If you will turn to Article III of the draft of Compact, page 7, the Legal Committee discussed at some length the matter of what constitutes a quorum of the Bear River Commission as set up in that Article. At that meeting, as a result of the discussion, some language was drafted which I will read, which would follow the words, "state law", at the end of Section A: "Six commissioners, which shall include two commissioners from each state, shall constitute a quorum, and the vote of two-thirds of the commissioners when a quorum is present shall be necessary for the action of the Commission."

COM. CLYDE: Mr. Skeen, would you read that again? And would that be a comma after "state law"?

MR. SKEEN: No, that would be a new sentence. (Mr. Skeen rereads language.)

The Legal Committee also made some changes in Article III, particularly in Section D, which already appear in handwriting in the copy of the draft of July 8th, marked "Revised" draft. I won't take the time to read them. They are for the most part provisions simply for clarification.

MR. MERRILL: In Article II we added Section 30.

MR. SKEEN: Yes.

MR. MERRILL: And then there will be a change in the

definition in Section 10, "Natural flow", or else--

MR. SKEEN: Or else a separate definition of the expression, "direct flow rights".

COM. CLYDE: What article are you talking about?

MR. MERRILL: Referring back to page 10, Article II, that we will have to prepare a proper definition of the expression, "direct flow rights", or amend the definition in Section 10 of "Natural flow". I rather think that it will be desirable to put in a new definition.

COM. CLYDE: And you want a definition of water year?

MR. MERRILL: We have got it.

COM. CLYDE: Did we define domestic use?

MR. MERRILL: We didn't need to define domestic.

COM. CLYDE: Mr. Chairman, coming back to Article III, is it still the opinion of the Commission that we should have nine commissioners?

MR. MERRILL: Yes. We fought that out for several meetings. We had it six once, and then we battled and battled.

COM. BISHOP: You are never going to convince me you need three, but I will go along.

COM. CLYDE: If you have just one commissioner and give him three votes, I guess it will be the same, won't it?

MR. MERRILL: I think it should be three commissioners under the circumstances. You know we fought a day on that.

COM. BISHOP: I remember. We went around and around.

MR. MERRILL: Let's stay with what we decided and

not fight another day.

MR. KULP: Mr. Skeen, on page 2, definition No. 6, "Additional storage", is that necessary now?

MR. SKEEN: I don't think it is.

MR. MERRILL: I don't either.

MR. SKEEN: In view of the change in wording in Article V, I think No. 6 should be eliminated.

Now I won't take the time to explain all the reasons for all these handwritten changes in this draft because it would take too long. But I would like to have you turn to page 11, under "Central Division", Paragraph a, right at the end of a, which reads: "The remaining fifty-seven percent shall be diverted for use in Idaho." Mr. Merrill suggests that we add to that sentence the words, "in the Central and Lower Divisions."

MR. MERRILL: The reason for that is, there is of course some runoff flow that necessarily would go down, and it would supply lower rights; and otherwise, there may be some confusion as to whether or not that 57 percent should be used entirely in the Central Division. And with the change I suggested, then it would be handled in accordance with state law, of course, and it would avoid confusion.

MR. KULP: Didn't we change that to "divertible" also?

MR. PERSON: It "shall be available for use in Idaho"-- I might say we are a long ways from satisfied with this section. When we start discussing it word by word, we have an amendment

to propose. But it "shall be available for use in Idaho" would take care of it.

COM. BISHOP: It won't take care of our objection.

MR. PERSON: No, but it will satisfy his point; it will be available for use in Idaho.

COM. COOPER: It "shall be diverted"--

MR. PERSON: ". . . shall be available for use in Idaho." That satisfies Mr. Merrill, but it doesn't satisfy our objection to it.

COM. BISHOP: Mr. Chairman, I have about three suggestions on page 3 that I would like to mention.

MR. MERRILL: Is this agreeable, before we get away from it, so the Legal Committee can--

MR. PERSON: "Available" instead of "diverted".

MR. MERRILL: And add, "in Central and Lower Divisions."

MR. PERSON: No.

MR. MERRILL: Why not?

MR. PERSON: "Available for use in Idaho"--let's stop there.

MR. MERRILL: It is merely to clear up any confusion.

MR. PERSON: We have an amendment to propose to that section that would be in complete conflict with that.

MR. MERRILL: Is that the same amendment that has been turned down three or four times?

MR. PERSON: Yes, sir.

MR. MERRILL: I don't know why we should bother with it.

MR. PERSON: If you are going to bother with the Compact, we have to discuss it.

COM. CLYDE: I think we ought to start from the beginning and read the whole thing.

MR. SKEEN: I think we should discuss that point last mentioned by Dean Person and see if we can come to some agreement with respect to the Central Division. As far as I know that is the last thing to be considered except just a matter of editing.

MR. PERSON: We also have some changes in the Upper Division under direct flow rights. All these are minor changes.

MR. SKEEN: I think I have stated the substance of any important changes suggested by the Drafting Committee, and maybe we had better start on the matters that might be controversial now.

COM. COOPER: Mr. Skeen, have you overlooked the change on page 20?

MR. SKEEN: I hadn't gotten to that. I would like to have it if you will read it. That came up since the meeting of the Drafting Committee.

COM. COOPER: Article IX on page 20: "The following rights to the use of Bear River water carried in interstate canals are recognized and confirmed. Name of Canal, Hilliard East Fork; Date of Priority, 1914; Primary Right, Second-Feet,

28.0: Lands Irrigated, 2,644, in Wyoming. Chapman . . Date of Priority, 8-28-05; Primary Right, Second-Feet, 134.00\*"--  
 And then add: \*Under the right as herein confirmed, not to exceed 134 second-feet may be carried across the Wyoming Utah State line in the Chapman Canal at any time for filling the Neponset Reservoir, for irrigation of land in Utah and for other purposes. The storage right in Neponset Reservoir is for 6,900 acre-feet."

We want added, "Under the right as herein confirmed..."

MR. SKEEN: That would be added just before the statement?

MR. MERRILL: Just before--"Not."

MR. SKEEN: Read the words again.

COM. COOPER: "Under the right as herein confirmed, not to exceed 134 second-feet. . . ."

THE CHAIRMAN: Mr. Clyde and Mr. Bishop, you heard the suggestion of Mr. Cooper to add those five words on page 20 right after the asterisk. Do you have objection to that? Can we settle that question?

COM. COOPER: I move that this change be adopted.

THE CHAIRMAN: Is there a second to Mr. Cooper's motion on the addition of those five words?

COM. CLYDE: I have no objection to that, Mr. Chairman. I will second the motion.

THE CHAIRMAN: All right, it has been moved and seconded. Is there any discussion? I will call for a vote by

states. Idaho?

COM. COOPER: Aye.

THE CHAIRMAN: Utah?

COM. CLYDE: Aye.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: Do you want to take up the question Mr. Person brought up next, or which item?

COM. BISHOP: I would like to go over these corrections suggested on page 3. It won't take but a minute. They are little changes in the wording that I don't believe have been brought up. If they have, we will soon have it over with.

On the first line up at the top of the page, it says, "'Natural flow' means all flows in. . ." I think it should read, "all water flowing in. . ." In the line underneath that, I would like to see it read, ". . . water released from storage or imported from a source other. . ." instead of "another source".

MR. MERRILL: Wasn't that "another" cut out by the Drafting Committee?

MR. SKEEN: That was amended in the Drafting Committee. It is one of the numerous amendments.

COM. BISHOP: I had these down here. I have another one here down in 12, in the second line, ". . . Lincoln County, Wyoming and flows in a general southwesterly direction. . ."--southerly direction, that wouldn't be right--". . . southwesterly direction to its confluence with . . . "

COM. COOPER: No. 12?

COM. BISHOP: Yes. In order to get it right in there, it has to read something like that.

MR. JIBSON: Mr. Skeen, I have those definitions reworded, don't you?

MR. SKEEN: They have been reworded but I did not prepare them in final form because I didn't have those township references you were going to supply.

MR. JIBSON: I have them for you. I thought we should bring that out. We have added the words, "to its confluence with", to make it a little clearer, in answer to Mr. Bishop's question.

COM. BISHOP: I want to call your attention to the fact that it is a little dangerous to put down townships, ranges and sections. We wrote the subdivision that a certain dam was to be built in in the Belle Fourche River Compact; and when they made the final survey, it wasn't in that subdivision. It could make a lot of trouble. I think a general statement is better than to try to tie it down to the legal subdivision on matters like this.

COM. COOPER: Let's get that wording, Mr. Bishop?

COM. BISHOP: ". . . southwesterly direction to its confluence with the Bear River near Cokeville, Wyoming;"

MR. JIBSON: Your statement on all these definitions where we have used the section, would suggest that we delete the legal description on all the definitions; is that the

meaning of it?

COM. BISHOP: I wouldn't want to tie them down to a description.

MR. JIBSON: The criticism was offered that we hadn't tied them down close enough.

COM. BISHOP: I know.

MR. JIBSON: So I tried to tie them down a little closer with some additional legal descriptions that we don't have at the present time.

COM. BISHOP: I don't see any objection if you absolutely know you are correct, but you don't always know that.

MR. JIBSON: That is very possible, and especially on the source of a stream. These streams are all intermittent at the headwaters except those that have a definite spring; and so I tried to tie those down to a township on the suggestion of the Legal Committee, but I wasn't too happy about it. If it is the consensus of opinion we don't need those things, that would be fine.

THE CHAIRMAN: Does the Commission want Mr. Jibson to come back with a new description and tie it to new locations, like you said Cokeville--"confluence with the Bear River at Cokeville", you said in one instance.

COM. BISHOP: I think this is all the description then need--the Bear River at Cokeville.

MR. SKEEN: How would it be if you complete his statement on all of them.

COM. BISHOP: I have two or three more I would like to mention because I do think they are important.

No. 13, in the second line "... Lincoln County, Wyoming and flows in a westerly direction to" -- and then insert-- "its confluence with Smiths Fork." That is a definite enough statement, "its confluence with Smiths Fork." It would be all right with me to delete that after Smiths Fork, delete the rest of it.

In No. 14, "'Pine Creek' means a tributary of Smiths Fork which "--and then I would insert--"tributary rises in Lincoln County, Wyoming, emerging from its mountain canyon in the Southwest Quarter, Section 34. . ."

In No. 15, "'Bruner Creek and Pine Creek Springs' means tributaries of Smiths Fork which tributaries rise. . ."-- insert "tributaries" after "which".

I imagine a lot of these you have got, like at the bottom of page 4, you had "Six Principal Meridian".

MR. SKEEN: We made a number of minor changes, inserting the word "of"--

COM. BISHOP: Anyway, I wanted to prove to you guys I read it.

COM. CLYDE: A point of information: In referring to a Principal Meridian, is it the Principal Meridian or the Principal Base Meridian?

MR. DAVID P. MILLER: It is the Principal Meridian; that is the way it is referred to up there.

MR. KULP: I think our correct designation is Boise Base Meridian.

COM. CLYDE: You can't describe a point unless you have two coordinates; you have a base and a meridian.

MR. MILLER: That is correct. But up in this country the universal description is Principal Meridian.

COM. CLYDE: Is it consistent to add in each of those, "in Wyoming", "in Idaho"? You see, you refer to the Boise Meridian in Idaho.

MR. MILLER: In each case the Sixth Principal Meridian applies only to Wyoming, the Boise Meridian applies only to Idaho, and the Salt Lake Meridian applies only to Utah in that particular section.

COM. CLYDE: I know. You put it in some cases and you left it out in some cases; to be consistent it should be put in every one or left out in every one.

THE CHAIRMAN: That should be caught by final editing.

COM. CLYDE: Mr. Chairman, immediately following Item 20, the Lannon Canal, there is another ditch that has been found up there that I believe should be included in there, called the Lone Mountain Ditch. It is between the Lannon Canal and West Hilliard Canal and it is not described here. I suggest we insert:

"'Lone Mountain Ditch' means that irrigation canal which diverts water from the right bank of Bear River in Summit County, Utah, North 1,535 feet and East 1,120 feet

from the West quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian and runs in a northerly direction crossing the Utah-Wyoming Line into the South half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian in Wyoming."

That is the description of the location of that Lone Mountain Ditch.

MR. JIBSON: It is what we have called Ed Massae Ditch the past two years. We didn't know the name until we got it from Mr. Bingham through the state adjudication records. We called it the Ed Massae Ditch. It is in exactly the same category as the other three canals diverting in Utah for exclusive use in Wyoming.

MR. PERSON: And will be in our allocation.

COM. BISHOP: Does it have a right to divert in Utah?

MR. JIBSON: Apparently it will do after their adjudication is complete.

(General Discussion.)

THE CHAIRMAN: Does anyone have an objection to that being included?

MR. JIBSON: There are several places in the Compact in which it will have to be included.

MR. SKEEN: In addition to a definition?

MR. JIBSON: Yes.

THE CHAIRMAN: Is there any objection to that being included?

COM. COOPER: No objection.

COM. CLYDE: Mr. Chairman, I might add that that same thing might be added wherever the Hilliard West Side and the Lannon Canals are referred to, because it is in that group of canals.

THE CHAIRMAN: There is no objection to including it.

MR. PERSON: But it was included in figuring the percentage.

THE CHAIRMAN: Are you ready to go to Article IV?

May I bring up one question at this time. The press naturally will be interested in the motion that was passed here with reference to what is in Article V. Is it the wish of the Commission that be given out to the public at this time, or wait until you arrive at a draft of Compact?

MR. PERSON: It should not be given out. We will be shot anyway when we get home. If you give that out we won't even dare go home.

THE CHAIRMAN: It was a tentative approval.

COM. COOPER: We are opposed to giving it out too. There may something happen that this Compact may not be approved yet. I feel that we should keep it out of the press.

THE CHAIRMAN: Apparently that is the unanimous opinion. Most of the figures are already in the press. May I ask again--the press points out that some of these figures are already out--is there objection to using the figures? Of course they are apparently already out, the 35,500 and others.

COM. COOPER: If they are already out, what are we going to do about that?

THE CHAIRMAN: Those figures have been in the paper practically every time.

COM. BISHOP: As far as Wyoming is concerned, they are only tentative.

COM. CLYDE: I think we have been talking about these figures, and of course I would hate to see anything get in the press to the effect that we have reached a final agreement on this, that is the thing I am concerned about. I think we are approaching agreement; I think we will get it. I would hate to see a report go out that it is all signed, sealed and delivered. We are still considering; we are approaching an agreement. I don't think we should go beyond that.

COM. COOPER: I don't think we should. I think we have gone far enough. If they have those figures out, that is as far as we should go, with the understanding that it is tentative too.

THE CHAIRMAN: (Turning to member of press) That is just part of the Compact, you know.

(General discussion.)

COM. CLYDE: I think the principal figure is 35,500; it has been bandied back and forth and it is in the minds of everyone. That is a tentative figure.

THE CHAIRMAN: And the thousand acre-feet on Thomas Fork, and the 14,000 of existing upstream storage.

COM. CLYDE: Is there any objection on the part of anyone that that goes in?

COM. COOPER: No.

COM. CLYDE: Do you have any objection to those figures going out?

COM. BISHOP: If they have already gone out, I guess there is no use.

THE CHAIRMAN: We have two points, I believe, in Article IV.

COM. CLYDE: There is still another point in Article II, Item 25, the definition of Upper Utah Section Diversions, page 5. The question involved there is what we mean by tributaries; and we happen to have a tributary in this area called Mill Creek which joins the main stream below the Utah-Wyoming Line. In order to clarify it and make it so there will be no misunderstanding, I would suggest that that definition read as follows:

"'Upper Utah Section Diversions' means the sum of all diversions in second-feet from Bear River and the tributaries of Bear River joining the Bear River upstream from the point where the Bear River crosses the Utah-Wyoming State Line above Evanston. . . ."

My only purpose there is to see that Mill Creek, a tributary that joins below the Line, is not included in the Compact and

is not inadvertently lumped in with this stream section.

MR. MERRILL: How does that read?

(Com. Clyde rereads proposed language.)

THE CHAIRMAN: Is that suggested change agreeable to you, Mr. Cooper?

COM. COOPER: That is agreeable with us.

THE CHAIRMAN: You, Mr. Bishop?

COM. BISHOP: Yes.

THE CHAIRMAN: Apparently it is agreeable to everyone. Have you another one, Mr. Clyde?

COM. CLYDE: No, that is all in Article II.

THE CHAIRMAN: Do you want to go to Article IV?

COM. CLYDE: Article III, on what constitutes a quorum. Can proxy votes be accepted? What about proxies?

MR. MERRILL: It doesn't seem to me to be advisable in a matter as important as this.

MR. SKEEN: There will be a lot of things that will have to be left to the By-Laws.

COM. CLYDE: I don't wish to push it.

COM. BISHOP: If we are going to have three commissioners, it seems to me that any state that wants one man to represent all three of them could do it. It seems to me like it makes it rather cumbersome; and it is hard for us to get people to serve on the commissions that will attend the meetings.

COM. CLYDE: And it is expensive to send a lot of

people.

COM. BISHOP: That is right.

MR. MERRILL: That has been definitely fought over and agreed to heretofore; I don't think we ought to change it. You take Utah for instance, it has got two divisions and probably there would be one from the State Engineer's Office; that was one of the things we were considering. And then Upper Wyoming, in Wyoming they are over a large section of country, and the commissioners from the various sections would like to be there undoubtedly and the State Engineer. And that is what we thought with Idaho; there would be the Upper Division between Border and Stewart Dam, and then there would be the Last Chance Division where Mr. Cooper is, and the State Engineer's office. Those are some of the arguments that were advanced.

COM. CLYDE: I think that is fine in the preparation of the Compact; but when the Compact is drawn, there are transactions to be carried out. I have no argument against it but I would like to pursue this point that Mr. Bishop raises. Supposing one state wanted to send only one representative; then he has got to use two proxies?

MR. MERRILL: That would be handled in the By-Laws.

COM. CLYDE: I see. Okay.

COM. BISHOP: If only one of the three were there, it shouldn't deprive that state of its right for a vote of all three. I think it ought to take all of whatever the number is to make one vote.

MR. MERRILL: They will all be there with water right questions; you don't need to worry about that. I have too many lawsuits about water matters to know that; they don't fail to show up.

THE CHAIRMAN: Any more questions before you get to Article IV?

COM CLYDE: No.

THE CHAIRMAN: That is where you come in, Mr. Person, I believe you said you had a question to raise.

MR. PERSON: This section e., page 10:

"If for any reason the aggregate of all diversions in a river section of the upper division does not equal the allocations of water thereto, the unused portion shall be divided among the other river sections in the division in the ratio of the percentages specified above. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e."

We are now dividing the water between the states, not between the sections. And if Utah wants to use her upper section water in the lower section, I think they should have that right. If they wanted to rotate it, they couldn't do it as this is now written. I say the first thing we should do, if Utah doesn't want to use her upper section water in the upper section, she should be allowed to use it in the lower section. First one section can use it and then the other section; and then if there is anything left, it is divided on

those ratios.

COM. CLYDE: May I ask a point of information: You mean sections, not divisions?

MR. PERSON: Sections.

COM. CLYDE: For example, if the Upper Utah Section in Summit County didn't want to use its water, you didn't mean it would go down to the Lower Division?

MR. PERSON: No, the lower section in the Upper Division. I think this wording ought to be changed. That would permit rotation of water and better use, which we are bound to come to, which this wouldn't permit.

MR. JIBSON: Maybe I should explain what this general statement means in terms of percentages if it will do any good. Otherwise, go ahead, it is immaterial to me.

THE CHAIRMAN: It is up to these people that are going to catch a train.

(General discussion.)

MR. PERSON: I will write some language and send it to Skeen.

COM. BISHOP: We seriously think it should be in there.

MR. PERSON: You wouldn't object to it?

COM. CLYDE: I wouldn't object to it.

MR. SKEEN: Let us pass that with the understanding you will prepare some language in the next few days.

MR. PERSON: Yes, I will send it to you in the next week or so.

MR. SKEEN: If you can make it in a few days it will be better. The next one I guess is in the Central Division. We might as well get that sore spot ironed out.

COM. BISHOP: In the middle of page 13, did you cut out that "aggrieved"?

MR. SKEEN: Yes, the word "aggrieved" is stricken. I have a number of changes of that sort that I didn't want to take the time of the Commission to discuss.

THE CHAIRMAN: Is it 2.a., Mr. Person, you are questioning?

MR. PERSON: In Central Division.

THE CHAIRMAN: Yes.

MR. PERSON: Well, it is the same old concession. I think Mr. Cooper knows what I am going to propose. I apologize, Fred, for proposing it. I don't think we could go into a Compact without a 207 flow.

COM. COOPER: Your apology is accepted, Mr. Person, I assure you; but we will absolutely not go into a Compact with it in.

COM. BISHOP: Fred, it gives you water down there for Last Chance Canal on a late priority, a whole lot later than any of ours would be receiving it, if you don't do it.

COM. COOPER: I beg your humble pardon. We have 1897 rights and you people are claiming rights for water in 1939. We are willing to concede it. We have also given you these storage rights, conceded that. We have just gone too far now.

We figure it is farther than we should have done and, gentlemen, we can't possibly make this kind of concession, because it would simply cut us in two.

MR. PERSON: No, Fred, it won't.

COM. COOPER: Yes, it will.

MR. PERSON: The Engineering Committee spent two days on this, including Mr. Crandall. The Engineering Committee all decided it was fair and equitable and it was desirable.

COM. COOPER: And then afterward, the Engineering Committee in conference here agreed that it was not desirable. I think Mr. Iorns very definitely pointed out that it would be injurious to the Last Chance particularly; therefore we had dismissed the thing from our minds. We felt that it was something--

\* MR. PERSON: Fred, I don't agree that it would hurt one iota the Last Chance. I don't think it would; I don't think it could.

COM. COOPER: I would like Mr. Iorns, if he will, explain how he feels about that proposition.

MR. IORNS: The 207 has a place in the picture if you are dividing between the two state divisions or the two state sections on the basis of priority of rights. We are not following priority of right division whatsoever here; we are following division on the basis of irrigated acreage.

MR. PERSON: Wait a minute, let's be sure of that. I want a correction in there. We are following priority rights

between the division, not within the division.

MR. MERRILL: We are dealing here with rights in the Lower and Upper Division.

MR. PERSON: Within the Division we divide on the basis of irrigated acreage.

MR. IORNS: Within the Division you are dividing on the basis of irrigated acreage.

MR. PERSON: Between the Division we are dividing on the basis of priority.

COM. COOPER: No, we are not.

MR. MERRILL: We would get about 90 percent.

MR. C. R. NATE: Then you should only have 35 percent based on the acreage. Report No. 27, that shows you will only need 35 percent in Cokeville and the Upper Wyoming, so we went a little too high on the 43.

COM. COOPER: We made that concession with you during the argument on this 207.

MR. PERSON: I have another correction I want to suggest which is logical. I can convince you of the logic of it, I am sure; if I can't convince you of the logic of that, it is still just as logical. On page 11, under 2.a., to strike--"When the divertible flow"--strike the "either", take out the comma, "is less than 810 second-feet", and then strike, "or the flow of Bear River at Border Gaging Station is less than 400 second-feet. "

COM. COOPER: I have that marked in red here where

we decided to leave that as it was. We discussed that question.

MR. PERSON: You are cutting us both ways. You are not satisfied to cut down to 207, you also want to cut us to 400. You are taking your pound of flesh piece by piece. You aren't satisfied in taking it only one way; you are taking it two ways.

COM. COOPER: We haven't asked for any blood.

MR. PERSON: I see, just flesh.

COM. COOPER: I think that should be left in there. I don't think it hurts you a bit.

MR. PERSON: Those are the only two corrections I have to suggest.

THE CHAIRMAN: We have five minutes more, apparently before Mr. Bishop here and the rest of them have to leave. Maybe you want to set a date for the next meeting and have the Legal Committee put this in the final draft form.

COM. COOPER: I didn't hear what you just said.

THE CHAIRMAN: Maybe you want to set another date for another meeting and consider a draft in final form with these changes, prepared by the Legal Committee.

COM. COOPER: When could the Legal Committee be ready?

MR. SKEEN: I think the first of the week.

MR. MERRILL: I won't be able to be with you until after the 3rd of January--

COM. BISHOP: That fits my schedule too.

MR. MERRILL: --because of my various commitments

already made.

THE CHAIRMAN: You can't meet with the Legal Committee either?

MR. MERRILL: No.

(General discussion.)

MR. MERRILL: Gentlemen, before you go, there doesn't seem to us to be any reason in the world why we couldn't clarify that matter to save litigation in the future, that the 57 per cent shall be for use in Idaho not only in the Central Division but the runoff down to the other part. Now just a few words would clarify that and it would save litigation in this matter if the Compact is passed. And it doesn't seem--

COM. BISHOP: Why not let them use it where they want to?

COM. COOPER: That is the point.

MR. MERRILL: That is the point;--"for use in Idaho in the Central or Lower Division."

MR. PERSON: If you want to put the 207 clause in, you can put it in any place.

MR. NATE: Then you get 35, not 43.

COM. COOPER: The point is, usually a little water gets past Stewart Dam; and if that were made so it just could be used in the Central Division, then we would not get the credit for it on the Last Chance. It doesn't amount to only-- maybe 5 or 7 feet is all it amounts to--but water is valuable to us and precious; and we would like that point in there.

This 207, that would cut us right in two; we can't stand for that.

THE CHAIRMAN: I assume you will have to have one more meeting to go over this draft and maybe settle any other problems you have, is that right? Shouldn't you at this time set the date?

COM. BISHOP: Mr. Chairman, I would like to ask the Legal Committee if they are going to have this written up and send us copies so we can take it up with our people. We wouldn't want to meet again until we talk about what we have got. There are some items we question and they may question. And we would like to have some copies and take it up with our people before we have another meeting. My idea would be to adjourn subject to the call of the Chairman, so we can take it up with our members and find out when we can have these meetings and find out what our people think about it before we have another meeting.

THE CHAIRMAN: You mean you are suggesting that drafts be furnished you for your people after the Legal Committee gets out a draft?

COM. BISHOP: I am willing to have the Legal Committee go ahead and draft it up; I think they know what we have tentatively agreed upon. If they will write it up and get it in shape, then we can take it up with our people and find out what they think about it.

MR. SKEEN: We will endeavor to get a copy to you,

Clark, on this coming Saturday, or get some copies of a clean draft on this Saturday. With that in mind, I think it would be a big help if we could agree on the date for the next meeting, because I have had some experience contacting you fellows and it is a pretty hard job.

THE CHAIRMAN: When can you meet after January 3rd, Mr. Merrill? What is the earliest time you can meet?

MR. MERRILL: The 5th would be about the closest date.

COM. BISHOP: That would be a little soon. We can't get our people together until after the first of the year.

MR. MERRILL: That is five days after.

COM. BISHOP: I would say we had better make it along the middle of January for our meeting.

MR. MERRILL: The legislatures will be in session. We have got to get this in the legislature.

MR. PERSON: Until we take it to our people, there is no sense in even talking about taking it to our Legislature. We have done a lot of things that our commissioners have given us definite instructions not to do. One is, we have gone down on the storage; the second is we have yielded to Utah--and I could go on down all the things--the 207--

MR. MERRILL: What do you think about the other states?

COM. COOPER: You are clever horsetraders.

(General discussion.)

COM. CLYDE: Mr. Chairman, I move we meet on the 12th.

THE CHAIRMAN: Is that all right, Mr. Merrill and Mr.

Cooper?

COM. COOPER: Yes.

THE CHAIRMAN: Then we will meet on the 12th of  
January.

(4:40 p.m., Wednesday, December 15, 1954, Meeting  
adjourned.)

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