

BEAR RIVER COMPACT COMMISSION

Transcript  
of  
Meeting  
held  
January 12, 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

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    Pocatello, Idaho

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    Utah, and Montpelier, Idaho

Melvin Lauridsen                      Montpelier, Idaho

A. R. Linford Raymond, Idaho

Harold D. Walter Raymond, Idaho

UTAH:

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Salt Lake City, Utah

Joseph M. Tracy State Engineer,  
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Power Board, Salt Lake City, Utah

John P. Stevens Member, Utah Water & Power Board,  
Henefer, Utah

Orville L. Lee Member, Utah Water & Power Board,  
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Salt Lake City, Utah

Ashby D. Boyle Utah-Idaho Sugar Company,  
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Garland, Utah

C. O. Roskelley Engineer, Utah-Idaho Sugar Company,  
Salt Lake City, Utah

J. L. Weidmann R. D. 1, Honeyville, Utah

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A. V. Smoot Corinne, Utah

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WYOMING:

Howard Black Attorney General,  
Cheyenne, Wyoming

H. T. Person	Dean of School of Engineering, University of Wyoming, Laramie, Wyoming
Paul A. Rechard	Wyoming Natural Resource Board, Cheyenne, Wyoming
P. W. Spaulding	Evanston, Wyoming
F. B. Myers	Evanston, Wyoming
Emil C. Gradert	Fort Bridger, Wyoming
Arden Pope	Sage, Wyoming
David P. Miller	Rock Springs, 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
M. T. Wilson	District Engineer, Salt Lake City, Utah
Francis M. Bell	District Engineer, Denver, Colorado
A. B. Harris	Logan, Utah

U. S. FISH AND WILDLIFE SERVICE:

V. T. Wilson	Brigham City, Utah
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PROCEEDINGS

The meeting was called to order by Mr. E. O. Larson,  
the Chairman, at 10:10 o'clock a.m., on Wednesday, January 12,

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

December 29, 1954

NOTICE OF MEETING

The next meeting of the Bear River Compact Commission will be held in the Bureau of Reclamation conference room (Room 307, 32 Exchange Place) in Salt Lake City, Utah, on Wednesday, January 12, 1955, at 9:30 a.m. The latest revision of the draft of Bear River Compact will be considered.

E. J. Skeen  
Secretary."

THE CHAIRMAN: We haven't a quorum here yet without Idaho, but I wonder if there is anything we can do in the way of paving the way for action on the minutes of the meeting of December 2nd and 3rd, and the meeting of December 14th and 15th. Those minutes are verbatim. We haven't tried to summarize them, have we, Mr. Skeen?

MR. SKEEN: No.

THE CHAIRMAN: These are the minutes here (indicating). I don't know how many pages there are--154 pages taken verbatim of the last meeting. But we can withhold action on them until Mr. Kulp and Mr. Cooper arrive.

I think Mr. Jibson has made a good suggestion. We

received a communication from Mr. Iorns of the Geological Survey in Oklahoma, who used to be in Logan, making certain suggestions; and since those suggestions only involve Wyoming and Utah, Mr. Jibson suggested we might go ahead and he could explain those while we are waiting for Mr. Kulp and Mr. Cooper. If you have no objection, and if that is all right with Utah and Wyoming, we will proceed.

MR. LAURIDSEN: That is all right. It doesn't concern us anyway.

THE CHAIRMAN: Will you go ahead, Mr. Jibson?

MR. JIBSON: You don't want him to read this letter?

MR. SKEEN: You might read the pertinent parts of it and just discuss it.

MR. JIBSON: There is one item, gentlemen, that was suggested in the last meeting. That concerns Mr. Person's suggestion, which deals only with Utah and Wyoming. In the memorandum sent out January 3rd, there was a suggestion made by Mr. Person modifying one of the clauses of the Compact which states that:

"Either State may divert water allocated to one Section of the Upper Division of that State in the other Section of the Upper Division of that State. If for any reason either State does not divert all the water allocated to it in the Upper Division, the unused portion may be diverted and used in either Section of the Upper Division of the other State, but no permanent right shall be

established through such diversion and use."

The Chairman received a letter from Mr. Iorns in which he has a comment or two to make on that. He states:

"I feel that this suggested change upsets the rather delicate balance that has been achieved in the last revised draft of the Compact. To equalize the effect of such a change, I would suggest that the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal be taken out of the Upper Wyoming Section and placed in the Upper Utah Section."

To clarify the meaning of this change a little bit, I believe if I show some percentages on the board we can study the present draft and the proposed change.

(Mr. Jibson places the following figures on the blackboard:)

	<u>Upper Utah</u>	<u>Upper Wyoming</u>	<u>Lower Utah</u>	<u>Lower Wyoming</u>
All Sections diverting	0.6%	49.3%	40.5%	9.6%
After Lower Wyoming shuts dry	0.7	(58.9) 54.5	(40.5) 44.8	0
After Upper Utah and Lower Wyoming shuts dry	0	(58.9) 54.9	(41.1) 45.1	0

Under the tentative draft as it is now set up, if all sections in the Upper Division are diverting their allocation, the percent division of the total divertible flow is 6/10 of one percent to Upper Utah, 49.3 percent to Upper Wyoming, 40.5 percent to Lower Utah, and 9.6 percent to Lower

Wyoming. The draft states that if any section or sections are not using all of their allocation, such allocation shall be divided among the other sections in the relationship of these percentages.

Now, the first thing that usually happens up there is that the Lower Wyoming Section dries up voluntarily soon after the 1st of July. So under the present draft, after Lower Wyoming shuts dry, these percentages become 7/10 percent, 54.5 percent, 44.8 percent, and zero.

The next thing that happens under normal conditions is that the Upper Section of Utah shuts dry. So after Upper Utah and Lower Wyoming shuts dry, the percentages become zero, 54.9 percent, 45.1 percent, and zero. In other words, at this point your total divertible flow is divided between Upper Wyoming and Lower Utah.

Essentially, the proposed change suggested by Mr. Person would do this: After Lower Wyoming shuts dry, his change would give the water allocated to Lower Wyoming to the Upper Wyoming Section. So under his suggestion, this would remain at 6/10 percent. Upper Wyoming instead of getting 54.5 percent would get 58.9 percent. And Lower Utah would get 40.5 percent without change. After both sections shut dry, Upper Wyoming would get 58.9 percent again, and Lower Utah 41.1 percent. Now this is essentially the difference as far as percentages go in the suggested change.

I just saw this letter from Mr. Iorns this morning

and I haven't had time to compute the different percentages if the Hilliard West Side Canal, Hilliard East Fork Canal, Lannon Canal and Lone Mountain Ditch were allocated to Upper Utah. We have those percentages in an older draft of the Compact and we could get them or compute them again. But it would change the 6/10 percent up to somewhere in the neighborhood of 4 or 5 percent, I believe--I am not sure--which then would more generally equalize this percentage with this one (indicating on blackboard), than we have in the present draft.

I don't know whether there is anything else in that letter he sent that is pertinent to this particular change or not. I believe the rest of his suggestions concerned the problem of when to begin regulation in the Upper Division, whether to use 1250 second-feet total divertible flow, or attempt to use the flow at Woodruff Narrows. I have also made a brief study on that; but if you care to discuss this thing further, I believe that is all I have concerning it.

(Idaho delegation arrives.)

MR. MERRILL: Mr. Chairman, this proposed change seems to me to be in direct conflict with the irrigation law of the respective states, which in each instance provides when the upper user doesn't use it, the water is available for the lower user. Here it is a method of transporting it upstream when the upper user doesn't use it. I think we had better be careful about that. I don't see why we should attempt to violate that fundamental principle of law any further than we

have.

MR. PERSON: I would like to discuss the whole situation. In the first place, the reason that zero is over there is because--is Representative Johnson here? No--because Utah water users are making it zero; when the regulation comes it is going to be 9.6 percent.

Second, moving the Wyoming users into the Utah Section is completely impractical politically. We can't go to our Legislature and take some of our water users and put them in the Upper Utah Section and get it through our Legislature.

Now the other thing, what we are doing here is setting up a Compact that doesn't make possible good use of the water, doesn't make possible rotation. And we are dividing water between states, not between sections. And this will be 9.6 percent; we talked to those water users and they said the only reason it wasn't 9.6 percent was because Utah water users were taking it in that Lower Utah Section.

MR. JIBSON: I might state in connection with Dean Person's statement that in the year 1954, which was a dry year, Lower Wyoming continued to divert throughout the season. That is the first year in which we have had diversion records that that practice has been followed. But it does indicate that in dry year at least, they won't shut dry shortly after the first of July, such as they have done in average years; and that may not be as important a factor in the dry years as we

are led to believe by studying average years.

MR. PERSON: Smith Fork users and Lower Wyoming users made it very clear if the 9.6 were available during the latter part of the season, they wanted it and could get it. That was the only talking point we had in that area for this whole Compact.

COM. CLYDE: Mr. Person, they went dry because there was no water rather than because they wanted to?

MR. PERSON: That is right.

COM. BISHOP: The only ones that dry up are the upper ones; we can't get the percent up to them.

COM. CLYDE: How do we reconcile your statement with Mr. Jibson's statement that the record only shows in 1954 they diverted throughout the season?

MR. PERSON: You will find in the latter part of the season the river is pretty dry and it is hard to divert, that is actually what they told me, and they had a diversion works so they could divert and they had some rains in some cases. But they said in 1954 and, in the future they will divert if they are short of water.

COM. CLYDE: In other words, there is no reason to expect after this river becomes regulated that they won't use their 9.6 percent every year.

MR. PERSON: At least that is what they tell me.

MR. ARDEN POPE: The old B. & Q. Dam--there has never been a time through the years when we haven't used the

McFarland Ditch when the water was available. That runs out on the bench very high. After our hay is watered by the B. & Q., then it is on our meadows. We have a bench canal that will hold all the water in the McFarland Ditch as long as we can hold it. We have alfalfa and grain that has to be watered as long as we can hold it.

THE CHAIRMAN: I think if there is no objection, now that Mr. Cooper and Mr. Kulp are here, we can go back on the agenda, and go on down and consider the comments of all those that have written in, and then we will come down to Mr. Iorns' communication a little later on.

The first item on the agenda is action on the minutes of the two previous meetings. Those minutes are a verbatim record of what took place. How do you want to handle them?

MR. SKEEN: Mr. Cooper probably hasn't seen these.

COM. COOPER: I think it would be a good idea to read them clear through, and that will pretty well take up the day.

MR. MERRILL: You talk like a legislator, reading a bill in full and at length.

THE CHAIRMAN: Does the Commission want to just pass them for the present until you have time to read them? Is that what you want?

MR. KULP: Is there any dynamite in them?

THE CHAIRMAN: I don't know whether you will ever read them. I am just asking how you want to handle them, whether you want to pass them over.

COM. COOPER: Let us pass the minutes for the time being.

COM. BISHOP: I will agree to that. I don't want to approve them until I read them and I haven't got time to read them this morning.

THE CHAIRMAN: Is that agreeable?

COM. CLYDE: Yes.

THE CHAIRMAN: We will pass over the minutes of the last two meetings. The next item we placed on the agenda, as a result of the action taken at the last meeting all of you wanted a draft of Compact prepared and sent out to you as a result of the instructions to your Drafting Committee or Legal Committee, and that was done. The draft of Compact was also sent to the various Government agencies, which we will come to later on. We have received communications back from certain agencies which we expect to take up. But before that, I suppose the next thing in order would be to call for a report from the states as a result of sending the tentative draft out to you. So taking them in alphabetical order, Idaho, have you any report to make or any comments on the draft sent out to you?

COM. COOPER: This last draft of Compact as prepared meets with our approval. We of course have gone over them carefully but we are not in agreement with the amendments that were sent to us from the Department containing the amendments as they were sent in by Mr. Person.

THE CHAIRMAN: Well we simply sent them on out to you at the request of Wyoming for consideration.

COM. COOPER: That is what I mean. We are willing to accept the draft as it was agreed upon at our last meeting and approved; we are in agreement with that. But we are not in agreement with the amendments that we received.

THE CHAIRMAN: That is all the comment you have at this time?

COM. COOPER: That is all we have at this time.

THE CHAIRMAN: I think it should be clearly understood that the Commission will want to consider some of the comments and suggestions of some of the Federal agencies after they are read. So we will keep that in mind. Utah.

COM. CLYDE: I have a comment on Article V.B., the question of storable water at Stewart Dam. Some of our people have wanted to be sure that the language was such that all storable water at Stewart Dam would be put into storage whenever the Lake level was below the limit fixed for the irrigation reserve. And further, in order that there be no misunderstanding, that Mud Lake be considered a part of Bear Lake in the operation of this facility as storage. Whether the water be in Bear Lake or Mud Lake, it be considered to be the same storage.

I would suggest therefore--this language may not be right but I will throw it out for your consideration--that immediately following the second line from the bottom, after

the word "irrigation", at the end of the sentence, insert another sentence: "Whenever the lake level is below the controlling elevation for the irrigation reserve, all storable water at Stewart Dam shall be put into storage and not used directly for power alone."

COM. BISHOP: Go a little slower, George, and we will write it in.

COM. CLYDE: This will be the sentence: "Whenever the lake level is below the controlling elevation for the irrigation reserve, all storage water at Stewart Dam shall be put into storage and not used directly for power alone." End of sentence. Then another sentence: "Mud Lake for the purposes of this Compact will be considered a part of Bear Lake."

THE CHAIRMAN: That is all you have?

COM CLYDE: Yes, that is all I have on that point. Then on the next page, page 15, we see the words, "except in emergency"; what constitutes an emergency in this sense? Should we define the term "emergency"? Can it be defined? I put that out as a question.

THE CHAIRMAN: Does anyone care to answer Mr. Clyde's question, or comment on it, rather?

COM. CLYDE: I might, Mr. Chairman, make this comment. You will notice that sentence says, "The water of such reserve shall not be released solely for the generation of power, except in emergency. ." I think it would be unwise to try to determine what constitutes an emergency from the

standpoint of the power operation. Therefore, would it be possible in the definition of this emergency to point out that in case of an emergency, without delaying action, the Commission be advised of the emergency for such action as it might have to take. In other words, you see it gives the operations a chance to act immediately, but at the same time it provides a means of presenting that case before the Commission for their determination of further action. I don't know just what language that should be.

COM. COOPER: Mr. Chairman, may I ask Dr. Clyde a question.

THE CHAIRMAN: Yes.

COM. COOPER: Why do you want that defined? Isn't an emergency an emergency in any case?

COM. CLYDE: Well, I suppose that is true, and I wouldn't want to tie up any action. But it seems to me that after an emergency occurs, the Commission at least should be advised of that emergency in case action by the Commission becomes necessary.

MR. KULP. We have some defined emergencies in the Compact; I take it Dr. Clyde doesn't believe this is the kind of emergency that is defined?

COM. CLYDE: That is right.

MR. KULP: We have one in Article IV. B., "When there is a water emergency, as hereinafter defined. ."

MR. PERSON: What page is that?

MR. KULP: Page 8.

MR. JIBSON: They are two different types.

COM. CLYDE: One has to do with power and one has to do with water.

MR. SKEEN: This is referred to as a water emergency in Article IV.

THE CHAIRMAN: What about an emergency from the standpoint of power? Did it mean to include that too?

MR. SKEEN: No, that didn't have anything to do with it.

THE CHAIRMAN: Oh I see, I just asked. Mr. Weidmann.

MR. WEIDMANN: I want to refer to the emergency as described in the Compact which has to do with water for irrigation, and as has been brought out, this is a matter of dealing with water for power when the gates are shut. Now an emergency is something that comes up quick, and probably has to be met right now. It would look like, to my way of thinking, that probably the Power Company would be the ones to determine the emergency and figure there was an emergency and open those gates, but notify the Commission what they had done. And the Commission could go in and say, "Well now, that might have been a justifiable emergency, but it is over with now." And I can see where it would be impractical probably to call the Commission together.

Supposing a steam plant blew up and they had to have some electricity, and they had to have some more water

right now; but I don't think the Power Company should have the sole power to judge how long the emergency should exist and so forth. And that was the purpose of having it defined, so they could contact the Commission and the Commission would act on it like they do on this other, and when the emergency is over--I think it could be worded to suit our objection.

THE CHAIRMAN: I would like to be clear on one point, Mr. Clyde. Are you asking that the emergency be defined, or are you asking that something be added so that the Commission would be notified immediately as soon as an emergency existed?

COM. CLYDE: I am raising the question whether or not we should define the term. We are using it in two different senses in the Compact. And for the purposes of clarification, I believe it would be better to have it defined. I don't know what language to use, because as Mr. Weidmann said, we don't want to erect any barriers in case of an emergency and we don't want to have to delay action in case of an emergency. But I think it would be in order for some provision to be made that in cases of an emergency, the Commission be advised of the nature of that emergency.

MR. MERRILL: Couldn't that be cared for by the Commission itself in its rules and regulations? It seems to me that it could and it wouldn't be necessary to put it in the Compact. That could be very easily handled by the Commission.

MR. WEIDMANN: May I add another word. My thinking, as Mr. Clyde said, is that someone in authority should be

notified that an emergency exists, and they are violating the provisions of this irrigation reserve. If they call me, I am going to tell them, "You leave that gate down, but you call someone"--that is what we have the Commission for, to consider the facts, if it is an emergency and how long it might last. It might last a week or two. That was the purpose of defining it and making someone responsible that is with authority to act.

THE CHAIRMAN: Mr. Merrill I think raised the question whether you should put more details in the Compact or cover it in your operational rules and regulations, the operations of the Commission.

MR. WEIDMANN: That would be all right; either case would be all right. But this point before us now, we don't know whether the operations are going to include it or not.

THE CHAIRMAN: It seems the Commission lays down rules for its operation. If they think that is what they should do, they would write another rule, surely. But that is up to the Commission, now, what you want to do.

COM. COOPER: Mr. Chairman, I think that it would be a lot more fair to all concerned to let the Commission set up what the emergency might be and to see to it that the emergency were justified by explanation after they have made use of water for power; they could explain why it was done to the Commission.

THE CHAIRMAN: And by notifying the Commission immediately when the emergency is exercised?

COM. COOPER: Notify the Commission when the emergency arose. But it would definitely handicap the Power Company in their operations if it were necessary for them to notify the Commission and let them decide. When an emergency arises they have to act just within a very short time. Consequently, it wouldn't be fair to them to set it up here that they had to notify the Commission.

THE CHAIRMAN: I think their thought was, after they had exercised it, not before.

COM. COOPER: That is perfectly all right.

MR. WEIDMANN: They can't wait for anybody, just go and pull the gates open, but then notify the Commission what they have done; and then they can investigate and see how serious the emergency is and how long it probably should continue and so forth. That was the thought. We want to make it as workable and as practical as possible.

COM. COOPER: The Commission could handle that.

MR. WEIDMANN: Then just another point: What assurance have we got at this time that the Commission will make a provision for that? If it is in the Compact, it seems to me like there is an invitation for that thing to be solved. If you write it in the Compact when the emergency exists on irrigation water, I can't see any reason for not writing it in for an emergency on the power water.

MR. KULP: This is irrigation water we are talking about.

MR. WEIDMANN: Yes, but it is released for power, which is against the Compact and it is contrary to the Compact. That will be released, Mr. Kulp, during times when we are not irrigating, theoretically, I would think. That would be in case of an ice jam or just whatever might happen, or maybe an accident with a steam plant, or some act of God, and they could get themselves out of the predicament they were in by releasing some water which they couldn't do under the Compact because the Lake was below the irrigation reserve level.

We don't want to tie up anything. At the same time we don't want to leave it to the whims of the Power Company-- that maybe isn't a proper word--to decide on when they want an emergency, that is, because they can sell a little more power and declare an emergency so they can shoot some more water down. We want it to be really an emergency and a necessary act to remove some of that irrigation water.

COM. COOPER: Mr. Chairman, we anticipate that there will be representatives of the irrigation people on this Commission who undoubtedly will look after the interests of the irrigation people; and we don't anticipate that there shall be any discrimination in favor of any one group or the other.

MR. WEIDMANN: If I have said anything that inferred that I didn't mean to.

MR. SMOOT: Mr. Chairman, would there be any objection from you folks to just simple writing in there that in case of an emergency, under those conditions the Commission be notified?

THE CHAIRMAN: I suppose you are addressing your question to Idaho?

MR. SMOOT: They seem to be the only one that is objecting to that.

THE CHAIRMAN: Idaho, do you care to comment on that question?

COM. COOPER: Well, we think that it is all right the way it stands. We will comment on it further later after we talk it over among ourselves.

MR. JIBSON: Do you mean before or after?

MR. SMOOT: I mean after. We don't want to infer it isn't proper to open, but as soon as they open up, the Commission be notified.

COM. CLYDE: Mr. Chairman, in order to give the Drafting Committee something to think about, let me make this suggestion, that immediately after the word "emergency" we insert the following, "which emergency shall be reported to the Commission, but such report shall not in any way delay action relative to the emergency. ."--the idea there being that action should be taken regardless of the report, but the matter should be reported to the Commission.

COM. COOPER: Dr. Clyde, will you please repeat that?

COM. CLYDE: Insert the following words, "which emergency shall be reported to the Commission, but such report shall not in any way delay action relative to the emergency. ." In other words, that gives them freedom to go ahead the minute

the emergency arises. They merely report the fact of the emergency to the Commission; and then it seems to me the Commission from that point has the information and can take such action as it sees fit within the framework of the Compact. In other words, they make a report anytime, but they act immediately upon the arising of the emergency.

THE CHAIRMAN: Mr. Thorum, since this may have to do with the Power Company, have you any comments to make on it?

MR. THORUM: No, sir.

COM. CLYDE: You said you didn't want to comment on it. I think we don't want to handicap the Power Company in any way from freedom of action. I do think we ought to have some provision for getting the matter before the Commission. They should be informed of any emergencies that arise on the river.

MR. SKEEN: Do you move that language be referred to the Drafting Committee for study?

COM. CLYDE: Yes, I move that language be referred to the Drafting Committee for further study.

COM. BISHOP: Second the motion.

THE CHAIRMAN: You have heard the motion that has been made by Mr. Clyde and seconded by Mr. Bishop. Are there any comments?

MR. KULP: Mr. Chairman, I just can't visualize emergencies like Mr. Weidmann says where you have an ice jam or something like that. This says, release for power solely;

and taking care of an ice jam wouldn't be a release for power only. I think there must be something to clarify this in a manner of describing what an emergency is. It is hard to realize an emergency that would justify using irrigation water for power. That is the whole thing we have been working for.

COM. CLYDE: Mr. Chairman, may I answer Mr. Kulp on that?

THE CHAIRMAN: Mr. Clyde.

COM. CLYDE: I don't know how to run a power system and I don't propose to, but I can conceive of a situation where an entire plant might go out on a system. For example, they may get an explosion and take a whole plant out. That power has got to be made up quickly somewhere. It may be it could be made up by opening these gates from the Lake and pulling the water out. That is more nearly the thing I am thinking about. Something happens on the system where you have to have power quickly and maybe for a very short duration. We wouldn't want to block them because you see that great reserve back there is potential power that can be called upon on short notice. If that thing is prolonged over a long period of time, there would have to be some negotiations. But that would constitute an emergency. Is that a possibility, Mr. Thorum?

MR. THORUM: That and a good many others.

MR. SCALLEY: In other words, the reserve level guarantees permanency of irrigation to the lower users, and

is the thing that will take care of a national emergency--not the upper.

COM. CLYDE: I suppose if you look at it in terms of 35,000 against a million maybe you would be right, but you couldn't go beyond that because that is the capacity. In other words we have got--maybe we shouldn't waste our time thinking about these possible emergencies--but if you have got a great quantity of water at high elevation and power plants below it, that is, regardless of how we feel about it, a source of energy that in case of national emergency would be used, I am sure. The point we are making here is, all we want to know is what is the emergency whenever it arises. Nobody is requesting us to disregard emergencies, but we would like to be advised of them so that we could see that those emergencies can be handled with the least adverse affects to all parties concerned.

COM. COOPER: You don't question the Commissioners are capable of deciding that, do you?

COM. CLYDE: No, this is a means of getting it to the Commission is all. This doesn't decide anything. It merely is a means of getting it before the Commission. They should be advised of the emergency.

COM. COOPER: The Commission would require that, there is no question about that. I don't see any justification for making it any different than it already is, because the Commission after all will set up rules for the conduct of the business and administration, and that certainly would be

included in the rules.

COM. CLYDE: If they will define emergency--

COM. COOPER: By specifying every term and everything that they shall do, we are not showing a good deal of confidence in the ability of the Commission in their administration.

COM. CLYDE: I wouldn't argue the point except that to be consistent we should do it. We have already done it with respect to water emergency. We don't trust the Commission there; we define that. Why make a difference in a case of this kind?

COM. COOPER: You haven't got the same type of emergency there.

COM. CLYDE: That is true. I don't have any brief on it. I would be perfectly willing to leave the emergency as it is. I am merely raising the question for the consideration of the Commission.

THE CHAIRMAN: You will have your motion seconded by Mr. Bishop. Is there any further comment?

COM. COOPER: We will vote "No" on this language being put in there. I don't think there is need for it, to encumber the Compact with it, and we will vote "No".

THE CHAIRMAN: I assume under the circumstances then there is no use pursuing the motion.

COM. CLYDE: There is no use pursuing the motion because we have to be unanimous to act.

THE CHAIRMAN: Do you want to insist?

COM. CLYDE: Do you want to insist?

MR. WEIDMANN: I feel like we should have some kind of information, a memorandum or something, to the Commission that when they set the rules up, they include those ground rules in.

COM. CLYDE: Of course, we will have the language of this discussion. That will certainly be before the Commission in setting up the rules and regulations. And I would like to make this substitute motion, that it be the sense of this Commission that this matter be covered in the rules and regulations set up by the Commission.

COM. COOPER: I will second that motion.

THE CHAIRMAN: You have heard Mr. Clyde's motion, seconded by Mr. Cooper. Is there any discussion?

COM. BISHOP: Question.

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

MR. JIBSON: Mr. Chairman, the first part of Mr. Clyde's motion concerning Section B, was that thrown out with the motion concerning storable water arriving at Stewart Dam?

MR. SKEEN: That isn't in the form of a motion.

MR. JIBSON: I would like to discuss Mr. Clyde's suggestion on storable water for the purposes of the record. We have a certain amount of leakage at Stewart Dam. In the winter-time, do you consider all of the water arriving at Stewart Dam as storable water, or the amount less the leakage that is

there at the present time?

COM. CLYDE: I would assume it is the amount less the amount of leakage necessary to the operation of the system.

MR. JIBSON: And during the irrigation season, you would say it is all water above that necessary to fill direct flow rights?

MR. JIBSON: And anything below that would have to be by-passed.

COM. CLYDE: Yes, I have been told--I don't know-- that this would automatically be taken care of in the rights to direct flow. All the rights at Stewart Dam are storage rights is that correct?

MR. JIBSON: I don't quite understand your question.

MR. SKEEN: In other words, your question is as to whether there is a direct flow power right at Stewart Dam?

COM. CLYDE: That is right.

MR. SKEEN: I have examined the Dietrich and Kimball decrees and I find no reference to direct flow power rights at Stewart Dam. In other words, any water over and above the direct flow rights below is storable water, and this question you raised I think is taken care of automatically by operation of the basic water law at that point. The Kimball decree and the Dietrich decree controls and the only power right is a storage right, and that means the water has to be stored and can't be used by direct flow. That is my opinion after reviewing the decrees.

COM. BISHOP. Mr. Chairman, it seems to me that should be worked out to store all the water that is storable; and if the dam leaks, that should be repaired. That is the way we consider practical water administration in Wyoming.

THE CHAIRMAN: Mr. Clyde, you made suggestions there adding two sentences in Article V. Is it agreeable to you if we leave some of these suggestions for the time we consider the Compact article by article, and go ahead and follow the agenda, finish with the report from each state and then go on with reading the communications from the Federal agencies?

COM. CLYDE: That matter is taken care of by referring it to the Drafting Committee. That was passed. I have one other comment.

THE CHAIRMAN: All right.

COM. CLYDE: I would like to refer to Article X on page 20. This appears to be a negative statement and it is suggested that at the end of the first sentence, ending with the word "entitled" we add the following--

COM. COOPER: Where are you reading from Doctor?

COM. CLYDE: On page 20, the fourth line, at the end of the sentence, the word "entitled", then following that sentence, take the period out and put a comma in, and add: "but nothing in this Compact shall be construed to prevent approval of applications to change a point of diversion, place and nature of use, or for exchange, under applicable state law, if the effect thereof will not impair the vested rights of

other water users."

MR. MERRILL: May I ask a question?

THE CHAIRMAN: Mr. Merrill.

MR. MERRILL: Dr. Clyde, don't you understand that to be the law of the states anyway, and it would be applicable to this Compact where it isn't otherwise contradicted? There is nothing in the Compact that would prevent that very thing, and it applies to the particular state in which the application for the transfer is to be made. And wouldn't it be better to let the law of the state control?

COM. CLYDE: I think that is correct, Mr. Merrill.

The principal purpose of this was to change it from a negative to a positive. You see this states, "No State shall approve", and we state, "but nothing in this Compact shall be construed to prevent" this. Now it is a matter of language; I appreciate that. Maybe it is covered. But the idea was to get a statement in there that permits these things to be done under the applicable state laws so long as they do not adversely affect vested rights.

MR. MERRILL: But there is in the Compact the recitation--I don't remember the exact place--that the laws of the state shall apply in all instances where the water rights in that state come up. And if there should be some little difference here in Utah from Idaho or Wyoming, I don't know why we should change it and try to make a definite statement here.

COM. CLYDE: Mr. Chairman, may I ask Mr. Porter to comment on that"

MR. PORTER: I think probably you are right, Mr. Merrill. If you will read the language immediate preceding what we are suggesting here, you have in effect changed state laws, or at least made them subject to this Compact, where you state, "No State shall approve" such an application if it will affect users in another state. I just don't like that negative language. If you prefer not to get that sort of thing in there, I would like to substitute this for what is in because I think a positive statement is much better than a negative. And you do put in the last sentence of that paragraph that applications that don't have anything to do with the Bear River from the standpoint of the interstate compact-- a copy shall be sent to the Commission.

COM. COOPER: Mr. Chairman, at the bottom of page 11 under c., it clearly states, "Water allocated to each State shall be distributed in accordance with State law."

MR. PORTER: But that is distribution, not applications which would be new rights. I think they are not similar at all.

THE CHAIRMAN: Any further comments on Mr. Clyde's suggestion?

COM. COOPER: I think each state should be permitted to handle their own affairs in connection with that. I don't think it is necessary to insert that in there.

MR. MERRILL: There is one further suggestion, if I might make it, in reference to Dr. Clyde's suggestion, and that is, applications to change the "point of diversion, place and nature of use"--that would give the right to irrigation users to entirely reconvert their water from irrigation and use it for power purposes or for some other purposes; and that broadens it tremendously beyond state law.

MR. PORTER: No, I don't think that is true, Mr. Merrill. Our state law so permits. It still has to have the effect of not impairing any vested rights.

MR. MERRILL: Then you mean, therefore, that any of this water may be changed from one use to another/

MR. PORTER: It always may be done in Utah.

MR. MERRILL: Then the water that runs into Idaho may be taken from lands and used for power purposes if the water user doesn't object?

MR. PORTER: No, I don't think the objection is necessary. I think the language is, if it will not impair vested rights.

MR. MERRILL: You can't tell that until there is an objection.

MR. PORTER: That is correct. That is the basis that we operate upon. An application has to be made so that objection may be made to it before they go ahead and do it.

COM. CLYDE: Mr. Chairman, if you read Article X, it says, "No state"--you see, it is negative--"shall approve an

application for appropriation, for change of point of diversion, place and nature of use, or for exchange"--you see, that is the same as in the proposed language. The objective of this additional language is to put that in the positive and say that nothing in this Compact shall prevent the approval of an application to do these very same things you pointed out here, if they do not affect adversely any other users. You see, it is merely shifting from the negative to a positive approach to that.

MR. TRACY: Mr. Chairman, could I interject a thought?

THE CHAIRMAN: Mr. Tracy.

MR. TRACY: in my mind, what Mr. Clyde proposes means in a way that we could change a flow right to a storage right. And in my mind, there is a very serious question as to whether the Compact as now written doesn't allow the State of Utah to change some of its flow right to a storage right over and above the 35,500. I think that should be clarified. Mr. Porter, you might elaborate on that; we discussed that very thing. It was your opinion that the way it is written now, they can change their flow right and build additional reservoirs and put it in storage?

MR. PORTER: I think any kind of a change could be made, Mr. Tracy, by any water user in any state provided you don't affect your other users, and particularly the lower users below.

MR. TRACY: Of course--there is a question in our

mind--when you change a flow right to a storage right, you are always going to affect somebody, because you are changing the place of use and everything else; and the Supreme Court has just held in the Hatch Town case they can't change the storage right.

MR. PORTER: They didn't go quite that far. That was a winter right. I think I see what you mean, that is, we have got it in here that no change can be made by anybody in any state if that change is going to impair somebody else's right.

MR. SKEEN: Mr. Chairman, may I make a brief comment?

THE CHAIRMAN: Mr. Skeen.

MR. SKEEN: I don't believe we should undertake to rewrite the water law and put it in this Compact. I think we have to leave the water law of each state as is and write in only necessary changes involving interstate matters. This language was carefully written to restrict it only to situations where the change in one state may adversely affect the rights of water users in another state. I think we already have a law protecting the water users in the several states. I think if we put this additional language in, it is just saying the thing twice--

MR. PORTER: That is true.

MR. SKEEN: --and the second statement is not specific at the end because it doesn't refer to water users in another state. It just says, ". .the effect thereof will not

impair the vested rights of other water users." That is the fundamental law in each of the **three states**.

MR. PORTER: Could you suggest, Ed, how we make that first statement instead of the negative, a positive. I think it has implications where you make a negative statement like that, if you don't add the positive to it, you can leave it so there are some rather serious questions.

MR. SKEEN: I think probably that is a matter that should be studied by the Legal Committee. It is primarily a legal matter and I think we should convene and discuss that, and also the question Mr. Tracy raised about whether Article V would cover water stored by changing direct flow to storage rights. I think they are technical matters that are largely legal, and we should have a report from the Legal Committee before further discussion.

COM. BISHOP: Mr. Chairman, I move that this matter be considered by the Legal Committee before we pass on it.

COM. CLYDE: Second the motion.

THE CHAIRMAN: Mr. Cooper, I don't believe you heard Mr. Bishop's motion, seconded by Mr. Clyde, that this matter be referred to the Legal Committee. Is that right?

MR. MERRILL: Does that involve also the first proposal?

THE CHAIRMAN: What did you mean to include here in your motion?

COM. BISHOP: The entire matter we are discussing

here, changing it from a negative to a positive approach. I like the idea of a positive approach if it can be done.

THE CHAIRMAN: Then it is the language in Article X referred to by Mr. Clyde.

MR. MERRILL: Of course, Article X is written merely for the purpose of protecting rights of a particular state, and it leaves to the law of the state the protection of the rights of the particular users in that state. You see, that is the purpose of Article X, as Mr. Skeen said a moment ago, and it serves a very valuable purpose.

THE CHAIRMAN: You have heard the motion seconded by Mr. Clyde.

COM. COOPER: Restate the motion, please.

THE CHAIRMAN: Will you restate your motion for Mr. Cooper?

MR. PERSON: That the matter be referred to the Legal Committee, is what it means.

MR. SKEEN: This matter discussed relating to Article X be referred to the Legal Committee.

COM. COOPER: We are ready for the question.

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

COM. CLYDE: I have nothing further.

THE CHAIRMAN: Mr. Clyde has concluded his comments for Utah. Wyoming, your report?

COM. BISHOP: I will have Mr. Person comment.

MR. PERSON: On page 9, Section e, we propose--

MR. MERRILL: I beg your pardon. May I inquire as to what has been done with Dr. Clyde's first suggestion? Is it deferred until--

MR. PERSON: On that emergency?

MR. MERRILL: No, the first one on--

COM. CLYDE: --on the storable water and elevation of the lake and so forth.

THE CHAIRMAN: I don't believe there was a motion. I think we just passed over it.

MR. MERRILL: I remember Mr. Cooper wanted to further consider it, and I wonder if it is to come up again?

THE CHAIRMAN: I assume it will. It was passed for the present, is that right?

COM CLYDE: There was a motion on it. I would like to have the motion read.

MR. SKEEN: I don't think there was a motion.

MR. BLACK: You read, "Whenever the lake level is below the controlling elevation for the irrigation reserve"--

COM. CLYDE: Okay.

MR. BLACK: And it was in regard to storable water and storing water, but I didn't get the last part of what your statement was. And there was a matter about Mud Lake for the purposes of this Compact shall be considered a part of Bear Lake.

COM. CLYDE: Mr. Chairman, in order to clarify this

then, I move that this language be referred back to the Legal Committee.

MR. MERRILL: There is a policy there too. The Legal Committee couldn't determine that. It is a matter of policy first.

MR. JIBSON: Mr. Chairman, I would like to make a comment here. I think what Mr. Clyde is getting at, we state now that the water in Bear Lake constitutes a reserve, but we state nothing about the flow that is arriving at Bear Lake under the present wording of the Compact. And I see nothing in here--unless it is modified--that would prevent water being bypassed that is coming down the river.

MR. SKEEN: The only thing that would prevent it would be decrees that are now in existence on Bear River, and they are the ones that control. I don't think again that we should--

MR. JIBSON: What decrees do you have in the winter that would prevent--even though the lake was below this elevation--what do you have in the wintertime that would prevent water from going past Stewart Dam and being used for power?

MR. SKEEN: We simply have the decrees on the Bear River up and down, a decreed right for each power plant and for storage at Stewart Dam; and I don't believe we can in this Compact attempt to rewrite those decrees, and I think that we ought to be very careful to avoid conflict.

MR. JIBSON: You are not rewriting them, but all Mr.

Clyde's suggestion would do would be to tie that storable water in with what is already in the lake, which it seems to me would be necessary; otherwise, there is nothing to stop them from using the flow in the river for power purposes instead of storing it.

MR. SKEEN: If it is storable water it has to be stored by definition.

MR. JIBSON: It doesn't say "storable water"; it says, "The waters of Bear Lake below elevation" so-and-so "shall constitute a reserve for irrigation." It doesn't say anything about the water arriving at Stewart Dam.

THE CHAIRMAN: Just a minute. Mr. Clyde, do you want to say something?

COM. CLYDE: Yes, I would like to have my position clear--I have a long distance call from Washington--I am concerned that we have something in this Compact to specify that the storable water at Stewart Dam be put in storage, and that Mud Lake be considered a part of Bear Lake for the purposes of storage. That means no water will pass Stewart Dam except those reasonable losses which are attendant to any structure of this kind; we put the water that is storable in storage at that point.

THE CHAIRMAN: Should we have a recess?

COM. COOPER: Mr. Chairman, in view of the fact that there is actually a reserve established in Bear Lake for irrigation purposes, wouldn't that forbid any usage of water except

there were an emergency even in the wintertime? Wouldn't they be obliged to store all the water they can in the lake at all times?

THE CHAIRMAN: I don't think you should direct that question to your Chairman. Is there anyone that wants to answer that?

MR. SMOOT: That is exactly what we would like--as water users down there--clarified. If there is language in there that makes that thing work that way, that is all we care about. But we want to make sure there is language that requires all water to be stored when the lake level is down below the reserve there.

THE CHAIRMAN: It seems to me we probably should recess five or ten minutes until Mr. Clyde gets back if it is all right. I don't see how we can go on. Since he has brought the matter up, he should hear the discussion. Unless there is objection, we will recess for five minutes.

(11:25 a.m. Recess.)

(11:40 a.m. Meeting reconvened. Com. Clyde present.)

THE CHAIRMAN: Before we recessed while Mr. Clyde took his long distance call, Mr. Cooper directed a question to the Chairman; and we will ask Mrs. Crowder to read that question so Mr. Clyde can make comments on it.

(Com. Cooper's question above read.)

COM. CLYDE: Mr. Chairman, may I answer that question, at least in part. The only time that would be true would be

when the water was below the prescribed elevation at the time to maintain the reserve, and storable water should be put in storage whenever that reserve is depleted. It would not be effective at any other time but when the storage is depleted. The objective of this proposal is to put into that lake all the storable water that is available to reduce the depletion.

COM. COOPER: But any time that they lost an opportunity to store water in there, wouldn't that necessarily affect the storage in the lake? Wouldn't that deplete the storage as a natural consequence?

COM. CLYDE: I don't believe I understand, Mr. Cooper, that question.

COM. COOPER: All right. If they wasted the water at any time and lost the opportunity to store even in the wintertime, wouldn't that necessarily deplete the lake?

COM. CLYDE: Still further--it would deplete it still further.

COM. COOPER: Sure.

COM. CLYDE: My point is that we so write the Compact that no storable water is permitted to pass the storage reservoir at time when the storage capacity is available to hold that storage below the irrigation reserve point at that particular time.

MR. MERRILL: There may be conditions when they can't store it, all of it, for instance, in a flush time. The canal leading into the lake may not be sufficient to carry all

of it. And then again it imposes a burden upon the Power Company to store; and it hasn't any obligation, other than insofar as protecting its rights for power purposes, to make such storage. It is attempting to impose upon it an obligation here that is not an obligation that it now has. There are some serious situations there. If for instance, as I mentioned before, there is a flood season, and the canal won't carry it into the lake.

And you have got to remember that the Bear River doesn't run into the lake; the water is taken in by a canal. If it doesn't take away all of the water for storage purposes, the canal won't carry it, then what is the penalty to the Company? There is certainly an obligation there; you impose by this method, these words, an obligation to probably enlarge the canal leading into the lake and other facilities with reference to it so as to take care of any possible flush. And it seems to me it is just imposing upon the Power Company-- and the Power Company has already given a tremendous amount here--matters that ought not to be.

COM. CLYDE: Mr. Chairman, may I ask Mr. Jibson if there has ever been a time when the capacity of the inlet canal was not sufficient to carry the flow of Bear River at Stewart Dam?

MR. JIBSON: Not to my knowledge. We have had a maximum flow of about 4400 second feet in our period of record. I am not certain of the capacity of the canal. Mr.

Thorum just stepped out. Perhaps he could inform us of that. It is considerably more than that but I wouldn't state figures right now.

COM. CLYDE: But in the event we wanted to be perfectly safe, I think it would be entirely in order to write into this language, "to the limit of the capacity of the inlet canal". I wouldn't impose upon the Power Company any burden that it doesn't now have. The only thing I would like to see is that we don't leave the gate open for passing water past Stewart Dam down the river during those periods when there is storage capacity available in Bear Lake below the point which fixes the irrigation reserve.

MR. MERRILL: But it must be remembered that under the method of operation at the present time, it is of course to the Power Company's benefit to store that water as much as possible to keep those levels up so they will have water for power purposes; and it seems just wholly unnecessary to try to insert an obligatory statement here in that respect.

COM. CLYDE: I agree fully with you, Mr. Merrill, that I can't imagine a case where the Power Company wouldn't want to store.

MR. MERRILL: Then why put the mandatory provision in?

COM. CLYDE: I think there is a justification for providing, in order that we may replenish this depleted storage, that the storable water in Stewart Dam be stored. Then

we are not hurting anybody and yet we have that saving clause which protects us. It does no harm and it may under some unusual conditions do some good.

MR. MERRILL: And it may under some unusual conditions do a lot of harm in the method which I have heretofore suggested.

COM. CLYDE: Other than the capacities, I didn't understand what harm could be done.

MR. MERRILL: If there is more water in a flush season than the capacity of the canal to carry into the lake has, it would certainly embarrass the Company.

COM. CLYDE: That is the reason I suggested that we could limit that to the capacity of the works, there wouldn't be any harm in that. Then that eliminates that objection.

MR. MERRILL: Then you have got this situation: There may be the filling of the canal by silt, or there may be enlargement of the canal, there may be changes in the canal. It seems to me that the matter is covered so fully all through that there is just no necessity of putting this demanding provision in there.

THE CHAIRMAN: Any further comments?

COM. CLYDE: I can't help but believe that is a point which should be covered. I think we should very definitely provide for the storage of storable water at Stewart Dam. Now, if it is provided for in the nature of the direct flow rights

for power, that is all right; if it isn't, I think some provision should be made. I can't see where it would do any harm and it makes the Compact that much more specific, what we mean by it.

MR. SKEEN: Have you worked out a definition of storable flow, Mr. Clyde?

COM. CLYDE: The storable flow would be that flow storable over and above that necessary to supply your direct flow rights.

MR. SKEEN: If that is the only definition we put in there wouldn't be any up there at the time you want it probably, because the rights are for large quantities of direct flow for the production of power for all these four or five plants below.

COM. CLYDE: I thought you said there were no direct flow rights at Stewart Dam.

MR. SKEEN: Not at Stewart Dam but there are below. We would have to work out a definition that would do some good, and that may be a very involved, technical question there.

COM. CLYDE: Let us look at the other side of this question and hold that one for a minute. Do you have any objection to making Mud Lake a part of Bear Lake?

COM. COOPER: Mr. Chairman, through necessity by reason of the present operation, Mud Lake is a part of Bear Lake.

COM. CLYDE: That is my understanding.

COM. COOPER: There is no way you can divide the two. The dike is the only thing that divides them, and the water runs into Mud Lake and on into Bear Lake.

COM. CLYDE: But you can put water into Mud Lake without putting it into Bear Lake

COM. COOPER: That is true, but they are the same thing practically. The only thing that divides them is that dike.

COM. CLYDE: But when you are pumping water out of Bear Lake, it wouldn't be advisable to put more water--

COM. COOPER: I don't see where there is any difference between the two, why that needs to be defined, because they are one and the same thing practically. They are part of the storage system.

COM. CLYDE: They are not operated the same. They can take water out of Mud Lake without putting it in Bear Lake. Mr. Smoot.

MR. SMOOT: As an irrigator down below the lake, I can see absolutely no use of having a reserve level there made if the Power Company can go ahead and bypass the water through Mud Lake or bypass it past Stewart Dam when the reserve in the lake is below the level that is set up as a reserve. We just as well leave that reserve level of the lake out of there if we don't write something in that Compact making it mandatory to put the water in there when it is below that level.

MR. SCALLEY: This would be a strange piece of law if the intent is not defined; what is to be done about it. I fail to see where anyone can say that you should leave something out that will clarify what is supposed to be the intent of the Compact. And certainly the Power Company--I would certainly imagine that they intend to see that that reserve level is maintained; and if that is true, I can see absolutely no reason why the language shouldn't be in there to define it properly. You certainly can't make it clear by leaving the definition out.

THE CHAIRMAN: Any further comments?

COM. CLYDE: Mr. Chairman, in order to get this matter before us so we can take action on it, I move that the language relative to storable water and the definition of what constitutes Bear Lake including Mud Lake, shall be referred back to the Drafting Committee for suggested language which will clarify the intent of this section.

THE CHAIRMAN: You have heard Mr. Clyde's motion. Is there any second?

COM. BISHOP: I will second it.

THE CHAIRMAN: Did you second it?

COM. COOPER: No. It has been suggested here that there isn't any place where the water will be bypassed out of Mud Lake. Consequently, we can see no reason why that language should be put in there.

COM. CLYDE: Is Mr. Thorum here? (No response.) Mr.

Thomas, maybe you can answer this question. Does the inlet canal discharge directly into Bear Lake or Mud Lake?

MR. THOMAS: The Rainbow Inlet Canal discharges into Mud Lake.

COM. CLYDE: And is there an outlet from Mud Lake so that the water from the inlet canal might go into Mud Lake and out of Mud Lake without ever going into Bear Lake?

MR. THOMAS: It is possible.

COM. CLYDE: Then they can bypass it.

COM. COOPER: Where can that be done? That is what we want to know.

MR. JIBSON: You have a two-way lock on there.

MR. THOMAS: Would you like me to answer that question?

COM. CLYDE: If you will please.

MR. THOMAS: The Rainbow Inlet Canal comes from the river right into Mud Lake. There is a connecting channel right in Mud Lake between the Rainbow Inlet Canal and the outlet canal, which has its control works down at the dike near Paris. So it is physically possible for water to come through the inlet canal into Mud Lake and down through the outlet canal to the dike and on through the dike and through the control works if the gates are up. On the other hand, the water also can go back to Bear Lake through the gates from Mud Lake. It is a flexible system that can be worked any direction.

COM. CLYDE: I mean the Commissioners might discuss it with the Power Company.

THE CHAIRMAN: You have heard Mr. Clyde's motion. Is there any second?

COM. COOPER: I will second the motion.

MR. MERRILL: Adjourn until when?

COM. CLYDE: One-thirty, we ought to be able to get back here.

MR. MERRILL. Some of us have to leave tonight.

COM. CLYDE: We will come back as early as we can.

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

(12:00 Noon, Recess.)

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(1:55 p.m., Meeting reconvened. All Commissioners present.)

THE CHAIRMAN: When we recessed for lunch, we were considering the motion made by Mr. Clyde and seconded by Mr. Bishop, and the Commissioners were going to discuss it during the noon hour. Have you any comments to make on that discussion?

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

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

COM. BISHOP: Yes.

THE CHAIRMAN: All right then, the motion is withdrawn. Am I going too fast?

MR. MERRILL: No, but I don't know which motion.

THE CHAIRMAN: It is the motion Mr. Clyde made just before the recess for noon and seconded by Mr. Bishop. We can have it read if you want to.

MR. MERRILL: Was that the one that was to be considered during the noon hour?

COM. CLYDE: It was the one referring the language back to the Drafting Committee.

MR. MERRILL: That is withdrawn. All right.

COM. CLYDE: Mr. Chairman, I move that we insert on page 1, Article II, immediately after the definition of "Bear River", a definition of "Bear Lake", which would be as follows: "For the purposes of this Compact, Mud Lake will be considered a part of Bear Lake."

*OK  
in  
final*

MR. MERRILL: At the top it says, "As used in this Compact"--you don't want to recite that here, do you?

COM. CLYDE: That is right.

MR. MERRILL: "Mud Lake shall be considered as part of Bear Lake"?

MR. SKEEN: How would it be, to make those consistent, Mr. Clyde, to make it read, "Bear Lake means Mud Lake and Bear Lake"?

COM. CLYDE: That is fine. I change my motion to

that language.

COM. COOPER: "Bear Lake means Bear Lake and Mud Lake"?

MR. SKEEN: Yes.

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

COM. COOPER: I will second that motion.

THE CHAIRMAN: Is there any further discussion?

COM. BISHOP: Question.

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

MR. KULP: That means all of the rest of them will have to be renumbered?

MR. SKEEN: Yes.

COM. CLYDE: Mr. Chairman, the second point that was at issue just before we recessed for lunch involved the question of storable water at Stewart Dam, and I had proposed some language that would cover that subject. After discussion with Mr. Cooper and Mr. Bishop and Mr. Irvine and Mr. Thorum, I would like to make this statement: That inasmuch as we have now agreed that Bear Lake includes Mud Lake, and inasmuch as the Compact as now written fixes an irrigation reserve, and inasmuch as the Compact as now written specifies that no water out of storage shall be diverted for the purpose of making power only at any time when the irrigation reserve

*Storable  
Water  
in Reserve*

is in a state of depletion, and inasmuch as there are no power rights to direct flow at Stewart Dam, I believe the Compact as now written fully protects all of the interest in the irrigation reserve and that the language which I set up this morning is superfluous and not necessary to that intent; furthermore, that in the operation of this lake and in the execution of this Compact, it is the intent of the Compact to maintain at all times that irrigation reserve at of course the maximum point possible.

With that statement, Mr. Chairman, I will withdraw any proposed language on the subject of storable water.

THE CHAIRMAN: Are there any other comments on the subject matter? Do any of the advisers have any comments?

MR. WEIDMANN: I nodded my head approving it.

COM. CLYDE: I thought you wanted to speak to it?

MR. WEIDMANN: No, I thought you said, did I agree with that. I think that protects it all right.

THE CHAIRMAN: Does anyone have any comments? (No response.) Does Utah have anything else to report before I call on Wyoming?

COM. COOPER: I have a question, Mr. Chairman. On this page 20, Article X, after the word "entitled," Mr. Clyde moved that certain language be referred to the Drafting Committee for their consideration. I wonder if he wants to withdraw that too?

COM. CLYDE: Was that in Article X?

*Storable  
water  
in 'reserve'*

*10-1-90  
UPBL  
Can open  
gates at  
Stewart Co  
use water  
for power  
W.N.J*

COM. COOPER: Article X.

COM. CLYDE: May I refer that back to Mr. Porter for one brief statement.

MR. PORTER: I would like to see if we can't make that language positive. I would like to go over that with the Drafting Committee to see if we could make the language positive instead of negative and still just leave one statement in there; and if you would permit us to try to work out something at the next time we meet that will clear it.

MR. MERRILL: This matter has got to be concluded soon or we won't get it through these legislatures, and to further delay it delays the entire matter. The only purpose of Article X any way, as you will observe, is so that there won't be affected the respective rights in the various states, that the method of application for appropriation and so forth shall be considered the same in each state. Now that is all that is in it, and it doesn't seem to me that there is any need of augmentation or change. It is perfectly clear as we discussed it here before.

MR. PORTER: As I said, comments were raised on it because of its negative implication, and that is why if it is possible to make it a positive statement, I think it would be much better. I haven't had the opportunity to work out some language there to suggest; I think it wouldn't be difficult to do. But I don't like the negative implication in it.

MR. MERRILL: I think Mr. Skeen has that very clearly

in mind.

MR. PORTER: Some questions have been propounded to me that I can't answer with respect to it that I think could be answered, and it will look better to me I think if it is a positive statement. Could we pass that for the moment and let me see if I can't work out what I have in mind and suggest it at a later time this afternoon?

THE CHAIRMAN: If there is no objection, we will pass over that for the present.

COM. CLYDE: That is all right.

THE CHAIRMAN: Wyoming, do you have anything to report?

COM. BISHOP: Mr. Person will comment for Wyoming.

MR. PERSON: On page 9 e., the last section, we proposed an amendment that was discussed at the last meeting. I don't think we need to discuss it again. It is a matter giving Wyoming or Utah the right to use in either section of the Upper Division, the water that is allocated to them. I think it is necessary if you are going to make the most efficient use of the water. I think Mr. Skeen proposed some revisions of my suggested amendment, which I think would be satisfactory.

On page 10--

COM. CLYDE: May we have that language, Mr. Person, that was proposed?

MR. PERSON: Mr. Skeen, would you give it to me?

MR. SKEEN: I don't have it.

MR. PERSON: I think I have it. Do you want mine or Mr. Skeen's--I will give you mine first. Here is Section e. as I proposed it:

"Either State"--and this applies only to the Upper Division--"may divert water allocated to one Section of the Upper Division of that State in the other Section of the Upper Division of that State. If for any reason either State does not divert all the water allocated to it in the Upper Division, the unused portion may be diverted and used in either Section of the Upper Division of the other State, but no permanent right shall be established through such diversion and use."

Mr. Skeen suggested the following in lieu of what I suggested:

"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 surplus 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 surplus occurs; and (2) In the river section of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e."

COM. CLYDE: Mr. Chairman, may I comment on that?

THE CHAIRMAN: Yes.

COM. CLYDE: The only difference as I understand it in those two versions is, in the first case all of the unused portion would be used in the other section of the respective state.

MR. PERSON: Would be available for use first.

COM. CLYDE: It would be used, in your language-- that is, if Upper Wyoming didn't use it, it would go to Lower Wyoming.

MR. PERSON: It could go.

COM. CLYDE: In the other case it would go to Lower Wyoming first, and then to anyone else if Lower Wyoming didn't want it.

MR. PERSON: Yes.

COM. CLYDE: Let's see how that would work. I think that is the table that you have on the board. (See page 6 above.) If you were to transfer, for example, Upper Utah down, it wouldn't make any difference because the quantity is so small; so we can forget that. But if you were to take Upper Wyoming and wanted to move it down to Lower Wyoming, it would have an adverse effect on the flow available to Lower Utah because of the return flow. That is the first thing.

COM. BISHOP: It would make more return flow.

COM. CLYDE: It would make less if you pass it down to the lower basin.

MR. PERSON: If we didn't use <sup>it in</sup> the Upper Wyoming Section and took it all down to Lower Wyoming Section--which of

course is not going to happen.

COM. CLYDE: But that would have an effect in that direction, you see. That water which you took down in the main stem in the Lower Division, no portion would return as return flow to the stream above.

Now if you took the Lower water to the Upper Wyoming Division, the effect it would have would be a mechanical one in getting the water out, because the diversion structures in the river are such that the smaller the flow remaining in the river, the more difficult the diversion. That is a mechanical thing.

The other thing is, the record to date shows that the Lower Wyoming group have on occasion not used their water; but I think someone said this morning that they would in all probability with the regulated stream use all the water to which they are entitled.

MR. PERSON: That is what the users tell me. The only reason they haven't used the water in the Lower Wyoming Section is that Utah doesn't let any water go by for them to use, or enough so they can get it out.

COM. CLYDE: That is what they say. The record doesn't quite show that because they have let water pass and not used it. Now the net impact of that is this, as far as Lower Utah is concerned: It will be in the order of 4.3 percent difference; that is, they would get 40.5 under that kind of a regulation of the total flow available in the Upper Divi-

sion, as against 44.8 if it was divided between the states.

Now as I say, that is a small percentage. When we add to that direct flow, your complications resulting from the combining out of storage and direct flow and exchange, we may be letting ourselves in for some administrative difficulties by breaking it this way; because you tie the hands of your Commissioner in making those divisions of that small percentage of water. My point is, it is going to be difficult to administer.

MR. PERSON: I appreciate that, but here is what would happen in the other situation: We have our prior rights in the Lower Section. We have turned water from the Upper Section down to our Lower Section, and it never gets there; and the Compact wouldn't make that possible now, that is, as it is now written. It would be possible if we release water in the Upper Section to get it to the Lower Section where they have the prior right under the arrangement we suggested, or under the arrangement Mr. Skeen suggested.

COM. CLYDE: Under that arrangement, it is true you would take water out of Upper Wyoming and pass it by the Lower Utah Section to the Lower Wyoming Section, that is true. Under the Compact under regulation, the 9.6 percent would be passed by the Utah Section without any question.

MR. PERSON: That is right.

COM. CLYDE: Now the operation though at the moment, if we go by past history, is that the tendency would be to

move the water from the Lower Division to the Upper Division.

MR. PERSON: No, I think the tendency would be the reverse because the Lower Division hasn't gotten the water.

COM. CLYDE: But the record is that they have passed the water past Pixley Dam.

MR. PERSON: A very small amount and just in unusual times. That is, they get a period here towards say about July 15th when the Lower Section doesn't have any water and they have to start haying. Then the water comes and passes by, but after that it is too late to do them any good, when Utah quits irrigating.

COM. BISHOP: Mr. Chairman, I think it ought to go farther than just the unused portion. Here is the thought I have, and this could well come up: The people in the Lower Section of Wyoming were badly in need of water for a certain kind of crop. The people in the Upper Section of Wyoming might want to forego the use of their water; and there is certainly no reason in the world why that water that belongs to Wyoming can't be passed through Utah down to the Lower Section of Wyoming for use down there if the people above wanted to forego the use of it. That is a matter within our state, and as long as it doesn't affect the other state, I can't see where there would be any objection to it, because whatever we do, Utah would get their percentage. And of course Utah should have the same privilege for their water.

COM. CLYDE: Of course, I have cited the two possi-

bilities, Clark, where it would adversely affect Utah. I can't give you the degree of the effect. But if you did take the water from the Lower Section to the Upper Section, it would affect it adversely.

COM. BISHOP: It would be much more apt to be the other way.

MR. PERSON: That is, compared to the Compact as now written, not compared to the situation as it now exists.

COM. CLYDE: Yes.

MR. PERSON: What we have got to keep in mind is, who is getting regulation all the way down this river? It is our people.

COM. CLYDE: That is true, but we wanted to enter into an agreement. I have said this movement upstream would be mechanical. It would be one of those things.

COM. BISHOP: You would still get your percent.

COM. CLYDE: That is true, we would still get our percentage of water. We may have our percentage on paper but we may not be able to get it out of the river without some additional expense. If that were material, it should be considered. But the other point I made is this: If you take the Upper water down to the Lower, you actually decrease the quantity that they will get because of the return flow.

MR. PERSON: But we still assure you of your 40.5 percent; that would be first, you see.

COM. CLYDE: That is true. Now the other thing, the

third point I made, was this: Is the gain to any of us sufficient to offset the disadvantage in the flexibility of administering direct flow and storage through exchanges by introducing this provision to move the water up and down the river? I put that as a question.

COM. BISHOP: Mr. Chairman, it seems to me that if we don't do that, we are certainly not going according to the laws and constitution of our state. This division of water is between the states and it is up to the states to use that water where they need it the most. And they should be able to manipulate it anyway they want to manipulate it to get that water there as long as it doesn't adversely affect anyone else.

COM. CLYDE: I can't argue against that position. My point in raising these questions is to see what we are doing here. This manipulation is not going to cut down our percentage; we will still get out 40.5 percent of the river without any question. Now will these disadvantages which may occur offset the advantages which will accrue to Wyoming through that increased quantity of water? Frankly, I think when that river goes under regulation that all of these divisions are going to use all of their water.

MR. PERSON: So do I.

COM. BISHOP: I do too.

MR. PERSON: But we don't want to happen what happened this summer. We turned water loose up in the Upper

Section to satisfy the Lower Section and it never got down there.

COM. CLYDE: It would have if we had regulation.

MR. PERSON: According to this, if we turned it all loose, you would have gotten four times as much of what we turned loose as we would. Suppose we turn loose all our Upper water; the way the Compact is now written, you would take  $\frac{4}{5}$  and we would get about  $\frac{1}{5}$ , roughly, under the Compact.

COM. CLYDE: In proportion to 9.6 and 40.5.

MR. PERSON: Yes. So you see, we don't have a chance to run our own water. We are turning over to someone else the job of doing what we are supposed to do in Wyoming.

COM. CLYDE: May we have that version prepared by Mr. Skeen read again?

Mr. Person:

"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 surplus 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 surplus occurs; and (2) In the river section of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e."

COM. CLYDE: Would you agree to that?

COM. BISHOP: He doesn't go far enough with it.

That is just taken care of in case there is a surplus there. I would like to see it so--and have Mr. Skeen reword it, I know he could do it probably better than most of us--so as to take care of a situation where our people can take all their water down there if they want, or trade it back and forth any way they want, as long as it doesn't interfere with anybody else.

MR. PERSON: I think it does, Clark, because it says, "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 surplus"--in other words, if we took the Upper Division--which isn't going to happen--and released all of it, it would all be surplus; and we would use it first in the Lower Wyoming Division, and if we didn't use it, they could use it. I think that is what this says.

MR. SKEEN: That is the intent.

COM. CLYDE: We should keep in mind on this, when we fully utilize this storage allowance upstream, much of it is going to be utilized by exchange; and that exchange of course will involve this very thing because it involves direct flow rights.

MR. PERSON: Yes.

COM. CLYDE: I think we can go along with that version.

MR. PERSON: I think you know what our intention is.

COM. CLYDE: That is right.

MR. PERSON: And I think we can take care of the wording if this doesn't do it. I think it does. I think what Mr. Skeen was trying to do was to say better and more simply what I was trying to say.

MR. SKEEN: I was simply making a language change. I didn't originate the idea.

COM. CLYDE: What it means is simply this, that each state is entitled to use its water in the state.

COM. BISHOP: I would like to see a short section inserted there that would give any state the right to use their water anywhere they want to as long as it doesn't interfere with anybody else's vested right.

COM. CLYDE: I believe that does it.

MR. PERSON: I think the Compact certainly does it time and time again.

COM. CLYDE: I think this does because it says if for any reason a section doesn't use its water, the other section in that state is entitled to the water allocated to it; and if that state doesn't use it, then the other state can use it.

COM. BISHOP: If it gets beyond their use; but that state ought to have a right to it until it gets beyond their use.

THE CHAIRMAN: Where are we now?

MR. PERSON: On page 10.

MR. MERRILL: What are we going to do with this?

MR. PERSON: Not very much I don't imagine, but we are going to try to.

COM. COOPER: Was there an agreement--

THE CHAIRMAN: Mr. Merrill has the floor.

MR. MERRILL: Mr. Cooper has it in mind.

COM. COOPER: Was there an agreement on the last recommendation?

THE CHAIRMAN: We are just waiting for somebody to make a motion or do something.

MR. PERSON: I move that Article IV, B, 1, e, be revised in line with the discussion. I think if Mr. Skeen can improve it some, he can change it, just so it means what we are trying to say it should mean.

COM. CLYDE: Second the motion.

COM. COOPER: Ready for the question.

THE CHAIRMAN: You have heard Mr. Person's motion, seconded by Mr. Clyde, and I suppose you know what it means, to clarify the language--

MR. PERSON: Really substitute this meaning for Section e--just copy this meaning.

THE CHAIRMAN: Any discussion on the motion? Do you have any comments, Idaho?

COM. COOPER: No, we are ready for the question.

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

THE CHAIRMAN: You may proceed with your report.

MR. PERSON: On page 10--it is Article IV, Section B, 2, a, the third and fourth lines, "or the flow of Bear River at Border Gaging Station is less than 400 second-feet". Now 810 second-feet of divertible flow and the 400 second-feet of flow of Bear River at Border are supposed to have some relationship; there is absolutely no relationship whatsoever. At least, if there is going to be such a figure in there, it should be some place between 175 and 300. In 1944, on July 18th when the divertible flow was 811, the flow at Border was 300. In all the other years, the divertible flow got to be less than 810 when the flow of Bear River at Border was less than 300. In fact, in 1954, when the divertible flow in the Division was 821 second-feet, the flow at Border was 173 second-feet.

Now I appreciate the flow at Border may have something to do with the divertible flow in Idaho. Of course we have got to keep in mind there is additional divertible flow comes into Idaho from Thomas Fork. And there is no relationship; they have about the same relationship as a donkey and an elephant, the 400 and the 800. That is, if you want to make it 150 or 175 or 200, then there would be a relationship.

MR. LAURIDSEN: Do you think for one minute when this was 173 that we were happy with it?

MR. PERSON: It would be hard to make you happy.

MR. LAURIDSEN: If we had our fair proportion we would be happy, but the 173 was a long ways from it.

MR. PERSON: Maybe we should substitute this: "When either the total divertible flow becomes 810 second-feet, or the divertible flow in Idaho becomes"--something; would that satisfy you?

MR. MERRILL: No, I should say not.

MR. LAURIDSEN: I can't see anything wrong with the 400.

MR. PERSON: It doesn't mean anything.

MR. LAURIDSEN: It does to us.

MR. PERSON: Why don't we put, when the divertible flow in Idaho becomes 463, regulation goes into effect? That is 57 percent of 810. Let us substitute for both of them, when the divertible flow in Idaho becomes less than 463 cfs, regulation goes into effect. That completely protects you.

MR. LAURIDSEN: Why is that better than the way we have it written?

MR. PERSON: Because the divertible flow is up to 1100, 1200, when regulation goes into effect, unless you are just trying to put regulation on our people. Actually, this was brought up by a number of our water users at our Cokeville meeting last Friday night, and they kept saying, "What is the relationship?" And I started to show them. I said, "When the divertible flow in 1944 was 811 the flow at Border was 300. In 1945 when the divertible flow was 810, the flow at Border was 303." So they suggested we put in an average of these figures for the flow at Border.

MR. LAURIDSEN: The reason that this figure is low (indicating on table) is because Wyoming was using the water and we didn't have a chance to use it. That 400 second-feet at Border is merely a red light that turns on when it gets less than that to indicate that it is time for this Compact to go into effect. Is that right or wrong?

MR. PERSON: You see, you are putting regulation on us when the divertible flow is 1100, 1200 cfs.

MR. LAURIDSEN: I can't see that.

COM. CLYDE: You mean in the Upper Division?

MR. PERSON: In the Central Division. This 400 at Border is about equivalent to some place between 1050 and 1150 cfs of divertible flow.

MR. LAURIDSEN: That 400 at Border doesn't fill our rights. I can't see any reason why we should cut that.

MR. PERSON: Why don't you accept this other proposal which is bound to satisfy your rights, when the divertible flow in Idaho becomes less than 463 cfs--and that is one cubic foot for each 50 acres in your section--regulation goes into effect. You see what I mean now?

MR. LAURIDSEN: I can't see why that would be any better than the 400 as written.

MR. PERSON: It would be better for us, but it wouldn't be any better for you; you see this other way you would be fully protected, your 463--

MR. NATE: 454.68 is the exact figure.

MR. PERSON: --is your second-feet of rights.

MR. NATE: Right.

MR. PERSON: We will give you a couple; we will call it 460. When the divertible flow in that division of Idaho becomes less than 460 cfs, regulation goes into effect. Then we are being regulated when you need it to protect you against us. You are not putting regulation on us just to regulate us.

MR. NATE: May I say something on that, Mr. Chairman. This 57-43 proposed division is based on irrigated acreages in the Central Division, on the Wyoming side of the fence 17,830 acres, and the Idaho side--that is from Border to Stewart Dam--22,664. That is how we arrived at the proposed 57-43 division.

Now then, regardless of any formula you might use to divide this water, we have got to have enough water to irrigate that many acres of land, the same as you have on the Wyoming side of the line for that acreage. So that is why in here you have a proposal of a division of 57 percent for Idaho and 43 percent for Wyoming of divertible flow as defined.

Now the divertible flow is made up of three factors, which are defined here in the Compact. So what it resolves itself into is that you have just got to have so much water to irrigate those two respective acreages regardless of any formula. So I can't see why you should confine that to the divertible flow in Idaho. You have got three items that make up divertible flow in the Central Division--

MR. PERSON: Yes.

MR. NATE: --the same as you have in that Upper Division, so it won't work.

MR. PERSON: But now if you had, say, a thousand second-feet of divertible flow in that Idaho Section--

MR. NATE: But you don't have it.

MR. PERSON: Let us say you did have it. --would there be any reason to regulate Wyoming?

MR. NATE: No, but where are you going to get it from?

MR. PERSON: Let me back up again. If you had 460 cfs of divertible flow, when it drops below that, that is when regulation starts going into effect in Idaho. Wouldn't that be the time to start regulating Wyoming?

MR. NATE: Here is the trouble. We have a different problem between Border and Stewart Dam than you do in that Lower Wyoming Section. The only place we have any water below Border is coming down from Thomas Fork. We don't have any other side streams coming in there. So the water at Border, plus what comes down Thomas Fork, for all practical purposes makes up the water between Border and Stewart Dam. That is the joker. If we had some other streams feeding in there it would be different.

MR. PERSON: Let me think about that. You have kind of convinced me, but you haven't convinced me I am not right.

COM. COOPER: Mr. Chairman, the engineers recommended

these figures.

MR. PERSON: Yes, now let me say something about that. I was a member of that Committee. We had it 400; I said 400 didn't mean anything. We put 810 in place of it, and the Compact Commission put the 400 back in. The Engineers recommended the 810, and the Compact Commission brought back the 400, because the Engineers realized the 400 cfs at Border didn't have much to do with it. So we have got them both in now. If you don't catch us one way, you take your pound of flesh another way.

COM. COOPER: It is an odd circumstance that it would slip by so many times during the reading of this Compact.

MR. PERSON: There are several times I have objected to it; I have objected to it every time I have seen it.

COM. CLYDE: I can comment on that. I know Harold has objected every time it has come up, because I have been kidding him about it.

MR. PERSON: Since you have been on the Commission.

COM. CLYDE: Since I have been on the Commission.

MR. PERSON: And actually, when I say that 400, I want to go back; that reminds me of another one I missed. On page 8, Article IV, Section A, I think that needs some more thought by you people in Idaho, that 400. You are just imposing a regulation that I think is unnecessary to make your Wyoming neighbors unhappy. Now Article IV, Section A, page 8, well our kids are going to read that and say, "A bunch of crazy

men wrote this"--at least our kids in Wyoming will. But we will discuss that some more.

I do have another proposal on page 10, Section 2.a., right at the head of the last sentence; I would like to suggest again, which I have mentioned once or twice at least, the infamous 207 clause. Now Judge Spaulding has proposed a wording which I think I even like better than mine; it is simpler and more to the point and does a better job. Right after the word "flow" there--that is five lines up--make that period a comma, and put in this clause:

"Provided, that during such time as there is natural flow in the Bear River past Stewart Dam and/or water is being diverted by the Rainbow Inlet Canal the diversions in this division for Wyoming shall not be limited to less than 207 second-feet."

And I propose that as a substitute for my amendment.

COM. CLYDE: Read that again slowly so I can copy it down.

MR. SKEEN: Here it is (handing document to Com. Clyde).

MR. PERSON: Maybe the Commissioners would like to kind of digest these, or do you want to make motions on them as we go?

COM. BISHOP: Go right ahead. You are doing all right.

MR. PERSON: On page 14, Article V, Section A, the

MR. PERSON: I suggest you add some language that this agreement is subject to ratification by the legislatures of the two states.

MR. MERRILL: That is the law anyway.

COM. COOPER: That is all right

MR. PERSON: You see what I mean?

MR. SKEEN: I think that is all right.

MR. PERSON: Probably that is what you intended, but Wyoming wouldn't give three people the right to modify the Compact.

And then in the first part of that last sentence, our instructions from our people were pretty clearcut in the first place that this storage should be divided between Wyoming and Utah on the basis of irrigated acreage.

COM. CLYDE: We wouldn't go along on that.

MR. PERSON: That would be 57-43--

COM. BISHOP: 56-44.

MR. PERSON: 56-44.

COM. CLYDE: We wouldn't go along on that because the whole basis of that allocation of storage is to supply the need of lands which are currently irrigated.

COM. BISHOP: Our 56 percent, George, won't anywheres near take care of ours; and I don't see how you can evolve a formula that is any better than the acres that need the water.

COM. CLYDE: It all depends on how you need it on that acreage; that question comes in too.

COM. BISHOP: That is a point we shouldn't spend much time on until we come to it in the Compact. But I might state right here that we feel that if the Court had to make this allocation, we would get 56 percent. And I would rather leave that and just say 35,500 acre-feet to Utah and Wyoming, period, and let it go rather than to take less than 56 percent. Our people I am sure would never understand the formula that you have in mind, George. They wouldn't agree to it; I wouldn't myself.

COM. CLYDE: I certainly wouldn't agree to a basis of acres when we have two different bases for determining acres; and the way we got around that is to take it independent of acreage and determine the consumptive requirements; and on the basis of that, it actually came out 64-36, 64 to Utah and 36 to Wyoming. We have gone down to 50-50.

COM. BISHOP: If we would get our experts to work it out, it would probably come the other way. I know how the experts do; they manipulate it around to fit the situation.

COM. CLYDE: This was worked out by the people hired to make the engineering analysis. We had nothing to do with it; that was their recommendation. But I know enough about it to verify it, and I checked it and did verify it, and therefore I couldn't go at all--our people wouldn't concede that point one minute.

COM. BISHOP: I feel frankly that your people have got way the best of it on account of the large percent you

will have of present storage.

COM. CLYDE: Most of that present storage is on tributaries, you see.

COM. BISHOP: An awful big chunk of it is the Neponset Reservoir that diverts the water in Wyoming.

COM. CLYDE: Yes, there is 6900 acre-feet there. I am sure we couldn't go along on that division.

COM. BISHOP: I think we have either got to leave that up in the air or something, because it is just one point--

COM. CLYDE: Why not leave it just as it is? It is subject to review and modification. This merely gives us a starting point. Nobody knows where we will end up, and I think one of the things that will determine where we finally end up is where and how fast we will develop the storage and where it can be used.

We have a unique situation up there. It is the same group of people outside of state lines essentially, and we have the Upper Wyoming and Lower Wyoming, and Upper Utah and Lower Utah. Now any storage we develop there is going to be most of it developed jointly. It is developed for use in both states. And I think that is the time when we should decide. And the objective in setting this up this way and leaving the gate open was to enable us to have maximum flexibility in developing that storage for the best use. I think it should be left

just as it stands because we still have the right to modify it

away from 50-50 if in our opinion we should.

COM. BISHOP: I would rather see it left without saying anything about 50-50, leave it open; and then if we can't agree on it later, at least we have reduced it down to one small problem instead of the whole thing.

COM. CLYDE: If you put it 50-50 you have a chance to immediately proceed with development in the respective states. If you leave it open, we can't move in either state until we have some kind of a marker.

COM. BISHOP: I would just as soon leave it open and we will go ahead and let nature take its course. We have got a lot of small ranches on small tributaries that need storage, small amounts of storage if you please. And we would just be perfectly willing to leave it open, and the first fellow that gets the reservoir and gets the priority established, give him the water.

COM. CLYDE: Therein lies the danger, because if you leave it wide open, supposing somebody should slap some applications in tomorrow for 75 acre-feet of that storage in on state; will you honor those? If we have it this way you can't go beyond 50 percent.

COM. BISHOP: Let's make it this way then, George: that neither state can use more than 40 percent of the water until such time as there is a re-evaluation of the entire situation and agreement between the states. In other words, leave 20 percent there that is to be taken care of in the future. In other words, we can develop up to 40 percent for

each state, but we can't go beyond that without further agreement.

COM. CLYDE: The minute you do that you run into trouble with Woodruff Narrows because that is the biggest storage; it is over half of the total. And right there, the minute you do that, you have violated the 40 percent.

I believe in fairness to everybody concerned that we ought to leave it just where it stands. We have got the chance for modification back and forth; and I wouldn't try to say just where we will end up, but I do believe it is a good beginning point. And I have succeeded in getting approval of our people in our upper area to that; I am afraid I would have trouble if I went down further because they are very much concerned about the storage. I would like to leave it the way we have got it. I don't think we will lose a thing by it.

COM. BISHOP: Our people would understand these figures based on areas a whole lot better than they would the report of an expert.

COM CLYDE: I am convinced that the figures based on acreage are not good figures, and that is being rapidly recognized in all irrigated areas. An acre of land is not a good measure of the amount of water you have to have.

Now just where we will end up, as I say, I don't know; but the objective when we began was to supply all of these lands with a full and sufficient supply as far as the water would reach. No new lands are to come into it in the making

of the Compact. And therefore we have gone ahead and used acreage as far as we could successfully, it has come into the picture; but I think we have found quite a divergence in the acreage. For example, one fellow told me very vigorously, "You will find 8,000 acres of land we are irrigating." I happen to know that if they put any water on it, they just put it on it by letting the water run down over the hillside. That isn't irrigated land in my language, and I don't think it should be classed as irrigated land. We have had trouble in screening out the most ridiculous cases. But I believe we have gone a long way in getting this close; and with that latitude that we have, I believe we had better leave it there.

COM. BISHOP: While I have this in mind, gentlemen, I want to tell you we had a filing come in our office yesterday for a reservoir on Thomas Fork to hold 1,008 acre-feet. I understand those people were informed that they were going to get a thousand acre-feet and they have already got their filing in in Wyoming to store 1,008 acre-feet on Thomas Fork in Wyoming for use in Idaho.

MR. KULP: Entirely in Idaho?

MR. PERSON: Not quite.

COM. BISHOP: A little more than half of the land is in Idaho and the other in Wyoming.

MR. PERSON: That was the thousand acre-feet you were trying to take care of.

MR. KULP: We were, for the Thomas Fork acreage in

Idaho. I would say if there was any acreage irrigated in Wyoming, that would come out of the Wyoming allotment.

COM. BISHOP: Well it is supposed to irrigate the land in the two states. That is the way the application is.

COM. COOPER: The language is clear in the Compact.

MR. KULP: That is, your application.

COM. BISHOP: It is mostly Idaho but some Wyoming land. They have a secondary filling where the land is and it is mostly under one canal. I forget the name of it.

COM. COOPER: The Compact states: "In addition to such existing storage rights, the right is hereby granted to store, in any water year, above Stewart Dam, 35,500 acre-feet of water and no more for use in Utah and Wyoming, and to store in Idaho or Wyoming on Thomas Fork 1,000 acre-feet of water and no more for use in Idaho."

MR. PERSON: That is what it says, but the intention of that clause was to take care of this.

MR. KULP: Not to take care of Thomas Fork, to take care of the Idaho uses in Thomas Fork.

MR. PERSON: You think the Wyoming State Engineer could get through his Legislature approval of a reservoir in Wyoming to irrigate Idaho land and eliminate the Wyoming land?

MR. MERRILL: No, you are going to irrigate land in Wyoming under this.

MR. KULP: The thousand acre-feet he has been asked to approve for a permit is for, as he says, use in Wyoming and

Idaho. Just because it happens to be on Thomas Fork, why it is not to come out of Idaho's allotment.

MR. PERSON: You know, we were informed time and time again there was no irrigable lands in Wyoming on Thomas Fork. Wallie, what is the reason for that?

MR. JIBSON: There is some irrigable lands under Raymond Creek in Wyoming. We said there was no irrigation on Thomas Fork.

MR. PERSON: There is some in Wyoming?

MR. JIBSON: The lands are on Raymond Creek in Wyoming.

MR. PERSON: Is that what this is for?

MR. JIBSON: I don't know.

MR. PERSON: What is the application for?

COM. BISHOP: The application is to store 1,008 acre-feet for irrigation of lands in Idaho and Wyoming.

MR. KULP: That part that would be used in Idaho would come out of Idaho's thousand acre-feet; and the part used in Wyoming would come out of the Wyoming allotment if Utah didn't take it away from them.

COM. BISHOP: That thousand acre-feet is allocated to take care of Thomas Fork.

MR. A. R. LINFORD: At the present time there is no land watered in Wyoming that has been allocated out of Thomas Fork. This permit was gotten out by two new members comparatively, who are Wyoming members, to store water in Wyoming,

bring it down Thomas Fork and take it out through what is known as the Taylor Canal, and then perhaps use a pumping system or sprinkling system to water land in Wyoming.

At the present time there isn't any Wyoming land watered out of Thomas Fork. There was no part of Thomas Fork that was ever used in Wyoming except perhaps about 25 or 30 acres which is above the Line, which isn't any part of the Thomas Fork Irrigation District.

This has been a misrepresentation as far as some of us were concerned. This thousand acre-feet, as we understand the Compact, was meant for Idaho users. And Thomas Fork Irrigation District isn't the one that has applied for the permit. There are a few members that are part of our Irrigation District that would receive some benefit from it; but the Thomas Fork Irrigation District as a whole wouldn't receive water out of this permit that has been granted, or part of it has been granted up to date.

We would like some storage on Thomas Fork in the name of the Thomas Fork Irrigation District because we are badly in need of it. Our water right, we have about twice as much water decreed to the ground as there is there, at least after our irrigation season is in effect; and we feel like if we could hold our own water up there, we could pretty well take care of the old rights that are there. But we don't feel like putting any water out for new land. I am a Director of the Thomas Fork Irrigation District. Mr. Walter here is the

Chairman of the District.

COM. BISHOP: Didn't you gentlemen have anything to do with this application?

MR. LINFORD: No, we didn't know about it until after it was filed, Mr. Bishop.

COM. BISHOP: I only looked at this map in a hurry, but according to my memory the map showed a ditch on each side of Thomas Fork and the ditch on the left side as you go downstream covered three or four hundred acres of Wyoming land. It didn't show any pumps or anything of that kind, and I had the impression that it was all supplemental supply according to their application. I might be mistaken on that.

MR. LINFORD: Actually, Mr. Bishop, the Taylor Canal was gotten out by an Idaho grant, as I understand, several years ago. The point of diversion is just below the Wyoming Line. The canal is constructed on a half of a tenth to a hundred feet; that is about the least the U. S. Reclamation puts a canal. Due to the flat arid type of ground, on an average in late years you can't get much water down the canal. It is just as high up as it can possibly go along the line. I doubt there is 80 acres in Wyoming that could be irrigated from the canal, and not one acre in Wyoming has been irrigated from the canal. That is the actual fact.

And it is an Idaho grant in the first place. They have a late right about 1895 and early rights date somewhere around 1880. Like I say, we have 192.88 feet of water decreed

to the Thomas Fork Irrigation District according to the Government survey at least, but by July 1st most years there isn't a hundred feet of water in Thomas Fork. I think that is a fair statement.

COM. BISHOP: Is there a thousand acre-feet of water that could be stored?

MR. LINFORD: Some years, as near as I could tell from going over some figures--it would be necessary for water to go down to water livestock at all times--as near as I could tell from figures for the year 1951, we could start storing water perhaps on March 31st, and we could pick up a thousand acre-feet of water, or perhaps 5,000 acre-feet in that particular year before we start irrigation, or the time we did in 1951. And of course we would like to store our own water and supplement our rights that deplete later in the season and have it distributed according to our Idaho decree that has been there since 1902.

COM. BISHOP: Is that the intent, that they not irrigate the Wyoming lands? I am sure the Wyoming Legislature wouldn't pass a bill that would take care of Idaho lands and not take care of Wyoming lands, because there would be no other source I could think of whereby the Wyoming lands would be taken care of.

MR. LINFORD: I doubt it very much. It would be necessary to locate a new ditch, or else use a pump, because there would be very little land that could be irrigated under

the Taylor Canal. It wouldn't exceed a hundred acres, I am sure, that lies in Wyoming. That incidentally doesn't happen to be the land under the application, the most of it, either.

COM. BISHOP: The matter probably should be given some thought and consideration and probably investigated on the ground.

MR. LINFORD: The first Thomas Fork Irrigation District heard about this permit was in December of 1954. According to the records it was filed in March or April of 1953, but not under the name of any part of the Thomas Fork Irrigation District.

COM. BISHOP: There was a filing for a reservoir on the head of Thomas Fork in Wyoming that was identical to the filing, filed in the name of Peter Etcheverry. This is the reservoir, I believe, they filed that the total capacity would be 1,008 acre-feet.

MR. LINFORD: I think according to the figures--I don't know whether they got it out of the air, they claimed a survey--it would be possible to store probably 2500 acre-feet at that site. But at the present time they want to store 1,008 acre-feet, and they already have a permit for 400 and some odd acre-feet.

We feel like it should be handled under the Thomas Fork Irrigation District inasmuch as we don't have enough water to fill our decreed rights; we would like to take up what storage there is. And we also feel like 80 percent of it

goes down the Bear River if we did use it in the irrigation season, and we don't feel like we are hurting the Bear River Compact.

COM. BISHOP: I would like to see you store 2,000 acre-feet up there.

MR. LINFORD: We would be very glad to store two or five. There are several sites we could pick up some.

THE CHAIRMAN: Can we get back on some of these other matters. Have you got further comments from Wyoming? We could talk on these little things a long while.

MR. PERSON: What?

THE CHAIRMAN: Do you want to proceed any further?

MR. PERSON: That is all.

THE CHAIRMAN: Before we continue to see whether we can agree on the terms of the Compact and refine some of the provisions, do you at this time want to have me read some of the comments I got from Federal agencies. Some of them have suggestions here that may have a bearing on some of the revisions.

The first one I have here is from the Federal Power Commission, from the Secretary of the Federal Power Commission in Washington, D. C.:

"This refers to your letter of December 29, 1954 inclosing a copy of the December 20, 1954 draft of the proposed Bear River Compact, and requesting the Federal Power Commission to review the draft and comment thereon.

"Prompt attention will be given to your request and the Commission's comments will be transmitted to you at the earliest practicable date."

So we haven't anything from the Commission yet. But I think I will read the letter from Mr. Wing, Regional Engineer of the Federal Power Commission at San Francisco, because as you will recall, he took part in the first meetings of the Compact Commission here, in submitting the first draft and working with Mr. Iorns and so on. He says:

"Dear Mr. Larson:

"The most recent edition of the Bear River Compact reached me today, and I have just finished reading it. It appears to me that you have now completed a document that is probably satisfactory to the several State Commissions.

"Although I have not been able to attend recent meetings of the Compact Commission, I have followed its progress with much interest. You and all of the others who have labored faithfully and strenuously to draft a satisfactory Compact Agreement, are to be congratulated on a job well done.

"With kindest regards and Best Wishes for 1955,

Sincerely,

Leshar S. Wing."

I received a letter this morning from the Assistant Director of the Bureau of the Budget:

"My dear Mr. Larson:

"This is in response to your letter of December 29, 1954, transmitting the draft Bear River Compact dated December 20, 1954, and requesting the comments of this Bureau on the proposal. Your letter requests our comments prior to the Compact Commission's next meeting on January 12, 1955.

"Because of the short time remaining prior to the date specified, the Bureau of the Budget is not able to advise you with respect to the substantive details of the proposed compact. As a matter of policy, however, water apportionment agreements between States, which do not adversely affect Federal interest, are to be encouraged.

"In general, the format and provisions of the compact proposal appear to conform to similar compacts in force. However, inclusion of the provision relating to payments in lieu of taxes by the United States in Article VII is questioned. Provision for Federal payments in lieu of taxes as it affects the entire Federal establishment is under study and reference to it in a compact to be consented to by the Congress may be premature.

"Upon receipt of your report and copies of the proposed compact in accordance with the provisions of Circular No. A-19 revised"--

which is something I am unfamiliar with. I assume it is a circular of the Bureau of the Budget.

--"the Bureau of the Budget will obtain the views of interested Federal agencies on the compact and advise you

accordingly."

Your Chairman has already done that and written direct to the different Government departments, as has been done on the other compacts, the Upper Colorado River Basin Compact and other compacts, which we thought was the procedure.

I received a teletype this morning quoting a letter from the Secretary of the Interior, which was brought in to me about five minutes ago, so I will read the letter instead. This is from Secretary of the Interior, Douglas McKay:

"This is in reply to your letter of December 29 transmitting copies of the proposed Bear River Compact and asking for review and comment by the Department of the Interior on the draft of December 20, 1954.

"This Department is fully aware of the complex and difficult problems with which the Commission has been confronted in reaching agreement on this vitally important stream. We wish to state our full support for and intention to cooperate in the approach you have taken in securing coordination between the States concerned and the Federal Government in the control and allocation of the water resources of the area.

"The following comments are submitted for consideration, without in any way objecting to the Compact as now drafted. They relate to the provisions of Articles V and VI.

"The language of Article V dealing with limitations on storage would appear to restrict storage of water

imported into the Bear River Basin as well as of water originating within the drainage area. It is doubtful that the Commission intended to make the Compact this restrictive since the possibility of water being imported is suggested in other portions of the draft. It would appear that the language of the present draft could readily be modified to allow for storage of imported water in addition to the storage intended for native water.

"We note that Article VI of the Compact both contemplates future additional developments in the Bear River Basin and provides that all such developments shall be subject to rights to the use of water theretofore initiated and in good standing.

"The Bear River Migratory Bird Refuge is the most important waterfowl management area administered by the Fish and Wildlife Service of this Department in the Intermountain area. A right to the use of 1,000 cfs of water for the Refuge from the Bear River was perfected in 1928 in accordance with the laws of the State of Utah.

"It is our understanding that, in accordance with Article VI, this right will be fully protected. We must, nevertheless, put ourselves on record at this time as reserving the privilege of examining plans for specific possible future developments and of objecting to these plans if it is determined that they will have any secondary adverse effects on the operation of the Refuge.

"The Geological Survey and the Bureau of Land Management have replied directly to your inquiry, without offering substantive comments. It is understood that the Bureau of Reclamation has transmitted to the Regional Office certain comments of a technical nature, or suggestions which might be helpful to the Commission in clarifying certain provisions of the proposed Compact, in matters which are of primary concern to the States involved.

"We wish to offer our congratulations to the members of the Commission for their effective efforts in resolving the important and difficult problems with which you have been confronted."

Now we have the one from Mr. Iorns of the Geological Survey, which we will take up later. I don't need to read that at this time.

Then we have the Bureau of Land Management letter which the Secretary of the Interior referred to. I will read the Bureau of Land Management letter:

"My dear Mr. Larson:

"Please accept my thanks for your courtesy in sending for my review the Bear River Compact with your letter of December 29, 1954.

"You are to be congratulated for your untiring effort in bringing the controversial forces inherent in this compact to a timely conclusion, and for the comprehensive provisions included therein.

"I do not have any comment to offer at this time. However, if I can assist you at any future date please inform me."

The only other one from the Department of the Interior is the letter from the Commissioner of Reclamation to the Director of the Technical Review Staff in the Secretary's office. It might be well to read it because they have made some detailed comments here. My throat is about shot. I wonder if you would read that.

MR. SKEEN:

"In response to your memorandum of December 31, 1954, this letter will constitute our comments on the December 20, 1954, draft of the Bear River Compact.

"The only item which might be of concern to the United States is in connection with Article V, page 14, of the proposed draft which deals with limitations on storage. This article appears to be restrictive for any type of stored water either native or imported. It is doubtful that the Compact Commission intended to make the Compact this restrictive since the possibility of imported water is referred to in other portions of the Compact. It appears that the draft of the Compact could very easily be modified to allow for storage of imported water in addition to the storage intended for native water.

"The remainder of the comments deal only with clarity and are offered for whatever value they may prove to the

Compact Commission in improving the clarity of the Compact. The points deal with matters that are of primary concern to the states involved and it should be clearly understood that no objection will be interposed if the comments are not accepted.

"In Article IV, Section B-1, provision is made for a division of flow between sections of the Upper Division in Utah and Wyoming, when the divertible flow is less than 1250 cfs. There appears to be a weakness in this section of the Compact in that, when the flow is slightly more than 1250 cfs, the upstream sections can take an unlimited amount of water, leaving the downstream sections less than would be their compacted right when the flow is less than 1250 cfs. It appears this possibility could be avoided by inserting some criteria with respect to the minimum allowable flow at the boundary between upper Wyoming and lower Utah sections. This procedure was used in establishing allocations for the Central Division.

"Under the provisions of the Compact the river is operated by the individual states according to priorities within those states, as long as no emergency exists. The Compact also provides that an emergency can exist in one Division without an emergency necessarily existing in another. If an emergency existed in the Upper Division, but not in the Central Division, this would appear to automatically give those portions of Wyoming in the Upper

Division priority over that part of Wyoming that is in the Central Division, since, when an emergency exists in the Upper Division, it has the right to all the divertible flow of that Division. It is not clear whether this was the recognized intent in drafting the Compact.

"In Article IV, Section B-2, the total diversions in Wyoming for the Central Division are limited to a specific amount. There is no indication given as to whether reservoir evaporation shall be included as a charge against diversions.

"In Article IV, Section B-3 and Article V, Section B, the relationship between the rights for beneficial use and power production in the Lower Division are somewhat obscure. It is entirely possible these rights may be obvious to those who have administered the river for some time, but the Compact leaves some question on this point.

"In Article IV, Section D, the waters of interstate tributaries will be administered during times of emergency in accordance with interstate priorities without regard to state boundaries. It would appear that this would include that portion of the tributaries in the upstream state in the priority administration of the whole Compact Division lying in the downstream state rather than just the priority administration of the tributary. It appears that the drafters of the Compact did not anticipate such operation because the following paragraph relates to apportionment of

expenses of a joint water commissioner for each tributary.

"Article V, Section A, provides that additional upstream storage shall be subordinate to existing direct flow rights. It is not clear whether these existing direct flow rights which are superior are limited to the state, or to the Division.

"Article V, Section B, provides that the water stored for irrigation in Bear Lake shall not be released for power generation except in emergency. Without some definition of emergency, considerable leeway appears to be given in power operations.

"In Article VIII, it appears that the language would be clarified if the work 'another' were substituted for 'a foreign.'

"Article IX, Section A, recognizes and confirms certain specific rights to use of water carried in interstate canals, as itemized in the table given in that paragraph, and then goes on to recognize and confirm the use of water carried in all other interstate canals and ditches. The reason for listing certain specific rights, when an all-inclusive statement is later made, is not clear.

"In Article IX, Section B, the last sentence appears to unnecessarily repeat the statement made in Article IV, Section B-1-b.

"In general, we feel that the present draft represents a good job of defining the allocations to various sections

of the Bear River Basin particularly in view of the many complications inherent in writing a satisfactory Compact for this Basin."

THE CHAIRMAN: You want to go ahead and read the others?

MR. SKEEN: Maybe I had better read this other one. This is a letter from Attorney General Herbert Brownell addressed to Mr. Larson:

"Dear Mr. Larson:

"This will refer to your letter of December 29, 1954, which was accompanied by a tentative draft of the proposed Bear River Compact among the States of Idaho, Utah, and Wyoming. As requested, the proposed Compact has been reviewed. That consideration was, of course, upon the background of the Congressional consent to the States in question to negotiate and enter into a compact providing for an equitable division and apportionment of the waters of the stream system in question.

"In your letter you recognize the vital importance of the Bear River as a source of water for irrigation and production of power in the highly developed economy of the three States. That stream is, of course, of great importance to the United States. It is observed in that connection that the proposed Compact would invest in the Bear River Commission broad authority in the administration of the stream and in the establishment of the policy for its

future development. Relative to that power and the objectives expressed in the Compact, reference is made to the fact that on July 26, 1954, the President appointed a Cabinet Committee on Water Resources Policy to formulate a National Water Policy. It is understood that the Committee will issue its report on an early date. Accordingly, it appears evident that there exists a strong possibility that there could be a serious conflict between the National Water Policy to be promulgated and a compact of the character here under consideration. A conflict of that nature could impede the fullest utilization of that interstate stream to the grave detriment of the States involved and of the Nation as a whole.

"Note-worthy is the fact that Congressional approval must be accorded the Compact before it shall become binding or obligatory. As a consequence, care should be taken to determine that it does not go beyond the Congressional consent. Further, it is quite possible that under the circumstances the States would not care to approve the Compact prior to their opportunity to consider the forthcoming National Water Policy. I suggest, therefore, that you bring this letter to the attention of the members of the Bear River Compact Commission prior to the meeting which you state will be held on January 12, 1955. In that manner they will be apprised that the National Water Policy is to be announced and will thus be afforded an opportunity

to consider whether they should act in regard to securing the ratification of the Compact prior to that announcement.

Sincerely,

Herbert Brownell, Jr."

COM. BISHOP: It would be all right with me to have the record show that we believe our representatives and those of the other states are very much better informed on the entire situation than the Water Policy Commission plus the Attorney General.

MR. PERSON: And also that we are a little disappointed to get an indication that a National Water Policy is going to be promulgated which is going to take even more rights away from us. That is the first time I have ever heard of states not being able to make a Compact. We have had that right for fifty years, a hundred years. Now they are even going to take that away from us.

THE CHAIRMAN: We have a letter likewise from the Acting Secretary of the Department of Health, Education, and Welfare. Shall we go ahead and read that first before you decide on a procedure here?

MR. SKEEN:

"Dear Mr. Larson:

"Thank you for your letter of December 29, 1954, enclosing a draft of the proposed Bear River Compact for Idaho, Utah, and Wyoming and requesting comments from this Department.

"Although the Compact provides primarily for the distribution and use of the waters of the Bear River, we believe that careful attention also should be given to the water pollution control features of the river's development.

"Attached for your consideration is a statement which has been prepared by the Public Health Service, of this Department, which is interested in interstate compacts for the development of water resources.

"We appreciate this opportunity to review the proposed Bear River Compact and trust that our comments will be of help to your Commission.

Sincerely yours,

Roswell B. Perkins

Acting Secretary."

MR. MERRILL: Does he make any comments?

MR. SKEEN: Yes. I will read them:

"The Department of Health, Education, and Welfare, through the Public Health Service, has definite interest in the development of the Bear River Basin. This interest stems in part from the relationship of water resources development to domestic and municipal water supplies, pollution control, and other public health aspects, and in part from Section 2(b) of the Water Pollution Control Act (P.L. 845, 80th Congress) directing the Surgeon General of the Public Health Service to encourage interstate compacts for water pollution control.

"The draft Compact is concerned primarily with equitable apportionment among the three States of waters of the Bear River and its tributaries. We wish to emphasize the importance in a compact of this type of recognizing the public health aspects of water resources development, particularly as they relate to public water supply and the control of pollution.

"The Compact has been framed primarily with a view to water apportionment. Article I-A, however, indicates that two of the purposes of the Compact are to provide for efficient use of water for multiple purposes and to permit additional development of the water resources of the Bear River. Article V-B refers to the use for other beneficial purposes of water in Bear Lake in excess of that constituting the irrigation reserve. Article VI reiterates the policy of the signatory States to encourage additional projects for the development of water resources of the Bear River to obtain the maximum beneficial use of water with a minimum of waste.

"The purpose of the apportionment provisions of the Compact is to regulate the use of the water. Such uses must be safeguarded by provisions for maintaining the quality of the water. The fundamental importance of providing for adequate public water supplies and of maintaining water quality of a character to permit appropriate beneficial uses has been recognized by the water supply and

pollution control activities of the health and water pollution control agencies of the States concerned.

"Presently available information indicates that four municipalities in the Bear River Basin utilize surface supplies, at least in part, for public water supplies. The Bear River and its tributaries now receive from 15 municipal sources pollution equivalent to more than 50,000 persons. Of these sources, 12 need new or improved sewage treatment plants. In addition, 16 industries located in the drainage area discharge to surface streams, wastes having an estimated population equivalent of nearly 700,000 at the seasonal peak. Seven of the industries provide some degree of waste treatment and four need new or improved waste disposal facilities. It has been reported that fish kills frequently occur in the Bear River during the sugar beet season because of oxygen deficiencies and the presence of floating sugar beet pulp. Field biologists of the Public Health Service have worked with the State agencies on this problem. In the Bear River Migratory Bird Refuge, the incidence of disease among waterfowl is reported to be increased seriously by polluted water entering the Refuge.

"This Department, therefore, urges that consideration be given to amending the proposed Compact so as to provide recognition of the importance of adequate public water supplies and the maintenance of suitable standards of water quality for all uses through the control of pollution.

It is not proposed in this statement to discuss the means by which this could be achieved. We suggest, however, that as a minimum the statement of purpose and general powers of the proposed Bear River Compact should be expanded to incorporate provisions to this end. Personnel of the Public Health Service are available to assist in doing this if the Commission desires."

COM. COOPER: Mr. Chairman, is that from the Fish and Game Department?

THE CHAIRMAN: No.

MR. SKEEN: That is from the Department of Health, Education, and Welfare.

THE CHAIRMAN: Mrs. Hobby's Department in Washington, and written by the Public Health Service. The only other communication I have is the one we took up this morning from Mr. Iorns. I assume you will want these communications as part of our record?

COM. BISHOP: If necessary I will make a motion that they all be included in the transcript of the meeting.

THE CHAIRMAN: Is there a second to that motion?

COM. CLYDE: I will second the motion.

THE CHAIRMAN: Any comments on the motion? It has been moved and seconded that the letters as read be a part of the minutes of this meeting. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

THE CHAIRMAN: After reading these communications, the

next thing I had on the agenda was consideration of the Compact article by article, and then also how you want to consider the communications from the Government agencies.

COM. BISHOP: Mr. Chairman, I don't think there is anything helpful included in the communications, and I therefore think we should proceed without paying any attention to them.

MR. LAURIDSEN: We agree with that.

MR. KULP: Yes, we agree with that.

THE CHAIRMAN: Do you have any comments Mr. Cooper?

COM. COOPER: It is perfectly okay with us if you want to discuss it article by article. I doubt whether we will get through it tonight.

THE CHAIRMAN: I meant, have you any comments on the communications received from the various Government departmental agencies, whether anything should be considered in the proposals they have made.

COM. COOPER: I don't think they made any suggestions there that would be helpful to us in the consideration of this Compact.

MR. KULP: May I ask a question of Mr. Skeen: Did you read the Compact in view of the comment on the imported water?

MR. SKEEN: I did, and I think by inserting the two words, "Bear River: in front of the word "water" in that Article V, it would take care of that; and I think that may be

a worthwhile amendment.

COM. CLYDE: Article V?

COM. COOPER: Where was that, Mr. Skeen?

MR. SKEEN: That would be in the second line below the table where it says, "to store"--I would insert--"Bear River water, in any water year, above Stewart Dam, 35,500. ." And that would exclude the possibility that imported water might be considered within that. That is on page 14.

MR. MERRILL: That might raise some question on some of these tributaries that we haven't included.

MR. SKEEN: But we have included the tributaries in the definition of the Bear River right at the first of the Compact. (Confers.)

MR. JIBSON: Mr. Chairman, while we are waiting for Mr. Skeen, I have prepared a listing of the reservoirs which are recognized in the Compact; and I would like to turn them over to the Commission for inclusion in the minutes, and one copy to each of the states, if that is desirable.

THE CHAIRMAN: I think that is desirable. If there is no objection, that will be done.

MR. JIBSON: This is a little different listing than in our report inasmuch as Article V states: "Existing storage rights in reservoirs heretofore constructed. ."; and it is leaving out, of course, all stock watering reservoirs which we had previously. I will give these to the states as a matter of record, because these are the reservoirs you are

recognizing in the Compact. (See pages 105a, 105b, and 105c.)

THE CHAIRMAN: Did Idaho have any further comments on the communications?

COM. COOPER: No.

COM. CLYDE: In connection with these communications there is one point there which I think it is well for us to consider, and that is the question of pollution. I think we should recognize that as a matter which must come to the attention of the people in the future, and it may be upon us quicker than we think. I don't think we can ignore it because as the water uses are more fully utilized, the question of pollution will become more important. I don't think we can write any rules and regulations governing it; but I think maybe we should recognize this question of pollution control.

MR. MERRILL: Why would that be the duty of the Commission?

COM. CLYDE: I Believe it should be in the Compact that the three states recognize the problem of pollution may come up. I don't know just how to write it, but I believe we should at least recognize it.

THE CHAIRMAN: There have been general provisions like that written in other compacts I believe.

MR. SKEEN: It might be included in Article I in the general statement of the purposes, "to control pollution", or something of that sort.

MR. MERRILL: That would imply the Commission would

control pollution. It wouldn't have the means to do so, nor the power. That is up to the states, isn't it?

MR. SKEEN: The trouble with putting anything in there is, though, we haven't another word about it in the Compact.

MR. MERRILL: That is the thing.

COM. BISHOP: I can't see any need for it.

MR. KULP: Here is the Columbia River (producing document), and we may cut it down further than that.

THE CHAIRMAN: Would you care to have read Article VIII, the Pollution Control article, in the draft of the Columbia Interstate Compact, just to get some idea of what they have done here?

MR. MERRILL: Yes.

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

MR. SKEEN:

"A. The governments recognize that the rapid increase of the population of the Columbia River Basin and the growth of industrial, mining, and related activities within that area can lead to increasingly serious pollution of the waters of the Columbia River System constituting a grave menace to the health and welfare of the people living in the Columbia River Basin and also occasioning a great economic loss. The governments further recognize that maintenance and improvement of the condition of the waters of the Columbia River System require cooperative

action and that pollution abatement and control are essential to the proper realization of the objectives of this compact and to the safe, profitable, and efficient multiple-purpose use of the waters of said Columbia River System.

"B. In addition to the powers enumerated in Article V, it shall be the duty of the Commission to, and the Commission shall have power:

- (1) To engage in such investigations, analyses, or other appropriate means as are deemed necessary to obtain, coordinate, tabulate and summarize technical and other data on the pollution of the waters of the Columbia River System or any portion thereof and on the character and condition of such waters; and to prepare reports thereon annually or at such other times as may be deemed advisable by the Commission.
- (2) To cooperate with governments or agencies thereof or other entities for the purpose of promoting uniform laws, rules, or regulations for the abatement and control of pollution of the waters of the Columbia River System or any portion thereof, and to make and, from time to time, to revise and to recommend to the governments reasonable minimum standards for the treatment of sewage and industrial or other wastes now or in the future discharged into such waters.
- (3) To disseminate to the public, by any and all appropriate

means, information respecting pollution abatement and control in the waters of the Columbia River System or any portion thereof and on the harmful and uneconomical results of such pollution.

- (4) Upon receipt of a complaint from a member state that interstate waters in which it has interests are being materially and adversely affected by pollution and that the state in which the pollution originates has failed to take appropriate abatement measures, to make such investigation and survey as the Commission finds to be proper, and thereafter to recommend to the appropriate agency that proper action be taken under state or Federal law."

MR. MERRILL: Of course, we wouldn't want anything like that in this Compact because this river doesn't go through any large city. It imposes upon only a few residents of each state the financial obligations of following that thing out. That Compact of course covers large areas, takes in almost all of some of the states. It makes a big difference.

COM. BISHOP: This is a different kind of compact altogether. That is the first one of those basin compacts to take the place of an authority, and our compact is altogether different. I can't see that we need anything at all.

MR. MERRILL: We have got to keep the expense of operation down here, and it would certainly increase it if we assumed the duty of preventing pollution of water by industrial

plants.

COM. BISHOP: Those matters will all come up and be taken care of by the proper agencies at the proper time.

COM. CLYDE: Mr. Chairman, I still believe that this Commission which is being set up under this Compact has got to take into consideration the water supply and its utilization, and that includes pollution. I agree that we don't have to go to the detail that they have gone in the Columbia Basin Compact, but I think the least we should have in there is the authority for this Commission to make recommendations to Federal and state authorities if we have some pollution problems come up, because otherwise it is hanging at loose ends and there is no one who could initiate an action.

I think it should be one of the responsibilities of this Commission if by any chance--supposing we take up here at Soda Springs and we develop a great industrial fertilizer situation which through some operation would discharge waste into the river which would be adverse. No one would be in a position to raise a voice effectively. I think the Commission should at least have recommending responsibility in cases of pollution.

COM. COOPER: Mr. Chairman, the Department of Public Health would immediately raise a voice if the stream is polluted in our state.

COM. CLYDE: They can raise a voice but they can't do anything except in Idaho.

COM. COOPER: Of course I am not opposed to making reference in here, but I contend that there are already existing agencies to take care of this stream pollution.

COM. CLYDE: There is no agency that exists today that can come in on interstate streams without the consent of all the states.

MR. KULP: I believe they can.

COM. CLYDE: I doubt it. I don't believe the Public Health Service can without the consent of the states. And my only suggestion here is that we recognize the problem and that we make it a responsibility of the Commission to at least recommend to these agencies when a problem arises on an interstate stream. It is somebody who can speak for the group of states, is all it amounts to.

I don't think it will involve any expensive control. I don't think the Commission can control it. But they could certainly take steps to bring it to the attention of proper authorities who can. We have different pollution laws in each state, and then we have of course the Federal Department of Public Health over those. But that question is becoming real on most streams, the question of pollution.

COM. COOPER: Mr. Chairman, why couldn't a clause be written in simply to recommend that the Commission be authorized to cooperate with the agencies for the control of stream pollution. If necessary I will move that be written in there.

COM. CLYDE: I will second the motion. I think that

will do what I think should be done.

THE CHAIRMAN: You have heard the motion.

COM. BISHOP: Question.

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

COM. CLYDE: Mr. Chairman, I would like to make one further comment relative to these documents, particularly the document from the Justice Department. This is not new and it is not limited to the Bear River Compact. It was also made to the Columbia Basin Compact as you recall, Mr. Kulp, and I think it is serious. I think it is just a stand that some people are taking that the Federal rights are paramount to state rights when it comes to water. That is the first thing.

The second thing is, the idea of waiting until a National Water Policy has been established, I think, is preposterous. We now have before us three different agencies working on National Water Policy, and one agency which functioned during the Truman administration from which nothing came after many, many months of work and expenditures of large sums of money. We now have the Hoover Commission, one of whose task forces is supposed to develop a National Water Policy. Then we have a Cabinet Committee, which was referred to in this document, which is supposed to establish a National Water Policy. And then we have the Federal Inter-Agency Committee, which has been functioning for years, which is supposed to come up with a National Water Policy.

I think we should have a National Water Policy, but I don't believe the states who have problems on inter-state streams, which problems can be solved by compacting and agreement between them, should wait on any agency coming up with a National Water Policy. I think we should therefore go ahead and consummate this Compact, if it is possible to do so, regardless of the caution which has been expressed in this letter.

COM. BISHOP: I agree with you, George.

THE CHAIRMAN: Any further comments?

MR. MERRILL: There is a fundamental point that is overlooked in that letter, and that is, the title to the rights of the water being in the states pursuant to the constitutional provisions, I think of each of the three states--I know of Idaho.

MR. KULP: He didn't ignore it or overlook it.

MR. MERRILL: The Bear River Compact granting those rights to the Federal Government just eliminates the states, takes it away from us, we can't do it ourselves; that is what we would be doing, giving it away.

THE CHAIRMAN: Any further comments? (No response.)  
How do you wish to proceed from here on?

COM. CLYDE: Mr. Chairman, I move we take up the Compact article by article.

COM. BISHOP: I will second the motion.

THE CHAIRMAN: You have heard the motion. Is there any discussion? (Question is called for. Thereupon a vote was taken and Com. Clyde's motion carried unanimously.)

THE CHAIRMAN: Shall we have the Secretary read it and then comment as we go along? The Secretary will read the Compact article by article; and then as we go along, I assume questions will be raised and we will try to dispose of them as we go along. Is that your intention?

COM. CLYDE: Yes.

THE CHAIRMAN: We will proceed in that manner.

MR. SKEEN:

#### "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 I

"A. The major purposes of this Compact are to remove the causes of present and future controversy as to 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; and to promote interstate comity.

"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."

MR. MERRILL: Was it in Article I, you wanted the pollution theory?

MR. SKEEN: I think we might add it to the provisions there and then put a short statement in the one granting the powers to the Commission.

MR. MERRILL: Yes.

MR. SKEEN: It may be that it could be put right at the end just before "and to promote interstate comity"; insert after the semicolon, "to control pollution."

MR. MERRILL: That would indicate too much authority on the commission, to control it.

MR. SKEEN: Or "to study pollution control".

COM. BISHOP: Why not put it after--where it says, "to permit additional development of the water resources of Bear River", "and pollution control".

MR. MERRILL: That infers we are assuming that responsibility of control of pollution, which we don't want to do.

COM. CLYDE: Mr. Chairman, how would this language be immediately following the semicolon, "to recognize and cooperate with Federal and State agencies in matters relating to control of pollution"?

COM. COOPER: Under B or A?

COM. CLYDE: I would put that in A, right after the

words, "Bear River" in the fifth line.

MR. SKEEN: Would you read it again please?

COM. CLYDE: I don't know whether I can say it the same again, "to recognize and cooperate with State and Federal agencies in matters relating to pollution control".

MR. MERRILL: Water pollution, you mean?

COM. CLYDE: Water pollution--leave off the word "control". Mr. Chairman, with that amendment, I move Article 1 be--

COM. BISHOP: Would you read that. I didn't get that all down.

COM. CLYDE: "to recognize and cooperate with State and Federal agencies in matters relating to water pollution". Then we would have a semicolon there, and proceed, "and to promote interstate comity."

MR. SKEEN: One other minor proposal: In the second line of A, strike the words "as to" and put in the word "over".

COM. BISHOP: Okay.

COM. CLYDE: I move the adoption of Article I as amended.

COM. COOPER: I second the motion.

COM. BISHOP: Question.

THE CHAIRMAN: It has been moved and seconded that Article 1 be adopted as amended. (Thereupon a vote was taken and Com. Clyde's motion carried unanimously.)

MR. SKEEN: "ARTICLE II

"As used in this Compact the term

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

2. '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;"--

I neglected to read the new one we put in as the new No. 2:

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

COM. COOPER: The next one would be changed to 3?

MR. SKEEN: The last one I read would be changed to 3. The new 4 would be:

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

MR. THOMAS: I suggest in the third line, the word "Base and" be inserted following the word "Boies" so the term will read, "Boise Base and Meridian, Idaho".

COM. COOPER: Okay.

MR. SKEEN:

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

Bear Lake and its tributary drainage;

"6. 'Upper Utah Section Diversions' means the sum of all diversions in second-feet from Bear River and the tributaries of the Bear River joining the Bear River upstream from the point where 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;

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

"8. 'Lower Utah Section Diversions' means the sum of all diversions in second-feet from Bear River main stem from the point where 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 north of Randolph, Utah;

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

diversion at Pixley Dam;

"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 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;

"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;

"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 a 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 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, Meridian, Idaho;"--

MR. KULP: Boise Base and Meridian, Idaho.

MR. SKEEN: ". . . Boise Base and Meridian, Idaho;

"18. 'Smiths Fork' means the 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;"--

I changed "a" to "the".

COM. BISHOP: Do you want to do that?

MR. SKEEN: I think it is better.

Mr. Jibson: "The" ties it right down to the stream "which rises in Lincoln County, Wyoming and flows in a general southwesterly direction to its confluence with Bear River near Cokeville, Wyoming". I think "a", the way it was originally, would be better.

MR. MERRILL: "A", yes.

MR. SKEEN: If there are several in the same category.

MR. JIBSON: There are several that could come under that general definition.

MR. SKEEN:

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

MR. JIBSON: To be consistent with our next definition and to be more accurate, I would recommend that " to its confluence" be taken out and in its place substitute, "and in its natural channel is tributary to Smiths Fork in Section

17... " Grade Creek does not reach Smiths Fork. It is all diverted in the summer, and in the winter it disappears; so it is an intermittent stream from the last diversion point. It still has a channel there. It is in exactly the same category as Pine Creek, which we have defined in this manner in the next paragraph.

COM. COOPER: How would you want it to read?

MR. JIBSON: I would strike, "to its confluence with" and substitute, "and in its natural channel is tributary to".

COM. COOPER: " . . . Tributary to Smiths Fork . . ."

MR. SKEEN: Would you read the whole thing?

MR. JIBSON:

"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;"

COM. CLYDE: Should that be Sixth Principal Base and Meridian?

MR. JIBSON: They say it is just Sixth Principal Meridian.

MR. SKEEN:

"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 and in its natural

channel is tributary to Smiths Fork in Section 36, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming;"

MR. JIBSON: I would like to make a correction on that, Mr. Chairman. The last line is Range 119 West rather than Range 118 West. I corrected that in the last draft but it slipped out again.

MR. SKEEN: That should be Range 119 West.

"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;

"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, 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. EMIL G. GRADERT: Aren't Sections 1 and 2 in 118 West?

MR. SKEEN: Mr. Gradert asked if Sections 1 and 2 aren't in Range 118 West instead of 119?

MR. JIBSON: Which definition are you reading?

MR. SKEEN: The old No. 21, Spring Creek--the new

No. 22.

MR. JIBSON: I checked all these other descriptions. I believe 119 is correct, Mr. Gradert.

MR. SKEEN:

"23. 'Sublette Creek' means a 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;

"24. 'Hobble Creek' means a 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;

"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;"

COM. BISHOP: Is that a northerly direction? I thought that was a southerly direction.

MR. JIBSON: It runs northerly across the State Line

and then turns east.

COM. BISHOP: That's right.

MR. SKEEN:

"26. 'Lannon Canal' means that irrigation canal which diverts water from the right bank of 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;

"27. 'Lone Mountain Ditch' means that irrigation canal which diverts water from the right bank of Bear River in Summit County, Utah, North 1,555 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 State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;"

MR. JIBSON: To be consistent we ought to put "Utah" after "Salt Lake Base and Meridian". We have used it everywhere else.

MR. SKEEN: Yes.

"28. 'Hilliard West Side Canal' means that irrigation canal which diverts water from the right bank of 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;

"29. 'Francis Lee Canal' means that irrigation canal which diverts water from the left bank of 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;

"30. 'Chapman Canal' means that irrigation canal which diverts water from the left bank of 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 basin drainage near the Southeast corner of Section 36, Township 17 North, Range 121 West, Sixth Principal Meridian"---

COM. BISHOP: Wyoming.

MR. SKEEN: "Wyoming, and then in a general westerly direction crossing the Wyoming-Utah State line;"

MR. SKEEN: Mr. Thomas suggests we change the wording of that "Saleratus basin drainage" to "Saleratus drainage basin", if that is satisfactory to everyone.

COM. BISHOP: That is okay.

MR. SKEEN:

"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. NATE: In some of the old compacts that was Township 9 North. Which is correct, 8 or 9?

MR. SKEEN: Do you know, Mr. Thomas?

MR. THOMAS: I am sorry. I didn't hear the question.

MR. NATE: In that No. 31, in some of the old drafts we refer to it as Township 9 North, and here it is written 8 North. Which is correct, 8 or 9 North?

MR. THOMAS: I wouldn't be able to answer that.

COM. CLYDE: It looks like it should be 8.

COM. BISHOP: Mr. Chairman, I move the approval of Article II as corrected and amended.

COM BISHOP: Second the motion.

MR. A. B. HARRIS: It appears to me we have overlooked the Bear River Canal. We have the Francis Lee which goes into the Bear River Canal.

MR. SKEEN: Did we have the definition in earlier drafts?

MR. HARRIS: I looked in the July 8 draft and I didn't see it there. I wonder why it was omitted.

MR. SKEEN: I think we just have these canals listed in Article IX over here.

COM. BISHOP: Bear River Canal comes right out near the Francis Lee Canal and has the same status, I would say.

MR. HARRIS: It comes out immediately below the Francis Lee. I thought the intent was to include it in this group.

MR. PORTER: On page 9 you do include the Bear River Canal.

COM. BISHOP: It ought to go in there as No. 30 or 28, one or the other, right next to the Francis Lee; because it comes out right near the Francis Lee.

MR. HARRIS: It should be included right after the Francis Lee.

MR. SKEEN: We will have to obtain a definition from Mr. Jibson then and insert it as No. 30. That would make the definition of the Chapman Canal No. 31, and Neponset Reservoir No. 32 with those changes and additions.

(The Chairman leaves.)

MR. MERRILL: That is an insert, No. 30, with a definition of Bear River Canal?

MR. SKEEN: Bear River Canal. (Question was called for. In the absence of the Chairman the Secretary put the vote and Com. Bishop's motion carried unanimously.)

(The Chairman returns.)

MR. SKEEN: "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 which"--

That "which" should be changed to a "who".

"--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.

"B. The compensation and expenses of each commissioner and each advisor 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, we might consider putting in a No. 5 there relating to pollution. That would probably be as good a place as any.

COM. CLYDE: Doesn't 5 cover that--"Perform all functions required'?"

MR. MERRILL: Yes, in view of what we have in Article 1.

MR. SKEEN: I think it probably would.

5. 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;"

COM. BISHOP: Just a minute. I don't like that No. 1. It infers we will have to have a suit to enforce it. I think it should say, "if necessary." Does that read all right to you?

COM. COOPER: We wouldn't have a suit unless it was appropriate. If you could get by without a suit, you wouldn't file it.

COM. BISHOP: Okay, if it suits the rest of you.

MR. SKEEN:

"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."

COM. CLYDE: Mr. Chairman, I would like to refer back to Section A of Article III, the last sentence relating to what constitutes a quorum. I would merely like to raise this question: This means that two representatives from each state must be present before we can do business?

MR. MERRILL: Yes.

MR. SKEEN: That is right.

COM. CLYDE: Is there any chance under that kind of a provision whereby one state could sit out and block any action by not coming to the meetings?

MR. SKEEN: It could.

COM. CLYDE: If that is answered in the affirmative, is there any solution to it? I don't know what it is.

MR. BLACK: How about a proxy, allow someone else to represent the Commissioner in case of illness?

THE CHAIRMAN: That would be in the form of a veto. We couldn't carry on if they didn't come.

MR. BLACK: If they could come by proxy, that would eliminate some excuse for anybody not coming on account of illness or something.

MR. MERRILL: Of course that is a matter that could be determined by the Commission itself, that is to say, by its by-laws.

MR. BLACK: Yes, I think so.

MR. MERRILL: That is what we thought before when we worded it this way.

COM. BISHOP: Mr. Chairman, I move we adopt Article III as corrected.

COM. CLYDE: I will second it.

THE CHAIRMAN: It has been moved and seconded that we adopt Article III as corrected. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

THE CHAIRMAN: "ARTICLE IV

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

"A. When the direct flow of water in Bear River at Border Gaging Station is less than 400 second-feet, no diversion from Bear River for irrigation shall exceed one second-foot for each 50 acres of land.

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

MR. PERSON: Mr. Chairman, I suggest we approve these section by section; otherwise we will just be doing them over.

MR. MERRILL: That is going to take so much time. Time is running out on us.

COM. COOPER: Mr. Chairman, are we going to get through with this tonight? If not, it is going to be necessary for us to make different reservations for getting home.

THE CHAIRMAN: I might be able to answer if I knew how you Commissioners felt about these articles here.

COM. BISHOP: I came here this time to stay until the last dog is hung.

THE CHAIRMAN: Mr. Bishop said he came prepared to stay until the Compact is completed.

COM. COOPER: We have come to stay until the Compact is completed without having it hung. We want to make arrange-

ments one way or the other.

THE CHAIRMAN: There are 22 pages and we have covered seven.

MR. MERRILL: In a little over a half hour.

THE CHAIRMAN: Yes.

(Discussion.)

THE CHAIRMAN: If it is agreeable with the Idaho delegation, I suggest we go on through so they can catch their plane to get there in the morning.

COM. COOPER: All right.

COM. BISHOP: Mr. Chairman, in order to get the thing going, I make a motion that we eliminate Section A of Article IV from the Compact.

COM. COOPER: We don't want to go that fast. We are not that anxious.

THE CHAIRMAN: I don't hear any second.

COM. CLYDE: What would you substitute?

MR. PERSON: Nothing. B would become A. It has no significance unless somebody just wants to regulate somebody when they don't need to be regulated; that is the only significance of A. And if we leave it in, we might as well stay out of here.

COM. CLYDE: Mr. Chairman, may I ask Mr. Jibson here, what was the reason for putting that in?

MR. JIBSON: That was merely to set a maximum lid on diversions; and I believe originally that the figures was

higher than 400 second-feet. As I have indicated in one of the previous meetings, this has very little meaning the way it is written now, because the water is not available at the point of diversion but for a very few canals when the flow at Border is less than 400 second-feet.

It had been suggested at one time, I think by Mr. Iorns, that perhaps that should be put on a section basis, that no section should divert more than at a rate of 1 to 50 when the flow at Border is below 400; and of course we know that the water is not available for a full section to divert higher than that during that period. I don't believe it has much significance at the present time at that particular figure of 400 second-feet.

I ran a study on the Utah canals, and you may recall that there were only a very few canals at the head of the section in a few years out of the last ten which would have had the water available to have diverted in excess of 1 to 50 at the time Border was below 400 second-feet. So as far as the Utah canals are concerned, we know it has practically no significance. There may be some canals in other sections that would have the water available at that time.

MR. PERSON: Since people seem to insist on having 400 someplace, let's put it in the most reasonable and logical place. Let's take it out of here and leave it in the other place, 400 at Border--if you want to keep picking at Border. Instead of having two or them in, let's have just one; let's

have the other one and take this one out.

COM. COOPER: We will consent to that.

COM. CLYDE: I have no objection to taking it out.

THE CHAIRMAN: Have you decided what your comment will be on that motion of Mr. Bishop?

COM. COOPER: We have agreed to delete A. under Article IV provided it is left in under a. in 2, "Central Division", on page 10; that is, page 10, under 2, "Central Division--provided that be left as it is.

THE CHAIRMAN: Is that satisfactory to you, Mr. Clyde?

COM. CLYDE: Yes, that is satisfactory to me.

THE CHAIRMAN: I don't believe you heard that.

MR. PERSON: Are you tying them both together? Is that all in one motion?

MR. MERRILL: You made the proposal and we accepted.

THE CHAIRMAN: What we really have is a motion by Mr. Bishop but it wasn't seconded.

COM. CLYDE: I will second it.

COM. BISHOP: My motion was to delete A. of Article IV, and Mr. Cooper seconded the motion.

MR. MERRILL: With a condition.

MR. NATE: With the condition that it stays in on page 10.

MR. MERRILL: That the 400 and 810 stays in on page 10.

MR. PERSON: Why not take it piece by piece, and then

we can back up.

MR. MERRILL: No, we want to know now if you are going to stay on it. We don't want to back up.

MR. PERSON: Make it a substitute motion and I think Wyoming will second it.

COM. BISHOP: How does it go?

MR. PERSON: He has got us beat down to a pulp. They have got to have 400 someplace.

COM. BISHOP: All right, we will consider it on its merits when we come to it.

COM. COOPER: Then we won't let it go out.

COM. BISHOP: We will try to be reasonable.

MR. PERSON: You make your motion.

COM. BISHOP: I withdraw mine.

COM. COOPER: We will move that A. in Article IV be deleted provided that 2, "Central Division", on page 10 will remain as it is written in the Compact now.

MR. PERSON: You mean the 400?

COM. COOPER: The 400 and 810 second-feet--" or the flow of Bear River at Border Gaging Station is less than 400 second-feet".

MR. PERSON: Fred, you don't intend not to give us a chance to discuss any other part of that Section 2.a., just the 810 and the 400?

COM. COOPER: That is right.

MR. PERSON: That is, you will eliminate this one

400 if we will accept the 400 and 810 on top of it?

COM. COOPER: That is right.

MR. PERSON: Okay.

THE CHAIRMAN: You have heard the motion. It there a second to it?

MR. PERSON: Second it.

COM. BISHOP: I can't like it.

MR. PERSON: I don't either. I am just weak.

COM. BISHOP: What I would like to do is just take it out on its merits; and then when we come to the other, consider it on its merits.

MR. MERRILL: Take it out is what you want.

COM. BISHOP: There is no harm in that, is there? The other one is a big long one; I would like a chance to talk it over and think it over a little.

(Discussion.)

COM. BISHOP: I will second it with the understanding of course that I am going to give further consideration to the situation that arises over this 400 and 810.

MR. MERRILL: In other words, you are seconding it upon the provision, however, that you won't be bound by it?

COM. BISHOP: That is right. I think we ought to take it as we come to it, as we go along here. We are trying to approve one way ahead that we don't know just what the effect of it is going to be, and I don't want to do it that way.

THE CHAIRMAN: Can we approve Article IV, all but A., until we get over to this next section that refers to it?

COM. COOPER: We will do it that way; we will do it that way if you want to.

COM. BISHOP: Let's go ahead and read the rest of it.

THE CHAIRMAN: It looks like we can't get a vote as it is.

MR. SKEEN: Where were you?

THE CHAIRMAN: Start on B.

MR. SKEEN:

"B. 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 percent,  
Upper Wyoming Section Diversions - 49.3 percent,  
Lower Utah Section Diversions - 40.5 percent,  
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 irrigate lands in both

Utah and Wyoming, shall be supplied from the divertible flow allocated to the Lower Utah Section Diversions.

"e. 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.

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

MR. SKEEN: Maybe we had better stop there and discuss it up to that point.

MR. PERSON: We have already agreed on e.

(See motion at page 65 above, and discussion prior thereto.)

MR. SKEEN: Yes, this is the old e. If there are no other questions, we will proceed to the Central Division:

## "2. Central Division

"a. When either the divertible flow as hereinafter defined for the Central Division is less than 810 second-feet, or the flow of Bear River at

Border Gaging Station is less than 400 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 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, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, and Smith Fork and all the tributaries of Smith Fork above the mouth of Hobble Creek including Hobble Creek, and the main stem of Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border, Wyoming.

- (2) Diversions in second-feet in Idaho from 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 at Stewart Dam.
- (3) Flow in second-feet of the Rainbow inlet Canal and of Bear River passing downstream from Stewart Dam."

COM. COOPER: Mr. Chairman, just a minute. On page 10, six lines from the bottom\*, "for the benefit of the State of Idaho", should that not read, "for the benefit of the State of Wyoming"?

MR. PERSON: We are regulated for your benefit.

MR. NATE: That is a typographical error, the only way it makes sense.

MR. PERSON: Certainly it wouldn't make sense the

\*REPORTER'S NOTE: See middle of page 140

other way, unless we tried to get it anyway. We regulate Wyoming for the benefit of Idaho.

COM. BISHOP: Let's put it in there, "regulated to the detriment of Wyoming"--that would suit me better.

COM. COOPER: ". . . to not exceeding forty-three percent of the divertible flow."

MR. MERRILL: You will have to say, "Divertible flow for use in Wyoming", otherwise.

MR. SKEEN: It shall be limited for the benefit of Idaho.

COM. COOPER: ". . . shall be limited for the benefit."

MR. SKEEN: It shall be limited for the benefit of Idaho, not exceeding 43 percent.

COM. COOPER: That is it; I get it now.

MR. SKEEN: The comma perhaps may be best out of there after the word "limited".

COM. COOPER: I get it now. I apologize.

MR. PERSON: Right after that "divertible flow", I suggest we take Judge Spaulding's amendment, "Provided"--

COM. COOPER: Where?

MR. PERSON: After "divertible flow", make that a comma, "Provided, that during such time as there is natural flow in the Bear River past Stewart Dam and/or water is being diverted by the Rainbow Inlet Canal the diversions in this division for Wyoming shall not be limited to less than 207 second-feet."

COM. COOPER: We object to that. We have discussed this over and over and over again, and this is an issue with us; and we absolutely refuse to have that amendment put into the Compact. It is unjust and it is based on priority and it takes the water directly from the Last Chance Canal, and we are not going to consent to it, and we are going to resist it.

MR. PERSON: You have been mighty successful so far. You wouldn't even give me a chance to talk about it.

COM. COOPER: I am sorry. You can talk about it all you like.

MR. MERRILL: You have talked about it a dozen times, and we have turned it down every time.

MR. PERSON: It was recommended and discussed two days. Let's first go into the whole history with the Engineering Committee.

MR. MERRILL: They recommended against it.

MR. PERSON: The Engineering Committee recommended it.

MR. MERRILL: No.

MR. PERSON: They thought it was fair.

COM. COOPER: Mr. Iorns has made a statement on various occasions to the effect that it isn't right. I think Mr. Jibson can elaborate on it and explain it. But to the amendment, we just simply say "no," and we are not going along with it.

MR. PERSON: You are going to make the Wyoming people mighty unhappy, Fred.

COM. COOPER: We are sorry that you feel that way.

MR. PERSON: Not me, the water users in Wyoming.

COM. COOPER: I don't see why--

MR. PERSON: It can't possibly hurt you, Fred, not one iota.

COM. COOPER: It will just simply take 207 second-feet away from us, that is all. We can't be intrigued by any such proposal.

MR. PERSON: Let me tell you what it would do. If our 43 percent gave us 150 second-feet and you were taking 6 second-feet past Stewart Dam, then we could divert 156; and our rights back to 1897 would be shut off and you would still be getting water on your 1897 rights.

COM. COOPER: We don't agree with you at all on that theory. It is entirely a theory and it wouldn't work out in practice. We have plenty of information to establish the fact that it would take the water directly from us, and we aren't going along with that.

MR. PERSON: Fred, I don't think it is going to take water away from you--

COM. COOPER: Yes, it will.

MR. PERSON: --except water that you are taking--it is a question with your 1897 rights--are you going to take water away from our 1890 rights? Would you want to do that?

MR. MERRILL: Our 1877 rights are taking your 1915 rights; that is what we are doing.

MR. NATE: Here are some figures taken from one of the reports in '48. On the adjudicated water rights, relative rights, as of 1897 Wyoming has 343.09 second-feet and--

MR. PERSON: What was that?

MR. NATE: 343.09.

MR. PERSON: That is the figure I should have had, in 1897, instead of 207.

MR. NATE: And Idaho has 454.68. So the relative percentages, Wyoming is 43 percent, Idaho 57 percent. Now figured as of 1885, Wyoming was 271.11, Idaho has 451.48; the relative percentages, Wyoming 37.5 Idaho 62.5. So as of 1897 it is still on this proposed ratio of division, 43 percent for Wyoming and 57 percent for Idaho.

MR. PERSON: Let's look at the facts as they actually exist. When you are letting water in your section go by Stewart Dam, it is going down to satisfy an 1897 right.

MR. NATE: Wait a minute--

MR. PERSON: And there are times when we are--in other words, you want to regulate us up here with our old rights to satisfy a junior right below Stewart Dam.

MR. NATE: This was put in here before on this 207, according to the sheet I have here, by Mr. Iorns. The 207 was accumulative rights of 1897 and an earlier priority. That is your right.

MR. PERSON: Yes.

MR. NATE: Now the first large irrigation right below Stewart Dam is the Last Chance Canal at 200 second-feet, date of priority 1897. So they are about the same date of priority.

MR. PERSON: So we are not at all interfering with your rights. That is, who does this Compact regulate? It regulates Wyoming and it isn't regulating you. It is regulating Wyoming for you; and then on top of that, you want to regulate us for an 1897 right below Stewart Dam.

MR. NATE: What you want to do is take out 207 and fill that right after we have already made a division of the water. You want to be sure your 1897 rights are filled. And what are we going to do about those older rights between Border and Stewart Dam?

MR. PERSON: You will have them all filled with the 43 percent.

MR. NATE: No.

MR. PERSON: If you didn't have them filled, why are you letting water go by Stewart Dam? We are going to stand on the 57-43 unless there is water going by Stewart Dam.

MR. NATE: But how do you expect to fill your 1897 rights if we don't fill our--

MR. PERSON: When you have got water going by Stewart Dam there is excess water in the section.

MR. NATE: Yes, but it looks to me like you are

dividing the water, and after you divide it then you want a credit for something that doesn't do us irrigators any good between Stewart Dam and Border.

MR. PERSON: You aren't using it.

MR. NATE: We can't physically use it but I am speaking for the water users between Border and Stewart Dam.

MR. PERSON: All right, if you are letting water go by Stewart Dam then there must be more water than you need.

MR. NATE: No, after it gets through Stewart Dam-- even before it gets through Stewart Dam we can't physically use it anyway for irrigation. The only one is West Fork Canal; that is the only one.

MR. PERSON: If you are letting water go by Stewart Dam, then your section must be wetted.

MR. NATE: No, that would be return flow after it has gone a long way around Preston.

MR. PERSON: Of course we are going to measure that at Stewart Dam, not miles below, right at Stewart Dam.

MR. NATE: I don't see how you can fill your 1897 rights and not fill our rights of the same date, which is 57 percent of those total rights as of--

MR. PERSON: If you were short of water, why are you letting water go by Stewart Dam?

MR. NATE: I don't think you would find much going by there then.

MR. PERSON: Then this provision doesn't operate.

MR. NATE: Why don't you put it at Pixley Dam? There isn't any provision for water coming by Pixley Dam to be moved back upstream. Why do you need it at Stewart Dam if you don't need it at Pixley Dam?

MR. PERSON: It never occurred to me. Maybe we ought to have it there.

MR. NATE: It wasn't in there.

COM. COOPER: You contend you should use the water in your state in the lower end if it isn't used in the upper. We expect the same right there. There isn't any difference, is there?

MR. PERSON: No. Let us face the facts. If you take these charts, the only state that is being regulated by this Compact is Wyoming. We are being regulated in the Upper Wyoming Section to satisfy the Lower Utah Section in the Upper Division. We are being regulated in the Upper Section in the Central Division to satisfy Idaho. Now, on top of that, when there is more water than Idaho needs, you still want us to be regulated. And we are willing to be regulated but at least we want to take care of our rights up to 1897 if you are turning water past your section to satisfy rights junior to 1897.

MR. NATE: In the last meeting Mr. Iorns testified that this 207 is based on priority rights.

MR. PERSON: The whole Compact is based on priority rights.

MR. NATE: It is based on acres irrigated.

MR. PERSON: And a priority the Supreme Court would recognize.

MR. NATE: There were no priorities; there were acreages irrigated, which are the figures of 17,830 acres in Wyoming and 22,664 in Idaho.

MR. PERSON: Our priority of rights, that is how we divided it into Divisions. We did consider priority when we divided it into Divisions. We also considered another rather important factor, equitable distribution between states. And you people go have a look at the reports and see who is being regulated by this Compact; we are getting the regulation, not you. You are getting the water. And then not only that, you put a 400 under A., then you put an 810, and then you get another 400; and then you come along and will not accept 207, and you say no water is going by Stewart Dam.

MR. NATE: That might be considered if you go on to relative priority of rights and forget about acres irrigated. That makes a different story.

COM. COOPER: When you get one acre-foot for 50 acres of land--we would be very happy if we got that kind of an allocation.

MR. PERSON: Fred, I am hungry and tired. Don't you start arguing with me about this. If I am talked into it I won't dare--

MR. NATE: A lot of those adjudicated rights are on the basis of 1 to 35.

MR. PERSON: You know as well as I do why we aren't going to set priority of rights between your first Idaho section and our section.

MR. NATE: Why?

MR. PERSON: You all have the same date of priority.

MR. NATE: No, we don't.

MR. PERSON: Practically. And you know all those people didn't go in and settle that in one year.

MR. NATE: They aren't the same dates.

MR. PERSON: A big chunk of them are. All the early ones are the same date.

COM. COOPER: We know too that Wyoming is trying to fill their '39 rights in some instances. We are well aware of that.

MR. PERSON: We won't under this Compact.

MR. NATE: Our rights start in 1877. We have some rights in here about 1884 through 1886 that come in there; and there is about, roughly, 100 second-feet of rights that come in there. There is the chart; look at that (indicating document).

MR. PERSON: You said a minute ago that there is very little water that goes past Stewart Dam. You know the 207 clause doesn't operate at all unless there is water going past. It doesn't become operative until there is water going past.

MR. NATE: Do you count the West Fork diversion in

there too, the West Fork Canal diversion, as well as water going through the dam?

MR. PERSON: Not the West Fork Canal; the Inlet Canal, not the West Fork Canal. No, it doesn't count; that is part of your Central Division, that is part of your diversions. That is a direct flow right. That wouldn't count on the 207 clause. Isn't that right?

MR. JIBSON: That is right.

MR. PERSON: That wasn't my intention. Inlet Canal and past Stewart Dam. That is what we are trying to do is to keep this regulation, when there is plenty of water, away; and that is all the 207 clause does. In other words, if you have 6 second-feet going past Stewart Dam, and we were diverting 150, we could increase our diversion to 156 as the 207 clause was written by me.

MR. JIBSON: There is a difference between Spaulding's and yours.

MR. PERSON: I like Spaulding's better. It is simpler and easier to operate.

MR. NATE: Why didn't you do that at Pixley Dam?

MR. PERSON: I will be glad to study that.

COM. COOPER: We don't expect to digress at all from the way this is set up. We won't accept this amendment.

THE CHAIRMAN: We will recess for five minutes.

(5:00 p.m. Recess.)

(5:17 p.m. Meeting reconvened)

THE CHAIRMAN: You were discussing the suggestion made by Mr. Person in the Central Division here which pertains to Idaho and Wyoming. Have you any further comments, Mr. Cooper?

COM. COOPER: The only comment that we have is that we don't expect to yield to it at all.

MR. PERSON: I hate to always offer the compromises; every time I do I lose something. I suggest we take the other 400 out and let the 207 go.

THE CHAIRMAN: Which other 400 do you mean?

MR. PERSON: The 810 and the alternate 400. We have already taken out A.

THE CHAIRMAN: We didn't act on that.

COM. COOPER: We didn't agree on that.

MR. PERSON: We left that. I think Mr. Lauridsen will be happy if I take that 400, the alternate to the 810, out, and then I will not insist on the 207 clause.

MR. MERRILL: No.

MR. PERSON: Wouldn't you like that?

MR. LAURIDSEN: We have got that 400 in.

COM. COOPER: We will agree to taking out the 400 second-feet under Article IV in A; but we will not consent to taking out the 810 second-feet or the 400 second-feet in a. in 2, "Central Division", and we don't expect to yield on the 207.

MR. PERSON: It seems to me what Idaho is suggesting

is they want to trade our one 400 for their 810 and their 400, and their 207; I can't see where that would be a fair trade. I suggest we might adjourn until after supper and maybe Fred will have some supper and be better natured.

MR. MERRILL: Fred is going home. He has got to go to Boise. There is no need of adjourning. We have all determined on this point just as it is and we can't do otherwise. If you are going to let that break up the whole thing, it is going to break up.

MR. PERSON: I have proposed all the compromises we can think of. If we go home and have supper, maybe we can think of another compromise.

MR. MERRILL: We have compromised and compromised. This is a result of compromise.

MR. PERSON: The only one who has compromised is Wyoming.

MR. MERRILL: You know that isn't true. Don't talk like that.

MR. PERSON: Fred, if you talked us into this, you wouldn't even have the face to come up into Wyoming and look at our water users, would you?

COM. COOPER: I would be very happy to. If I compromised with you and gave you this, I wouldn't dare go home because I would be hung to crossarms.

MR. PERSON: Your people are wonderful, aren't they?

COM. COOPER: I would be hung to the first crossarms

on the first telephone pole they could reach. They would say, "We had confidence in you and we are surprised and disgusted."

MR. PERSON: Their confidence is completely justified, I can assure them of that.

COM. COOPER: They would be thoroughly disappointed if I permitted this proposal to go through, I am sure.

COM. CLYDE: When we get into a jam of this kind we always go back to the fellows that dug up the records. I am still a little confused on the impact of your 400 second-feet. Will somebody explain that?

MR. PERSON: The 207?

COM. CLYDE: The 400. We have, "810 second-feet, or the flow of Bear River at Border Gaging Station is less than 400 second-feet, whichever shall first occur.." Which will govern it?

MR. PERSON: The 400 every year.

MR. JIBSON: The last report I gave, No. 28, makes a statement in summary that I will read again, on page 5, Paragraph 4:

"Following high water the flow at Border drops below 400 second-feet in all years at an earlier date than the total divertible flow drops to 810 second-feet. The average period between these dates is 15 days."

MR. MERRILL: Report No. 28?

MR. JIBSON: Report No. 28, page 5.

COM. CLYDE: That means if they held on 400 second-

feet, it would go under regulation 15 days earlier.

MR. JIBSON: On an average it would go under regulation 15 days earlier than if it is based on 810 total divertible flow.

COM. CLYDE: And when it goes under regulation, I think it is usually those downstream who are the beneficiaries of regulation.

MR. PERSON: That ; is right.

COM. CLYDE: Therefore it would seem that the earlier the regulation, the more benefit to those down below. I may be wrong on that, but that is the way it looks to me.

MR. MERRILL: The reason why, as I remember the discussions, that we agreed to 810 and/or 400, whichever was the closest, was because there would be various conditions that would be different each year perhaps, and in those sections they may not want to call for an emergency, they could exercise their choice between the two, and it gave some flexibility; and that was one of the arguments for agreeing upon these two figures, which was so definitely agreed upon.

MR. PERSON: Let me make it clear for the record that Wyoming has never agreed to the 400. I think there are enough people here that know that. Idaho may have agreed to the 400.

MR. KULP: May I say, Mr. Chairman, I believe that 400 was put in for the benefit of Wyoming and Utah--

MR. MERRILL: It was.

MR KULP: --because we had an inch and a half to the acre down there, and you had one second-foot per 70 acres. You wanted to be on a parity with us so we put that 400 in as a basis of reducing all appropriations to a common figure,

COM. CLYDE: That was the 400 in Section A?

MR. KULP: Yes.

MR. PERSON: But the other 400 is the one we have objected to strenuously. The other 400 was stuck in there because it was said that when the flow at Border became 400, the divertible flow would be about 810. It happens when the flow at Border is 400 the divertible flow is about 1100.

MR. JIBSON: There was never any attempt from the Engineering Committee that I know of to say that those two figures are comparable; 400 second-feet did not originate as a comparable figure to 810 second-feet divertible flow. I can tell you where the 400 second-feet originated, but it wasn't to be a comparable figure with 810 second-feet divertible flow

MR. PERSON: Why did we put the "or" in?

MR. JIBSON: I don't know why we put it in. I mean, from the standpoint of the engineering studies, we never did say that they were comparable in any sense of the word. That is why they don't happen on the same date, or they don't fluctuate back and forth. It is always the same.

MR. PERSON: The 400 is always ahead of the 810. Three hundred would always be ahead of 810; if you had 300 it

would always be ahead of the 810 .

MR. NATE: Isn't that critical flow when there is a usage of water one to 50?

MR. JIBSON: The 400 flow at Border is an average flow where there would be no interference with the rights of the Last Chance by the Wyoming uses. That came from Report No. 16 and Report No. 23.

COM. CLYDE: You mean, if you only had 300 at Border it would interfere with Last Chance?

MR. JIBSON: Generally speaking, yes. This is an average figure at Border that was used in these previous reports as a necessary flow to supply the rights below, the first rights below Bear Lake.

COM. CLYDE: It still appears to me that if you regulate at 810 divertible flow, you would regulate sooner and you would solidify the flow available at Last Chance.

MR. JIBSON: You regulate later on the 810 rather than sooner. Your criteria is 400 in each case.

MR. PERSON: I hate to propose another compromise. Let's make that 400, 300; and make the 207, 200.

MR. MERRILL: Why not make it 202?

COM. COOPER: That isn't any compromise at all; that is ridiculous.

MR. PERSON: A suggestion for the 400--we will forget about the 207 clause and make the 400, 175, what it actually is.

MR. NATE: We wouldn't have any water if it got down to 175. We would have a little water coming down West Fork--

MR. PERSON: In 1954 when it was 175 you had enough water to reach all your requirement of one acre-foot for 50.

MR. NATE: No, we didn't. We didn't meet all irrigation requirements.

MR. PERSON: But if you had the rest of the Compact you would.

MR. NATE: What?

MR. PERSON: If you had the 57 percent, you would have.

MR. NATE: How can you fill 455 second-feet of rights with 175 second-feet of water?

MR. PERSON: The total divertible flow in 1954 in the Central Division was 810 second-feet when the flow of Bear River at Border was 175; and when you get this regulation on us, we put down your 53 percent, and then you would have satisfied all your rights at that time with the flow of 175 at Border.

MR. NATE: Wasn't it true most of that water was above the Wyoming state line?

MR. PERSON: It was this year, that is right.

MR. NATE: Sure.

MR. PERSON: But under the Compact you would have had 53 percent of it--or 57. You see, when the flow at Border

this year was 175 cfs, there was 810 second-feet of divertible flow in the Central Division; and I don't know who used it-- maybe we did--but under the Compact you would have gotten 57 percent of it.

MR. NATE: But if there was, we didn't get it and that is why we were short and raised a 60 percent hay crop.

MR. PERSON: Under the Compact you see what a concession we are making.

COM. COOPER: You have this storage above, 35,500 acre-feet, and then you are just cut to one foot to 50 acres. That is just a terrible concession; I don't know how you are going to stand that. If we got a chance at it!

MR. PERSON: Fred, you be careful; you are going to hurt my feelings.

MR. NATE: Not only that, we have got these old rights, 455 second-feet of 1880 rights.

COM. COOPER: You are getting insurance, in the first place, against future critical times; you are going to get some reservoirs up there amounting to 35,500 acre-feet. And then you are only cut--we wouldn't consider that was any cut, one foot to 50 acres. That is plenty of water. You can't use water conservatively and not damage your land by using more than one foot to 50 acres. You injure your land if you use more than that.

MR. PERSON: Well let's see who would benefit. Was my 175 right, or was it 275?

MR. JIBSON: I didn't check that.

MR. PERSON: I can check it.

MR. JIBSON: I wanted to check those figures I sent you in 1954 to check the flow at Border on a particular date. Can you loan them to me?

MR. PERSON: Would this find it quicker for you (handing document to Mr. Jibson)?

MR. JIBSON: I wanted the flow at Border on June 1st, 1954. You can just read it to me on those figures I sent you.

MR. PERSON: On June 1st, Wally?

MR. JIBSON: Yes.

MR. PERSON: You want the flow at Border?

MR. JIBSON: Yes.

MR. PERSON: 259.

MR. JIBSON: Well, now on June 1st, Idaho was diverting just under one to 50--in 1954, just under one to 50. As a matter of fact they were about 20,30 second-feet under one to 50. So it would take in that particular year, at least that much flow at Border to give them a one to 50 diversion rate, and there was no water passing Stewart except leakage.

MR. PERSON: If you assume the Compact isn't in effect. If the Compact is in effect, they are going to--

MR. JIBSON: But the Compact wouldn't be in effect if you set it lower than that at Border, and the flow wouldn't get down to Border. You wouldn't be under Compact regulation

if you went to that lower figure.

MR. BLACK: That is 175 feet?

MR. JIBSON: If you went to 175 feet.

MR. PERSON: Of course the 810 would regulate finally.

MR. JIBSON: The 810 would be the governing factor, not the 175 feet, because you would never get down to 175 feet.

MR. PERSON: That is right. That is why I proposed it as an alternate.

MR. MERRILL: Why is the 810 left in?

MR. PERSON: So it would operate--why have it in?

MR. JIBSON: 175 is not a reflection of a one to 50 diversion rate.

MR. PERSON: In 1954, Wally, the divertible flow available in the Central Division was 821--

MR. JIBSON: All right.

MR. PERSON: --when the flow at Border was 173. Now with the Compact in operation, Idaho would have gotten 57 percent. I admit in 1954 they didn't. But that is what they are doing to us; they are regulating us so they do.

MR. JIBSON: My point was this, that 175 second-feet at Border would not provide sufficient water for a one to 50 rate of diversion in Idaho.

MR. PERSON: You say it wouldn't. It would have with the Compact; it would have.

MR. JIBSON: With the Compact the figure would have

been higher than that.

MR. PERSON: That is right. That is right.

MR. JIBSON: Judging from past conditions it would take at least 260 second-feet at Border for Idaho to divert one to 50 on a section basis.

MR. PERSON: That sounds about right, 250 to 270, someplace in there, around that range. That is really what that figure should be, someplace between 250 to 270.

MR. JIBSON: That would permit Idaho to divert at a one to 50 rate.

MR. NATE: 260?

MR. JIBSON: In 1954. I don't want to say that as an average figure because I haven't computed it.

MR. PERSON: It is around that.

MR. JIBSON: Have you checked it on other years?

MR. PERSON: Oh yes.

MR. NATE: When you divide on the basis of irrigated acres, what you are doing is dividing water on this proposed ratio; and if it is a dry year, we all suffer alike and the upstream users can't hold it all back.

MR. JIBSON: My only point was to get at a figure that would permit Idaho to divert at least one to 50. I knew they couldn't divert that way at 175.

MR. PERSON: Not on the basis of 175. That is not a logical figure. That is about as logical as the present 400 is.

MR. MERRILL: What was that figure, 250?

MR. JIBSON: 250 to 270 in 1954.

MR. MERRILL: If the quantity flowing over Border was 400 and an emergency is declared, we would only get 57 percent of that 400.

MR. PERSON: You would get about 57 percent of 1100. Your divertible flow would always be more than 800 at that particular time.

MR. NATE: In other words, when it drops, then you can pick your 57 percent of the total divertible flow as defined in the Compact, and that raises the figure at Border again. But if you are going to divide the water on the basis of irrigated acreages, I can't see where you can put restrictions on it. In other words, someone with a 1940 right is going to be just as good as an 1877 right down in lower Idaho. That is quite a concession.

(General discussion.)

THE CHAIRMAN: Is there any chance of Wyoming and Idaho getting together, if we recess until seven o'clock and come back? What do you care to do?

COM. BISHOP: I wouldn't want to try it but you can.

COM. COOPER: We don't expect to yield on that point.

THE CHAIRMAN: I was saying, do you want to adjourn and be back here in this room at seven o'clock and continue to read the articles?

COM. COOPER: I have plane reservations and I was

excused for one day. I would have to come back to a future meeting. If I could change my plane reservations, I would stay tonight. If I couldn't, I would have to go.

(General discussion.)

COM. CLYDE: Mr. Chairman, may I ask Mr. Person a question for clarification: When Idaho is getting 57 percent of the flow--supposing that equaled 150 second-feet--and 10 second-feet were going by the dam, what would your total amount be? Would you jump to 207 second-feet?

MR. PERSON: Not the way I wrote the amendment. That is, if the 43 percent--let us take our own case--

COM. CLYDE: Yes.

MR. PERSON: --give 150, and there were 10 second-feet going by Stewart Dam, we could increase to 160.

COM. CLYDE: That would be your total?

MR. PERSON: That would be our total, that is right; our total, the 150 the 43 percent gives us, plus what was going by Stewart Dam. Now if our 43 percent gave us 207, no matter what was going by Stewart Dam, we can't increase.

COM. CLYDE: You could never get more than 207 second-feet?

MR. PERSON: That is right. In other words, if our 43 percent gave us 100 and there was 25 going by Stewart Dam, we would divert 125.

COM. CLYDE: And they would still get the 57 percent?

MR. PERSON: If they wanted to use it.

COM. CLYDE: Yes.

MR. PERSON: Now actually the way the Judge wrote the clause it meant a little different than the way I wrote it.

MR. KULP: Any time any was going by you could go up to 207.

MR. PERSON: We could go up to 207.

COM. CLYDE: How would that affect your return flow? Suppose you got up to 207 second-feet.

MR. PERSON: Of course, my justification for it is not the return flow. It means that our 57 percent regulation gives the Upper Idaho Section--let's say we are talking about 10 second-feet--10 second-~~feet~~ more than they need; and why should they regulate us more than is necessary to supply their needs? Of course it doesn't apply in all cases; it only applies when our 43 percent is below 207.

COM. CLYDE: And that is only in dry years, isn't it?

MR. PERSON: The way it would have affected it the last eight years, I think it would have affected the actual diversions two or three years--correct me, Wally, if I am wrong. It would have increased the Compact allocation quite a few years; but our actual diversions, it wouldn't have had any effect. That is, our diversions are below our 43 percent generally.

MR. JIBSON: I might summarize that for the period of record very briefly for the record. I ran a quick rundown on that a few days ago. In no year of record would it have

had any effect at all prior to August 1st.

MR. PERSON: That is the 207?

MR. JIBSON: Any type of 207 clause, either yours or Judge Spaulding's. In 1944 it would have been in effect from August 9 throughout the rest of the season, and would have had the effect of giving Wyoming a little more water than they actually diverted.

COM. COOPER: How much more?

MR. JIBSON: It would average about 20 second-feet for the rest of the period more than they actually diverted. The Compact in that year under the present draft would have cut them an average of 30 or 40 second-feet from what they actually diverted.

MR. KULP: What they actually diverted was all that was available for diversion, is that right?

COM. COOPER: They took all the water that was there.

MR. JIBSON: They took all that was needed. I wouldn't say it was all that was available; they took all they wanted in that particular year. In 1945 that type of provision wouldn't have entered the picture until September 9th, at which time Wyoming would have been allowed 207 for the rest of the season--I am speaking here of Dean Person's recommendation rather than Judge Spaulding's--and the Compact for the rest of the season would have had them cut to about 160 second-feet.

In 1946 it would have entered the picture on August

10th, and there was sufficient water passing Stewart that they would have been able to divert 207 for the remainder of the season; whereas the present draft of Compact cut them to about 165 or 170, average throughout that period.

In 1947 it didn't enter the picture until September 5th, and it would have allowed them a 207 diversion for the rest of the season, when the Compact varied from 180 to 207.

In 1948 it entered the picture on August the 13th and gave them a diversion rate of about what they were diverting until September 15th, at which time it would have given them about 50 second-feet less than they were actually diverting for the last 15 days; and during this same period the present draft of Compact would have cut them to about 160 second-feet, average diversion rate.

In 1953 it enters the picture on August 25th and it gives them about 30 second-feet more than the present draft, but still a little less than they were actually diverting--about 20 second-feet less than they were actually diverting.

In 1954, which is the year in which it would have entered the picture the earliest, it would have been in effect on August the 1st, and would have given them about 20 second-feet more than the present draft of Compact gives them for the remainder of the season, but about 30 or 40 second-feet less than their actual diversions for the same period.

(Mr. Kulp leaves.)

THE CHAIRMAN: Have you got any suggestions?

COM. COOPER: I would like to know if they feel that there is any chance of our getting together. If there isn't, I want to get excused; if there is, I will try to make reservations to stay until morning and meet this evening.

MR. PERSON: I know you are a reasonable man and I think there is a chance to get together.

MR. MERRILL: Not if you keep pressing that point, there is no chance.

MR. PERSON: Bishop is going to send me home and I won't be here.

COM. COOPER: When are you leaving?

MR. PERSON: I have missed mine already. I am going to leave in the morning. You had better stay. You will be more reasonable if you have something to eat.

MR. MERRILL: Will you? I don't believe so.

MR. PERSON: It depends on what the boss says.

MR. NATE: After all these concessions, and the proposed dividing on the basis of share alike, which is irrigated acreages; in a dry year we will have regulation and there will just have to be some of it come down the river, it can't be all held back like it was in 1934.

MR. PERSON: Yes, or 1954. But, Russell, look what we have already done on the 57-43. This year we diverted 60 percent of the water--you had about 35 percent, we had about 65 percent. We have already given you 57 percent.

MR. NATE: We only got a 60 percent hay crop whereas

in Cokeville you got a good, normal hay crop.

MR. PERSON: The reason is we only gave you this year about 35 percent of the water.

MR. NATE: I know it.

MR. PERSON: But under the 57 percent provision you will get it.

MR. NATE: You would have gotten it if we had had the 207 clause.

MR. PERSON: The 207 clause wouldn't have affected you one iota.

MR. NATE: If there isn't much difference in it, why not leave it out?

MR. PERSON: Because it helps us a little bit and we are the ones that are going to be regulated. We are going to be regulated for you. You are just going to be cut down a slight bit.

MR. NATE: Why do you want the 207 in there?

MR. PERSON: Because I think it is fair and honest and equitable.

MR. NATE: Based on what?

MR. PERSON: On the fact that if you let water go past Stewart Dam, we are letting more water go down than you need.

MR. NATE: Is it because you want to fill these 1897 rights?

MR. PERSON: No. If you are letting water go past

Stewart Dam, it means our 57 percent is giving you more water than you need, and we don't want to be regulated if we don't need to be.

MR. NATE: All we want is that in a dry year we all share alike regardless of state lines.

MR. PERSON: Actually there was no water going past Stewart Dam in 1934.

MR. NATE: It wasn't coming to us.

MR. PERSON: And under the Compact, 57 percent would; so we are the ones who are getting regulated.

MR. NATE: You have a lot of increased priorities since 1900, and yet we have consented to go on the basis of land irrigated.

MR. PERSON: That is a concession.

MR. NATE: That is a big concession.

MR. PERSON: But we have always had a free hand, no regulation.

MR. NATE: Sure, because you had the priority.

MR. PERSON: And you are expecting us to give up a priority for your priority without any more concessions.

MR. NATE: We just want to divide it as good neighbors based on acres irrigated; but after we divide it, then we don't want some of it taken back. It is like giving your boy \$10 to go down town and have a good time, but telling him, "Give me \$5 of it back."

(General Discussion.)

COM. CLYDE: Would there be any validity, instead of starting at zero when you pass the flow at Stewart Dam, suppose you start at 50 second-feet and say whenever there is more than 50 second-feet going over the dam, then you move up to your 207? Because only in the driest years is that going to be effective.

MR. PERSON: Actually in 1934 there was no water going by Stewart Dam. I think the only thing we would concede is the leakage, and I don't know whether the Doctor will concede that.

COM. CLYDE: That is only about 7 or 8 second-feet.

MR. PERSON: That is the only thing I could reasonably concede on.

(General discussion.)

THE CHAIRMAN: Did you change your reservation, or what have you decided?

COM. COOPER: Mr. Merrill and I changed our reservations and we are going out in the morning, at six o'clock.

MR. PERSON: Mr. Commissioner, you want to give up Wyoming's last drop of water?

COM. BISHOP: No, sir. I was wondering about these two meetings; these two here haven't been approved, is that right (indicating transcripts)?

MR. SKEEN: No.

COM. BISHOP: I have looked them over enough that I am satisfied with them. If they want to approve them I would

be glad to make a motion. Fred, have you gone over them?

MR. MERRILL: Fred hasn't had a chance.

COM. COOPER: They were just handed to me today. I don't want to look them over in the morning before I leave.

COM. BISHOP: If you want to look them over, all right. I am satisfied with them.

COM. COOPER: If you are, I move we approve them.

COM. CLYDE: Knowing Mrs. Crowder I will be glad to accept them.

THE CHAIRMAN: Then will somebody make a motion on these minutes?

COM. COOPER: I move that we approve them.

COM. BISHOP: I will second the motion.

COM. CLYDE: Couldn't you change that to, accept them and have them reproduced for distribution?

COM. COOPER: I will amend the motion to that.

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

THE CHAIRMAN: Now what do you want to do?

COM. CLYDE: Recess until seven-thirty.

COM. COOPER: That is agreeable with us.

MR. PERSON: Eight o'clock is better.

THE CHAIRMAN: If there is no objection we will meet back in this room at seven-thirty.

(6:10 p.m. Recess.)

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(8:33 p.m. Meeting reconvened. Com. Bishop not present.)

THE CHAIRMAN: Let us resume. We were on page 10 I assume.

MR. SKEEN: We might as well resume on 810, 400, and 207.

THE CHAIRMAN: Can we get over this 2 on page 10? You had the floor, I believe, Mr. Person, when we left.

MR. PERSON: I will yield it now to anyone that wants it. I would like to propose another compromise. It is that 810 become 900 and the 400 become 300 and --Dr. Bishop isn't here--we forget about the 207 clause.

COM. COOPER: Why do you want to make that change?

MR. SPAULDING: I thought you settled that in the elevator.

MR. PERSON: That is what we agreed on in the elevator.

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

COM. COOPER: I just asked the question, why does Wyoming want to make the change from 810 to 900, and then reduce this 400?

MR. PERSON: The 900 and the 300 are close together.

MR. MERRILL: They are farther apart than 810 and 400.

MR. PERSON: No. The divertible flow will be close

to 900 or more, when the flow at Bear River is about 300.  
Isn't that about right, Wally?

MR. JIBSON: It will be in that direction. It will come together rather than separate.

MR. PERSON: I think 300 will still govern generally.

MR. JIBSON: Possibly will.

MR. PERSON: When regulation starts.

MR. MERRILL: Have you studied this out?

MR. JIBSON: You should keep one thing in mind, that your days involved between three and four hundred second-feet, except in unusual conditions, is very short. At the time Border is dropping, the ordinary thing is to drop maybe a hundred second-feet a day.

MR. MERRILL: I see no reason for the change.

MR. JIBSON: You are raising your 810 up to 900, which tends to move that ahead a bit. It tends to compensate for dropping from 400 to 300. They tend to compensate each other. I don't think you would find a great deal of difference.

MR. NATE: How will that affect water users between Border and Stewart Dam?

MR. JIBSON: Just a day or two. Some years she hangs there; sometimes she will stay there at 400. But the usual thing is a rapid cutting and at that time only a few days are involved.

MR. NATE: But there is a possibility it could hang

several days?

MR. JIBSON: It could do, but that is not the usual condition.

COM. COOPER: How does that suit you, Mel?

MR. LAURIDSEN: I don't know. We have got our people educated to this 400 second-feet.

MR. JIBSON: Some years it could hang between 300 and 400 for two weeks; but the usual condition is, Mel, that it just doesn't do that until it gets lower than that. I mean it hasn't reached its base flow when it passes through that period. The base summer flow is still dropping at that time.

MR. NATE: If it could last as long as two weeks we could burn up in two weeks.

MR. JIBSON: It could hang at 410 second-feet for two weeks too. It might hang around the line regardless of whether you have 300 or 400; it might hang on the line for several weeks.

MR. PERSON: Of course, they are completely protected on the 900. That is, they get 57 percent of the 900 whenever the divertible flow becomes 900. So you are completely protected on that.

COM. COOPER: What are your reasons for wanting to change it?

MR. PERSON: I just would like to get this settled. It is quite a compromise.

COM. COOPER: So would we, but we feel like we have

yielded about as far as we can go.

MR. MERRILL: We have studied it on that basis and advised with the people on it. Mr. Nate says he has talked to so many on it and they are agreed on it.

MR. PERSON: I would much rather have the 400, 800 and 207 clause than I would the thing I proposed. I was proposing a compromise.

COM. COOPER: But for your information we are not going to yield on the 207 under any circumstances.

MR. PERSON: Didn't you get any dinner?

COM. COOPER: That is the reason we are ready to sit on it.

MR. PERSON: Why don't we read the next one? Maybe I can think of some other compromise proposal. Our instructions were pretty definite that our 207 clause was important to them as a matter of principle and equity.

MR. NATE: In that case how can you throw it out with this new suggestion? How are you going to square yourself with them?

MR. PERSON: The 900 and the 300 you see.

MR. MERRILL: You know, Dean Person, it was on this basis that the compromise was perfected with reference to that storage matter; and we yielded and yielded because we felt that we would be reasonably protected under this provision. Now I assume we should be bound by the storage provision but you want to change this provision, which was adopted and acted

upon and agreed upon months before the storage provision was ever discussed.

MR. PERSON: Now again. I have always suggested--I will admit kind of meekly and mildly--the 207 provision; but every meeting we have had I have proposed that.

MR. MERRILL: And at every one you have heard us vigorously object to it.

MR. PERSON: And I don't think with any real reason.

MR. MERRILL: We do.

MR. JIBSON: The average slope of this total divertible flow in the first part of July would indicate that with a hundred second-feet difference--that is, set between 810 and 900--there is maybe an average period involved of about five days. Now that would tend to move your regulation period ahead five days as between 810 and 900.

MR. MERRILL: Why would Wyoming want that?

MR. JIBSON: Now you have got to counterbalance that with how far back your regulation period is moved from the time the flow is 400 until it gets 300.

MR. MERRILL: You wouldn't wait until it got to 300, as soon as it got to 900?

MR. JIBSON: No, that is total divertible flow.

MR. PERSONS: The 300 will occur before--

MR. JIBSON: The interval is about five days; that is to your advantage in the Lower Basin. Now if the interval between 400 second-feet and 300 second-feet at Border coincided

with the five days, you would be in exactly the same spot as you are under the present draft. But you have got a gain of approximately five days, and you will tend to go in the opposite direction as between 400 and 300. But without making a study of it, I don't think that it will average over five days, and I don't think it will average that.

MR. NATE: Those will be exceptional times?

MR. JIBSON: Yes. Maybe the Dean has made a study of it; maybe it will average more than that.

MR. PERSON: The 300 and 900 would be very close together, and it will be just about half-way between the 400 and the 800. The 300 and 900 will come pretty close together. In fact, you will find the 900 governs generally, just to be frank with you. It is possible that 300 might govern. I haven't checked it exactly some of those years.

MR. JIBSON: It falls between the 810 and the 400.

MR. PERSON: The way it is now, the 400 will put in regulation over here when this is getting toward the end of the season (indicating), and the 810 will put regulation over here (indicating). The 900 and 300 will put regulation in here (indicating), about this far apart.

COM. CLYDE: They will both be within the limits of 400 and 800.

MR. NATE: How many years' study is that?

MR. PERSON: Six or 7 years we have record--7, don't we, on this section of the river?

MR. NATE: Any dry years?

MR. PERSON: In 1954, regulation would be in effect all of 1954 even with the 300, you see.

MR. JIBSON: Let me borrow your figures again.

(Takes documents from Mr. Person.)

MR. PERSON: I don't think the flow at Border in 1954 ever got to 300, did it?

MR. JIBSON: We just as well have the facts out here so you can make your comparison. In 1944 there was a five-day interval between 400 and 300.

MR. LAURDISEN: In 1944?

MR. JIBSON: Yes. There is a 7-day interval in 1945. A 5-day interval in 1946--wait a minute, it dropped down and went back up again. There is about a 12-day interval in 1946. It dropped down momentarily and climbed back up again. There is a 5-day interval in 1947. There is an 8-day interval in 1948. There is a 13-day interval in 1953.

COM. COOPER: 1953, you say?

MR. JIBSON: Yes. I can't give you 1954 because I started with the 1st of June and Border was below 300 on the first day of June in 1954, and I don't have the May figures. You don't have them, do you, Al, Border for May 1954? What is the interval between 400 and 300, Al?

(Mr. Harris hands document to Mr. Jibson.)

COM. COOPER: The average is 7 days.

MR. JIBSON: In 1954, except for a very brief period

right at the first part of May, it is five days. There were a couple of days right at the first part of the month which it dropped below 400.

MR. NATE: That would be an average of about 8 days.

MR. JIBSON: Including 1954 it should be about 6.

MR. LAURIDSEN: We figured 7 with the '54.

(General discussion.)

COM. COOPER: Just about 8.

MR. JIBSON: An average of 8 days in those 7 years. This 5-day period I gave you of course is rough. I was just examining the divertible flow for a typical year, which drops about 100 second-feet in 5 days. You see, you are getting down now to just a very few days involved there.

(General discussion.)

COM. COOPER: Will you make it 900 and 350?

Mr. Nate: That is a good compromise.

MR. PERSON: I will make it--no, I won't. I am saying "no" to your proposition. I was going to suggest something else. I will have to think a little while, look at my figures. I want them close together so we can explain to our people there is a correlation between 350 and 900. (Examines documents.)

COM. COOPER: I just asked him if he would consider it; I didn't make any proposition.

MR. PERSON: I am glad you didn't because I wouldn't have considered it anyway.

COM. COOPER: I am glad I didn't too because I didn't intend to change my mind.

THE CHAIRMAN: What do you want to do? Do you want to consider something else, or still talk about this?

COM. CLYDE: Mr. Chairman, I move that we table for a few minutes Article IV and proceed with Article V, and then come back to Article IV.

MR. PERSON: Couldn't we read this? I have some questions just to clear myself up on Article IV.

THE CHAIRMAN: Is that agreeable to the others?

COM. COOPER: What was the proposal?

COM. CLYDE: The proposal is to proceed with the balance of the Compact and come back to this afterwards--get as much out of the way as we can and come back to these points.

COM. COOPER: All right.

THE CHAIRMAN: We read down to the Cook Canal on page 11. Shall we continue reading it, or have questions raised as we turn the pages?

COM. CLYDE: I think it would be better to read it.

MR. SKEEN:

"b. The Cook Canal, which diverts water from the main stem of 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"--

strike the word "therein" and put the word "Utah."

MR. SPAULDING: ". .in Utah"?

MR. SKEEN: Yes.

". .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.

"C. 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.

"D. 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 an upstream State he is being deprived of water to which he is justly entitled, and that by reason thereof a water emergency exists"--

A comma should be after "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."

MR. PERSON: That is a clause, I would like to know what interstate tributaries might it apply to.

MR. JIBSON: You mean having trouble across state lines?

MR. PERSON: What would this Section D apply to?  
What are the tributaries, especially in Wyoming, it might apply to?

MR. JIBSON: Mill Creek--

MR. PERSON: Mill Creek?

MR. JIBSON: --I believe is the only tributary in the Upper Basin.

MR. PERSON: And Thomas Fork might be another one?

MR. JIBSON: Thomas Fork could possibly come under that in the future. It wouldn't now.

MR. PERSON: And it would operate straight on a priority basis.

MR. SPAULDING: How about Yellow Creek?

MR. JIBSON: It possibly could be applied to Yellow Creek too.

MR. GRADERT: It comes out of Wyoming into Utah.

MR. MERRILL: What about Cub River?

MR. JIBSON: I was thinking about the Upper Basin first. As we come down the river I believe Cub River is the only one in the Lower Basin.

MR. SKEEN: And Malad River?

MR. JIBSON: Cub and Malad in the Lower Basin.

MR. PERSON: And it could be Yellow Creek?

MR. JIBSON: Yellow Creek and Mill Creek.

MR. PERSON: And possibly Thomas Fork.

MR. JIBSON: Possibly Thomas Fork. It would have to

mean future development on Thomas Fork; there is ~~no~~ irrigated acreage now that could be involved.

MR. SKEEN:

"1. 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."

COM. CLYDE: What is the effect of that one? Is that part of D.?

MR. SPAULDING: We scratched out the figure 1. didn't we?

MR. SKEEN: No, it comes under D and covers compensation for that work on interstate tributaries. I think it is properly 1.

MR. SPAULDING: I think we should scratch out figure 1, it has no place in there, on page 13.

MR. PERSON: No paragraph then?

MR. SKEEN: We had better not have a paragraph then.

MR. SPAULDING: Then we will run it along at the tail end of that.

MR. SKEEN: I think it would be well to put it in the same paragraph.

MR. MERRILL: Wouldn't that limit it?

MR. SKEEN: It was intended to limit it only to the interstate tributaries.

MR. MERRILL: Does D deal entirely with interstate tributaries?

MR. SKEEN: Yes. "The State officials in charge of water distribution on interstate tributaries may appoint and fix the compensation and expenses". .and so on. It is clearly on interstate tributaries only.

COM. CLYDE: Mr. Gradert has a comment on that point. Will you explain that?

MR. GRADERT: Our water commissioners are paid by the counties--I am speaking for the State of Wyoming--and the State fixes the compensation for a water commissioner. The water commissioner handles a certain district, the main stem of the river as well as the tributaries. Now are you going to have a special commissioner just for the tributaries, and is the Commission going to pay him?

MR. SPAULDING: The interstate tributaries.

MR. SKEEN: In Utah it is the other way around, the water users pay on the basis of the water rights. This would have to be a special treatment because it can't be the same in both states.

MR. PERSON: This would be the law on interstate tributaries and take precedent over our present system.

MR. SPAULDING: And being a governmental agency,

there would be no chance for it to go lower than the present standards of compensation.

MR. GRADERT: Thank you, as long as you don't make it lower.

MR. SKEEN:

"E. 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.

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

MR. PERSON: In connection with that, you notice early in the season if there were an emergency there would be water regulation. I don't think it affects the water use on the basis of past experience. I know Commissioner Bishop has suggested that we not have regulation over there when it doesn't mean anything. That is, could we put something in here to take care of it, like regulation shouldn't start before June 1st because---Wally, I think you will confirm this---

sometimes there has been some regulation in May that doesn't amount to anything.

MR. JIBSON: If you take it down to a date like June 1st in an extremely dry year when you should be under regulation, say, through May, you seriously handicap regulation in that year. For instance, in 1954 I don't think there is any question but what regulation would have been desirable through the month of May, or through part of the month of May. It would be difficult to tie that down.

MR. PERSON: Okay.

MR. JIBSON: However, in the Upper Division, inasmuch as that regulation in May didn't actually cut anyone, it has no meaning except it entails collection of diversion records.

MR. PERSON: That of course probably would happen; that is, we didn't need regulation at that time and it didn't mean anything to anybody, we weren't yet irrigating. If you read the 1250 clause, you would have to check to see if you needed to put in regulation, and Commissioner Bishop brought it up so I am bringing it to your attention. He might have some other ideas on it since 1954 needed to be regulated throughout the year; that is a different situation. The June 1st I suggested wouldn't work.

MR. JIBSON: No, it wouldn't work to tie it down to a definite date, but it might be left to the discretion of your Commission or in some other way, that early spring regulation when not needed might be eliminated. The regulation

itself, inasmuch as everyone is built up in the Division, doesn't mean anyone is being reduced any. It is just the cost of administering it during that period and keeping records.

MR. PERSON: We would leave it, regulation early in the irrigation season would be at the discretion of the Commission, something like that.

MR. MERRILL: The Commission could handle it.

MR. JIBSON: Without putting it in the Compact. I think after a year or two they wouldn't have to much difficulty with the situation.

MR. SKEEN: Any other comments on IV? (No response.)

#### "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."

Now a change has been suggested in the first line following that, to read as follows:

"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 there of will be to

impair or interfere with (1) existing direct flow rights, and (2) existing storage rights above Stewart Dam, but shall not be"--

"it" would go out because we have changed it to the plural.

--"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 may make an agreement modifying the allocations of additional storage provided that such agreement shall not be effective until ratified by the Legislature of each state."

COM. CLYDE: Would you repeat that again so we can get it, "may make"--

(Language reread.)

MR. PERSON: I think we should say legislatures"-- we don't need Idaho's Legislature.

MR. SKEEN: It is just the two states involved.

MR. PERSON: Is that clear?

COM. COOPER: It says, "the three Commissioners for Utah and the three Commissioners for Wyoming may make an

agreement modifying the allocations. ."

MR. MERRILL: The "legislatures of said states"--  
that would clear it.

MR. PERSON: Yes.

MR. SKEEN: ". .by the Legislatures of said states."

MR. SPAULDING: ". .the three Commissioners for  
Utah and the three Commissioners for Wyoming are hereby  
authorized, subject to ratification by the Legislatures of  
their States, to modify by written agreement. . ."

COM. CLYDE: I think that is better.

MR. SKEEN: ". . are authorized, subject to ratifica-  
tion. ."

MR. SPAULDING: ". .by the Legislatures of said  
states, to modify. ."and then let it go along the way it is;  
or have the "subject to ratification" at the tail end. It  
doesn't make any difference.

MR. SKEEN: I believe it is better where you suggested  
it.

MR. MERRILL: We didn't get that first part, Mr.  
Skeen, way up there, "In addition"--

MR. SKEEN: "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."

And down below: "Such additional storage rights. ." Any further questions on that A?

MR. THOMAS: Mr. Chairman, I have one question. This may be clear, but I am not sure it is clear to me, so I thought I would just raise the question. In the second sentence following the table at the top of Article V, we have: "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, and (2) existing storage rights above Stewart Dam. ."

My question concerns mainly the (1), existing direct flow rights. It is clear that (2), existing storage rights, refers to only those rights above Stewart Dam; but about those direct flow rights under (1), would you interpret that as meaning they are above Stewart Dam or anywhere on the river? It appears to me there possibly could be two different interpretations there.

MR. MERRILL: Couldn't you add, "existing direct flow rights at any place on the river"?

MR. THOMAS: I am not sure that is the intent.

MR. MERRILL: It would have to be, wouldn't it?

MR. SPAULDING: The word "any" before "existing".

COM. CLYDE: Isn't the entire Compact based on three river systems, the three divisions? Therefore, this would apply only to the Upper Division.

MR. JIBSON: I think it was the opinion of the group

last time that it covered the entire river because the subject was brought up as it concerned the date on which storage must end, principally following April 30th, and as I recall it was stated then that any time a direct flow right was cut anywhere on the river, that a like amount of storage would have to be reduced. It seemed that the intent was to include the entire river at that time.

MR. THOMAS: That is the way I remember it. I wanted to bring this up though, you remember there was some discussion regarding Cutler, the dry spot on the river; and I believe the group finally followed Mr. Iorns' suggestion that the river could be administered. But I thought perhaps that should be clarified to bring out the meaning, that it does cover the entire river rather than just the portion above Stewart Dam.

COM. CLYDE: I have no objection to it.

MR. SKEEN: How would it be to insert, "existing direct flow rights in any river division"?

MR. MERRILL: Yes, Mr. Chairman, do I understand this is worded to mean that storage may be added during the irrigation season? And also, that there may be ~~storage~~ accumulated every year; if they store, say, 20,000 feet and that is the capacity of their reservoir, they could store 20,000 every year, or 35,500 acre-feet every year and balance it up and accumulate it notwithstanding the fact that it takes it out of Bear Lake?

And furthermore, there is another point that is a

little disturbing and that is, "Such additional storage rights shall be subordinate to"--and down below--"but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam." Now that is going to cause some difficulty if that Cutler Dam is built, isn't it? And furthermore, it is going to simply ignore the rights of storage in Bear Lake by piling it up upstream.

COM. CLYDE: Mr. Chairman, may I try to answer Mr. Merrill's first question: This additional storage right is a storage allowance, maximum 35,500 acre-feet; and I presume if anyone were to be foolish enough to build a reservoir which could hold three times that much, and they stored no more than 35,500 acre-feet a year, they would have the right to do so. But, you see, the economics of the thing is going to control that.

MR. MERRILL: Why shouldn't it be controlled here?

COM. CLYDE: Because the storage allowance is a volume of water per year, and I think they should be entitled to have that every year.

THE CHAIRMAN: I think you would have to have some holdover, as I recall, to make a reservoir feasible up there--have holdover capacity and holdover water. Is that right, Mr. Thomas?

MR. THOMAS: Our studies show, as based upon Mr. Jibson's requirement studies, that holdover storage may not be feasible, at least very much of it. But I certainly agree

personally with Mr. Clyde in that you can peg the storage allowance, but I don't see how it is possible to peg the storage capacity, tell any man or agency how big he shall build his reservoir. I think the concept has always been that the storage allowance be pegged and leave the storage capacity open, because I am sure the economics of the thing will control. It just won't be feasible to put in a lot of excess storage capacity.

MR. IRVINE: Could I ask why the change in the language, "Additional rights are hereby granted to store. ." rather than, "In addition to such existing storage rights, the right is hereby granted to store. ."--who suggested it and why?

MR. SKEEN: That was language which was suggested by a language expert in the Bureau of Reclamation here, and the only significance is, the ordinary reader reads this 35,500 is one right, and the thousand is another--there are two rights. I had several people who were entirely disinterested from the background of it, read it, and they all stumbled on that; and this other language was suggested as a substitute because there are really two quantities mentioned there. That is the reason for it. There is nothing substantive in it at all.

MR. IRVINE: I just wanted that in the record.

COM. CLYDE: Mr. Chairman, In an attempt to answer Mr. Merrill's second question in this phrase, "but shall not be

subordinate to any right to store water in Bear Lake-or elsewhere below Stewart Dam"--you will recall we spent practically one full session on that subject and it was batted back and forth; and the conclusion I think we can to was that the irrigation reserve fully protected that situation.

You will recall Mr. Weidmann was one of the strong supporters of the change of language. I proposed some different language; it wasn't accepted. We came back to this. And I am convinced now--although I wasn't at that time--that no harm will be done. And I don't know how else you could write that language to provide for storage upstream in connection with the irrigation reserve which will serve to protect both the storage upstream and the storage downstream. It seems to me that language is all right the way it is written with the irrigation reserve.

MR. JIBSON: Mr. Chairman, I had another question on that before you leave it, and that is as to the definition of an existing direct flow right. The rights of the Power Company at their Oneida Plant and other plants down the river, it appears to me, could be called direct flow rights; and if they are, why they would come under ~~this~~ category. In other words, storage upstream would not be exercised when the effect would be to impair those direct flow rights for the power plants below Bear Lake. I don't believe that was the intent; because if it were, it would be seriously curtailed throughout a big part of the winter. If there is any question of whether or

not they are direct flow rights, it appears that it should be clarified.

THE CHAIRMAN: What is your study based on, Mr. Thomas?

MR. THOMAS: It is based upon the existing direct flow rights for consumptive use.

MR. JIBSON: We could take care of that by adding, "existing direct flow rights for consumptive use in any division".

MR. THOMAS: Yes. I think that is the real meaning. I think that is a very good comment.

MR. SKEEN: So it would read, "existing direct flow rights for consumptive use in any river division".

MR. MERRILL: Direct flow rights are defined in Article II, page 3, No. 16.

MR. JIBSON: That says: "'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". I don't see that that eliminates their rights for the Oneida power plant, for instance.

THE CHAIRMAN: Are there further questions or shall we read on?

MR. SKEEN: If there is no further question--

MR. JIBSON: You are going to add that then, is that right?

MR. SKEEN: Yes.

"B. The waters of Bear Lake below elevation 5,912.91, Utah Power & Light Company"--insert--"Bear Lake datum (the equivalent of elevation 5915.66 based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947)"--

MR. MERRILL: Where does that parenthesis go?

MR. SKEEN: I will read the parenthetical statement again:

". .(the equivalent of elevation 5915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation."

That wording is correct, is it, Elton?

MR. THOMAS: Yes.

MR. SKEEN: The second sentence:

"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 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: Additional storage acre-feet. Lake surface elevation UP&L Co. datum."

Do you want the words "Bear Lake" in there?

MR. THOMAS: Yes. I would also suggest in that table that UP&L Co. be taken out, the abbreviation, and Utah Power & Light Company be substituted.

MR. SKEEN: You mean above in B, in this first sentence?

MR. THOMAS: In the table where you have UP&L Co.

MR. SKEEN: What should that be?

MR. THOMAS: Personally I would like to see it Utah Power & Light Company.

MR. SKEEN: Spelled out, you mean?

MR. THOMAS: Rather than the abbreviation for further clarification, "Utah Power & Light Company Bear Lake datum."

MR. SKEEN: Utah Power & Light--should Company be written out or Co.? I guess Gerry would know.

MR. SPAULDING: It is written out on page 14. Co. ought to be sufficient here for anybody.

MR. SKEEN: I will read all these numbers if anyone is going to check them; if not--

COM. COOPER: We make the suggestion you dispense with the reading of them.

MR. SKEEN:

"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 hereinabove recited."

"ARTICLE VI."

COM. CLYDE: I move, Mr. Chairman, we approve Article V as amended.

MR. IRVINE: Before you approve it I would like to review the language change in the early part of V, particularly with respect to those early changes in the section.

THE CHAIRMAN: Do you want them read?

MR. IRVINE: No, I would like to review them myself and I would like to reserve action on them until they are reviewed.

COM. CLYDE: You mean the language changes?

MR. IRVINE: Yes.

THE CHAIRMAN: We will hold up that Article then.

COM. CLYDE: Okay.

MR. SKEEN: "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 hereof, be subject to rights theretofore initiated and in good standing."

MR. MERRILL: Would that be a place to say anything about imported water that is referred to in a number of those letters?

MR. SKEEN: We covered that in V as far as storage is concerned by inserting the words, "Bear River" water.

MR. MERRILL: I know. All right.

MR. SKEEN: Are there any other question on VI?

MR. SPAULDING: Yes. The last line, "paragraph A hereof," instead of "hereof" it should be "thereof."

MR. SKEEN: I think that is right.

COM. CLYDE: With respect to line 4, to whom is this authority granted?

THE CHAIRMAN: Authority is granted the government, private interests, anybody that happens to be filing under state law to build something. That is the way I would interpret it. It might be a government project, county project.

MR. SKEEN: I think it would be a mistake to try to

name who it is. It means the United States or anybody else.

COM. CLYDE: That is all right.

MR. SKEEN: It is merely a statement of policy.

COM. CLYDE: Mr. Chairman, I move we adopt Article VI. Let's chop these off.

MR. PERSON: Second the motion.

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

MR. SKEEN: "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."

Any comment on A?

MR. GRADERT: Did you read in the state, or just out of state?

MR. SKEEN: You can always do it under state law for

anything that is within the state.

MR. GRADERT: I just wondered.

MR. SKEEN: So I don't believe it is necessary to mention that.

"B. Any signatory State, any person or any entity of any signatory State 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; 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 person or entities herein, 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 subdivisions of the State. The signatory States recommended to the President and the Congress that, in the event the United States of America shall acquire property in one of the signatory States for the benefit of another signatory State, or for the benefit of the water users of such other State provision be made for like payment in reimbursement of loss of taxes."

I don't think that means anything, that sentence starting with, "The signatory States recommended to the President..." It might be well to move to strike it; otherwise, we

Congress may be premature."

They were just making that comment.

MR. SKEEN: Maybe you better dispose of that.

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

THE CHAIRMAN: What do you want to do with Article VII?

MR. PERSON: I move it be approved with this last sentence of Section D out.

MR. MERRILL: And that the Article be otherwise approved, is that your motion?

MR. PERSON: Yes.

COM. COOPER: This last sentence of D.

MR. PERSON: D. I think after all the 14 years we have been going through this--we can still recommend that kind of legislation. That kind of legislation would have to go through Congress anyway; and we could do it more effectively by a bill itself than by putting it in the Compact.

COM. CLYDE: Second the motion.

MR. PERSON: Because if Congress objected, we would have to go through and renegotiate it and take it through our legislatures.

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

MR. SKEEN: "ARTICLE VIII

"Stored water, or water from a foreign watershed may be turned into the channel of Bear River in one State and a like quantity, with allowance for loss by evaporation, transpiration, and seepage, may be taken out of 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. Exchange shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid."

THE CHAIRMAN: This is the one where the Commissioner of Reclamation suggested the word "another" instead of "foreign", "or water from another watershed".

COM. COOPER: I move we approve that Article as it stands.

MR. MERRILL: Without that change he mentioned, "another" instead of "foreign"?

COM. COOPER: With that one change.

MR. PERSON: Second the motion.

COM. CLYDE: Question.

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

MR. SKEEN: "ARTICLE IX

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

firmed."

This table we have had. I will read the explanatory note under "1", but I don't see any reason for reading the table unless someone has a comment.

"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 in 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."

COM. CLYDE: May I ask for a point of information. Why this tabulation? We don't tabulate any of the other rights in the Compact.

THE CHAIRMAN: There was an explanation made here I believe by Iorns or Jibson.

MR. JIBSON: Are you talking about the table on page 19?

COM. CLYDE: Yes.

MR. JIBSON: There was some question concerning these rights as they exist on the adjudication books. I don't recall in each case just what it was. And for the sake of clarification and being sure that we recognized the rights, it was thought advisable to list those on which there was any question. The Hilliard East Fork and the Chapman and the Francis Lee, all three, had some question about them. I don't recall right now just what it was.

THE CHAIRMAN: For your information these rights aren't listed in Judge Dietrich's Federal case.

MR. JIBSON: They wouldn't be in his. The Francis Lee right would be in the Wyoming decree and the Chapman right; and I don't know what the question was on the Hilliard East Fork. Mr. Tracy might be able to answer that. He isn't here.

MR. SKEEN: I recall the reason on the Hilliard East Fork. That diverts in Utah and at the time a filing was made for appropriation for the water in Utah, the law didn't permit

*Why Not  
HWS, Lannon,  
Worcester 2117, etc?*

the approval of the filing; and as a consequence, they had a canal and they have used it since 1914 and there is no water right of record. This was intended to validate and recognize and confirm that right. It would be inequitable and unjust in the extreme to stand on that technicality and knock it out.

COM. CLYDE: Why doesn't the 1905 right there for 134 second-feet have the acres, or is that a supplemental right?

MR. SKEEN: That is a diversion for storage and they have covered it in No. 1 below.

COM CLYDE: Where will they use that?

MR. JIBSON: The purpose for including the Chapman was principally because the irrigated acreage found up there differed materially from that in the adjudication books. So all of the various rights--this is direct flow rights, not storage--all the various rights on the Chapman Canal with the accepted acreage were then listed.

Now at the same time there was considerable discussion as to how much water might be diverted by the Chapman canal for the purposes of filling the Neponset Reservoir; and the 134 second-feet happens to be the maximum capacity at this time of the Canal. It was the opinion of the Commission at the time that they should be limited to the present capacity of the Canal, which is 134 second-feet, at any time for filling the Neponset Reservoir or for direct flow irrigation.

COM. CLYDE: They are not duplicate rights.

MR. JIBSON: It is not a duplicate right. Now at the last meeting this was modified slightly by stating, "Under the right as herein confirmed. ."--in order to allow them a future change in the event of securing a new right. The way it was originally worded they were absolutely restricted to 134 regardless of any new rights that might be aquired; and it was modified slightly just before this last draft.

COM. CLYDE: As I understand that footnote under "1", that does restrict it to 134.

MR. JIBSON: It says, "Under the right as herein confirmed. ." In the event they secured another right in the future by any legal means, this would not limit it.

COM. CLYDE: All right. Thanks.

MR. JIBSON: But it does limit it at the present time.

THE CHAIRMAN: Did you read to the end?

MR. SKEEN: Yes, I read to the end of Article IX.

COM. CLYDE: Mr. Chairman, I move that Article IX be approved.

MR. PERSON: Second the motion.

THE CHAIRMAN: You have heard the motion.

COM. COOPER: Question.

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

MR. SKEEN: "ARTICLE X" I might say by way of explanation that earlier in the meeting the Legal Committee was

asked to try to work out a rewording of Article X. That was done this evening and we have the following suggested language:

"Applications for appropriation, for change of point of diversion, place and nature of use, or 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, provided that no such application shall be approved if the effect thereof is to deprive any water user in another state of water to which he is entitled."

MR. MERRILL: Could you let me have that again?

(Language reread.)

MR. SKEEN: That follows the language in the first sentence.

MR. SPAULDING: You still want the last three lines of that, do you not?

MR. SKEEN: The next sentence:

"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."

That is the same as appears in this draft.

MR. MERRILL: I wonder--it just occurred to me as to whether or not that would be interpreted as applying merely to a water user in another state and not applied to a water user in the state in which the change is made.

MR. SKEEN: You mean the last sentence?

MR. MERRILL: No, I mean the first part, ". .shall be considered and acted upon in accordance with the law of the State in which the point of diversion is located"--that may cover it--"provided that no such application shall be approved if the effect thereof is to deprive any water user in another state of water to which he is entitled."

MR. SKEEN: That is right.

MR. MERRILL: I was just wondering if it would be by implication avoiding the water user in that state who might be affected.

MR. SPAULDING: May I go a little beyond Mr. Merrill and suggest that we change a headgate in Wyoming upstream to a point in Utah; where would the jurisdiction be, in both states?

MR. SKEEN: That would be covered by this other article, Article VII, which would authorize the building of a canal or conduit or other works in one state for use of water in another state.

MR. SPAULDING: I think so.

MR. PERSON: I move it be adopted as modified.

COM. CLYDE: Couldn't that be made to read "any water user" without limiting it to a water user in any state?

MR. MERRILL: I think we ought to keep in there the language, "to deprive any water user in another state of water," I think that must be in there. But I was just wondering if

there should be anything added with reference to the water user in the state in which the change is made. Maybe that is covered by the law in the state in which the diversion is made. I think that is all.

THE CHAIRMAN: You have heard the motion. Is there a second?

COM. COOPER: I will second it.

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

MR. SKEEN: "ARTICLE XI

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

COM. COOPER: Mr. Chairman, that is according to form, isn't it? Isn't that something that has to be in there?

MR. SKEEN: Yes.

COM. COOPER: I move we approve it.

COM. CLYDE: Second the motion.

MR. PERSON: Question.

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

MR. SKEEN: "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 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."

MR. MERRILL: You see, that is just contrary to the provision we struck out. It is a good thing we struck it out.

COM. CLYDE: I move it be adopted.

MR. PERSON: Second the motion.

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

MR. SKEEN: "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."

COM. COOPER: I move we approve that.

MR. PERSON: I second the motion

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

MR. SKEEN: "ARTICLE XIV

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

MR. MERRILL: I have been worried about that a little bit, as to whether or not that has to do with rights which the water users now have; are they molded into this Compact? And if so, then the termination of the Compact wouldn't effect any purpose.

COM. COOPER: It looks to me like it reads that the rights that are ~~no~~, that is right. "In the event of such termination all rights established under it shall continue unimpaired."

MR. SKEEN: I might state that that is stock language in every compact that has been written. I think it means that, for example here, if a storage right were created in the Upper Division under Article V and the Compact should be terminated, it wouldn't invalidate that right; that right would continue unimpaired.

MR. MERRILL: Suppose this, for instance, that the Compact should be terminated before the reservoirs are constructed to impound the 35,500 acre-feet; would they still remain rights, and subsequently there could be the impounding of water in them and they could be built?

MR. SKEEN: I guess technically it would depend on whether the rights had actually been created before the reservoirs were built. Now obviously, if you went a little further and the rights were created and the reservoirs are built, the money expended, and the water used, and this Compact is terminated, it shouldn't affect them.

MR. MERRILL: That is right.

MR. SKEEN: It would be a question of fact as to when the right was initiated and perfected.

THE CHAIRMAN: In other words, how could the right be perfected before the reservoir was built anyway?

MR. MERRILL: It says "rights established" not "rights perfected."

THE CHAIRMAN: How could it be established complete unless the works were built?

MR. SKEEN: I think if this is ratified it will be just as hard to unratify it.

MR. PERSON: They will never let us do that.

COM. CLYDE: I move we adopt it.

COM. COOPER: It would be worse than getting a divorce.

THE CHAIRMAN: Mr. Clyde moved Article XIV be adopted. Is there any second?

COM. COOPER: I second it.

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

MR. PERSON: I move the next two articles be adopted without reading them. We have read them hundreds of times.

MR. MERRILL: It is helpful to hear them.

MR. SKEEN: "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."

MR. PERSON: I move we adopt it.

COM. CLYDE: Second the motion

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

MR. SKEEN: "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 of the signatory States have signed this Compact in quadruplicate on the \_\_\_\_\_ day of \_\_\_\_\_, 195\_\_."

(Discussion off the record.)

COM. CLYDE: I move the adoption of Article XVI.

MR. PERSON: Second the motion.

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

THE CHAIRMAN: Now we are back to V. Mr. Irvine?

MR. IRVINE: After you consider IV I will give you my comment.

MR. PERSON: Mr. Chairman, there is one person that has been working hard here today, and it seems to me the next that will happen, we won't have a recording secretary, if we don't get reasonable and let her go home.

THE CHAIRMAN: Yes, she surely has been working.

MR. GRADERT: I wondered what person you were talking about.

THE CHAIRMAN: It is all in your hands, how quick we go now.

MR. THOMAS: Mr. Chairman, before this other article is begun, I suggest one very small correction on page 17, Paragraph C, second line, the "herein" I believe should be

"therein".

MR. SKEEN: Yes. The correction is made if there is no objection. One other little matter: Before we adjourned for dinner we had a motion for the insertion of a definition of the Bear River Canal, definition No. 30 on page 6.

MR. PERSON: I move Wally give us a definition for the Bear River Canal, unless he already has one.

MR. SKEEN: I was going to state that there appears to be no reason for a definition of Bear River Canal unless we define all the other canals that are mentioned in the Compact. We have got the Beckwith Quinn Canal and Cook Canal and a number of others, and the only ones we have listed here are the Chapman Canal and Francis Lee, which appeared in that table.

MR. JIBSON: That was the only purpose of listing them.

MR. PERSON: I withdraw that motion. Mr Chairman, I move we adjourn.

MR. MERRILL: Aren't we going to finish this?

MR. PERSON: Our secretary will quit.

MR. MERRILL: Adjourn to when?

MR. PERSON: I am worn down to the point where Fred will have me conceding some points I can't afford to concede.

COM. CLYDE: I think we are close enough to get the mail. I would surely like to give it another try.

THE CHAIRMAN: Everything is approved now but

Articles IV and V now.

COM. CLYDE: That is right.

MR. MERRILL: That is right. We can very easily and quickly approve those, Just make a motion.

(General discussion.)

COM. COOPER: We have discussed this provision here on page 10 under the Central Division. We feel that this 400 second-feet is the only protection that we have against the excess use upstream, and we are going to insist on that clause being in the Compact as it now reads.

MR. PERSON: I move we adjourn, Mr. Chairman.

THE CHAIRMAN: I don't hear a second.

COM. CLYDE: That means we have no Compact.

MR. PERSON: We don't have a Compact tonight, George. We don't have a Compact tonight.

COM. CLYDE: We are not going to continue to meet on these things indefinitely. We have been meeting for 15 years now and it is high time we were coming to some conclusion. I think the thing we have been discussing tonight is important, but I don't think it is nearly so important as getting the Compact. It seems to me that regulation will bring more benefits to all parties than can possibly be wrapped up in our current differences, we are that close together.

And it seems to me that we are again arguing over something that is not realistic because in the administration of this river we can't measure that close. These days that

we have been talking about are not subject to instantaneous regulation because of the nature of the stream; and therefore, I can't see where a difference of two or three days in the Compact is going to make a major difference in the administration of the water. For example, the commissioner, whoever he is, under whatever Compact you draw, has got to learn the characteristics of the river and operate it to meet as nearly as he can the terms of the Compact. He never can reach it a hundred percent. Therefore, I hate to see this meeting break up without reaching a conclusion on these Articles IV and V because we are so close together.

COM. COOPER: We have yielded and yielded and yielded on many other points in connection with it, and our resistance has been broken down a number of times; but we feel that this case is an exception and we can't see how we can afford to continue to yield. Maybe Mr. Merrill has a statement he would like to make.

MR. MERRILL: Just that I think Article V can be worked out if we get this one worked out, get this passed.

MR. SPAULDING: Will the Chairman permit a caucus?

THE CHAIRMAN: Surely we will.

(11:06 p.m. Recess.)

(11:10 p.m. Meeting reconvened.)

THE CHAIRMAN: Have you got anything to say after your caucus?

MR. PERSON: No, the same as I stated before, we

will change the 400 to 300 and the 810 to 900 and try to convince our people we can get along without the 207 clause. We will leave the 810 and 400 as they are and insert the 207 clause and try to sell the 400 clause to our people.

COM. COOPER: I didn't get that clear.

MR. PERSON: As it stands now, there is 810 and the 400. We don't like the 400; we don't think it makes sense, it is silly, it has no place in the Compact. But we will accept it provided the 207 clause is inserted at the head of the last sentence.

As an alternate and a compromise, we will make the 400, 300; and the 810, 900. The 810 happens to come first.

COM. COOPER: Wait a minute, the 400 where?

MR. PERSON: In Article IV.

MR. GRADERT: Page 10.

MR. PERSON: Page 10. The first 810 and the 400 which you want, we will try to sell to our people if we insert the 207 clause at the head of the last sentence in that section.

COM. COOPER: Don't waste your time.

MR. PERSON: As an alternate we suggest that the 810 be changed to 900 and the 400 be changed to 300; and we try to sell our people on not asking for the 207 clause in that case. I might say this in addition: At our meeting at Cokeville where there were 37 water users, one of our State Senators, who would take this through our Legislature, after

going through a long explanation of these figures on why and what the relationship between the 810 and the 400 was, he said he wasn't interested in introducing this Compact into our Legislature unless the 400 was changed to 300 and the 207 clause was in. So actually we are going way beyond the instructions of our people.

Then also Section A in the same Article, which I believe isn't as serious a contention, we assumed would be out in both of these propositions we made.

COM. COOPER: Section what?

MR. PERSON: Section A, Article IV.

COM. COOPER: Well as the Chairman of the Irrigation and Water Resources Committee in the Senate in the State Legislature of Idaho, I wouldn't want to propose to them something that I couldn't justify; and I am dead sure with Section A under Article IV, page 8, out, and this 900 and 300 in here-- I don't know how I could.

MR. PERSON: I will come up and help you.

MR. MERRILL: Fred can come down and help you.

MR. PERSON: I would appreciate it, and he could probably do it, the way he has sold me.

COM. CLYDE: Hasn't the Engineering Committee said Section A has no meaning in fact, the record shows it doesn't mean anything?

THE CHAIRMAN: You mean A on page 8?

COM. CLYDE: If it doesn't mean anything, why do we

have it in there?

MR. PERSON: What did we do with Article V?

MR. MERRILL: It is waiting on this.

MR. PERSON: I move that we tentatively approve Article V. Let's get some action. I am getting awfully tired.

MR. MERRILL: Why not put that Article IV instead of V?

MR. PERSON: No.

MR. MERRILL: Then we can get along quicker.

MR. PERSON: I am even going to vote for Dr. Bishop on Article V; you know I might have some trouble.

COM. CLYDE: I will second the motion on Article V.

THE CHAIRMAN: That is as modified in reading it here. It has been moved and seconded that we approve Article V as modified. Mr. Irvine.

MR. IRVINE: We are still opposed to it. We are opposed to the approval of Article V until Article IV is approved.

MR. PERSON: I withdraw my motion with the consent of the second.

COM. CLYDE: I will consent.

MR. PERSON: I move we adjourn and all go home and wrestle with our conscience.

MR. MERRILL: We don't have to. Our conscience is all right.

MR. PERSON: I am puzzled; I don't understand it.

MR. MERRILL: I am sure you don't. I can readily see that.

COM. COOPER: I understood you earlier in the evening to say that you would be willing to go along with page 10--

MR. PERSON: That is the 400 on page 10?

COM. COOPER: --if we would delete A in the Article IV on page 8.

MR. PERSON: No, Fred. Maybe I didn't make myself clear. I did say I would accept the one 400 that is in Article B, if you take the 400 out of Section A and insert in Section B the 207 clause. That is what I meant to say at least.

MR. MERRILL: Don't you remember, Dean Person, that Section A is what the Wyoming group urged and suggested, and it is in there because of your request?

MR. PERSON: Was it?

MR. MERRILL: Yes, Sir.

MR. PERSON: Well, I have never been known for consistency.

MR. MERRILL: It would be a good time to learn it.

COM. CLYDE: Could you reach an agreement if we kept Section A in and made it 300 and 900?

MR. MERRILL: No. The A doesn't mean much to us.

COM. COOPER: No, we agreed to take that out. That is another concession we made.

MR. PERSON: I would a lot rather sell this Compact to your Legislature than to sell it to our Legislature. When

you go to sell it to your Legislature you can say, just as you did to your people--you told them honestly, "We are going to get some water by regulating Wyoming", because some of our people happened to be there the next day.

COM. CLYDE: That is true, under regulation you lose water.

MR. PERSON: We are going to have to tell our people, "We are going to regulate you."

COM. CLYDE: But you can say, "Now, look, with this regulation and in the interest of fairness, we are getting some upstream storage."

MR. PERSON: I grant that, and that is what I am going to use on this section up here, and I think I can convince them.

COM. COOPER: Plus an increase in the duty of water, don't forget that, from one to 70 to one to 50.

MR. PERSON: But I am going to be torn limb from limb on this 400, trying to explain it.

COM. COOPER: They will never touch you.

(General discussion.)

COM. COOPER: Would you be willing to compromise at 350 and 900?

MR. PERSON: No, I have the same trouble with 350 and 900 as I do with 400 and 810; there is no correlation. I have a feeling our recording secretary can go home if she wants to.

MR. IRVINE: Mr. Person, suppose this were agreed to tonight; then what is your position?

MR. PERSON: On what?

MR. IRVINE: What would you do, take it back and reconsider it and bring it back here again? Or are you prepared to submit it to your Legislature?

MR. PERSON: I might say, until Dr. Bishop signs it--

MR. IRVINE: You don't know.

MR. PERSON: --I don't know, but I feel pretty sure that what we agree to tonight, if we agree to anything, we will propose to the Legislature.

MR. IRVINE: But you don't know until you talk to Mr. Bishop?

MR. PERSON: No.

MR. MERRILL: Why couldn't the Compact be written up as is and submitted to the various Commissioners for their signature. If they fail to sign it within, say, ten days, have one other meeting called.

MR. PERSON: you are just wasting the paper you write it up on then.

MR. MERRILL: All right then, we will go home.

COM. COOPER: If you don't care to make any further compromise, it is all right with us.

MR. PERSON: Would you second my motion now?

COM. COOPER: It depends on what the motion is.

MR. PERSON: I move we adjourn.

MR. MERRILL: To when?

MR. PERSON: Whenever you want to set a meeting.

COM. CLYDE: What you fellows are letting yourselves in for, I am sure, is another 1954. This Compact is of extreme importance, I think.

MR. MERRILL: You are getting yourself into a lawsuit. That is what started this Compact, because we were ready to file a lawsuit, it was all ready, and the Wyoming people asked us to come in on this Compact matter to avoid litigation. We came in on it. We have been at it now for all these years so we have just got to start the other way.

MR. PERSON: I won't have to take the responsibility for that one.

(Informal recess.)

MR. PERSON: Mr. Chairman, I move we adjourn subject to call.

THE CHAIRMAN: Before we do another thing, I think we have got to go into another matter in fairness to the Geological Survey program that is being operated on your funds. What about that program.

MR. PERSON: You have enough to run until July 1st? That is, the program has been approved by all three states until July 1st?

MR. HARRIS: What about after July 1st?

MR. PERSON: That is right, this meeting would consider that. Whether we have a lawsuit or Compact we still

want the data. Have you prepared a budget, Wally?

MR. JIBSON: Do you have a prepared budget in the event they want to continue the Compact assistance?

MR. HARRIS: If they want the stream gaging program as we are operating it, and continue on with the Compact assistance--and I understood in the September meeting each state had included in their next biennial budget the same amount as was in the last biennium, and whether or not the program was to continue would depend on the developments subsequent to that time. Now if this meeting is going to adjourn without setting another meeting, I think it is imperative that the Geological Survey know whether or not it is the wish of this Commission to continue on that basis or not.

MR. PERSON: Mr. Chairman, I move that we continue with the program, because we need the data in any case.

MR. MERRILL: What will you do about the budget? Fred is on the Finance Committee in the Senate.

COM. COOPER: We wouldn't approve of any funds. We have all the information that is necessary. I don't know why we need to continue this negotiation. We have 29 books on it now. What is the use to keep on prolonging the thing and spending this money? I am sure that Idaho wouldn't agree to appropriate another \$12,000.

MR. PERSON: Is that what it cost us? What puzzles me is, if we finish the Compact, then we wouldn't need this data; the Compact Commission would be getting it. If we don't

have a Compact, we are all going to need it. We are going to need it whether we have a lawsuit or anything else. And the fact that the Commissioners at their September meeting decided to put it in the next biennial request, I think that assures you the program.

COM. COOPER: They could take it out again, couldn't they?

MR. PERSON: Sure, they could take it out again.

COM. COOPER: Yes, we could withdraw it.

MR. PERSON: But it would be my suggestion that we not do that.

THE CHAIRMAN: You made a motion. Apparently there are no seconds.

COM. CLYDE: Mr. Chairman, I move that we recess for another two weeks and give it another try.

MR. PERSON: I will second the motion.

MR. MERRILL: I can't be here.

COM. COOPER: We won't recess for two weeks and hold another meeting unless you can be here.

COM. CLYDE: Do I interpret that to mean that your mind is made up that you either get what you are asking tonight or there will be no Compact?

COM. COOPER: I am not stating that. I am stating that we will not come to a meeting without our legal counsel. We can't depend on the Attorney General's office from Idaho now because they are so busy involved in legislative matters; and

we don't intend to go into one of these meetings unless Mr. Merrill can be present.

MR. MERRILL: What would be the date of two weeks from today?

COM. CLYDE: The 27th. Any time that is convenient would be satisfactory. Let me ask this question before we decide that. Practically, what are the chances that we can get this thing before the legislatures?

COM. COOPER: If it is passed, we can get it before our Legislature in just a few days after it is passed, two or three days.

MR. MERRILL: The rule in the Idaho Legislature--I think I am right, Fred--is, that a bill may be introduced by an individual any time within the first months.

COM. COOPER: In the first 25 days.

MR. MERRILL: After that it has to be introduced by--

COM. COOPER: A committee.

MR. MERRILL: --a committee, but that wouldn't bother us up there.

COM. COOPER: We can get it through the Irrigation and Water Resources Committee.

MR. MERRILL: And I think the other states can do the same thing.

MR. PERSON: I think during the first three weeks a bill can be introduced by anyone, but after that it takes unanimous consent.

MR. MERRILL: But a committee can introduce it?

MR. PERSON: After a certain date they have to have unanimous consent.

MR. MERRILL: You had better have yours before the three weeks is up.

MR. PERSON: If we get our Senator from the Basin to introduce it--if they will introduce it, they can get unanimous consent. Isn't that right, Judge?

MR. SPAULDING: There is a limited time for introduction, and then either by a committee or by unanimous consent.

MR. MERRILL: By a committee or unanimous consent. In other words, it can be introduced by a committee after that, but if it is introduced by an individual, it would have to be by unanimous consent.

MR. SPAULDING: Yes.

MR. MERRILL: That is the law in most states.

COM. COOPER: It can be introduced by a committee in Idaho up to the 50th legislative day.

MR. SPAULDING: We have 40 days altogether.

(General discussion.)

MR. MERRILL: The 31st would be all right with me, but it is a long time.

MR. PORTER: It is two weeks plus a couple of days.

MR. MERRILL: I know, but dealing with the legislatures is what I had in mind.

MR. MERRILL: But a committee can introduce it?

MR. PERSON: After a certain date they have to have unanimous consent.

MR. MERRILL: You had better have yours before the three weeks is up.

MR. PERSON: If we get our Senator from the Basin to introduce it--if they will introduce it, they can get unanimous consent. Isn't that right, Judge?

MR. SPAULDING: There is a limited time for introduction, and then either by a committee or by unanimous consent.

MR. MERRILL: By a committee or unanimous consent. In other words, it can be introduced by a committee after that, but if it is introduced by an individual, it would have to be by unanimous consent.

MR. SPAULDING: Yes.

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MR. PORTER: It is two weeks plus a couple of days.

MR. MERRILL: I know, but dealing with the legislatures is what I had in mind.

MR. SKEEN: Couldn't you make it closer to a week or ten days? How about the 21st?

MR. MERRILL: We could have it on the 21st, Friday.

COM. CLYDE: I will make it the 21st.

COM. COOPER: I can come the 21st. Can you?

MR. MERRILL: Yes.

COM. CLYDE: I think we ought to agree that if we are going to meet again, we make another sincere effort to close the gap. I am not belittling the difficulty, but I do feel we are close enough to get together on it some way, and I would like to see us give it a try. I move, Mr. Chairman, we meet again on the 21st of January in this same place if it is agreeable.

COM. COOPER: On the 21st?

COM. CLYDE: On the 21st.

MR. PERSON: That is a week from this Friday.

THE CHAIRMAN: It has been moved and seconded that we meet on Friday, January 21st. (Thereupon a vote was taken and Com. Clyde's motion carried unanimously.)

THE CHAIRMAN: Then we stand adjourned.

(11:45 p.m., Wednesday, January 12, 1955, meeting adjourned.)

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