

BEAR RIVER COMPACT COMMISSION

Transcript
of
Meeting
held
February 4, 1955

Room 307
32 Exchange Place
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 PRESENTIDAHO:

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

A. L. Merrill Legal Adviser,
 Pocatello, Idaho

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

Melvin Lauridsen Montpelier, Idaho

J. Warren Serrine Dingle, Idaho

A. R. Linford

Raymond, Idaho

Harold D. Walter

Cokeville, Wyoming

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

Member, Utah Water and Power Board,
Brigham City, Utah

Thomas W. Jensen

Utah Water Users Association,
Salt Lake City, Utah

H. T. Godfrey

Salt Lake County Water Users Ass'n.,
Salt Lake City, Utah

Gerald Irvine

Utah Power and Light Company,
Salt Lake City, Utah

E. G. Thorum

Utah Power and Light Company,
Salt Lake City, Utah

C. O. Roskelley

Engineer, Utah-Idaho Sugar Company,
Salt Lake City, Utah

W. A. McMurray

Deseret Livestock Company,
Salt Lake City, Utah

Alonzo F. Hopkin

Woodruff, Utah

Lawrence B. Johnson

Randolph, Utah

J. L. Weidmann

R.D. No. 1, Honeyville, Utah

E. M. Van Orden

Lewiston, Utah

WYOMING:

H. T. Person

Dean of the School of Engineering,
University of Wyoming
Laramie, Wyoming

Howard B. Black

Attorney General
Cheyenne, Wyoming

Reed Dayton

Cokeville, Wyoming

Emil C. Gradert

Fort Bridger, Wyoming

U. S. GEOLOGICAL SURVEY:

W. N. Jibson

Hydraulic Engineer,
Logan, Utah

PROCEEDINGS

The meeting was called to order by Mr. E. O. Larson, the Chairman, at 11:20 o'clock a.m., on Friday, February 4, 1955, in the Conference Room of the Bureau of Reclamation, Room 307, 32 Exchange Place, Salt Lake City, Utah.

(Notice submitted for the record reads as follows:)

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

January 31, 1955

NOTICE OF MEETING

The final meeting of the Bear River Compact Commission will be held in the Bureau of Reclamation Conference Room, Room 307, 32 Exchange Place, Salt Lake City, Utah, on Friday, February 4, 1955, at 10:30 a.m.

A copy of the draft of Compact which was approved at the last meeting of the Commission will be mailed to you tomorrow.

E. J. Skeen,
Secretary."

THE CHAIRMAN: Are you ready to proceed? This meeting of the Bear River Compact Commission was called for the consideration of the final draft I suppose, and the signing of the Compact.

Now the first thing the Secretary would like to know is, how many signers do you have for each state so that we can prepare the signature page? We would like to know that so we won't have any extra lines. Idaho, do you know how many signers you will have?

COM. COOPER: We will just have three signers for Idaho.

THE CHAIRMAN: Have you any advisers to sign? You can amend your statement when you hear how many the others have. Utah?

COM. CLYDE: We will have seven; eight total.

THE CHAIRMAN: Eight for Utah. How many for Wyoming?

COM. BISHOP: Five.

THE CHAIRMAN: Five for Wyoming. Do you want to reconsider yours, Mr. Cooper? There are eight for Utah, five for Wyoming.

COM. COOPER: If the lawyers from the other states are signing, we want one of our lawyers on there (Confers.) We will confine it to the three.

THE CHAIRMAN: In Utah it is the Commissioner and the advisers?

COM. CLYDE: The commissioner and the advisers and

the Member of the Board on the Bear River Committee that has worked on it from the beginning to the end.

COM. COOPER: We will just have the Commissioners sign it, the three.

THE CHAIRMAN: Next, the Bureau of Reclamation photographer is here; and after you consider the compact and sign it, then he is here to take any pictures that each state would like of its own group, or any combination, that you Commissioners desire for your record. They will be glad to take the pictures for that purpose for you and send them to you.

COM. COOPER: We would like to have all the Idaho representatives in a picture.

THE CHAIRMAN: I thought possibly you would, yes. He can take one for each state that way, and he can take one of the whole group with the advisers, and one with just the Compact Commission alone, if that is the way you would like it. He is here available to take it when we get farther along, if that is the way you want it.

COM. COOPER: That is fine.

COM. BISHOP: That is fine.

COM. CLYDE: We have one man who is not present today.

COM. BISHOP: I have eight absentees, but I am not going to count anybody that isn't here. I don't think it is necessary for them to be considered at all if they are not here. The ones who are here are all.

MR. SKEEN: Then reduce Utah by one, to seven?

COM. CLYDE: Reduce it to seven.

THE CHAIRMAN: Would you like to proceed by having each article of the Compact read? There are one or two minor changes, particularly in wording. I think Mr. Skeen had one suggestion in Article 1 where we mention the major purposes and we mentioned, "to cooperate with State and Federal agencies in matters relating to water pollution". His suggestion is that that isn't one of the major purposes of the Compact, and we should mention that in another place. He has suggested language and we can consider that when we get to it. There may be a couple of commas or other things to consider.

Would you like to read the Compact?

COM. BISHOP: Mr. Chairman, I move we proceed by reading the Compact, paragraph by paragraph, and have Mr. Jibson with a pointer show us what we are talking about as we come to the paragraphs pertaining to the map.

THE CHAIRMAN: Is there a second to the motion?

COM. CLYDE: I will second the motion.

THE CHAIRMAN: Do you have any comments, Mr. Cooper, on the motion?

COM. COOPER: No comments.

THE CHAIRMAN: You heard Mr. Bishop's motion to read the Compact paragraph by paragraph and have Mr. Jibson point out on the map as we go along, what the location is.

COM. COOPER: There is one correction I would like

to make in this, "An Act", (referring to document): I would like my name to be, Fred M. Cooper. The reason I do that is because there was a man in Idaho by the name of Fred Cooper that established a bad reputation, and I would like this M. included.

THE CHAIRMAN: It will be included. We will vote on the motion. Idaho?

COM. COOPER: Idaho votes "Aye".

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: Utah?

COM. CLYDE: Aye.

THE CHAIRMAN: Mr. Clyde?

COM. CLYDE: We have two members of the Legislature here. If we go through the Compact paragraph by paragraph, that will take an hour. They would like to be excused and come back, if that won't interfere with the procedure.

COM. BISHOP: Don't you think the members of the Legislature should sit in and know what they are considering? They are going to have to consider this. Don't you think they should sit in?

COM. CLYDE: They have been for 13 years, these two particular ones.

THE CHAIRMAN: You want those two to sign pending our--

COM. BISHOP: Or come back and sign.

MR. L. B. JOHNSON: May I explain. (Remarks off the record.) I think Mr. Bishop has something there, it would be fine if we see it through because it will come to the Legislature. I will go out and phone and see if that matter won't come up until this afternoon.

THE CHAIRMAN: Mr. Merrill, will you read it while Mr. Skeen is getting it typed?

MR. MERRILL: Yes, I will be pleased to.

"BEAR RIVER COMPACT

"The State of Idaho, the State of Utah, and the State of Wyoming, acting through their respective Commissioners after negotiations participated in by a representative of the United States of America appointed by the President, have agreed to a Bear River Compact as follows:

"ARTICLE 1"

As it now is drafted:

"A. The major purposes of this Compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes to permit additional development of the water resources of Bear River; to cooperate with State and Federal agencies in matters relating to water pollution; and to promote interstate comity."

Now there has been eliminated from Article 1 this wording: "to cooperate with State and Federal agencies in

matters relating to water pollution".

MR. PERSON: That is what we want to eliminate because we moved it back in another place.

COM. BISHOP: They are revamping the first page.

MR. MERRILL: The first page is to be revamped. The one I am reading from is the one previously written up. I thought it was a redraft.

COM. CLYDE: Shall we take these up as we go?

THE CHAIRMAN: The words, "to cooperate with State and Federal agencies in matters relating to water pollution", are the only words to be eliminated. Is that satisfactory to the Commission? We put them in further over.

COM. CLYDE: Mr. Chairman, I move we delete the words, "to cooperate with State and Federal agencies in matters relating to water pollution".

COM. COOPER: I will second the motion.

COM. BISHOP: Question.

THE CHAIRMAN: You have heard the motion. (Thereupon a vote was taken and Com. Clyde's motion carried unanimously.)

MR. MERRILL:

"B. The physical and all other conditions peculiar to the Bear River constitute the basis for this Compact. No general principle or precedent with respect to any other interstate stream is intended to be established.

"ARTICLE II."

MR. KULP: Are you going to accept B before you go

to II, or--

MR. MERRILL: It seems to me it would be quicker to do them all.

COM. CLYDE: Yes, I think so.

MR. PERSON: Yes, just the changes, because you have approved it once; otherwise you will have the record cluttered up with motions.

MR. MERRILL: My understanding is that at the previous meeting, the one that we first had was approved; and the only thing now is the changes.

COM. BISHOP: That is right.

MR. MERRILL:

"ARTICLE II

"As used in this Compact the term

"1. 'Bear River' means the Bear River and its tributaries from its source in the Uinta Mountains to its mouth in Great Salt Lake;

"2. 'Bear Lake' means Bear Lake and Mud Lake.

"3. 'Upper Division' means the portion of Bear River from its source in the Uinta Mountains to and including Pixley Dam, a diversion dam in the Southeast Quarter of Section 25, Township 23 North, Range 120 West, Sixth Principal Meridian, Wyoming;"

COM. BISHOP: Just a minute. Will you point that out? I think we will understand it better if we have it pointed out as we go along, where Pixley Dam is.

(Mr. Jibson points out on map.)

MR. MERRILL:

"4. 'Central Division' means the portion of the Bear River from Pixley Dam to and including Stewart Dam, a diversion dam in Section 34, Township 13 South, Range 44 East, Boise Base and Meridian, Idaho;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"5. 'Lower Division' means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"6. 'Upper Utah Section Diversions' means the sum of all diversions in second-feet from the Bear River and the tributaries of the Bear River joining the Bear River upstream from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming; excluding the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"7. 'Upper Wyoming Section Diversions' means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming, to the

point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, and including the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;"

(Mr. Jibson points out on map.)

MR. MERRILL: "8. 'Lower Utah Section Diversions' means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, to the point where the Bear River crosses the Utah-Wyoming State line northeast"--it should be--"of Randolph, Utah;"

There is one correction in this paragraph, and that is, the word "north" is changed to "northeast".

(Mr. Jibson points out on ~~map~~ map.)

MR. MERRILL:

"9. 'Lower Wyoming Section Diversions' means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line north of Randolph to and including the diversion at Pixley Dam;"

MR. KULP: You have that same correction in that one as the one before, making it northeast of Randolph.

MR. JIBSON: It should be, to be consistent; that should be "northeast".

MR. MERRILL: Where would that be? Oh, "northeast of

Randolph".

MR. KULP: It should be, to be consistent.

MR. MERRILL: That is in 9, line 3, "north" to "north-east".

(Mr. Jibson points out on map.)

MR. MERRILL:

"10. 'Commission' means the Bear River Commission, organized pursuant to Article III of this Compact:

"11. 'Water user' means a person, corporation, or other entity having a right to divert water from the Bear River for beneficial use:

"12. 'Second-foot' means a flow of one cubic foot of water per second of time passing a given point:"

May I inquire there, the previous definition legally of a second-foot of water was under four pounds of pressure.

MR. KULP: That is an inch.

MR. MERRILL: That is an inch. Would the speed of the water make any difference here, if it was flowing fast or flowing slow?

MR. JIBSON: Since the speed is tied up in the volume per second, it is already in the definition for a second-foot, a cubic foot per second. It is a cubic foot passing a given point each second.

THE CHAIRMAN: In other words, the quantity is the area times the velocity.

MR. MERRILL: I see.

"13. 'Acre-foot' means the quantity of water required to cover one acre to a depth of one foot, equivalent to 43,560 cubic feet;

"14. 'Biennium' means the 2-year period commencing on July 1 of the first odd numbered year after the effective date of this Compact and each 2-year period thereafter;"

MR. KULP: If we don't get this until after July 1st of this year, the biennium will start in 1957, is that right?

MR. MERRILL: It would according to this definition.

MR. SKEEN: Yes, it would. That is why we will have to take care of financial matters and so on in the bill approving the Compact to take care of the interim period.

MR. MERRILL:

"15. 'Water year' means the period beginning October 1 and ending September 30 of the following year;

"16. 'Direct flow' means all water flowing in a natural watercourse except water released from storage or imported from a source other than the Bear River watershed;

"17. 'Border Gaging Station' means the stream flow gaging station in Idaho on the Bear River above Thomas Fork near the Wyoming-Idaho boundary line in the Northeast Quarter of the Northeast Quarter of Section 15, Township 14 South, Range 46 East, Boise Base and Meridian, Idaho;

"18. 'Smiths Fork' means a Bear River tributary which rises in Lincoln County, Wyoming and flows in a general southwesterly direction to its confluence with Bear

River near Cokeville, Wyoming;

"19. 'Grade Creek' means a Smiths Fork tributary which rises in Lincoln County, Wyoming and flows in a westerly direction and in its natural channel is tributary to Smiths Fork in Section 17, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming;

"20. 'Pine Creek' means a Smiths Fork tributary which rises in Lincoln County, Wyoming, emerging from its mountain canyon in Section 34, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming, and in its natural channel is tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

COM. BISHOP: Just a minute. Let's point out where Grade Creek and Pine Creek are on there.

(Mr. Jibson points out on map.)

MR. MERRILL:

"21. 'Bruner Creek' and 'Pine Creek Springs' means Smiths Fork tributaries which rise in Lincoln County, Wyoming, in Sections 31 and 32, Township 25 North, Range 118 West, Sixth Principal Meridian, and in their natural channels are tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"22. 'Spring Creek' means a Smiths Fork tributary

which rises in Lincoln County, Wyoming, in Sections 1 and 2, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming, and flows in a general westerly direction to its confluence with Smiths Fork in Section 4, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"23. 'Sublette Creek' means the Bear River tributary which rises in Lincoln County, Wyoming and flows in a general westerly direction to its confluence with Bear River in Section 20, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"24 'Hobble Creek' means the Smiths Fork tributary which rises in Lincoln County, Wyoming and flows in a general southwesterly direction to its confluence with Smiths Fork in Section 35, Township 28 North, Range 118 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"25. 'Hilliard East Fork Canal' means that irrigation canal which diverts water from the right bank of the East Fork of Bear River in Summit County, Utah, at a point West 1,310 feet and North 330 feet from the Southeast corner of

Section 16, Township 2 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the Southwest Quarter of Section 21, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"26. 'Lannon Canal' means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, East 1,480 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"27. 'Lone Mountain Ditch' means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, North 1535 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, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"28 'Hilliard West Side Canal' means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, at a point North 2,190 feet and East 1,450 feet from the South Quarter corner of Section 13, Township 3 North, Range 9 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"29. 'Francis Lee Canal' means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter of Section 30, Township 18 North, Range 120 West, Sixth Principal Meridian, Wyoming, and runs in a westerly direction across the Wyoming-Utah State line into Section 16, Township 9 North, Range 8 East, Salt Lake Base and Meridian, Utah;"

(Mr. Jibson points out on map.)

COM. BISHOP: I wonder if we have left that out in the description of Upper Wyoming Section. Shouldn't that be mentioned in there?

MR. JIBSON: It is mentioned by definition, I believe,

Mr. Bishop. We state that:

"Upper Wyoming Section Diversions means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming, to the point where the Bear River crosses the Wyoming -Utah State line east of Woodruff, Utah, and including the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal."

It was necessary to include those four canals because they actually divert above the line; but everything else, including the Francis Lee, is included by definition, because it does actually divert in Wyoming.

COM. BISHOP: I had in mind that the Francis Lee and Bear River canals were to be administered by Utah.

MR. JIBSON: No. They are to be administered by Wyoming and their allocation comes out of Upper Wyoming Section allocation. Their acreage has been included in the percentage allocation for Upper Wyoming.

COM. BISHOP: That wasn't the way we had it figured out to start with. Of course it has been so many years, and we have gone over it so much, I am probably wrong in my conclusion there.

MR. JIBSON: It was discussed at length, I believe, a little over two years ago in the meetings; and I think it was unanimously agreed at the time that it would come out of

Wyoming's allocation and be administered by Wyoming. Do you recall that, Dean Person?

MR. PERSON: Yes.

COM. BISHOP: It seems to me that Utah should administer that water, the same as we should administer the water for the Lannon and Hilliard ditches down south.

MR. JIBSON: Well, in a sense they are in the same category as the Chapman Canal, which is also administered by you, because it irrigates lands on both sides of the state line.

COM. BISHOP: Is that the way you understood it?

MR. PERSON: Yes.

MR. JIBSON: There is one difference between that and these other canals: You have land irrigated in both states under the Francis Lee, but under the four Upper Utah canals, all the land is in Wyoming.

COM. BISHOP: Isn't it probable--I just want to ask this question at this time so as to be straight on this point--isn't it probable that the Commission will designate a water commissioner that is paid by the three states that will take charge of a considerable length of the river regardless of state lines? Isn't that right.

MR. JIBSON: I am not sure just what the Commission's desires would be.

MR. SKEEN: The Commission would have power to do that, but whether the Commission will do it, of course nobody

knows.

COM. BISHOP: That is right.

MR. JIBSON: Actually, under existing conditions today without a compact, those two canals are under the jurisdiction of Wyoming.

COM. BISHOP: One point there that I want to bring out is that the Francis Lee Canal does not have a water right from the State of Wyoming to irrigate land in Utah. We are trying to recognize it; and I believe the attorneys have told us it can be done by the way we have written in the Compact.

Mr. JIBSON: That is the reason for defining the Francis Lee Canal and not defining the Bear River Canal. We defined it essentially for that reason, to confirm its water right on which there had been a question.

COM. BISHOP: Yes.

MR. NATE: Mr. Chairman, I have a question. On the previous draft, right following the Francis Lee Canal, I have a note here to add the Bear River Canal. Was that left off properly?

MR. JIBSON: That is what I just explained, Mr. Nate. The Bear River Canal is not necessary in these definitions any more than any canal on the system; but the Francis Lee is because there is a question on its water right and we wanted to define it to confirm that right.

MR. MERRILL:

"30. 'Chapman Canal' means that irrigation canal

which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter of Section 36, Township 16 North, Range 121 West, Sixth Principal Meridian, Wyoming, and runs in a northerly direction crossing over the low divide into the Saleratus drainage basin near the Southeast corner of Section 36, Township 17 North, Range 121 West, Sixth Principal Meridian, Wyoming and then in a general westerly direction crossing the Wyoming-Utah State line;"

(Mr. Jibson points out on map.)

MR. MERRILL:

"31. 'Neponset Reservoir' means that reservoir located principally in Sections 34 and 35, Township 8 North, Range 7 East, Salt Lake Base and Meridian, Utah, having a capacity of 6,900 acre-feet."

(Mr. Jibson points out on map.)

MR. MERRILL: Those are all of the definitions.

"ARTICLE III

"A. There is hereby created an interstate administrative agency to be known as the 'Bear River Commission' which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The Commission shall be composed of nine Commissioners, three Commissioners representing each signatory State, and if appointed by the President, one additional Commissioner representing the United States of America who shall serve

as chairman, without vote. Each Commissioner, except the chairman, shall have one vote. The State Commissioners shall be selected in accordance with State law. Six Commissioners who shall include two Commissioners from each State shall constitute a quorum. The vote of at least two-thirds of the Commissioners when a quorum is present shall be necessary for the action of the Commission."

MR. KULP: I don't want to throw a monkey wrench in the wheel here, but supposing the United States of America does not appoint a Commissioner; necessarily there will have to be a chairman elected from among the Commissioners. And the next to the last line on page 8 says, "Each Commissioner, except the chairman, shall have one vote." Now, if we have a State Commissioner as chairman, we don't want to deprive him of a vote.

MR. MERRILL: You wouldn't be.

MR. KULP: Why?

MR. MERRILL: Because he is a State Commissioner even though he is acting as chairman.

MR. KULP: "Each Commissioner, except the chairman, shall have one vote."

THE CHAIRMAN: It is pretty remote that there won't be a United States representative.

MR. KULP: I wouldn't hold it up for any change on that.

THE CHAIRMAN: I think Mr. Merrill has another point.

MR. MERRILL: I think probably the By-Laws that the Commission will adopt may clarify that.

THE CHAIRMAN: You surely wouldn't deprive a state of its vote.

COM. BISHOP: Maybe that should be fixed to read and say what it means.

THE CHAIRMAN: It does.

MR. KULP: It could say, "except the United States Commissioner".

MR. PERSON: If the Federal government didn't want to appoint a Commissioner, you could make someone else acting chairman and he could vote; otherwise, no one would accept the chairmanship if he couldn't vote. I think it is all right the way it is.

MR. KULP: I wouldn't hold it up.

MR. MERRILL:

"B. The compensation and expenses of each commissioner and each adviser shall be paid by the government which he represents. All expenses incurred by the Commission in the administration of this Compact, except those paid by the United States of America, shall be paid by the signatory States on an equal basis.

"C. The Commission shall have power to:

"1. Adopt by-laws, rules, and regulations not inconsistent with this Compact:

"2. Acquire, hold, convey or otherwise dispose

of property;

"3. Employ such persons and contract for such services as may be necessary to carry out its duties under this Compact;

"4. Sue and be sued as a legal entity in any court of record of a signatory State, and in any court of the United States having jurisdiction of such action;"

Now, it is suggested that there be inserted here as No. 5, this:

"5. Cooperate with State and Federal agencies in matters relating to water pollution of interstate significance;"

That was referred to when that phrase was eliminated from the first page, as you will remember.

COM. CLYDE: Would you read that again please?

(Language reread.)

MR. MERRILL: It may be that you would want a motion on that in conformance with the previous change.

COM. BISHOP: Mr. Chairman, I move that that be inserted as No. 5.

COM. CLYDE: Second the motion.

THE CHAIRMAN: Are there any remarks? You have heard the motion. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

MR. MERRILL:

"6. Perform all functions required of it by this Compact and do all things necessary, proper or convenient

in the performance of its duties hereunder, independently or in cooperation with others, including State and Federal agencies.

"D. The commission shall:

"1. Enforce this Compact and its orders made hereunder by suit or other appropriate action;

"2. Annually compile a report covering the work of the Commission for the water year ending the previous September 30, and transmit it to the President of the United States and to the Governors of the signatory States on or before April 1 of each year;

"3. Prepare and transmit to the Governors of the signatory States, and to the President of the United States on or before a date to be determined by the Commission, a report of expenditures during the current biennium, and an estimate of requirements for the following biennium.

"ARTICLE IV

"Rights to direct flow water shall be administered in each signatory State under State law, with the following limitations:

"A. When there is a water emergency, as hereinafter defined for each division, water shall be distributed therein as provided below.

"1. Upper Division

"a. When the divertible flow as defined below

for the Upper Division is less than 1,250 second--feet, a water emergency shall be deemed to exist therein and such divertible flow is allocated for diversion in the river sections of the Division as follows:

Upper Utah Section Diversions - 0.6 per cent,

Upper Wyoming Section Diversions - 49.3 percent,

Lower Utah Section Diversion - 40.5 per cent

Lower Wyoming Section Diversions - 9.6 percent

Such divertible flow shall be the total of the following five items:

- (1) Upper Utah Section Diversions in second-feet,
- (2) Upper Wyoming Section Diversions in second-feet,
- (3) Lower Utah Section Diversions in second-feet,
- (4) Lower Wyoming Section Diversions in second-feet,
- (5) The flow in second-feet passing Pixley Dam

"b. The Hilliard East Fork Canal, Lannon

Canal, Lone Mountain Ditch, and Hilliard West Side Canal, which divert water in Utah to irrigate lands in Wyoming, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

"c. The Chapman, Bear River, and Francis Lee Canals, which divert water from the main stem of Bear River in Wyoming to irrigate lands in both Wyoming and Utah, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

"d. The Beckwith Quinn West Side Canal, which diverts water from the main stem of Bear River in Utah to irrigable lands in both Utah and Wyoming shall be supplied from the divertible flow allocated to the Lower Utah Section Diversions."

MR. KULP: Is Beckwith Quinn two words or a hyphenated word?

MR. MERRILL: I thought it was two words.

MR. SKEEN: That has been my understanding .

THE CHAIRMAN: How about it, Mr. Johnson?

MR. L. B. JOHNSON: They were separate names,

separate incorporators.

MR. MERRILL:

"e. If for any reason the aggregate of all diversions in a river section of the Upper Division does not equal the allocation of water thereto, the unused portion of such allocation shall be available for use in the other river sections in the Upper Division in the following order: (1) in the other river section of the same State in which the unused allocation occurs; and (2) In the river sections of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph "e".

"f" Water allocated to the several sections shall be distributed in each section in accordance with State law.

"2 Central Division

"a. When either the divertible flow as herein after defined for the Central Division is less than 870 second-feet, or the flow of the Bear River at Border Gaging Station is less than 350 second-feet, whichever shall first occur, a water emergency shall be deemed to exist in the Central Division and the total of all diversions in Wyoming from Grade Creek, Pine Creek, Bruner Creek

and Pine Creek Springs, Spring Creek, Sublette Creek, Smiths Fork, and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and from the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border shall be limited for the benefit of the State of Idaho, to not exceeding forty-three (43) percent of the divertible flow. The remaining fifty-seven (57) percent of the divertible flow shall be available for use in Idaho in the Central Division, but if any portion of such allocation is not used therein it shall be available for use in Idaho in the Lower Division.

The divertible flow for the Central Division shall be the total of the following three items:

- (1) Diversions in second-feet in Wyoming consisting of the sum of all diversions from Grade Creek, Pine Creek, Brunner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, and Smiths Fork and all the tributaries of

Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border, Wyoming.

- (2) Diversions in second-feet in Idaho from the Bear River main stem from the point where the river crosses the Wyoming-Idaho State line near Border to Stewart Dam including West Fork Canal which diverts the Stewart Dam.
- (3) Flow in second-feet of the Rainbow Inlet Canal and of the Bear River passing downstream from Stewart Dam.

"b. The Cook Canal, which diverts water from the main stem of the Bear River in Wyoming to irrigate lands in both Wyoming and Idaho, shall be considered a Wyoming diversion and shall be supplied from the divertible flow allocated to Wyoming.

"c. Water allocated to each State shall be distributed in accordance with State law.

"3. Lower Division

"a. When the flow of water across the Idaho-Utah boundary line is insufficient to

satisfy water rights in Utah, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division, and during such emergency, water shall be delivered in accordance with such schedules by the State official charged with the administration of public waters.

"B. The Commission shall have authority upon its own motion (1) to declare a water emergency in any or all river divisions based upon its determination that there are diversions which violate this Compact, and which encroach upon water rights in a lower State, (2) to make appropriate orders to prevent such encroachments, and (3) to enforce such orders by action before State administrative officials or by court proceedings.

"C. When the flow of water in an interstate tributary across a State boundary line is insufficient to satisfy water rights on such tributary in a lower State, any water user may file a petition with the Commission alleging that by reason of diversions in any upstream State he is being deprived of water to which he is justly entitled and that by reason thereof a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds that a water emergency exists and that interstate control of water of such tributary is necessary, it shall put into effect water delivery schedules based on priority of rights and prepared without regard to the State boundary line. The State officials in charge of water distribution on interstate tributaries may appoint and fix the compensation and expenses of a joint water commissioner for each tributary. The proportion of the compensation and expenses to be paid by each State shall be determined by the ratio between the number of acres therein which are irrigated by diversions from such tributary, and the total number of acres irrigated from such tributary.

"D. In preparing interstate water delivery schedules the Commission, upon notice and after public hearings, shall make findings of fact as to the nature, priority and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops, time of use, and related matters; provided that such schedules shall recognize and incorporate

therein priority of water rights as adjudicated in each of the signatory States. Such findings of fact shall, in any court or before any tribunal, constitute prima facie evidence of the facts found.

"E. Water emergencies provided for herein shall terminate on October 15 of each year unless terminated sooner, or extended by the Commission."

THE CHAIRMAN: Would you like to recess for lunch or go on?

COM. CLYDE: Let's go on.

MR. MERRILL: I have got to be at an appointment at one for a short time

THE CHAIRMAN: All right.

MR. MERRILL:

"ARTICLE V

"A. Existing storage rights in reservoirs heretofore constructed above Stewart Dam are as follows:

Idaho	324 acre-feet
Utah	11,850 acre-feet
Wyoming	2,150 acre-feet

Additional rights are hereby granted to store in any water year above Stewart Dam, 35,500 acre-feet of Bear River water and no more for use in Utah and Wyoming; and to store in any water year 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 shall

not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. One-half of the 35,500 acre-feet of additional storage right above Stewart Dam so granted to Utah and Wyoming is hereby allocated to Utah, and the remaining one-half thereof is allocated to Wyoming, but in order to attain the most beneficial use of such additional storage consistent with the requirements of future water development projects, the three Commissioners for Utah and the three Commissioners for Wyoming are hereby authorized, subject to ratification by the legislature of Utah and the legislature of Wyoming, to modify by written agreement the allocations of such additional storage.

"B. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power & Light Company Bear Lake datum (the equivalent of elevation 5,915.86 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency"--
And in the new draft, a comma is there inserted.

--"but after release for irrigation"--

The comma is eliminated.

--"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 paragraph 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 Utah Power & Light Company Bear Lake datum</u>
5,000	5,913.24
10,000	5,913.56
15,000	5,913.87
20,000	5,914.15
25,000	5,914.41
30,000	5,914.61
35,500	5,914.69
36,500	5,914.70

"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 hereby recognized and confirmed subject only to the restrictions hereinbefore recited."

MR. MERRILL: Is there any necessity for a motion for those changes on the commas?

THE CHAIRMAN: I don't think so.

MR. MERRILL: I wouldn't think so.

"ARTICLE VI

"It is the policy of the signatory States to encourage additional projects for the development of the water resources of the Bear River to obtain the maximum beneficial use of water with a minimum of waste, and in furtherance of such policy, authority is granted within the limitations provided by this Compact, to investigate, plan, construct, and operate such projects without regard to State boundaries, provided that water rights for each such project shall, except as provided in Article V, paragraph A thereof, be subject to rights theretofore initiated and in good standing.

"ARTICLE VII

"A. No State shall deny the right of the United States of America, and subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person or entity of another signatory State, to acquire rights to the use of water or to construct or to participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one State for use of water in another State, either directly or by exchange. Water rights acquired for

out-of-state use shall be appropriated in the State where the point of diversion is located in the manner provided by law for appropriation of water for use within such State.

"B. Any signatory State, any person or any entity of any signatory State"--

Insert a comma.

--"shall have the right to acquire in any other signatory State such property rights as are necessary to the use of water in conformity with this Compact by donation, purchase, or, as hereinafter provided"--

That semicolon is out.

--"through the exercise of the power of eminent domain in accordance with the law of the State in which such property is located. Any signatory State, upon the written request of the Governor of any other signatory State for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price acceptable to the requesting Governor, or if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or to the person, or entity designated by its Governor provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining such property shall be paid by the requesting State or the person or entity designated by its Governor.

"C. Should any facility be constructed in a signatory State by and for the benefit of another signatory State or persons or entities therein, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located.

"D. In the event lands or other taxable facilities are acquired by a signatory State in another signatory State for the use and benefit of the former, the users of the water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such facilities are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average of the amount of taxes annually levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivision of the State.

"E. Rights to the use of water acquired under this Article shall in all respects be subject to this Compact.

"ARTICLE VIII

"Stored water, or water from another watershed may be turned into the channel of the Bear River in one State, and a like quantity, with allowance for loss by evaporation, transpiration, and seepage, may be taken out of the Bear

River in another State either above or below the point where the water is turned into the channel, but in making such exchange the replacement water shall not be inferior in quality for the purpose used or diminished in quantity. Exchanges shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid.

"ARTICLE IX

"A. The following rights to the use of Bear River water carried in interstate canals are recognized and confirmed.

<u>Name of canal</u>	<u>Date of priority</u>	<u>Primary right second-feet</u>	<u>Lands irrigated</u>	
			<u>Acres</u>	<u>State</u>
Hilliard East Fork	1914	28.00	2,644	Wyoming
Chapman	8-13-86	16.46	1,155	Wyoming
	8-13-86	98.46	6,892	Utah
	4-12-12	.57	40	Wyoming
	5- 3-12	4.07	285	Utah
	5-21-12	10.17	712	Utah
	2- 6-13	.79	55	Wyoming
	8-28-05	134.00 ^{1/}		
Francis Lee	1879	2.20	154	Wyoming
	1879	7.41	519	Utah

^{1/} 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.

All other rights to the use of water carried in interstate canals and ditches, as adjudicated in the State in which the point of diversion is located, are recognized and confirmed.

"B. All interstate rights shall be administered by the State in which the point of diversion is located and during times of water emergency, such rights shall be filled from the allocations specified in Article IV hereof for the Section which the point of diversion is located, with the exception that the diversion of water into the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal shall be under the administration of Wyoming. During times of water emergency these canals and the Lone Mountain Ditch shall be supplied from the allocation specified in Article IV for the Upper Wyoming Section Diversions.

"ARTICLE X

"Applications for appropriation, for change of point of diversion, place and nature of use, and for exchange of Bear River water shall be considered and acted upon in accordance with the law of the state in which the point of diversion is located, but no such application shall be approved if the effect thereof will be to deprive any water user in another state of water to which he is entitled. The official of each State in charge of water administration shall, upon the filing of an application affecting Bear River water, transmit a copy thereof to the Commission.

"ARTICLE XI

"Nothing in this Compact shall be construed to prevent the United States, a signatory State or political sub-

division thereof, person, corporation, or association, from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under State or Federal law or under this Compact.

"ARTICLE XII

"Nothing contained in this Compact shall be deemed

"1. To affect the obligations of the United States of America to the Indian tribes;

"2. To impair, extend or otherwise affect any right or power of the United States, its agencies or instrumentalities involved herein; nor the capacity of the United States to hold or acquire additional rights to the use of the water of the Bear River;

"3. To subject any property or rights of the United States to the laws of the States which were not subject thereto prior to the date of this Compact;

"4. To subject any property of the United States to taxation by the States or any subdivision thereof, nor to obligate the United States to pay any State or subdivision thereof for loss of taxes.

"ARTICLE XIII

"At intervals not exceeding twenty years, the Commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such

proposed amendments have been ratified by the legislatures of the signatory States and consented to by Congress.

"ARTICLE XIV

"This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

"ARTICLE XV

"Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any signatory State or to the Constitution of the United States, all other severable provisions of this Compact shall continue in full force and effect.

"ARTICLE XVI

"This Compact shall be in effect when it shall have been ratified by the Legislature of each signatory State and consented to by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, The Commissioners and their advisers have executed this compact in five originals, one

of which shall be deposited with the General Services Administration of the United States of America, one of which shall be forwarded to the Governor of each of the signatory States, and one of which shall be made a part of the permanent records of the Bear River Commission.

"Done at Salt Lake City, Utah, this 4th day of February 1955.

"For the State of Idaho:"--

And so forth.

THE CHAIRMAN: Thank you for reading it, Mr. Merrill. You went right through; even the earthquake didn't stop you.

MR. MERRILL: No. Did we have an earthquake?

COM. BISHOP: Sure. I noticed it.

MR. MERRILL: I didn't notice it.

(Informal discussion.)

THE CHAIRMAN: There are several people that want to leave very soon. I think maybe the best way to proceed is to call for any remarks that you may have, anything before we call for any action. Idaho.

COM. COOPER: We have some gentlemen here on Thomas Fork that may have something they would like to say to the Commission at this time.

THE CHAIRMAN: Could we first go through and see if there are any errors that anyone of you caught, or any changes, and then go to that?

COM. COOPER: We didn't catch any.

THE CHAIRMAN: You didn't have any. Wyoming?

COM. BISHOP: Mr. Chairman, I would like to ask a question about the statement here on page 16, Article IV, D, starting at the bottom of the page: " In preparing interstate water delivery schedules the Commission, upon notice and after public hearings, shall make findings of fact as to the nature, priority and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops. . . ." I thought that was all out. It seems to me that this Commission could decide that they didn't want to go according to the allocations we made at all, but could decide maybe over the state line they had some land that was better land and the water ought to be used over there, and they could do that. I thought that paragraph was out.

MR. MERRILL: No.

COM. BISHOP: Is that the idea, that they can do that? If it is, I am not in favor of it.

MR. SKEEN: That affects only the Lower Division between Utah and Idaho and the interstate tributaries. That is the only part of the river that would be affected by this.

MR. MERRILL: It doesn't affect you at all.

COM. BISHOP: Okay. If the secretary has got it down there to that effect, I am satisfied with it.

MR. JIBSON: Is that properly taken care of, that we tie that to the tributaries? We know that is the intent.

(General discussion.)

THE CHAIRMAN: Do you have any more suggestions?

COM. BISHOP: No. I don't.

THE CHAIRMAN: Do you have any, Utah?

COM. CLYDE: No.

THE CHAIRMAN: Mr. Jibson, do you have any suggestions?

MR. JIBSON: I just discussed this thing with Mr. Skeen that Wyoming brought up. If there is no question about the reference to interstate tributaries or to the Lower Division, the Article is probably all right as written. I mean, Mr. Bishop's concern about it would not be material. And as long as Ed says that legally there can't be any question but that it only pertains to the interstate tributaries and to the Lower Division, why we are all right on it.

THE CHAIRMAN: Anything else? (No response.) Now, if you are ready, Idaho, we will go back to the Thomas Fork people, if they care to make a statement.

MR. MERRILL: Has Utah approved it?

COM. COOPER: Has Utah approved it?

THE CHAIRMAN: They had no suggestions.

COM. COOPER: We just want to ask, who is going to sign this? Are all of the Utah advisers and all of the Wyoming advisers going to sign?

THE CHAIRMAN: We covered that when we started out. We called for the number from each state-- and we have had that prepared on that basis--when I first called the meeting

order. There are three from Idaho, seven from Utah, and five from Wyoming.

COM. COOPER: That is all right. We had a question arise; we just wanted to clear it.

COM. BISHOP: All the Wyoming people who are signing are Assistant Commissioners appointed by the Governor.

THE CHAIRMAN: Mr. Cooper, you heard Mr. Bishop's statement that the ones in Wyoming who will sign will be the Assistant Commissioners as advisers appointed by the Governor.

MR. BLACK: No advisers just as advisers, not as such. I am an adviser, and also an Assistant Commissioner; but I will sign as an Assistant Commissioner, not particularly as an adviser.

COM COOPER: Okay, that is agreeable with us.

THE CHAIRMAN: Before signing the Compact, do you want to hear from anyone?

COM. BISHOP: I think we ought to hear from the Thomas Fork people.

COM. COOPER: Yes, they have a statement.

THE CHAIRMAN: We will call on the Thomas Fork people for any statement you care to make .

MR. LINFORD: We object to the Compact that is drawn up now on the grounds that we were taken in suddenly without representation and a chance to show our needs. We were led to believe over a period of years that we weren't part of the Compact. As further proof, we weren't part of the Bear River

decree, and we were more or less left out. And all of a sudden in the last four or five meetings, we were taken in. We weren't aware we were taken in. We were taken in and an allocation of a thousand acre-feet was set out for us.

This doesn't take care of our needs. According to some data Mr. Jibson has, our land needs 3.0 acre-feet per acre for irrigation; and our direct flow rights give us an average a year of somewhere around 1.6. Therefore, we are in worse need for storage water than any other acreage under the Compact.

We feel like we have been taken in without a chance for representation, it has been dished out and acted on. And, therefore, we are opposed to the Compact as it now is.

THE CHAIRMAN: You have heard the statement. Does anyone have any remarks to make?

(General discussion.)

COM. COOPER: I have a statement I would like to make in connection with this.

THE CHAIRMAN: Mr. Cooper.

COM. COOPER: During the proceedings of the drafting of this Compact, the Idaho Commission acted in good faith. All we understood that Thomas Fork was asking for was 1,000 acre-feet. And you will recall, you who are members of the Commission, and you who are present, that we did as best we could to justify their needs and qualify them as being entitled to the 1,000 acre-feet of storage under the Compact. We were

unaware of the fact that they wanted any more water than this.

Now we are willing to make any concessions that are within our power. But by reason of the fact that the Compact has gone as far as it has, by reason of the fact that we feel that we have been very reasonable--we are still willing to negotiate--we feel that they still have an opportunity, provided that they can negotiate with the people who have the storage rights, to acquire waters, because it is not within our power to grant it to them.

COM. BISHOP: Mr. Cooper, would you like to have me make a statement about that. Of course I know all about these filings, and I might tell you for your information--I have talked some with Mr. Kulp about it--I don't intend to allow the Etcheverry application which has been approved--that is, the Wyoming Legislature, I believe, has passed the bill that would authorize me to approve it. Now they authorized me; they don't direct me to approve it. And I intend to work with Mr. Kulp and I fully intend to see to it that those people get together and agree on a distribution of that water that will be fair.

I can see where it would be extremely unfair for some one appropriator or one or two appropriators to go in there and hog all of the thousand acre-feet that has been provided for. And therefore I am going to cooperate with the State Reclamation Engineer to the effect that a satisfactory arrangement is made for the division of the thousand acre-feet among

the Idaho users.

COM. COOPER: Thank you.

THE CHAIRMAN: Any further comments?

MR. LINFORD: I would like to make another suggestion before you fellows. In Article V, page 17, where it reads: "Additional rights are hereby granted to store in any water year above Steward Dam, 35,500 acre-feet of Bear River water and no more for use in Utah and Wyoming; and to store in any water year in Idaho or Wyoming on Thomas Fork 1,000 acre-feet of water and no more for use in Idaho." I would like to ask you to eliminate the part where it says, "and no more" following the "1,000 acre-feet of water.... for use in Idaho."

THE CHAIRMAN: Any comments on that remark?

MR. JIBSON: May I ask a question, Mr. Chairman, of the Secretary?

THE CHAIRMAN: Mr. Jibson?

MR. JIBSON: By eliminating that, Mr. Skeen, would it leave the way open for future negotiations within the state for the parties concerned; or is it necessary to eliminate that to leave it open?

MR. SKEEN: I don't think it would have any legal effect one way or the other to leave it out. But we have used it above and it was put in to emphasize the fact that there is to be so much storage above Bear Lake, and that is why the language was left that way. I don't see anything to be gained by removing it for those people up there. I don't think it

would change their situation a bit.

MR. JIBSON: What is their situation then? Is this wording confining enough now that the thousand acre-feet is the limit to their storage?

MR. SKEEN: It is the limit the way it is written now , and that was the intention throughout.

MR. JIBSON: And if they wanted to make further negotiations with people within their own state, and it is not an interstate problem, this would still limit them as it is worded?

MR. SKEEN: This provides for storage in Idaho or Wyoming. And of course they could negotiate with their own people in Idaho, but they wouldn't get a priority ahead of Bear Lake unless it is set out in the Compact here.

MR. MERRILL: Unless they would buy it.

MR. SKEEN: That is right.

MR. KULP: They couldn't get ahead of Bear Lake if they did buy Bear Lake storage; it would be the same priority.

MR. SKEEN: That is right

MR. LINFORD: Mr. Merrill, would you give us a legal opinion on that article we just spoke of?

MR. MERRILL: I wouldn't be able to without giving it considerable study. I don't know.

MR. LINFORD: I would still ask--

MR. MERRILL: Without going into it I would rather agree with Mr. Skeen's suggestion.

THE CHAIRMAN: Any further remarks or suggested action? Are there any other comments from the advisers?

MR. L. B. JOHNSON: Yes, Mr. Chairman. In my mind I am not satisfied on page 23 with the way the right is set up for the Chapman Canal and the Neponset Reservoir. I want that interest treated fairly, but I would like to suggest we add this after "6,900 acre-feet", "which is a component part of the irrigation right for these lands."

COM. BISHOP: Just where is that? I didn't get it.

MR. JOHNSON: It is on the bottom of page 23 of the Compact, Mr. Bishop.

MR. BLACK: In the footnote?

MR. JOHNSON: Yes. It is not clear to me whether or not the reservoir right which is confirmed in the Compact is only storage. I want this section to confirm it as a component part of the irrigation right on that so we don't have any duplication and that those lands can claim a flow right regardless of the reservoir right.

COM. BISHOP: They can't take water to exceed 134 second-feet.

MR. JOHNSON: Over to fill it, that is right. I have no objection to that. But it seems to me that there could be a dry season, and if 134 acre-feet were diverted to that and we filled it to capacity, say we have a reservoir at the Narrows, it is going to suffer just to that extent. I want them to have their share of the water. But in my mind, Ed,

if that were added, at least it would satisfy my thinking that their reservoir storage becomes a component part of their right.

COM. BISHOP: But it isn't in addition.

MR. JOHNSON: That is right, see to it that it isn't.

COM. BISHOP: The total maximum that they have ever taken there is 134 feet, and they can't take any more than that. That reservoir, as you probably know, doesn't have a permit from Wyoming, but we are recognizing it this way; and they can take the water over there and store it and it is being recognized. But we have gone into that pretty carefully, and it seems to me the way it is worded covers it.

(General discussion.)

COM. CLYDE: Mr. Chairman, for the purposes of clarification, on page 23, under footnote 1, I would move that we add the following words, "which is a component part of the irrigation right for the lands listed above." The last sentence would then read, "The storage right in Neponset Reservoir is for 6,900 acre-feet which is a component part of the irrigation right for the lands listed above."

MR. JOHNSON: Should we define them as just being Utah lands? All the Desert lands which were affected by the reservoir were taken in by some other people; those Wyoming rights are not Desert rights. It is "the lands in Utah listed above".

COM. CLYDE: Is that all right, Clark?

COM. BISHOP: I don't get through my head what you are trying to do.

COM. CLYDE: It is just so there is no duplicating right there. This is a part of the direct flow rights, the same lands. In other words, we wouldn't want them to come in and claim a full right for the lands twice.

COM. BISHOP: As long as it makes it plain that the total amount they can divert at any one time is 134 second-feet, I will agree with you.

COM CLYDE: Then we will change it to read, "The storage right in Neponset Reservoir is for 6,900 acre-feet which is a component part of the irrigation right for the Utah lands listed above." That ties it down to those specific Desert lands so there is no duplication of that right. That is the only purpose there.

COM. BISHOP: They have stored water on a direct flow right, they never did have a reservoir right; and of course that is what they are going to continue to do. But we don't want them to go in and enlarge the canal to carry 400 second-feet. We want to confirm what they have been doing but we don't want to enlarge upon it. When you add it up it is way more than 134 feet; they have two or three times as much water rights adjudicated as irrigated.

MR JIBSON: If you took out the Wyoming lands, then there would be less than 134 second-feet, adding these up for Utah.

COM. BISHOP: One hundred twenty is the most I ever measured in the ditch.

MR. JIBSON: 134 was an instantaneous measurement.

COM. BISHOP: I figure 120 is what it ought to be.

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

COM. COOPER: I will second Mr. Clyde's motion.

COM. BISHOP: Question.

THE CHAIRMAN: You have heard the motion and it has been seconded. Idaho?

MR. COOPER: Aye.

THE CHAIRMAN: Utah?

COM. CLYDE: Aye.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

COM. COOPER: Mr. Chairman, I would like to make one more statement in connection with the needs and requirements for the benefit of all concerned, and that is this: In the allocating of the upstream storage we have been dealing with the situation where the waters have already been appropriated or over-appropriated. Consequently, it hasn't been a matter of distributing according to needs actually, but it has been a matter of dividing according to waters available for storage upstream. I would just like that in the record, please.

COM. CLYDE: Mr. Chairman, I move we formally approve the Compact and proceed with the signing.

COM. COOPER: I will second it.

THE CHAIRMAN: You have heard the motion and it has been seconded. Are there any remarks?

MR. LINFORD: I would like to make a remark. I would like to have some action on that statement I made a few minutes ago about following a thousand acre of feet, and take a vote and see if we can eliminate the place where we say " and no more".

THE CHAIRMAN: No one made a motion for it.

MR. LINFORD: Is it permissible for me to make a motion?

THE CHAIRMAN: In this case, I think not. It would have to be made through your Idaho Commission.

COM. COOPER: Okay, I will make the motion.

THE CHAIRMAN: Are there any seconds?

COM. BISHOP: Did he make a motion?

MR. PERSON: He makes a motion to eliminate "and no more".

COM. BISHOP: I will second that motion.

THE CHAIRMAN: Was that your motion, to eliminate those words?

COM. COOPER: Eliminate those words.

THE CHAIRMAN: "And no more".

COM. COOPER: That is, in that particular instance.

THE CHAIRMAN: Are there any remarks?

COM. CLYDE: Mr. Chairman, I have no objection to the

elimination of them, but the legal counsel indicates that it doesn't make any difference whether they are there or not. They are there in one place. I think the intent of the thing was specific and they were put there to show the intent, and that was that the upstream storage should be limited, and this merely expresses that specifically.

COM. BISHOP: It wont affect us though, George. If they get some more upstream storage, it isn't going to come off us.

COM. CLYDE: That is why I don't want to argue about it.

COM. BISHOP: I think if there is any way we can leave it open so they can negotiate for more, it should be done. That is the way I feel about it.

THE CHAIRMAN: Are you ready to vote on the motion? Idaho?

COM. COOPER: Aye.

THE CHAIRMAN: Utah?

COM. CLYDE: In line with my statement I will vote "Aye" on it.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

MR. LINFORD: Thank you.

THE CHAIRMAN: Now we have the motion of Mr. Clyde to formally approve the Compact and sign it, seconded by Mr. Cooper. Idaho?

COM. COOPER: Aye

THE CHAIRMAN: Utah?

COM. CLYDE: Aye

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: Before we sign it I would like to make this statement.

This is a major accomplishment for which you should be congratulated. It shows what people can do in settling water problems by negotiation rather than by prolonged litigation. This has not been possible without healthy give and take by all concerned and willingness to compromise in the common interest. There has, of course, been some good horse-trading, if you want to call it that, but this is in the American tradition.

Water right problems on the Bear River system below Bear Lake were settled by the Federal decree of 1922, and by the Kimball decree of 1924. This left a real need to settle the water problems above Bear Lake, which is accomplished by this Compact.

The ratification of the Compact by the legislatures of the three states and the approval by the Congress of the United States will mean that more development can go forward. At the same time the old rights will remain intact and the holders of the Junior rights will know where they fit into the picture in the administration of the river.

As United States Representative and Chairman of the Commission, I wish to commend the Commissioners and their advisers for being so patient in working out a difficult problem. I would like also to express my appreciation for the confidence you have had in the Federal offices that have worked right along with you, particularly the Geological Survey and the Bureau of Reclamation offices at Logan. I think we should single out also Mr. E. J. Skeen of the Solicitor's Office, who has acted as our Secretary, and the attorneys from the states who have worked diligently in drafting this Compact to conform to the wishes of the Commission and their advisers. I should say too that the advisers of the State Commissioners have been very helpful in arriving at the terms of the Compact.

I am convinced that you have justly earned the gratitude of your respective states, and that the future will bear out the soundness of this Compact. I personally am grateful for the opportunity of being one of the signers of it. (Applause.)

Would you like to go ahead with the signing and get your photographs?

COM. COOPER: Mr. Chairman, I understood there was another statement to be made.

THE CHAIRMAN: We will have to make reruns of three or four pages to catch these last corrections, but if it is all right we will go ahead and sign it and leave it to Mr. Skeen to get those pages inserted.

COM. BISHOP: I was thinking about adjourning to two o'clock and being back then.

MR. BLACK: Let's sign it now.

MR. J. L. WEIDMANN: I would like to suggest that a copy of your remarks be sent to each of the participants in this negotiation. I would appreciate very much having a copy of that.

THE CHAIRMAN: If the Commissioners would like that-- I dictated that to my secretary just a few minutes ago.

MR. WEIDMANN: I am sure we would all appreciate it.

THE CHAIRMAN: If it is all right with the Commission, I will be glad to do that.

(1:15 p.m., Wyoming representatives commence signing the six copies of the Compact, followed by the Idaho representatives, and the Utah representatives. Signing concluded at 1:45, following which pictures were taken.)

THE CHAIRMAN: Can we bring up just one other matter before we leave.

MR. SKEEN: A draft of a bill was prepared for introduction in the legislature of each of the three states and circulated here. I assume that each Commissioner got a copy.

COM. CLYDE: I have seen it, but I haven't a copy.

COM. BISHOP: I didn't see it.

MR. BLACK: I have a copy for you.

MR. SKEEN: Mr. Black has one for Wyoming. And, Mr. Cooper, you have one?

COM. COOPER: I don't have one.

MR. SKEEN: I gave one to Mr. Merrill. I had four or five copies. I was wondering if there were any suggestions for changes in that draft.

COM. CLYDE: I presume each state will have to modify it slightly to provide for the appointment of the Commissioners according to their respective state laws.

MR. SKEEN: Yes.

COM. CLYDE: On this question of the budget, I am not so sure we want to have that budget item in the ratification statute, for the reason that that also varies. In our case, for example, we have those funds set up in the Utah Water and Power Board, so we wouldn't want to set them up in the Compact. In the second place, we don't know how much we are going to use until we get it organized.

MR. KULP: We don't want our appropriation in the ratification bill.

COM. COOPER: No.

MR. SKEEN: We had better make those suggested changes in each state. I simply prepared this rough draft form to bring up all the points that should be considered. And if that is eliminated from the Utah statute--I don't know whether you want it in your Wyoming statute or not?

MR. BLACK: I don't know for sure. I would have to discuss that a little bit with the State Engineer. But I don't think there would be any harm to put it in there, because we

have an appropriation then if it goes through; and if it doesn't the money is referred to the General Fund.

THE CHAIRMAN: Does that dispose of that? Then, there is one other question, if you are through with that. In case the three legislatures approve the Compact, then I assume you will want a draft of bill to be introduced in the Congress. Probably the Senators and Congressmen of the three states would get together and introduce a bill in the Congress.

COM. CLYDE: Yes. I would suggest as soon as the states ratify this Compact that we again meet and draw such a bill for submission to the Congress, and at the same time we could organize the Commission. There is no point in organizing the Commission until the states ratify it. But in the meantime, it is the expressed opinion, I think, of the three states that we proceed with our cooperative measurements on the river under a plan which will be jointly developed by the representatives of the states and the Geological Survey.

THE CHAIRMAN: Then it is your suggestion that the Chairman call a meeting when he is notified--if he is notified--that all three legislatures ratified the Compact?

COM. CLYDE: I would like to suggest that each of the states keep the Chairman informed as to the progress of the legislation in their respective states; and as soon as the legislatures ratify it, that the Chairman call a meeting of the Commission.

COM. BISHOP: I will agree to that.

COM. COOPER: We will follow that recommendation,

THE CHAIRMAN: That will be done then.

MR. BLACK: Wyoming is going to have very short notice to get this in because the Legislature adjourns, I think it is either the 19th or 20th. The only way we can get this bill in is with unanimous consent now; the time for the introduction of bills is past. And I haven't got the bill yet, I can't get it probably in my hands until Tuesday, and it will take a day or day and a half to copy it. So, you can see that we are going to have a very short time to get this through, but I will do the best I can with it.

COM. CLYDE: We have two more days' grace in which to get bills in. We will have to get it in Tuesday at the latest.

THE CHAIRMAN: What is your situation, Mr. Cooper, in Idaho?

COM. COOPER: We can have it introduced as a Committee bill up until the 50th legislative day. It is assigned to the Committee on Irrigation and Water Resources and it can be introduced.

COM. CLYDE: Introduced in the Senate or the House?

COM. COOPER: We will introduce it in the Senate.

THE CHAIRMAN: Is there any further business?

COM. BISHOP: I move we adjourn.

COM. CLYDE: Mr. Chairman, may I ask Clark one question, and Mark: Should we attempt to fix any time now for

a meeting with the Geological Survey relative to next summer's program?

MR. KULP: They will be hard to get together too.

COM. BISHOP: Our Legislature has been asked for funds--and I am sure they will be provided--to go ahead on the same basis as the last two years.

COM. CLYDE: We have too.

MR. KULP: Let's put it up to the U.S.G.S. council, those three District Engineers. They will get together and--

COM. CLYDE: And call us in?

MR. KULP: Yes.

MR. JIBSON: What is that?

MR. KULP: Get those three District Engineers, Bell, Wilson and Newell, and have them set a date when we can meet with them.

MR. JIBSON: Have them initiate the date and notify you people they will meet with you?

COM. CLYDE: That is right, to develop the program for the coming year.

COM CLYDE: I second the motion to adjourn.

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

(2:00 p.m., Friday, February 4, 1955, Meeting adjourned.)
