

**Findings Concerning
the
Need for Compact Revision**

**A Report of the
Bear River Commission**

**This report is made as a part of the
twenty-year review effort
provided for by Article XIV
of the
Amended Bear River Compact**

November 18, 1997

ACKNOWLEDGMENTS

This is a report of the Bear River Commission. Much of the writings contained herein, however, were influenced by a large number of technical people, water users, people from the general public and, in a broad sense, stakeholders in the Bear River and its environs. The Commission appreciates the commentaries made by the public during this twenty-year review process. Their thoughts and statements provided the framework for this report. Members of the Commission's Technical Advisory Committee (TAC) and the Commission's staff were actively involved in the collection of information and the drafting of major portions of the report. Their contribution is greatly appreciated by the Commission.

Commission Meeting
April 29, 1997

Photograph of Commissioners, Alternate Commissioners and Commission staff support

Commissioners are seated on front row. They are from left to right: Rodney Wallentine (Paris, ID); Karl J. Dreher (Boise, ID); Don W. Gilbert (Grace, ID); D. Larry Anderson (Bountiful, UT); Charles W. Holmgren (Bear River City, UT); Blair Francis (Woodruff, UT); Denice Wheeler (Evanston, WY, Federal Representative and Chair); Gordon W. (Jeff) Fassett (Cheyenne, WY); John A. Teichert (Cokeville, WY); James Crompton (Evanston, WY, Vice Chair). Back Row, left to right as follows: Jade Henderson (TAC member - Cokeville, WY); Hal Anderson (TAC member - Boise, ID); Norm Stauffer (TAC member - Bountiful, UT); Kevin Wilde (TAC member - Cokeville, WY); Joseph Larsen (Alternate Commissioner - Newton, UT); Bob Fotheringham (TAC Member - Logan, UT); Bert Page (Staff, Utah Division of Water Resources - Bountiful, UT); Don A. Barnett (Commission staff - Farmington, UT); Nola Peterson (Commission staff - Bountiful, UT); Sue Lowry (TAC member - Cheyenne, WY); Jack A. Barnett (Engineer-Manager - Bountiful, UT); Carly Burton (PacifiCorp - Salt Lake City).



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FINDINGS AND ACTIONS

After an 18-month period in which the Bear River Commission was involved in meetings, hearings, and research concerning the Bear River Compact, it finds that there is not now a need to amend the Compact. Many helpful suggestions and ideas have been advanced by Commission members, technical staff of the states, water user groups, and the general public. It is apparent that many new voices desire to be heard with respect to the management and operation of the Bear River and Bear Lake. The Compact gives authority to the Commission to get involved in a wide range of issues relating to the river. The Commission is the only formally constituted body with responsibility and jurisdiction over the entire river and because of this unique position, the Commission should provide leadership and a forum for discussion on issues that affect the entire river basin or major portions thereof. The Commission will create a Water Quality Committee with representation from the three State Departments or Divisions of Environmental Quality.

The Commission will rename the long-standing Records Committee, designating it as the Records and Public Involvement Committee, and instruct that committee to look for more opportunity for public involvement in Commission activities.

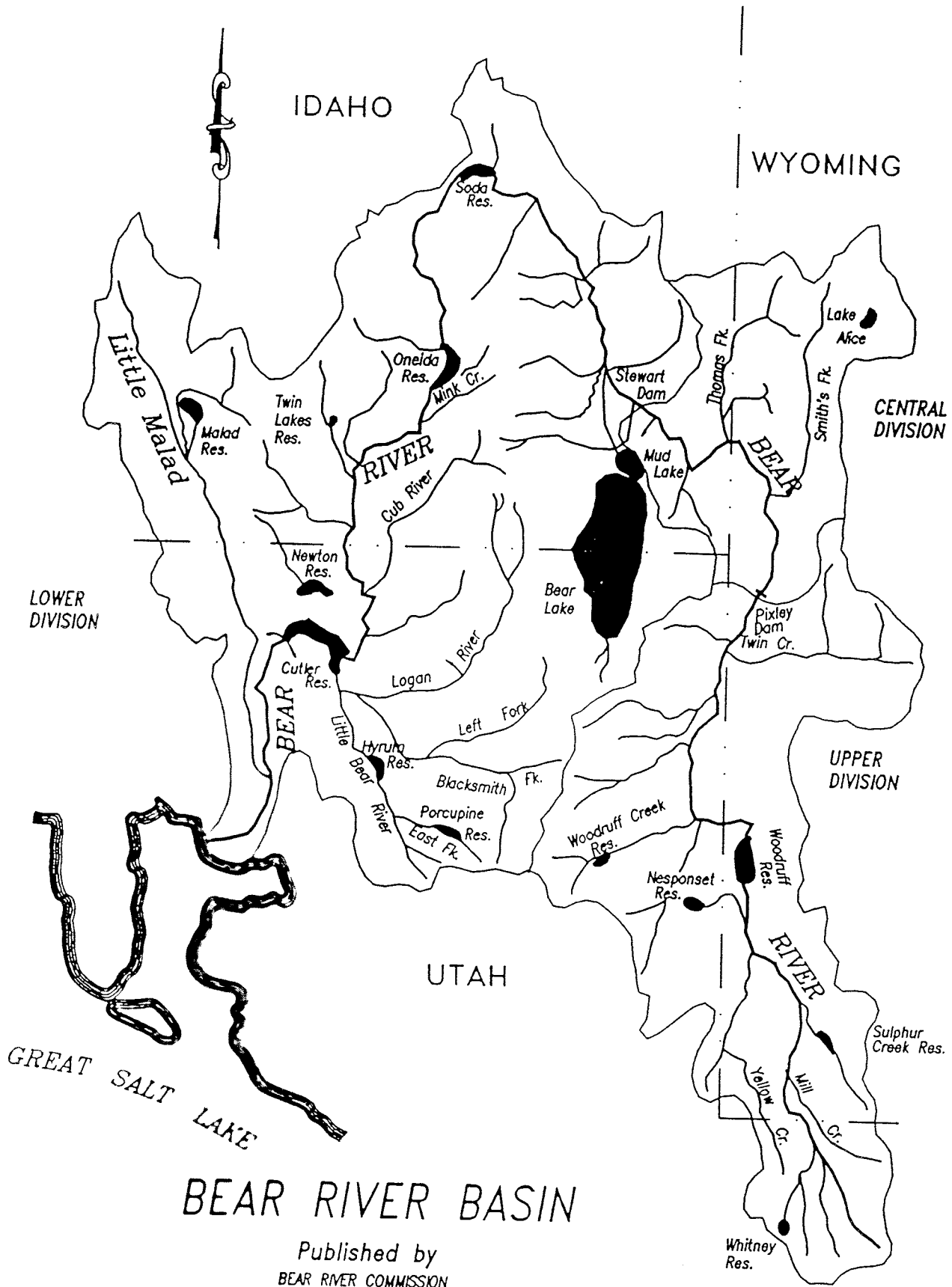
The Commission met on November 18, 1997 and, by formal action and resolution, implemented the above findings. The Commission's resolutions are attached to this report as Appendix A. The Bylaws of the Commission are a part of Appendix B of this report, and the Bylaws have been amended to include the actions of the Commission on November 18, 1997 and as set forth in Appendix A.

OVERVIEW

The Bear River Compact grew out of informal meetings that began in March of 1943 between the States of Idaho, Utah and Wyoming. The Bear River crosses state lines in the three Bear River Basin states five times from its headwaters in the Uinta Mountains in Utah to its terminus in the Great Salt Lake (see Figure 1). Each of the states had developed their own water right laws based on the common law prior appropriation doctrine, and the river's crossing of state lines had, in effect, created six water right administrative units. Administration of the water rights in each of these six units was not taking into consideration rights of users in other units. Issues were very complex, divergent views were strongly held, and a formal accord was long in coming. The first official meeting of the Commission, as allowed under the then newly adopted Bear River Compact, did not occur until April of 1958. It is understandable that in 1996, when public comments were requested concerning whether or not there is now a need to revise the Compact, many commentators lack the historical perspective of the Compact. It is felt that before responses to comments are given in this report, it would be helpful to provide an overview and a history of the three-state water accord.

As stated above, informal meetings began as early as March of 1943 between representatives of the three Bear River Basin states - Wyoming, Idaho and Utah, to determine if there wasn't some accord that could be reached with respect to the allocation of the waters of the Bear River which, at some times during the season almost every year, appeared to be inadequate to meet all of the needs of the water users along the course of the river. Intense negotiations between the states began in December of 1954. The states, in February of 1955, signed an agreed-to Compact and then proceeded to seek state

Figure 1



BEAR RIVER BASIN

Published by
BEAR RIVER COMMISSION

legislative and Congressional approval. Federal consent to the Compact was given by the Congress and signed by President Eisenhower on March 17, 1958. The Bear River Commission was created as an interstate agency to administer the Compact.

The Bear River Compact determines the rights and obligations of the signatory States of Wyoming, Idaho and Utah with respect to the waters of the Bear River. A copy of the Compact is attached to this report as Appendix B. Article XIV of the Compact states:

"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."

With time, the states saw a need for additional provisions and the Bear River Compact was amended in accordance with Article XIII (Article XIV, Amended Compact) following several years of study and review of Compact provisions. Principal amendments and other changes are discussed elsewhere in this report. State amending legislation was approved in each state in the spring of 1979, and Congressional consent given February 8, 1980 by Public Law 96-189, 96th Congress.

On April 16, 1996, the Commission, meeting in Salt Lake City, determined that it was timely for the Commission to begin the twenty-year review, as required by the Compact, as to the need for revision of the Compact. The Commission appointed a special three-member committee, composed of Commission members, and instructed the committee to hold public meetings and return to the Commission and report their findings. The Commissioners assigned to the committee were Calvin Funk (Utah), James Crompton (Wyoming) and Rodney Wallentine (Idaho). Three public meetings were scheduled in each of the three states, with a special meeting being held in the Bear Lake area because of the Commission's sense of significant interest in the Compact by residents of that area.

The first meeting was held on July 16, 1996 in Evanston, Wyoming; the second meeting was held on July 17, 1996 in Logan, Utah; the third meeting was held on August 5, 1996 in Montpelier, Idaho; and the fourth meeting was held on August 6, 1996 in Grace, Idaho. All in attendance at the four meetings were given an opportunity to provide oral comment and testimony, and then the public was given until August 27, 1996 to provide any additional written comment. Following the public meetings, the committee instructed the Engineer-Manager to prepare a book containing all testimony received, and that book "Bear River Commission Compact Review, Public Meetings and Testimonies, September 5, 1996" was made available to the public at a Commission meeting held in Salt Lake City on November 19, 1996.

A report given at the Commission meeting completed the special committee's assignment, and the information provided from the public meetings and the committee was taken under advisement by the Commission. A special assignment was given to the Commission's Management Committee to contemplate the recommendations made and the testimony given, and to report back to the Commission any actions that the Commission should take as a result of the twenty-year review. The Management Committee assigned the Engineer-Manager and the Commission's Technical Advisory Committee (TAC) to further analyze the information obtained and to suggest much of the text of this report.

BEAR RIVER HYDROLOGY AND MANAGEMENT

General

Much is known about the hydrology of the Bear River, its historic flows and its management, but from comments received it was apparent that some were unaware of important information. It was concluded that before responses were made to some of the comments, it would be helpful if the following background was provided in this report. Data is collected daily and weekly by the U.S. Geological Survey, PacifiCorp (dba Utah Power or Utah Power and Light) and state watermasters. The current data is compiled by the USGS, the Commission staff, and state water agencies and is published regularly. Flows along the Bear River are recorded, as are lake and reservoir levels. Also made of record are major and minor flows relating to irrigation diversions. Some of the data is available to administrators on a weekly basis, and some data can be collected by satellite transmission on a real-time basis.

The Commission does not get involved in the operation of the river unless conditions exist that trigger provisions of the Compact. The three administrative diversions of the River as provided for by the Compact are indicated on Figure 1. In the Upper and Central Divisions of the river, the Commission imposes interstate regulation on natural flows during many irrigation seasons. Divertable flows, as defined by the Compact, are determined in those divisions. When flow shortages are determined in those divisions, the Engineer-Manager instructs state watermasters on the amount of flow that can be diverted in various state sections of the river. In the Lower Division, there are provisions of the Compact for interstate regulation, but shortages to date have not been severe enough to prompt a request for interstate regulation between Utah and Idaho. During the irrigation season, on a regular basis (often daily or weekly), each state's watermasters regulate the diversion and flow of water to irrigation canals and other users. Those state officials record flow and distribute entitlements within their state. PacifiCorp operates the diversions into and out of Bear Lake. Storage is accomplished generally during the non-irrigation season, and during the irrigation season releases are made from Bear Lake storage to satisfy calls for stored water by downstream users that have contracts with PacifiCorp.

PacifiCorp operates five on-river, downstream, electrical generating facilities, and associated with three of those facilities are small storage reservoirs. Those small storage reservoirs are operated on a daily basis to regulate flows to accommodate peaking electrical generation needs and the requirements of downstream water users. During the non-irrigation season, PacifiCorp generates electrical power from river flows or flood control releases from Bear Lake that pass their generation stations. During the irrigation season, PacifiCorp is able to take advantage of natural flows that pass their generation stations plus flows that have been released from Bear Lake to accommodate downstream contract holders. Although the Compact allows PacifiCorp to release water from Bear Lake for exclusively power generation when the lake is above the irrigation reserve, this has not been PacifiCorp's operational practice for at least two decades. PacifiCorp has only released water from Bear Lake storage at times of downstream contract holder water demands, or at times when there is excess water, or projected to be excess water, over and above current or projected future demands to protect against future unwanted very high flows and potential damage from flooding.

PacifiCorp plays a very important role in the river use with its very senior water rights to divert water from the Bear River and store water in Bear Lake, and its commitment by contract to the major water

users of the river downstream. To accomplish their legal role on the system, PacifiCorp diverts the Bear River at Stewart Dam through the Rainbow Canal into Mud Lake. Mud "Lake" could be just as well described as a marsh. Water stored in Mud Lake is considered by the Commission to be a part of the Bear Lake storage. Mud Lake is a very important feature on the river system. It provides excellent habitat for wildlife and is a U.S. Fish & Wildlife Service reserve. At times, the levels in Mud Lake are manipulated by PacifiCorp at the request of the U.S. Fish Wildlife Service to accommodate wildlife management purposes. Most generally, Mud Lake is held at a near full level, which is most advantageous to the wildlife and accommodates the operational needs of PacifiCorp with respect to the operation of Bear Lake and the release of water to users downstream from Bear Lake.

Bear River waters diverted into Mud Lake are spread out through an associated marsh. The velocity of its flow is greatly reduced, and during the period of time that the water is in Mud Lake, there is an opportunity for a significant amount of silt to drop from the waters of the Bear River into the bottom of Mud Lake. The interaction of the waters with the marsh also allows for a significant amount of nutrients to be taken from Bear River waters and consumed in the marsh. Waters from Mud Lake can either be allowed to flow through the causeway or the Lifton pumping station directly into Bear Lake when the water level in Mud Lake is higher than that of Bear Lake, which is most often the case. During the storage season it is common for PacifiCorp to allow the waters diverted from the Rainbow Canal, after settling in Mud Lake, to flow into the north end of Bear Lake through a new control structure on the causeway.

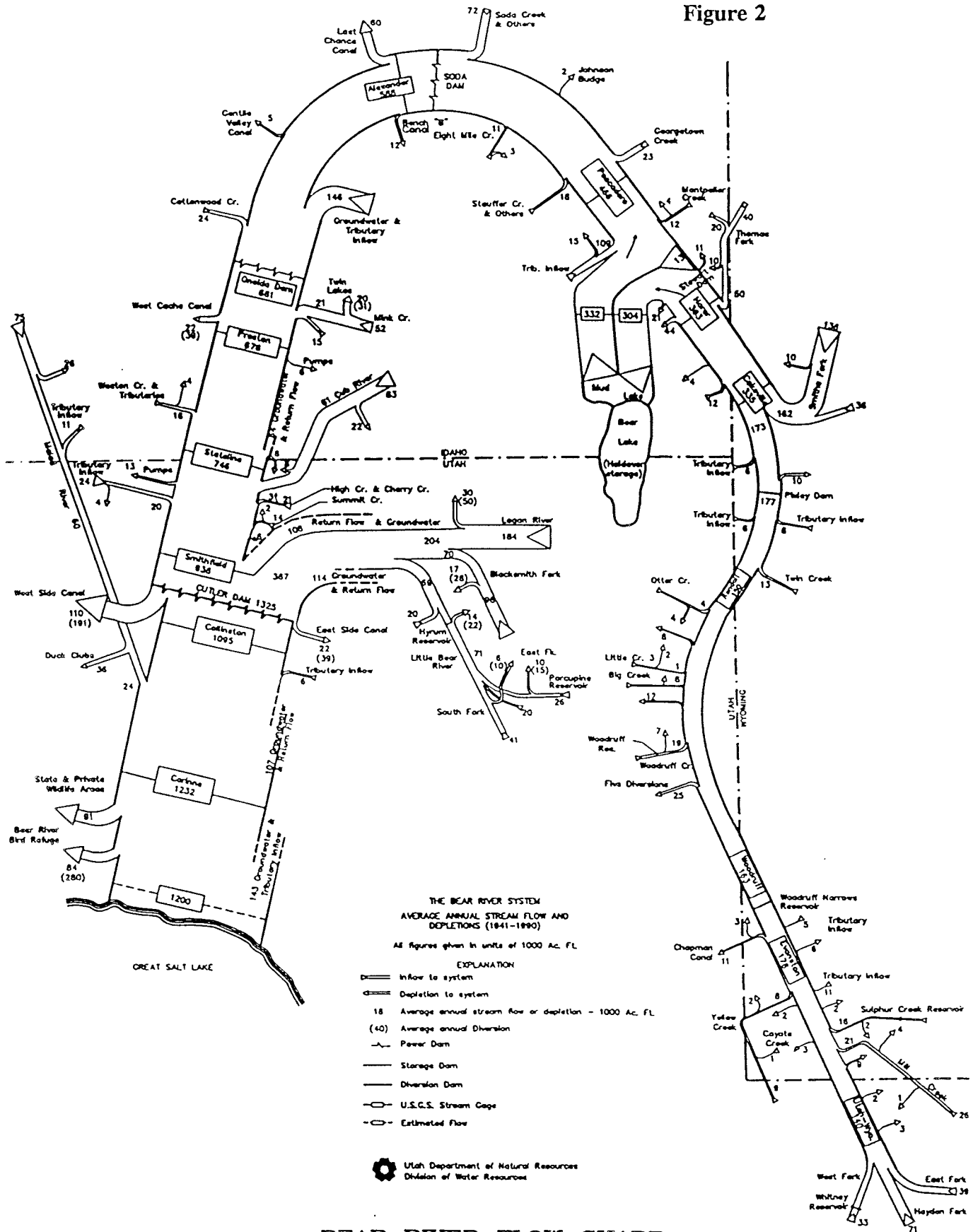
Waters flowing into Mud Lake can also be allowed to flow directly to the outlet canal without entering Bear Lake and discharge through the outlet canal back into the Bear River. Waters stored in Bear Lake by PacifiCorp which are both diverted flows from the Bear River and natural flows collected from the Bear Lake Basin can either be allowed to flow by gravity through the Lifton station to the outlet canal and down the river system when Bear Lake is at a higher elevation than the outlet canal (Mud Lake), or the waters can be pumped at the Lifton station from Bear Lake into the outlet canal and delivered to the river for users downstream. During the irrigation season, often from mid-June until mid-September, the pumps are on at Lifton and stored waters are being released for use by contract holders downstream.

The Commission will only become involved in the regulation of the flows of the river for users as described above when provisions of the Compact call for the Commission's intervention under the auspices of a Compact-described water emergency. In the Lower Division, with the encouragement of the Commission, the states of Utah and Idaho have taken their already in-place accounting systems, which are facilitated by computer models, and adapted them so that a common accounting and river model system has been agreed to in the event there is a need for interstate regulation of the river system by the Commission. This commonly agreed-to accounting system, assisted by the commonly agreed-to computer models, can be used to assist the Commission in its operation of the Lower Division of the Bear River basin.

Bear River Hydrology

The following Bear River flow chart (Figure 2) shows the relative size of annual streamflows in the Bear River throughout its length, as well as tributary inflows, diversions, depletions, and groundwater

Figure 2



BEAR RIVER FLOW CHART

inflows, based on a 50-year period from 1941 to 1990. The path of the mainstem Bear River flow is indicated on the chart, beginning with the headwaters in the Uinta Mountains. The width of the mainstem and tributaries is roughly proportioned to average annual flow in acre-feet. The flow in acre-feet is shown at gaging station locations and other points on the chart.

Mainstem gaging stations are indicated by rectangles. Diversions from the Bear River and its tributaries are represented by arrowheads. Bear Lake inflows and outflows are similarly shown. As the chart indicates, the Logan River is the largest tributary. It is joined by Blacksmith Fork and Little Bear River before entering Cutler Reservoir. The next largest tributary of the Bear River is Smith's Fork in Wyoming. Others are the interstate Cub River tributary in Idaho and Utah, Mink Creek and Soda Creek in Idaho and Malad River in Utah. Major diversions are Last Chance Canal in Idaho, West Cache Canal with diversion in Idaho and much of its use in Utah, the West Side and East Side Canals of the Bear River Canal Company in Utah and the Bear River Migratory Bird Refuge in Utah.

Several streamflow gaging stations above Bear Lake and on most of the tributary streams throughout the entire basin and some mainstem locations below Bear Lake are operated by the U. S. Geological Survey in cooperation with the Bear River Commission. PacifiCorp operates and maintains several of the mainstem stations downstream from Bear Lake, i.e., those associated with their hydroelectric system, and the Rainbow Inlet Canal.

The annual flows for the Bear River near Corinne are shown in Figure 3. The Corinne gage is near the mouth of the river at the Great Salt Lake just above the Bear River Migratory Bird Refuge. These annual flows show the wide variation in runoff from year to year (see Figure 3). The lowest yearly runoff of 315,710 acre-feet occurred in 1992, and the highest runoff of 3,666,000 acre-feet occurred in 1984. This ratio of high-to-low annual runoff of 11.6 makes management of the river extremely difficult during wet or dry cycles. For the 1931-1935 five-year drought, the average flow was 616,000 acre-feet per year. The average annual flow for the 1988-1992 five-year drought was 488,000 acre-feet. The recent 1988-1992 drought was the worst recorded in the past 76 years. In addition, the annual runoff pattern (see Figure 4) in the Bear River has high runoff in the spring months and low flows during the summer months. This makes storage water and water regulation necessities, since the highest need for water is in the summer months.

Figure 3

Annual Flows Bear River near Corinne

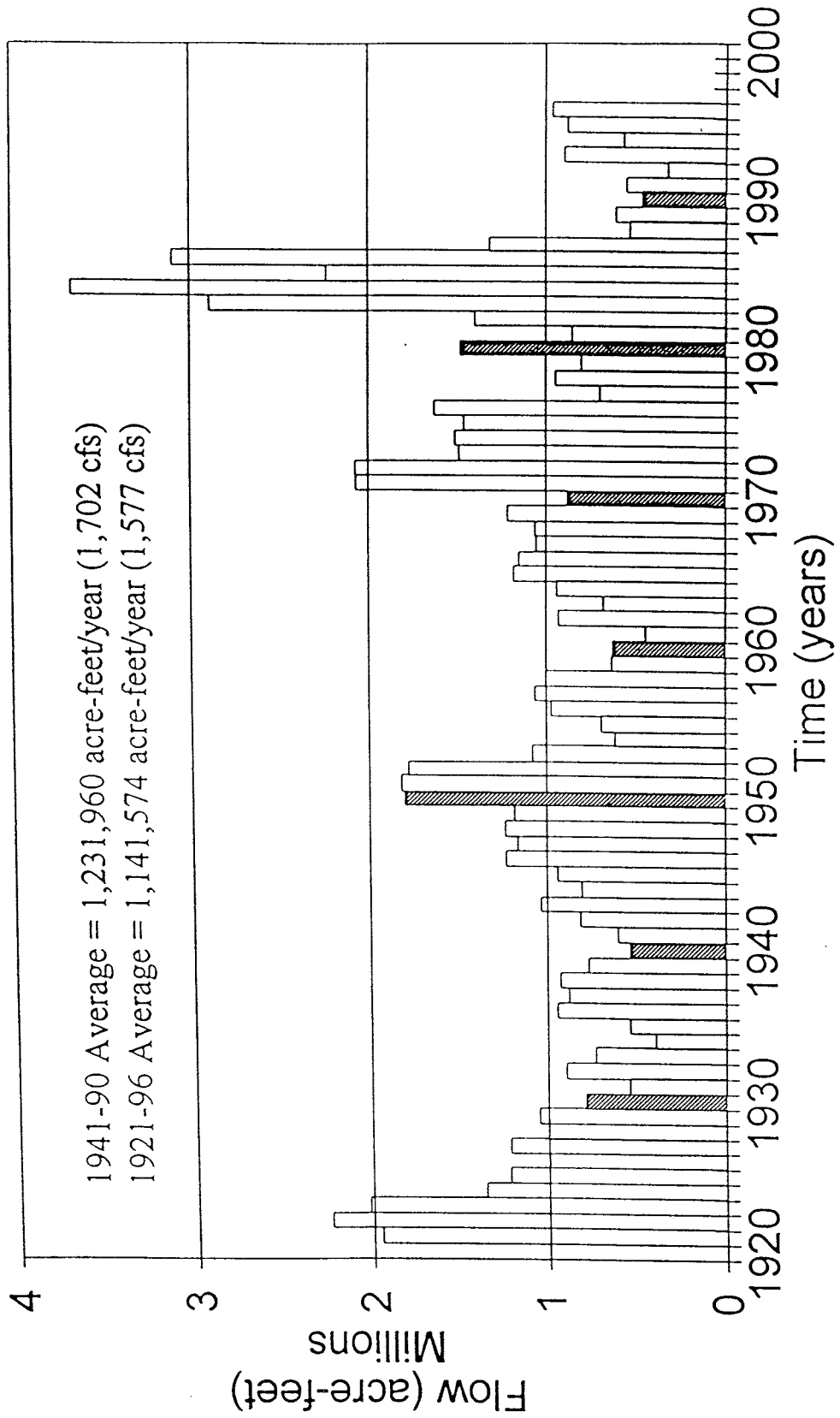
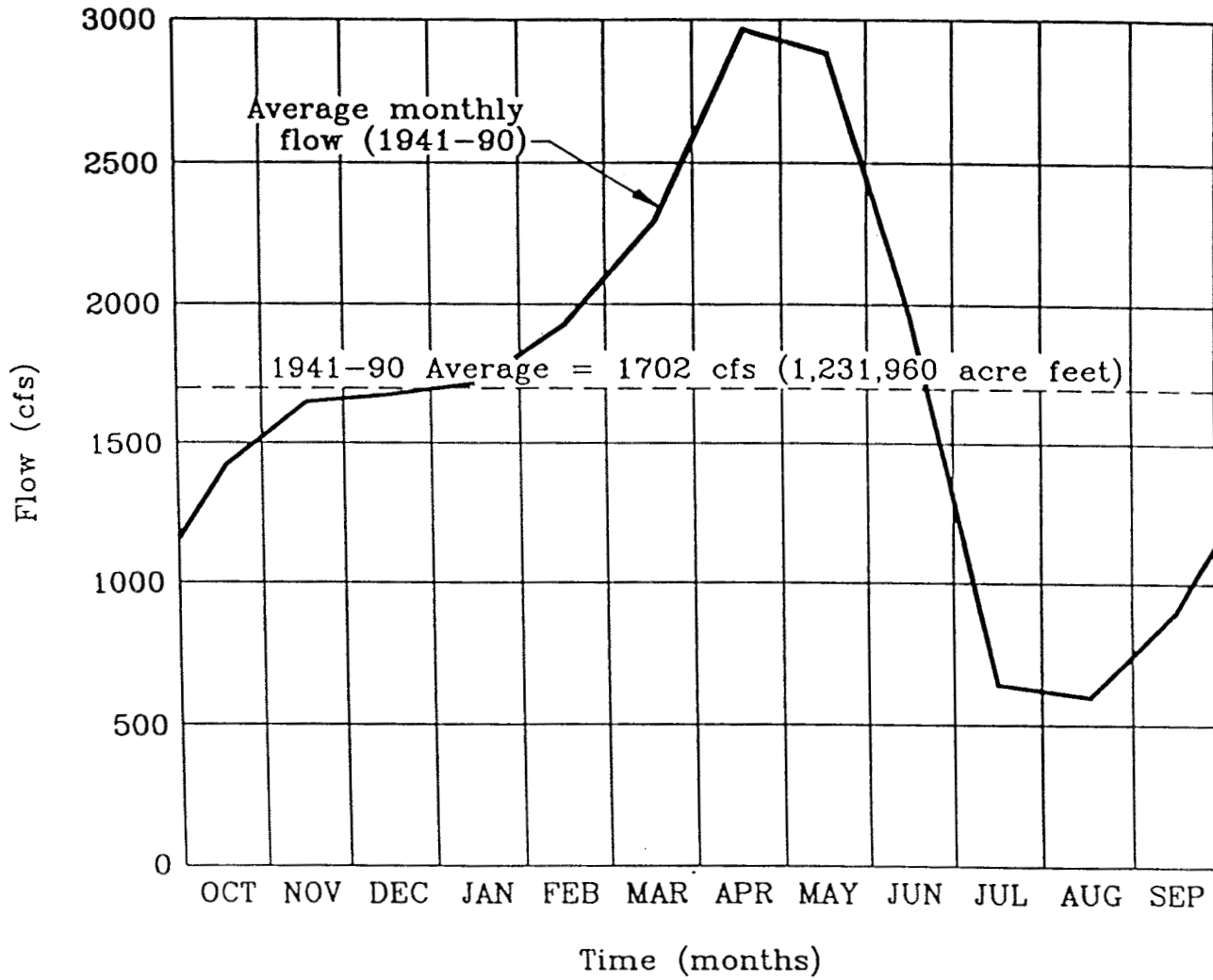


Figure 4

ANNUAL RUNOFF PATTERN
BEAR RIVER NEAR CORINNE



River Operation And Management

General

Several reservoirs have been constructed to provide storage water to supplement the natural river flows during the summer months, as well as some holdover storage for drought years. Figure 5 shows the existing reservoirs with storage capacities over 4,000 acre-feet in the Bear River Basin. The reservoirs are listed in downstream order.

General river commissioners (watermasters), appointed by the respective State Engineers, deliver stored water and natural flow water within each state without direction from the Bear River Commission, unless a water emergency exists as determined by the Compact. As previously stated, the Bear River Compact divides the river into three main divisions: the Upper Division, the Central Division, and the Lower Division. The Compact specifically identifies which reaches of the river and canal diversions are to be assigned to each division. Each division operates independently.

Figure 5

EXISTING RESERVOIRS IN BEAR RIVER BASIN
(4,000 ac-ft or larger, in downstream order)

Name	County		Stream Source	Total Storage (acre-feet)
Whitney	Summit	UT	West Fork Bear River	4,700
Sulphur Creek	Uinta	WY	Sulphur Creek	19,800
Neponset	Rich	UT	Bear River/Chapman Canal	6,900
Woodruff Narrows	Uinta	WY	Bear River	57,300
Woodruff Creek	Rich	UT	Woodruff Creek	4,100
Bear Lake	Rich	UT	Bear River	1,452,000
	Bear Lake	ID	Bear River	
Montpelier	Bear Lake	ID	Montpelier Creek	4,050
Soda Point	Caribou	ID	Bear River	15,500
Oneida Narrows	Franklin	ID	Bear River	11,500
Twin Lakes	Franklin	ID	Mink Creek	14,000
Glendale	Franklin	ID	Worm Creek	11,000
Strong Arm	Franklin	ID	Battle Creek	4,500
Treasureton	Franklin	ID	Battle Creek	7,000
Porcupine	Cache	UT	East Fork Little Bear River	12,800
Hyrum	Cache	UT	Lower Bear River	18,800
Newton	Cache	UT	Newton Creek	5,600
Cutler	Box Elder	UT	Bear River	17,000
Daniels	Oneida	ID	Lower Malad River	11,900
Deep Creek	Oneida	ID	Deep Creek	5,400
Devil Creek	Oneida	ID	Devil Creek	4,450
St. Johns	Oneida	ID	Davis Creek	4,450

Upper Division

The Upper Division includes the portion of the Bear River and its tributaries from its source in the Uinta Mountains to and including Pixley Dam (a diversion dam), located in Wyoming between Randolph, Utah and Cokeville, Wyoming. There are five storage reservoirs with capacities over 4,000 acre-feet in the Upper Division as shown in the table. These include Whitney, Sulphur Creek, Neponset and Woodruff Creek on the tributaries and Woodruff Narrows on the mainstem. Woodruff Narrows Reservoir is the largest mainstem reservoir (57,300 acre-feet) on the Bear River.

The direct flow (natural flow) and storage water in the Upper Division is administered in Utah and Wyoming under state laws without direction from the Bear River Commission unless a water emergency exists. A water emergency exists when the divertable flow (direct flow), as defined in the Compact, is less than 1,250 second-feet. (For more information on how the divertable flow is defined in the Upper and Central Divisions, refer to Article IV.A. of the Compact found in Appendix B). The direct flow is then allocated to Utah and Wyoming sections of the river as specified in the Compact. The Engineer-Manager of the Commission makes these allocations weekly to the river commissioners of Utah and Wyoming for distributing under individual state laws. Stored water is not affected by water emergencies and is distributed by the river commissioners of each state under state laws. However, the total amount of water stored in a given water year is monitored by the Engineer-Manager to assure compliance of each state's storage allocation with the Compact.

Central Division

The Central Division is the portion of the Bear River and its tributaries from below Pixley Dam to and including Stewart Dam in Idaho. Stewart Dam is the diversion dam that diverts Bear River water to Mud Lake/Bear Lake. There are no major reservoirs in the Central Division. The direct flow in the Central Division is administered in Wyoming and Idaho under state laws without direction from the Bear River Commission, unless a water emergency exists. A water emergency exists when the divertable flow as defined in the Compact is less than 850 second-feet, or the flow of the Bear River at the Border Gaging Station, located at the Wyoming-Idaho state line, is less than 350 second-feet. The direct flow is then allocated to Wyoming and Idaho as specified in the Compact. The Engineer-Manager of the Commission makes these allocations weekly to the river commissioners of Wyoming and Idaho for distributing the allocated direct flows under their individual state water laws.

Water emergencies provided for in the Compact terminate on September 30 of each year unless terminated sooner or extended by the Commission. Water emergencies occur in the Upper and Central Divisions on a regular basis.

Lower Division

The Lower Division is the portion of the Bear River and its tributaries between Stewart Dam and the Great Salt Lake, including Bear Lake and its tributary drainage. There are several reservoirs on the tributaries in the Lower Division, as shown in the reservoir table.

To manage the mainstem flows, PacifiCorp has developed facilities and perfected water rights which enable the company to regulate (and use as a reservoir) the top 1.4 million acre-feet of Bear Lake's 6.5 million acre-feet of storage volume. To operate Bear Lake as a major and dependable reservoir, it was

necessary to divert the flow of Bear River into Bear Lake. The Bear River has, at geologic times in the past, been a direct tributary to Bear Lake but it is not a natural tributary today. Between 1909 and 1918, the Stewart Diversion Dam, the Rainbow Inlet Canal, the Outlet Canal, and the Lifton Pumping Plant were built. The pumping plant was needed to lift water from the lake into the Outlet Canal, which returns the water to the Bear River. Operation of these facilities provides PacifiCorp with controlled storage in Bear Lake through a maximum range of 21.65 feet (elevations 5902.00 feet to 5923.65 feet), which represents 1,452,000 acre-feet of storage. The entire Bear River is diverted at Stewart Dam through the Rainbow Inlet Canal to Mud Lake. Water can then flow into Bear Lake or bypass Bear Lake by flowing directly from Mud Lake into the Outlet Canal back to the Bear River.

In accordance with many contracts with downstream water users, PacifiCorp provides water for irrigation diversions along the Bear River in Idaho and Utah from Bear Lake down to and including the diversions from Cutler Reservoir at Cutler Dam. The Irrigation companies which divert from the Bear River under contract with PacifiCorp are given in the following figure (Figure 6):

Figure 6

IRRIGATION CONTRACTS WITH PACIFICORP FOR BEAR LAKE STORAGE WATER		
Company	Date of Contract	Amount
IDAHO		
Last Chance Canal Company (24,000 acres)	1919 ^a	20,000 ac-ft + supplemental
Thatcher Irrigation Company (1,700 acres)	1989	Variable
West Cache Canal Company (15,000 acres) ^b	1919	12,000 ac-ft
Twin Lakes Irrigation Company (12,500 acres)	1961	5,000 ac-ft
Cub River Irrigation Company (22,300 acres) ^b	1916	20,000 ac-ft
Individual Pumping Contracts (19 contracts)	1989	Variable
UTAH		
Bear River Canal Company (64,000 acres)	1912	900 cfs
Individual Pumping Contracts (57 contracts)	1989	Variable

^aOriginal contract revised in 1984.
^bIncludes land in Utah and Idaho.

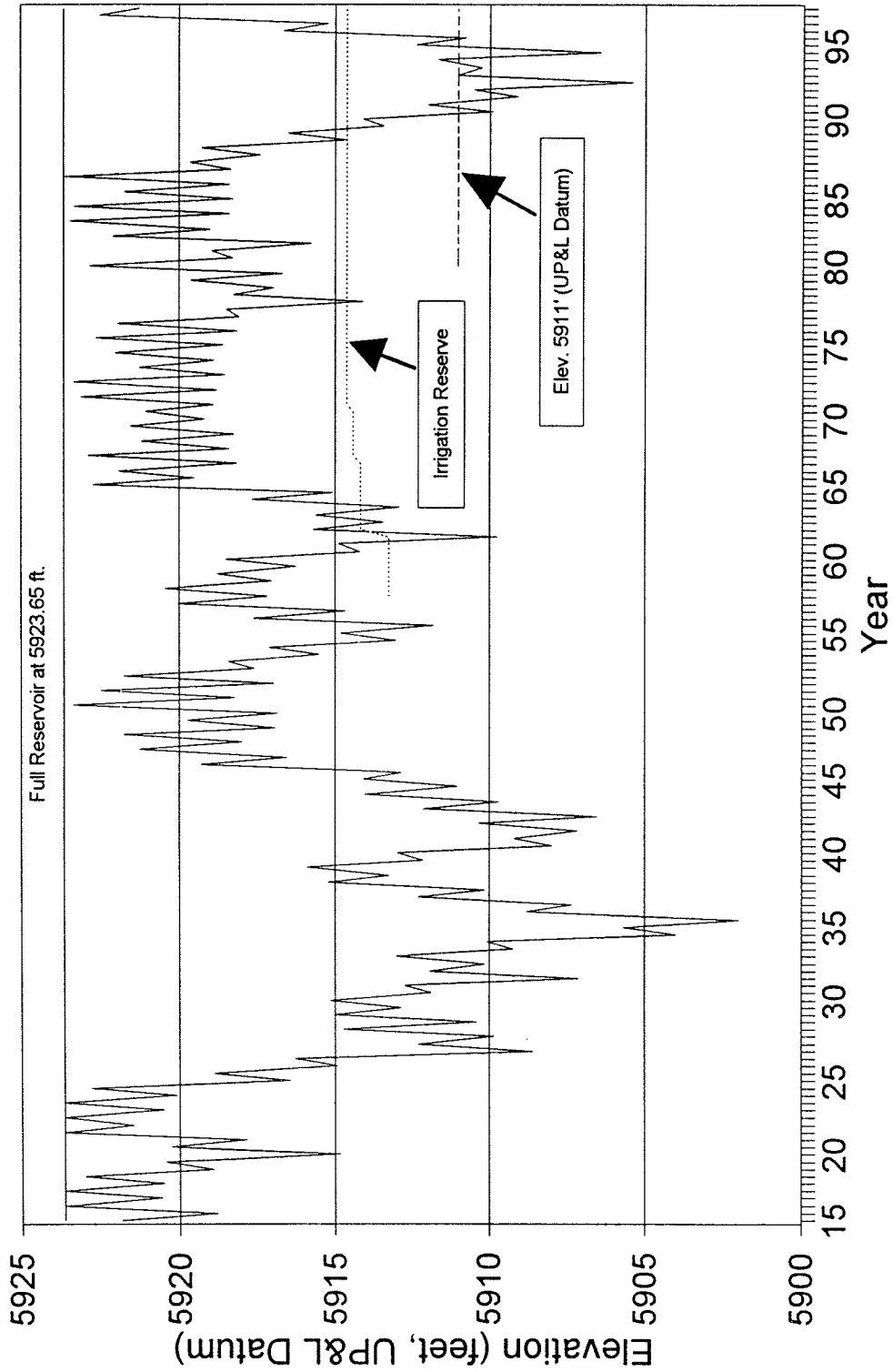
The three mainstem reservoirs, Soda Point, Oneida and Cutler, are operated by PacifiCorp for power head and temporary storage, not annual storage. Bear Lake releases to irrigators can take up to five days in travel time. Water conservation and management of the Lower Bear River System is enhanced by temporary storage and releases from these reservoirs.

The operation of Bear Lake is reflected in the historical Bear Lake hydrograph (Figure 7). During the 1920's to the late 1950's, power production on the Bear River was a major part of PacifiCorp's

Figure 7

BEAR LAKE ELEVATION

Annual Maximum & Minimum Elevations



generation facilities. Since that time, power production on the Bear River System has become a minor part of the total generation facilities of PacifiCorp. When the Bear River Compact became law in 1958, it established an irrigation reserve in Bear Lake (elevation 5,914.7 feet). The Compact prevents water being released for power purposes only when Bear Lake is below the irrigation reserve. The water released for irrigation when Bear Lake is below the irrigation reserve may be used for generating power. The Amended Compact provided additional storage rights in the Upper and Central Divisions but limited the storage rights to times when Bear Lake is above the upstream storage restriction elevation of 5,911.0 feet.

Since the mid-1960's, PacifiCorp has operated Bear Lake as if the irrigation reserve were at elevation 5,918 feet. This keeps the lake relatively high, which satisfies most recreational users and provides a good holdover storage for irrigators for use in times of drought. PacifiCorp lowers the lake to elevation 5,918 feet in the fall and winter, if the lake is above that elevation, to provide storage for flood control around the lake, as well as flood control along the Bear River below Bear Lake.

As a result of the recent drought and the need to dredge in Bear Lake to get water for irrigation out of the lake, and a lawsuit filed by Bear Lake interests against the U.S. Army Corps of Engineers, a settlement agreement was made between Bear Lake interests, the irrigators and PacifiCorp. As part of the settlement for dropping the lawsuit, the irrigators and PacifiCorp agreed to an Irrigation Water Allocation and Lake Recovery Proposal for Bear Lake. When Bear Lake is at or above the irrigation reserve, the maximum annual allocation remains 230,000 acre-feet. The maximum annual allocation decreases in stages to zero when the lake is at or below an elevation of 5,904 feet. This is two feet above the ability of PacifiCorp to pump from the lake. This reduced water allocation agreement will help keep Bear Lake at higher levels (the Settlement Agreement is Appendix C of this report).

Water emergencies in the Lower Division are not specified in the Compact as they are in the Upper and Central Division. For the Lower Division, the Compact states:

"When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah, covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division, and during such emergency, water shall be delivered in accordance with such schedules by the State official charged with the administration of public waters."

There has not been a petition filed for a water emergency in the Lower Division. However, a water user notified the Commission that filing of a petition was considered during the most recent drought. The Commission has been developing procedures for receiving, acting upon a petition and allocating water in the Lower Division. Public hearings have been held in Idaho and Utah. Interim procedures were adopted by the Commission at its November 18, 1997 meeting. The procedures provide for an accounting method to account for both Bear Lake storage water and direct flow, based on priorities, without regard to the Idaho-Utah boundary line. Each state has developed nearly identical computer models to account for use of direct flows and storage water as specified by the Commission.

OVERVIEW OF COMMENTS AND ISSUES

Amending the Compact

At the public meetings and in written statements, many took the opportunity to speak directly about the issue of amending the Compact. There were many comments that the Amended Compact, as now in force and effect, was well-suited to serve the purposes of the Commission and the citizens from the three states of the Bear River drainage. Several of the statements were made by individuals, but many of the statements were made by representatives of government or quasi-governmental organizations. Additional and important comments to this same effect were made by organizations that represent hundreds, if not thousands, of residents of the area. A few comments were made by individuals that either did not believe amendments to the Compact were necessary, were not sure if amendments to the Compact would accomplish the solution of issues that they identified, or felt that amendments to the Compact were only warranted if accommodations by the Commission within the existing Compact could not be made to address contemporary needs and issues. Water users in the Upper and Central Divisions expressed frustration at the conspicuous imbalance of water emergency occurrences in their divisions when compared to the Lower Division. Concern was expressed on behalf of Wyoming users in the Central Division about the heavy burden on Smith's Fork water rights to supply Idaho's flow allocation, and about the discrepancy between the Compact declaring Pine Creek flows tributary and a state court decreeing that they are not. But while there were suggestions from the Upper and Central Divisions that the Compact was not perfect and could perhaps be improved, they did not support an amendment at this time.

Only one individual who commented brought to the Commission a specific request with amendatory language concerning amendments to the Compact. It could be concluded that by nearly unanimous consensus, the commentators told the Commission that amendments to the Compact, at this moment in time, were neither needed, appropriate or desired if within the framework of the Compact a broader range of issues could be addressed.

The process of amending the Compact is complex, and it would be hard to justify the effort if the desired amendments would not be important to enhancing the Commission's opportunities to further the charges given to the Commission with respect to the three states' needs to administer the uses of the river across state lines. For an amendment effort to move ahead and succeed, there would first have to be concurrence by the three states on the need for amendment. A negotiating committee would then need to be convened, and that committee would have to reach consensus on amendment language. It is doubtful that consensus could be obtained unless the proposed amendments were advantageous to the citizens of each state. If the amendments were significant, then lengthy negotiations may be needed. History tells us that a few months would not allow enough time. If the amendments were not significant, then the committee may choose to proceed. Once a consensus by the committee was reached and amendatory language agreed to, the Commission would take actions after public comment.

Bills would then need to be drafted, introduced, passed by each state legislature and signed by each Governor. Once all three states had enacted such legislation for the amendment, sponsors would need to be found in both the House and the Senate, bills drafted and introduced, hearings held, and identical measures passed in both the House and Senate. Through the legislative process, particularly the federal process, there is opportunity for the three-state, agreed-to language of amendment to the Compact to

be amended. Provisions could be deleted or new amendments added. If the federal Congress and the states were not in agreement on final amendatory language, the negotiation process could be long and intense. The Congress could, to accomplish a federal purpose, pass related legislation mandating certain actions or policies for the river. The last step would be for the President, as did Eisenhower and Carter, to sign the measure into law.

It should be realized that although the Compact requires a review by the Commission every 20 years, the Commission can, at any point in time within the next twenty-year review period, determine that amendments are needed and initiate the above described review and potential amendment process. This was the case with respect to the first amendments to the Compact. The original Compact was signed into law on March 17, 1958. The original Compact required the twenty-year review and so a review was required to be initiated by March of 1978. The first meeting of a negotiating committee to amend the Compact, however, was held in January of 1970, eight years before the required review. It was in February of 1980 that President Carter approved the amendments, 10 years from the first meeting of the Negotiating Committee.

Additionally, the ratification of the Bear River Compact could be held up in Congress by members of Congress who have some political disagreement with the members of Congress from Bear River Basin states. A case in point is ratification of the Fort Peck Compact in Montana. A compact to describe the reserved rights of the Indian tribes on the Fort Peck Indian Reservation was negotiated between Montana and the Assiniboine and Sioux tribes of the reservation in 1985. After ratification by the Tribal Councils and the Montana State Legislature, multiple attempts have been made to obtain Congressional approval. Because of concern with the water leasing language in the compact, Senators from the State of Missouri have repeatedly delayed the ratification.

For the reasons stated above, the Commission concludes it will not move to amend the Compact at this time.

Bear Lake Levels and Alternative Storage

Bear Lake elevations have been of concern to Bear River water users and Bear Lake area residents long prior to this twenty-year Compact evaluation effort. The extreme high and low water elevations which can occur in Bear Lake were recognized by the negotiators of the Compact. The irrigation reserve first established at 5912.91 feet was agreed upon to protect and conserve the available storage by not allowing the taking of water from the lake for only power generation when lake elevations were below a certain point. Article VI.D of the Compact states:

"The waters of Bear Lake below elevation 5,912.91 feet, Utah Power and Light Company Bear Lake datum (the equivalent of elevation 5,915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, 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 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, Utah Power and Light Company, Bear Lake datum
5,000	5,913.24
10,000	5,913.56
15,000	5,913.87
20,000	5,914.15
25,000	5,914.41
30,000	5,914.61
35,500	5,914.69
36,500	5,914.70

After the enactment of this provision of the Compact, additional storage was built. The influence with time of the added storage on the irrigation reserve elevation is illustrated on Figure 7.

This provision of the Compact has had the effect of ensuring that during normal years and during times of drought, the lake remains at a higher level. The benefit of the irrigation reserve elevation to users above Stewart Dam is that additional storage can be accomplished. However, no diversion to additional upstream storage under Article VI.b. of the Compact is permitted unless the elevation of Bear Lake is above 5911 feet. Because the irrigation reserve elevation was established as a variable, as additional storage was added above Bear Lake, downstream interests were protected. The end result has been that the lake's elevations are held higher and more constant than in years prior to the Compact. This is shown in Figure 7, which shows the history of Bear Lake elevations.

Because of recent extreme drought and low river flow years, and despite Compact constraints to protect lake levels, the elevation of the lake dropped at an almost unprecedented rate during the period over the last part of the 1980's and the first part of the 1990's. Storage during this time was restricted by the Commission at the Woodruff Narrows Reservoir and other upstream reservoirs. This is shown by the history of Bear Lake elevations, which also shows the almost record recovery due to a following very wet hydrologic cycle. As lake levels were at a very low point, PacifiCorp experienced difficulty in getting water to flow through the natural sand bar at the north end of the lake to the pumps at Lifton. This led to some dredging of the sand bar. Additional permits for dredging were sought and public concern over the depth of dredging and the lower lake level was expressed. This led the Idaho Water Resource Board, in May of 1993, to file an application for a minimum lake level at Bear Lake of 5902.0 feet. The Director of the Idaho Department of Water Resources, pursuant to Idaho law, held a hearing on this application and in 1994 granted the application.

At the public meetings, several comments were made that the storage and water level of Bear Lake needed to be further protected. Some suggested that additional storage opportunities should be investigated as a way to further protect lake levels from lowering in the future. A somewhat conflicting suggestion was that flows from the Bear River into Bear Lake should be reduced or terminated.

Reduced contribution to the lake from the river, in and of itself, would have the effect of lowering lake levels.

The storage right on Bear Lake is for 1,452,000 acre-feet above elevation 5902 (5905.42 was the 1992 low elevation). Comparatively, the potential for storage at the sites of Smith's Fork, Rocky Point, Caribou, Oneida Narrows, Enlarged Hyrum, Barrens and Honeyville (highest to lowest) combined totals about 720,000 active acre-feet of storage (see Figure 8). The 300,000 acre-feet indicated for the Rocky Point site is for a 90 foot high dam that the most recent study shows to be infeasible. There is not a dam of any height at Rocky Point that currently would be feasible to construct. Totaling the storage capacity at all sites also fails to recognize that some sites are alternatives one to another. Bear Lake storage rights are much larger than the storage that could build as replacement storage by the relatively small, upstream sites the Smith's Fork and Rocky Point. Sites upstream of Bear Lake could only account for about 400,000 acre-feet even if the larger, perhaps not feasible, options are considered. Furthermore, if all reservoirs were constructed at all of the sites, one reservoir would take away from another's dependable storage. Most of the potential storable water that studies have identified is at sites far downstream from Bear Lake.

Figure 8. Potential Reservoir Sites Above and Below Bear Lake

Site Name	State	River Division	Maximum Potential Active Storage capacity in acre-feet
Smith's Fork ⁽¹⁾	Wyoming	Central	100,000
Rocky Point ⁽²⁾	Idaho	Central	300,000
Caribou	Idaho	Lower	40,000
Oneida Narrows ⁽³⁾	Idaho	Lower	77,000
Enlarged Hyrum ⁽⁴⁾	Utah	Lower	21,000
Barrens ⁽⁴⁾	Utah	Lower	75,000
Honeyville ⁽⁴⁾	Utah	Lower	107,000
TOTAL			720,000

- (1) Reservoir sites above Bear Lake
- (2) The Rocky Point dam site was most recently investigated by the U.S. Army Corps of Engineers and found to not be feasible. The acre-feet in the active storage column is for a 90 foot high dam. It is not known if a small dam with less storage capacity would be more feasible.
- (3) Several dam sizes at the Oneida Narrows site have been studied. The storage capacity indicated is in keeping with what has been referred to as the "Lower Oneida." This potential dam, although built in Idaho, would possibly provide much of its storage to users in Utah.
- (4) These three dam sites are currently being studied by the Utah Division of Water Resources. Various dam sizes have been considered, but no consideration is being given, at this time to the building of all three dams. They are viewed as competing options.

Additional stabilization of lake levels is expected because of an agreement between downstream water users, citizen groups around Bear Lake and PacifiCorp. On April 10, 1995, what has been titled as the "Bear Lake Settlement Agreement" was signed. The agreement provides, among other things, that starting at a lake elevation of 5914, downstream users will restrict their call for Bear Lake stored water that they are entitled to under contract with PacifiCorp. Full annual allocation under the contracts is 230,000 acre-feet. When the lake is full at an elevation of 5923.85, there is 1,414,000 acre-feet of storage above the elevation of 5902. At the irrigation reserve elevation of 5914.7, there is 801,000 acre-feet in storage. The reductions in use of this storage are based on several lake elevations but is in terms of percentages of the full entitlement. Figure 9 indicates this agreed to reduction and the full agreement is made a part of this report as Appendix C.

Figure 9. Bear Lake Settlement Agreement - Reduction in Allocations Below 5916 ft.

Bear Lake Elevation	Storage Allocation	Percent of Full Allocation
5914	225,000	98 %
5913	220,000	96 %
5912	215,000	93 %
5911	210,000	91 %
5910	205,000	89 %
5909	181,000	79 %
5908	168,000	73 %
5907	141,000	61 %
5906	104,000	45 %
5905	55,000	24 %
5904	0	0 %
5903	0	0 %
5902	0	0 %

The reality, when considering environmental, political and financial feasibilities of building new storage at some of the sites, is debatable, despite provisions in the Compact for development. River recreationists and some environmental interest groups have expressed opposition to any more dams on the mainstem of the Bear River and its tributaries. On the other hand, other recreationists, property owners, aesthetic interests and various additional environmental interests concerned with Bear Lake are calling for new dams to replace Bear Lake storage.

Additional storage provisions in the Compact allocate specific amounts for use in the respective states, and those allocations would need to be protected under any alternate or shared reservoir scenario. It would be inappropriate for the Commission to discourage efforts towards development of additional

storage within the terms of the Compact. The development of additional storage would be done under each of the states' water right laws, and new storage would be junior in priority to the storage rights held in Bear Lake unless the Bear Lake storage right holders apply for and receive approval to move those rights to new storage sites. It is most appropriate for the Commission to have continued active representation on the Bear Lake Preservation Advisory Committee, formed by PacifiCorp to provide input regarding Bear Lake issues, and to encourage water conservation and the stabilization of lake levels whenever possible within the provision of the Compact and within the parameters of the state water laws of the affected states. The Commission finds that there has not been identified, at this time, a need to consider Compact revisions with respect to Bear Lake levels or future storage allocations that are now allowed to the three states by the Compact.

Water Quality

General

When the three states were negotiating the Compact in the 1950's, the main area of concern was the allocation and fair distribution of water quantities. Water quality considerations were generally not an issue. Issues and circumstances have changed for water managers in the 1990's. Many of the comments in the current twenty-year review raised issues of concern with water quality in the Bear River Basin. During the drought of the late 1980's and early 1990's, Bear Lake levels dropped to levels not seen since the Dust Bowl days. Many residents of the Basin are concerned with the differing water quality of the Bear River proper as it co-mingles with Mud Lake and Bear Lake waters that tend to be much lower in sediment and nutrient load. A recent failure of the causeway and sediment load into Bear Lake was also mentioned in several comments. Most of the efforts of the Clean Water Act and the three State Departments or Divisions of Environmental Quality have been focused on point source discharges up to this time. However, more emphasis is being placed on the contribution of non-point sources by the state agencies and Environmental Protection Agency (EPA). EPA has been sued in both Wyoming and Idaho because of lack of enforcement of the Total Maximum Daily Load provisions of the Clean Water Act. How non-point sources are handled by the regulatory agencies in the future will have some impact on water quantity management and the state agencies whose mission is the regulation and administration of the water quantities of the three states.

Many comments at the public meetings indicated the Commission should increase its area of interest and concerns. Some comments went towards recreation, aesthetics and general river flow. All of the comments related to a broadening of the Commission's agenda concerning environmental issues. Most of the comments in this regard indicated that the Commission should be involved in water quality matters. Some comments included quotes from the Compact under Article III.C.5. which reads as follows:

"C. The Commission shall have powers to:

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

Others reminded the Commission that the Compact was created to address water quantity issues and this should be the focus of the Commission. They cited Article I.A that sets forth that the major purposes of this Compact are for distribution of quantities, and that those issues should therefore be overriding.

There are governmental agencies and organizations that are in place to regulate water quality or to promote water quality enhancement. All three states, within their Departments or Divisions of Environmental Quality, have Water Quality units that regulate water quality, set standards and promote water quality protection and enhancement. The EPA administers federal laws concerning water quality. The EPA and the U.S. Bureau of Reclamation have recently provided grant money to assist with water quality programs. The Department of Agriculture, under the new Environmental Quality Incentives Program, has provided grants to agriculturalists to assist them in water quality enhancement programs. The U.S. Geological Survey is now beginning a major water quality data collection effort under that agencies' National Water-Quality Assessment (NAWQA) Program. The State of Utah has also funded and conducted water quality studies.

In 1993, a Water Quality Symposium was held in Logan, Utah. It was sponsored by federal, state and local government agencies and citizen groups. From the symposium, a need was identified for a three-state approach to solving interstate Bear River water quality issues and informal committee meetings were held on the subject. This grew into the formation of the Bear River Basin Water Quality Task Force. This task force is co-chaired by the Bear River Resource Conservation and Development (Utah and Idaho) and the Western Wyoming Resource Conservation and Development agencies. State and local government has representation on the task force, as do citizen groups. Although this task force lacks the official power to administer state and federal laws or to speak officially for the three states or EPA, a good spirit of cooperation has been created and, through the course of several meetings, the Task Force has accomplished much in bringing together various interests and promoting specific water quality enhancing efforts. The task force goals have been stated as: 1) to measurably improve the overall water quality and stream integrity of the Bear River and its tributaries, including lakes and reservoirs, to support multiple beneficial uses and development; and 2) to develop and implement a coordinated tri-state basin-wide water quality planning approach with strong local involvement and leadership.

Another organization that spans two state lines (Utah and Idaho) in the Bear Lake Basin has also been created. This organization is the Bear Lake Regional Commission. It was created in 1973 in an effort to acknowledge the Bear Lake Valley (a bi-county, bi-state area) as a resource of regional significance and provide for its continued utilization and preservation. Although its efforts in the Bear Lake area have been broad-based, an important portion of its focus has been the water quality issues in and around Bear Lake. One of its stated objectives is to "Maintain a Bear Lake Water Quality Monitoring Program to: Maintain water quality data base; and Evaluate current water quality conditions in Bear Lake and the inflow and outflow waters." Through the efforts of Regional Commission members that represent local governments and interests, and the Regional Commission staff, and through an effective effort to raise funds from various sources, including state and federal grants, the Regional Commission can point to important accomplishments. They include maintaining the Bear Lake Water Quality Monitoring Program and fostering construction of sewage collection and treatment facilities.

During the public input period of this twenty-year review, the Task Force and others asked for a more active role of the Commission in water quality matters. More recently, the Task Force has asked the Commission to recognize the Task Force as an advisory body to the Commission on water quality matters.

The Compact provides authorities and responsibilities, both stated and inferred, as quoted above. There are also the general and obvious responsibilities that must receive more consideration with respect to

the interface between water quantity and water quality issues. The Commission can help to forge partnerships at both the technical and policy levels. However, when it comes to water quality regulation, the Commission should ensure that the leadership responsibilities and authorities that exist within the three State Departments or Divisions of Environmental Quality be recognized and supported. The Commission will create a Water Quality Committee and that Water Quality Committee will include lead representatives of the water quality agency within each of the State Departments or Divisions of Environmental Quality. The Commission-created Water Quality Committee will provide the Commission technical and policy expertise with respect to matters of water quality, and the Committee can provide the appropriate point for input from the Bear River Basin Water Quality Task Force and other water quality organizations.

One way the Commission can broaden its area of interest and influence in the water quality area is by sponsoring or co-sponsoring workshops where a broad spectrum of interests can be invited to work on Bear River issues. Several comments indicated a need for a listening ear with respect to the Commission and its activities as it prepares to conduct Commission business. The Commission's staff, the Commission's TAC and other designated state employees can assist the Water Quality Committee and the Commission in facilitating the efforts of the Committee to allow for an exchange of a broadened range of ideas for all involved or seeking to provide input regarding water quality matters.

The above will be implemented without amendment to the Compact.

Bear Lake Causeway Failure

There is an earth causeway that separates Bear Lake from Mud Lake. PacifiCorp's Lifton Pumping Plant is located on that causeway, and east of the Lifton Pumping Plant there is a control structure that allows PacifiCorp to control the flow of water from Mud Lake into Bear Lake. On May 6, 1993, the original control structure washed out. Mud Lake was higher than Bear Lake at the time, and material from the earth causeway and silt from the adjacent bed of Mud Lake washed into Bear Lake as the water elevation in the two water bodies reached equilibrium. PacifiCorp has since designed and constructed a new control structure. During the public comment period, the Commission received comment with respect to water quality issues concerning failure on the old structure and the design and operation of the new structure. The causeway and the structure are operated and maintained by PacifiCorp and are located in Idaho. The Commission has been advised that PacifiCorp and the State of Idaho are cooperatively evaluating the concerns expressed regarding the causeway structure and its operation. The Commission has no responsibility or authority with respect to the causeway, and the Commission finds that subject is not germane to the efforts of the Commission to look at the needs for Compact revision.

Commission Make-Up

General

Several comments suggested that the Commission membership should be broadened or that the Commission should represent a wider range of interests. The comments inferred that the Commission should take action in this regard.

The Bear River Commission is created by the Bear River Compact. Article III states:

"A. There is hereby created an interstate administrative agency to be known as the 'Bear River Commission' which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The Commission shall be composed of nine Commissioners, three Commissioners representing each signatory State, and if appointed by the President, one additional Commissioner representing the United States of America who shall serve as chairman, without vote. Each Commissioner, except the chairman, shall have one vote. The State Commissioners shall be selected in accordance with State law. Six Commissioners who shall include two Commissioners from each State shall constitute a quorum. The vote of at least two-thirds of the Commissioners when a quorum is present shall be necessary for the action of the Commission."

As is learned from the reading of Article III, Commissioners from the three states shall be selected in accordance with State law. The governing state laws in this regard are as follows:

Wyoming

Wyoming does not have any set specifications that must be met by potential Commission members. Wyoming Statute 41-11-202 is the governing statute which states:

"The Governor of Wyoming shall appoint and designate such commissioners as may be necessary to represent the State of Wyoming on all negotiated interstate compacts, unless the compacts by their terms otherwise provide. The Governor of Wyoming, at his option, may serve as a commissioner for Wyoming on any compact commission, if permitted under the terms of the compact. The Governor may remove any commissioner he appoints as provided in W.S. 9-1-202."

Wyoming's Commission members have traditionally been the State Engineer, a resident water user from the Upper Division and a resident water user from the Central Division. Wyoming has experienced very low turn-over in its representation. The team of Wes Myers from Evanston and Reed Dayton from Cokeville served the State for over 35 years. At least one alternate has generally been named by the Governor.

Utah

The Utah law is as follows:

"There shall be three members of the Bear River Compact Commission from the State of Utah. One member shall be the Interstate Stream Commissioner of Utah and he shall be chairman of the Utah delegation. The other two Commissioners from Utah shall be appointed by the State Water and Power Board, with the consent of the Governor, and they shall hold office at the pleasure of the Water and Power Board and until their successors shall have been appointed and qualified. Each member shall be a bona fide resident of the State of Utah and one shall be a landowner and irrigator actually residing on and operating a farm within the Lower Division as defined by the Compact, and one

shall be a landowner and irrigator actually residing on and operating a farm within the Upper Division as defined by the Compact."

"The Utah Water and Power Board may, with the consent of the Governor, appoint two alternate members of the Bear River Commission. One such alternate shall be a bona fide resident of the State of Utah and a landowner and irrigator actually residing on and operating a farm within the Lower Division as defined by the Compact and he shall be entitled to act at all regular and special meetings of the Bear River Commission whenever the regular member of the Commission from this same area is unable to serve and act. One such alternate shall be a bona fide resident of the State of Utah and shall be a landowner and irrigator actually residing on and operating a farm within the Upper Division as defined by the Compact and he shall be entitled to act at all regular and special meetings of the Bear River Commission whenever the regular member of the Commission from this same area is unable to serve and act. Each member of the Commission from Utah shall receive a per diem plus necessary expenses, as provided by law."

Idaho

The Idaho law is as follows:

"42-3502. Qualifications of commissioners of Bear River Compact. — Two (2) of the commissioners shall be electors of the state of Idaho who are residents within the watershed of the Bear River in Idaho. One (1) commissioner may be the director of the department of water resources of the state of Idaho."

"42-3503. Terms of Bear River Compact commissioners — Filling vacancies. — The appointment of each commissioner shall be for a six (6) year term but may be terminated at the pleasure of the governor. Provided that the appointments of the commissioners first appointed shall terminate at two (2) year intervals beginning with the end of the first even numbered year after the Bear River Compact goes into effect. Vacancies shall be filled for the unexpired term in which the vacancy occurs."

Federal

The Federal representative, as stated by the above quote, Article III of the Compact, is appointed by the President.

As can be seen, the Compact gives the Commission no authority to appoint or nominate its membership. The Commission is a creation of the three states and the Federal government. Not only does the Commission have no authority with respect to membership selection, it is also most appropriate that the four governments creating the Commission should have total authority in designating their representation. It is obvious that if a resident or a group of residents in a given state desire to change their state's representation, their avenue is to approach the state appointing authority or to ask their state legislature to modify the state law. If the Commission were to take steps to control or influence this appointment process, either by policy, rule, bylaw or Compact amendment, it could be judged to be

inappropriate by the states. No Compact amendment is found to be needed at this time in this subject area.

Multi-Purpose Use of Water

As expressed by some of the commenting public, the interstate Compact recognizes the value of efficiently using water for "Multiple purposes" (Article IA). It was stated that encouragement should be given water users to conserve and improve water use efficiencies. Further, reasonable efforts should be made to accommodate concurrent or simultaneous uses of the basin's water resources. Various interests seeking different uses of the same water can find some common operation and management tools if they come together and understand each others' objectives. A committee of the Commission could be assigned to foster more public involvement by the Commission. Other non-consumptive uses without a water right basis can often be accommodated while still satisfying established water rights.

The Compact, however, does not determine what constitutes "beneficial use", nor does it prioritize between competing uses or favor any particular use (except to restrict power-generation drawdown of Bear Lake and post 1976 storage allocations above Bear Lake). Protecting a specific use requires a water right, and bestowing a water right is the prerogative of the individual states as they decide how to allocate the water the Compact apportions.

It is true that the senior water rights were secured under the prior-appropriation laws in each state for uses traditional to past decades (such as irrigation, power generation, domestic, stock, municipal, flood control, storage). Those interests are represented well because they own the water rights the Compact was created to protect. This is not to say, however, that new uses or owners of junior water rights are prohibited by the states from recognition or protection, or that existing uses cannot be changed by the water right owners and the states to reflect different uses for fish habitat, wildlife, aesthetics, recreation, flood control, water quality, etc.

When competing uses cannot be accommodated simultaneously, Article VIII of the Compact recognizes that individual water rights are valuable private property rights that can be changed to a different use and ownership only under the laws of the respective states, not by confiscation. Without amending the Compact, provisions are already in place to allow for changing uses and establishing new uses. An amendment to the Compact to change provisions to Article VIII is not appropriate at this time.

Public Involvement

Some of the testimonies and comments received during the Compact review process included concerns that the Bear River Commission was not considering or providing leadership in the areas of recreation and environmental quality. There was also a frustration expressed relative to the public's access to the Commission. Although the responses were mixed, it appears the majority felt that changing the Compact was not necessary but the Commission should implement some changes to be more responsive to public concerns.

In order to be responsive, the Commission will restructure the existing Records Committee to include a public involvement responsibility. The restructured committee will be called the "Records and Public Involvement Committee" (RPIC). The TAC will provide the necessary technical support. The primary responsibilities of the RPIC will be to continue with oversight and administration of Commission records

and to provide a forum for and to work with the public. Groups that have particular issues or concerns with the management and operation of the Bear River and Bear Lake could bring them to the RPIC. To facilitate RPIC operation, interested public groups should make their requests for presentation of their issues to the Engineer-Manager. The Engineer-Manager will then work with the public group and RPIC chairperson to establish meetings, presentations, field visits and other committee business. The RPIC will report to and make recommendations to the Commission.

Another function of the RPIC can be to facilitate the coordination of the many different water resource related programs, projects and technical studies occurring in the Bear River Basin. This may include any number of activities, but the principle focus would be to provide pro-active leadership so as to enhance existing efforts, identify gaps and make recommendations that would improve these efforts. The RPIC may also sponsor or co-sponsor various conferences and workshops pertinent to the Bear River Basin.

In conclusion, it does appear that the Commission needs to be more responsive to the public and provide a stronger leadership role in the area of non-consumptive water uses in the Bear River Basin. It is not necessary to change the Compact in order to establish the RPIC nor to accomplish the requests of the commentors in this subject area.

FERC Relicensing

PacifiCorp is in the process of relicensing some of its power facilities with the Federal Energy Regulator Commission (FERC). It is a long and involved process, not fully understood by many, but at various points open to public comments. Some comments indicated a misunderstanding that the Commission is formally involved with this process and perhaps has some regulatory function to perform in this effort. Neither the Compact, nor the Commission, has a formal role in the FERC relicensing process, but the Commission is following the process, as all stakeholders on the river should.

Responsibility to Protect Apportioned Waters

Numerous comments were received concerning the role of the Commission and the Compact in protecting the agreed-to apportionment of the water of the Bear River. They cited this role as the reason for the initial compact and they further cited the purpose of the 1976 amendments as being to apportion additional Bear River water that would involve future storage.

The goal of the negotiators of the Compact was to establish rules for order on the river with respect to its use and to establish the amount of the remaining unused water each state would have jurisdiction to allocate. To provide for the peaceful development of water, the allocation of each state would have to comply with the rules established by the Compact. The Compact recognized each state's right to allocate water within the respective state. The unused amounts of water allocated to the respective states, along with the existing rights in each state, are administered by the state to which the Compact allocated the waters. All parties, whether individuals or otherwise, have the right in each state to enter the water rights arena and appropriate surplus or unused water, if any, or acquire existing rights to meet their needs.

The waters of the Bear River were put to beneficial use according to the statutes of the states where the water was diverted. The Compact recognizes that waters of the Bear River are administrated under state

laws, but limits diversion in the Upper and Central Divisions based on percentages of available flow. Members of the negotiating committees of each state recognized that if additional water was going to be used in their respective states, the uncertainty of the status of the unappropriated (or unused) water of the Bear River had to be defined. The Bear River Compact recognizes the right to use all water placed to beneficial use prior to January 1, 1976 as a basis to work from in determining new depletion in each state. The Compact confirmed the right to water use for existing water rights in each state so a procedure could be established to allocate and account for additional water use, including ground water. If the negotiating committee could not identify a particular process that would be used to account for an additional water use, the Compact allowed for the establishment of a "Commission approved procedure" to make an accounting.

The Compact provided to the states of Idaho, Utah and Wyoming a method to manage the additional demands that are and will be placed on Bear River water. Without the Bear River Compact, no rules of order would exist to define how each state could administer the unused water. Without the Compact, uncertainty and costly inter and intra state litigation would be the norm, and most likely this would lead to disputes moving through Federal courts or directly to the U.S. Supreme Court. Article I of the Compact clearly states the leading purpose of the Compact. Article I.A. states:

"A. The major purposes of this Compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; and to accomplish an equitable apportionment of the waters of the Bear River among the compacting States.

Many who commented pointed to protection of apportioned waters as the most important role of the Compact. Many also stated that they felt the Compact and the Commission effectively accomplished this purpose. None felt that the major purpose of the Compact should be modified by Compact amendment.

CONCLUSIONS

The Bear River Commission has adequately considered the need for revisions to the Compact. The Commission has given full consideration to comments received. With the adoption of this report and the actions taken on November 18, 1997, the Commission has completed the review as required under Article XIV of the Amended Bear River Compact and finds that no amendments to the Compact are to be proposed by the Commission at this time.

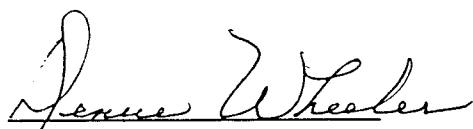
Appendix A
Bear River Commission Resolutions

RESOLUTION OF THE BEAR RIVER COMMISSION

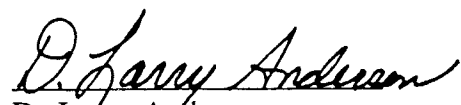
The Bear River Commission, on this 18th day of November, 1997, enters into this resolution concerning the required Compact twenty-year review as to the need for revision of the Bear River Compact as Amended. A year and a half ago, the Commission directed the review process, as required under Article XIV of the Compact, be commenced. Public hearings (4) were held, a special Commission committee reported its findings, the Management Committee reviewed comments received and the authorities identified within the Compact. The Management Committee gave guidance to the Engineer-Manager asking him to seek advice from the Technical Advisory Committee (TAC) and to prepare a draft report. The report findings are accepted by the Commission and the report is being finalized. The Commission hereby finds:

- 1) that there is no present need to amend the Compact
- 2) that the Commission shall create a Water Quality Committee, and
- 3) that the Commission shall add public involvement to the function of the Records Committee.

The Commission finds that it has appropriately conducted and completed the required Compact review.


Denise Wheeler
Federal Chair

12-3-97
Date


D. Larry Anderson
BRC Secretary/Treasurer

12-15-97
Date

Amendment to the:

BYLAWS OF THE BEAR RIVER COMMISSION

At its regularly scheduled meeting on November 18, 1997, the Bear River Commission, upon proper notice of its intention to modify a portion of Article V of its Bylaws, and upon unanimous vote of a quorum of Commissioners present, amended Article V, paragraphs 1 and 3, of its Bylaws as follows:

1. There shall be the following standing committees:

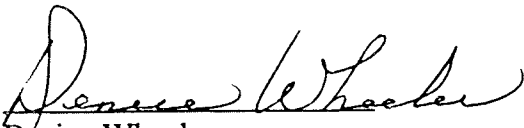
Management Committee
Operations Committee
Records & Public Involvement Committee
Water Quality Committee

2. No change

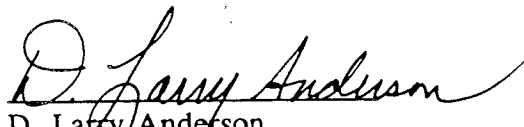
3. Members of the Management, Operations, and Records & Public Involvement Committees shall be Commission members. The number of members on each committee shall be determined by the Commission. Each State shall designate the members and/or advisers on each committee representing such State. In all committee action the votes shall be taken by States, with each State having one vote.

4. The Water Quality Committee will be composed of at least three members who have been designated by each of the three states' Director of Environmental Quality, or its equivalent, as being the lead water quality administrator from that agency to represent the state and serve on the committee. These designated members of the Water Quality Committee need not be members of the Commission. Other members or advisors to the Water Quality Committee may be determined by the Commission and designated by each state. In all committee action the votes shall be taken by States, with each State having one vote.

(paragraphs 4, 5, 6 and 7 of the original bylaws shall be renumbered to be 5, 6, 7 and 8)


Denise Wheeler
Federal Chair

11-18-97
Date


D. Larry Anderson
BRC Secretary/Treasurer

11-18-97
Date

Appendix B
Bear River Amended Compact and Bylaws

BEAR RIVER COMPACT
AS AMENDED
and
BYLAWS OF BEAR RIVER
COMMISSION

Entered Into By The States Of

Idaho

Utah

Wyoming

November 1997

**BEAR RIVER COMPACT
AS AMENDED
and
BYLAWS OF BEAR RIVER
COMMISSION**

Amended Compact Unanimously
Approved December 22, 1978
by
the Duly Appointed Commissioners
from those states of Idaho, Utah and Wyoming

Ratified
by the Legislatures of all 3 states in 1979

Congressional Consent Public Law 96-189
February 8, 1980

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Public Law 96-189
96th Congress

An Act

Feb 8, 1980
[H.R. 4320]

To consent to the amended Bear River Compact between the States of Utah, Idaho, and Wyoming.

Bear River Compact.
Congressional
consent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is given to the amended Bear River Compact between the States of Idaho, Utah, and Wyoming. Such compact reads as follows:

"AMENDED BEAR RIVER COMPACT

Amended agreement
by Idaho, Utah, and
Wyoming.

"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 an Amended Bear River Compact as follows:

"ARTICLE I

"A. The Major purposes of this Compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; and to accomplish an equitable apportionment of the waters of the Bear River among the compacting States.

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

"ARTICLE II

Definitions.

"As used in this Compact the term

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

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

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

"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 Base and Meridian, Idaho;

"5. 'Lower Division' means the portion of the 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 the Bear River and the tributaries of the Bear River joining the Bear River upstream from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming; excluding the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

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

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

"9. 'Lower Wyoming Section Diversions' means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line northeast 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 the Bear River for beneficial use;

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

"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 October 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 storage or imported from a source other than the Bear River watershed;

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

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

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

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

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

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

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

"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;

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

"27. 'Lone Mountain Ditch' means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, North 1,535 feet and East 1,120 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, 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;

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

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

"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.

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"ARTICLE III

Bear River Commission, establishment and membership.

"A. There is hereby created an interstate administrative agency to be known as the 'Bear River Commission' which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The Commission shall be composed of nine Commissioners, three Commissioners representing each signatory State, and if appointed by the President, one additional Commissioner representing the United States of America who shall serve as chairman, without vote. Each Commissioner, except the chairman, shall have one vote. The State Commissioners shall be selected in accordance with State law. Six Commissioners who shall include two Commissioners from each State shall constitute a quorum. The vote of at least two-thirds of the Commissioners when a quorum is present shall be necessary for the action of the Commission.

Compensation and expenses.

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

Powers.

"C. The Commission shall have power to:

- "1. Adopt bylaws, 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;
- "5. Co-operate with State and Federal agencies in matters relating to water pollution of interstate significance;
- "6. Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in co-operation with others, including State and Federal agencies.

"D. The Commission shall:

- "1. Enforce this Compact and its order made hereunder by suit or other appropriate action;
- "2. Compile a report covering the work of the Commission and expenditures during the current biennium, and an estimate of expenditures for the following biennium and transmit it to the President of the United States and to the Governors of the signatory States on or before July 1 following each biennium.

Report, transmittal to President and Governors

"ARTICLE IV

Water rights, limitations.

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

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

"1. Upper Division

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

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"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 Diversion 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 allocation of water thereto, the unused portion of such allocation shall be available for use in the other river sections in the Upper Division in the following order: (1) In the other river section of the same State in which the unused allocation occurs; and (2) in the river sections of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e.

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

"2. Central Division

"a. When either the divertible flow as hereinafter defined for the Central Division is less than 870 second-feet, or the flow of the Bear River at Border Gaging Station is less than 350 second-feet, whichever shall first occur, a water emergency shall be deemed to exist in the Central Division and the total of all diversions in Wyoming from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, Smiths Fork, and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and from the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border shall be limited for the benefit of the State of Idaho, to not exceed 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 Smiths Fork and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border, Wyoming.

"(2) Diversions in second-feet in Idaho from the Bear River main stem from the point where the river crosses the Wyoming-Idaho State line near Border to Stewart Dam including West Fork Canal which diverts at Stewart Dam.

"(3) Flow in second-feet of the Rainbow Inlet Canal and of the Bear River passing downstream from Stewart Dam.

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

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

"3. Lower Division

"a. When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah, covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division, and during such emergency, water shall be delivered in accordance with such schedules by the State official charged with the administration of public waters.

Emergency declaration authority.

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

User's water rights, petition filing.

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

Water delivery schedules.

Joint water commissioner.

Interstate water delivery schedules, findings of fact.

"D. In preparing interstate water delivery schedules the Commission, upon notice and after public hearings, shall make findings of fact as to the nature, priority, and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops, time of use, and related matters; provided that such schedules shall recognize and incorporate therein priority of water rights as adjudicated in each of the signatory States. Such findings of fact shall, in any court or before any tribunal, constitute prima facie evidence of the facts found.

Prima facie evidence.

Emergency termination.

"E. Water emergencies provided for herein shall terminate on September 30 of each year unless terminated sooner or extended by the Commission.

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"ARTICLE V

Lower Division water rights, Idaho and Utah.

"A. Water rights in the Lower Division acquired under the laws of Idaho and Utah covering water applied to beneficial use prior to January 1, 1976, are hereby recognized and shall be administered in accordance with State law based on priority of rights as provided in Article IV, paragraph A3. Rights to water first applied to beneficial use on or after January 1, 1976, shall be satisfied from the respective allocations made to Idaho and Utah in this paragraph and the water allocated to each State shall be administered in accordance with State law. Subject to the foregoing provisions, the remaining water in the Lower Division, including ground water tributary to the Bear River, is hereby apportioned for use in Idaho and Utah as follows:

"(1) Idaho shall have the first right to the use of such remaining water resulting in an annual depletion of not more than 125,000 acre-feet.

"(2) Utah shall have the second right to the use of such remaining water resulting in an annual depletion of not more than 275,000 acre-feet.

"(3) Idaho and Utah shall each have an additional right to deplete annually on an equal basis, 75,000 acre-feet of the remaining water after the rights provided by subparagraphs (1) and (2) above have been satisfied.

"(4) Any remaining water in the Lower Division after the allocations provided for in subparagraphs (1), (2), and (3) above have been satisfied shall be divided; thirty (30) percent to Idaho and seventy (70) percent to Utah.

Allocation charge.

"B. Water allocated under the above subparagraphs shall be charged against the State in which it is used regardless of the location of the point of diversion.

Depletions.

"C. Water depletions permitted under provisions of subparagraphs (1), (2), (3), and (4) above, shall be calculated and administered by a Commission-approved procedure.

"ARTICLE VI

Reservoir storage rights.

"A. Existing storage rights in reservoirs constructed above Stewart Dam prior to February 4, 1955, are as follows:

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

"Additional rights are hereby granted to store in any water year above Stewart Dam, 35,500 acre-feet of Bear River water and no more under this paragraph 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 for use in Idaho. Such additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. One-half of the 35,500 acre-feet of additional storage right above Stewart Dam so granted to Utah and Wyoming is hereby allocated to Utah, and the remaining one-half thereof is allocated to Wyoming.

Additional storage rights.

"B. In addition to the rights defined in Paragraph A of this Article, further storage entitlements above Stewart Dam are hereby granted. Wyoming and Utah

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are granted an additional right to store in any year 70,000 acre-feet of Bear River water for use in Utah and Wyoming to be divided equally; and Idaho is granted an additional right to store 4,500 acre-feet of Bear River water in Wyoming or Idaho for use in Idaho. Water rights granted under this paragraph and water appropriated, including ground water tributary to Bear River, which is applied to beneficial use on or after January 1, 1976, shall not result in an annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet in excess of the depletion as of January 1, 1976. Thirteen thousand (13,000) acre-feet of the additional depletion above Stewart Dam is allocated to each of Utah and Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho.

Limitations.

"The additional storage rights provided for in this Paragraph shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam; provided, however, there shall be no diversion of water to storage above Stewart Dam under this Paragraph B when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power & Light Company datum (the equivalent of elevation 5,913.75 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947). Water depletions permitted under this Paragraph B shall be calculated and administered by a Commission-approved procedure.

"C. In addition to the rights defined in Article VI, Paragraphs A and B, Idaho, Utah and Wyoming are granted the right to store and use water above Stewart Dam that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied. The availability of such water and the operation of reservoir space to store water above Bear Lake under this paragraph shall be determined by a Commission-approved procedure. The storage provided for in this Paragraph shall be subordinate to all other storage and direct flow rights in the Bear River. Storage rights under this Paragraph shall be exercised with equal priority on the following basis: six (6) percent thereof to Idaho; forty-seven (47) percent thereof to Utah; and forty-seven (47) percent thereof to Wyoming.

Irrigation reserve.

"D. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power and Light Company Bear Lake datum (the equivalent of elevation 5,915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, 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 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:

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"Additional Storage (Acre-feet)	Lake surface elevation, Utah Power and Light Company, Bear Lake datum
5,000	5,913.24
10,000	5,913.56
15,000	5,913.87
20,000	5,914.15
25,000	5,914.41
30,000	5,914.61
35,500	5,914.69
36,500	5,914.70

"E. Subject to existing rights, each State shall have the use of water, including ground water, for ordinary domestic, and stock watering purposes, as determined by State law and 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 paragraphs A, B, and C of this Article.

"F. The storage rights in Bear Lake are hereby recognized and confirmed subject only to the restrictions hereinbefore recited.

"ARTICLE VII

Development projects.

"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 Vi, paragraphs A and B, thereof, be subject to rights theretofore initiated and in good standing.

"ARTICLE VIII

Water rights,
acquisition.

"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.

Property rights,
acquisition.

"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,

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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.

Facilities, State authority.

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

Facilities, taxation.

"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 proposes, a sum of money equivalent to the average of the amount of taxes annually levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivision of the State.

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

"ARTICLE IX

Water exchanges.

"Stored water, or water from another watershed may be turned into the channel of the Bear River in one State and a like quantity, with allowance for loss by evaporation, transpiration, and seepage, may be taken out of the Bear River in another State either above or below the point where the water is turned into the channel, but in making such exchange the replacement water shall not be inferior in quality for the purpose used or diminished in quantity. Exchanges shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid. Water from another watershed or source which enters the Bear River by actions within a State may be claimed exclusively by that State and use thereof by that State shall not be subject to the depletion limitations of Articles IV, V and VI. Proof of any claimed increase in flow shall be the burden of the State making such claim, and it shall be approved only by the unanimous vote of the Commission.

"ARTICLE X

Interstate canals, water use.

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

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

¹Under 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, which is a component part of the irrigation right for the Utah lands listed above.

Administration.

"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.

"ARTICLE XI

Applications.

"Applications for appropriation, for change of point of diversion, place and nature of use, and for exchange of Bear River water shall be considered and acted upon in accordance with the law of the State in which the point of diversion is located, but no such application shall be approved if the effect thereof will be to deprive any water user in another State of water to which he is entitled, nor shall any such application be approved if the effect thereof will be an increase in the depletion of the flow of the Bear River and its tributaries beyond the limits authorized in each State in Articles IV, V and VI of this Compact. The official of each State in charge of water administration shall, at intervals and in the format established by the Commission, report on the status of use of the respective allocations.

Allocation status report.

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ARTICLE XII

"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.

ARTICLE XIII

"Nothing contained in this Compact shall be deemed:

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

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

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

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

ARTICLE XIV

Commission review and proposed amendments.

"At intervals not exceeding twenty years, the Commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such proposed amendments have been ratified by the legislatures of the signatory States and consented to by Congress.

ARTICLE XV

Termination of Compact.

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

ARTICLE XVI

Constitutionality of provision.

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

ARTICLE XVII

Ratification and notice.

"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

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the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

"IN WITNESS WHEREOF, the Commissioners and their advisers have executed this Compact in five originals, one of which shall be deposited with the General Services Administration of the United States of America, one of which shall be forwarded to the Governor of each of the signatory States, and one of which shall be made a part of the permanent records of the Bear River Commission.

"Done at Salt Lake City, Utah, this 22nd day of December, 1978.

"For the State of Idaho:

"(s) Clifford J. Skinner

"(s) J. Daniel Roberts

"(s) Don W. Gilbert

"For the State of Utah:

"(s) S. Paul Holmgren

"(s) Simeon Weston

"(s) Daniel F. Lawrence

"For the State of Wyoming:

"(s) George L. Christopoulos

"(s) J. W. Myers

"(s) John A. Teichert

"Approved:

"Wallace N. Jibson

"Representative of the United States of America

"Attest:

"Daniel F. Lawrence

"Secretary of the Bear River Commission."

Approved February 8, 1990.

STATE AMENDING LEGISLATION

WYOMING: Enrolled Act No. 41

Amended W.S. 41-12-101

March 6, 1979

UTAH: Enrolled Copy S.B. No. 255

Amended Section 73-16-2, Ut. Code Annot. 1953

May 8, 1979

IDAHO: Senate Bill No. 1162

Amended Section 42-3402, Idaho Code

April 5, 1979

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LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-524 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 96-526 accompanying S. 1489 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 125 (1979): Nov. 27, considered and passed House.

Dec. 20, S. 1489 considered and passed Senate.

Vol. 126 (1980): Jan. 23, considered and passed Senate.

BYLAWS
OF
BEAR RIVER COMMISSION

ARTICLE I

THE COMMISSION

1. The Commission shall be composed of nine Commissioners, three Commissioners representing each of the States of Idaho, Utah, and Wyoming, selected in accordance with the laws of each such State and, if appointed by the President, one Commissioner representing the United States of America.

2. The credentials of each Commissioner shall be filed with the Secretary of the Commission.

3. Each Commissioner shall advise in writing the Secretary of the Commission as to his address to which all official notices and other communications of the Commission shall be sent to him and shall further promptly advise in writing the Secretary of the Commission as to any change in such address.

ARTICLE II

OFFICERS

1. The officers of the Commission shall be:

Chairman,
Vice-Chairman,
Secretary,
Treasurer

2. The Commissioner representing the United States of America shall be the Chairman of the Commission. The Chairman shall preside at meetings of the Commission. His duties shall be such as are usually imposed on such officers and such as may be assigned to him by these Bylaws or by the Commission from time to time.

3. The Vice-Chairman and Secretary shall each be one of the Commissioners representing a State. They shall be elected at each annual meeting of the Commission and shall hold office until the next annual meeting and until their successors are elected. In the case of a vacancy in either office, the Commission shall at its next meeting, whether regular or special, elect a successor to serve for the unexpired term. The Vice Chairman shall perform all the duties of the Chairman when the Chairman is unable for any reason to act, or when for any reason there is a vacancy in the office of Chairman. In addition, the Vice-Chairman and Secretary shall perform such other duties as may be assigned to them under these Bylaws or by action of the Commission.

4. The Treasurer may or may not be a member of the Commission. He shall be elected at each annual meeting of the Commission and shall hold office until his successor is elected and shall have qualified. The Treasurer shall receive, hold, and disburse all funds of the Commission. The Treasurer shall furnish a bond for the faithful performance of his duties in such amount as the Commission may direct. The cost of such bond shall be paid by the Commission. In the case of a vacancy in the office of Treasurer the Chairman shall appoint a new Treasurer to serve for the unexpired term or until such time as the Commission shall elect a successor at a regular or special meeting and the person so elected shall have qualified. The offices of Secretary and Treasurer may be held by the same person.

5. The Commission may employ a secretarial assistant and such engineering, legal, clerical, and other personnel as, in its judgment, may be necessary. They shall receive such compensation and perform such duties as may be fixed by the Commission.

ARTICLE III

PRINCIPAL OFFICE

1. The principal office and place of business of the Commission shall be at a location designated by the Commission.

2. The principal office shall be open for business on such hours and days as the Commission may direct.

3. All books and records of the Commission shall be kept at the principal office of the Commission. Except as otherwise provided in the Compact, or herein, all records of the Commission shall be open to inspection by the public.

ARTICLE IV

MEETINGS

1. The annual meeting of the Commission shall be held on the third Tuesday of April of each year unless otherwise designated by the Commission.

2. The Commission shall hold a regular meeting during the month of November on the Tuesday of the week preceeding the week of Thanksgiving each year unless otherwise designated by the Commission.

3. Special meetings of the Commission may be called by the Chairman or, in case of vacancy in the office of the Chairman or inability of the Chairman to act, by the Vice-Chairman. Upon the request of two or more Commissioners, it shall be the duty of the Chairman to call a special meeting.

4. Notice of all meetings of the Commission shall be sent by the Secretary or the Engineer-Manager, to all members of the Commission, by ordinary mail at least ten days in advance of each such meeting. Such notice shall designate the time, place, and proposed agenda of the meeting. The notice here required may be waived by unanimous consent of all members of the Commission.

5. The approved minutes of the Commission shall be preserved in a suitable manner. Until approved by the Commission, minutes shall not be official and shall be furnished only to members of the Commission, its employees, and committees.

6. Six Commissioners, who shall include two Commissioners from each State, shall constitute a quorum. An absent member may be represented by his proxy who must be an accredited adviser from his State, and such proxy shall have the powers of a member at such meeting.

7. Each Commissioner, except the Federal Representative, shall have one vote.

8. When a quorum is present, an affirmative vote of at least two-thirds of the Commissioners in attendance shall be necessary for Commission action.

9. At each meeting of the Commission, the agenda items, unless agreed otherwise, shall include approval of the minutes of the last meeting, and reports from the Chairman, the Secretary, the Treasurer, the Engineer-Manager, and other agreed-upon agenda items.

10. All meetings of the Commission, except executive sessions, shall be open to the public. Executive sessions shall be open only to officers and members of the Commission, three advisers designated by each State, and the Federal Representative; provided, however, that the Commission may call witnesses in such sessions.

11. Each State may accredit three advisers to the Commission.

ARTICLE V

COMMITTEES

1. There shall be the following standing committees:

Management Committee
Operations Committee
Records & Public Involvement Committee
Water Quality Committee

2. The standing committees shall have duties as assigned by the Commission.

3. Members of Management, Operations, and Records & Public Involvement Committees shall be Commission members. The number of members on each committee shall be determined by the Commission. Each State shall designate the members and/or advisors on each committee representing such State. In all committee action the votes shall be taken by States, with each State having one vote.

4. The Water Quality Committee will be composed of at least three members who have been designated by each of the three states' Director of Environmental Quality, or its equivalent, as being the lead water quality administrator from that agency to represent the state and serve on the committee. These designated members of the Water Quality Committee need not be members of the Commission. Other members or advisors to the Water Quality Committee may be determined by the Commission and designated by each state. In all committee action the votes shall be taken by States, with each State having one vote.

5. The Chairman shall be an ex-officio member of all committees.

6. Each committee shall designate a chairman from among the members of the committee.

7. The Commission may create special committees and assign them tasks to be determined by the Commission.

8. Committees shall report all of their findings and recommendations.

ARTICLE VI

FISCAL

1. All expenses incurred by the Commission in the administration of the Bear River Compact, except those paid by the United States of America, shall be paid by the signatory States on an equal basis.
2. Commission funds shall be received by the Treasurer and deposited by him in a depository or depositories designated by the Commission.
3. The Treasurer shall disburse Commission funds by check upon vouchers approved and countersigned by the Chairman, the Vice-Chairman, or a member of the Management Committee.
4. On or before May 1 of each odd-numbered year, the Commission shall adopt and transmit to the appropriate water resource agencies of the three States, a budget covering an estimate of its expenses for the following biennium and the amount payable by each State under the provisions of the Bear River Compact.
5. The payment of expenses of the Commission and its employees shall not be subject to the audit and accounting procedures of any of the three States.
6. All receipts and disbursements of the Commission shall be biennially audited by a certified public accountant to be selected by the Commission. The audit report shall be included in the biennial report of the Commission.
7. The Secretary shall keep an up-to-date inventory of all Commission property.
8. The fiscal year of the Commission shall begin July 1 of each year and end June 30 of the following year.

ARTICLE VII

MISCELLANEOUS

1. The Commission shall on request make available to the Governor of each of the States signatory to the Bear River Compact any information within its possession at any time, and shall always provide the Governors of such States or their representatives or authorized representatives of the United States of America, free access to records. The cost of making information available shall be borne by the person or government requesting such information.
2. All contracts or other instruments in writing to be signed for and in behalf of the Commission, except matters relating to the receipt or disbursement of funds, shall be signed by the Chairman or Vice-Chairman and the Secretary or Treasurer.
3. Amendments to the Bylaws may be made at any meeting of the Commission, provided notice of the proposed amendment shall have been given in the notice of the meeting.
4. Except as otherwise provided by the Compact or herein, meetings of the Commission shall be in accordance with Robert's Rules of Order.

Appendix C
Bear Lake Settlement Agreement

BEAR LAKE SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 10th day of April, 1995, by and between LAST CHANCE CANAL COMPANY, CUB RIVER CANAL COMPANY, WEST CACHE CANAL COMPANY, BEAR RIVER CANAL COMPANY, IDAHO PUMPERS ASSOCIATION, UTAH PUMPERS ASSOCIATION, and THE BEAR RIVER WATER USERS ASSOCIATION, INC. (referred to collectively as the "Irrigators"), BEAR LAKE WATCH, INC., EMERALD BEACH, INC., BEAR LAKE EAST, INC., and JIM KIMBAL (hereinafter referred to collectively as the "Bear Lake Group"), and PACIFICORP.

RECITALS:

A. PacifiCorp has certain decreed rights under the Dietrich Decree in Idaho and the Kimball Decree in Utah to divert water from Bear River for storage in the top 21.65 feet of Bear Lake between elevations 5902 and 5923.65 and to operate, manage and release the same for irrigation in the Bear River Valley In Idaho and Utah, for power generation, and for other beneficial uses.

B. The Irrigators each hold contracts with PacifiCorp to receive Bear Lake storage water which has historically been applied to beneficial use for the irrigation of more than 150,000 acres in Idaho and Utah.

C. The Bear Lake Group represents the interests of their members who are homeowners around Bear Lake, recreationalists and other non-consumptive users of Bear Lake water.

D. The Bear Lake Group has filed a lawsuit against the U.S. Army Corps of Engineers and the Environmental Protection Agency in the U.S. District Court for the District of Utah, Civil Action No. 94-NC-157W, challenging certain permits previously issued to PacifiCorp which allow for dredging of Bear Lake.

E. PacifiCorp has submitted applications for dredging permits to the U.S. Army Corps of Engineers which is pending at U.S. No. 920302450 and also to the Idaho Department of Lands, which is pending at State No. L-11-S-131D (collectively referred to

as the "Dredging Permit Proceedings). In said proceedings, PacifiCorp is the Applicant; the Bear Lake Group and the Irrigators are interested and affected parties.

F. Upon the terms set forth below, the parties desire to compromise, settle and resolve the above described disputes and general disagreements that exist concerning the operation and management of Bear Lake by PacifiCorp and the use, release and distribution of Bear Lake storage water.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES WHOSE SIGNATURES ARE AFFIXED BELOW AS FOLLOWS:

1. Bear Lake Group will dismiss, without prejudice, their Complaint for Declaratory Judgment and Injunctive Relief pending in the U.S. District Court for the District of Utah, Civil Action No. 94-NC-157W. Such dismissal will occur as soon as practicable as will be arranged with other parties to that suit.
2. PacifiCorp agrees not to dredge Bear Lake prior to or during the 1995 irrigation season.
3. The Bear Lake Group's request for a contested case hearing before the Idaho Department of Lands in Case No. L-LE-95-002 will be withdrawn immediately. The Idaho Department of Lands and the U.S. Army Corps of Engineers will be provided with a copy of this Stipulated Settlement Agreement and are requested to act upon the pending Dredging Permit application and approve the Permit based upon the record established, without further notice and hearing. The parties hereby agree that this Stipulated Settlement Agreement shall be attached to and become a part of the Dredging Permit and that this Settlement Agreement shall be enforceable among the parties in conformance with the terms hereof without notice or hearing by Idaho Department of Lands or U.S. Corps of Engineers. All parties reserve their rights to appeal the decisions entered by the Idaho Department of Lands and/or U.S. Army Corps of Engineers in the pending Dredging Permit Proceedings and this Agreement will be without prejudice or effect upon such appeal rights.
4. The "Bear Lake Storage Allocation and Recovery Proposal," consisting of two pages, attached hereto and incorporated by reference is hereby approved by the

Irrigators and Bear Lake Group, and adopted by PacifiCorp as its established policy and guideline for the operation and management of Bear Lake. The parties acknowledge and agree that the authority to change the annual amount of Bear Lake storage water allocated pursuant to the proposal shall remain solely within PacifiCorp's discretion, upon reasonable cause and following consultation with the "Bear Lake Preservation Advisory Committee" as discussed below.

5. The parties agree to form a new "Bear Lake Preservation Advisory Committee." The task force will consist of a representative of Last Chance Canal Company, Cub River Canal Company, West Cache Canal Company, Bear River Canal Company, Idaho Pumpers Association, Utah Pumpers Association, Bear River Water User's Association, Inc., Bear Lake Watch, Inc., Emerald Beach, Inc., Bear Lake East, Inc., and PacifiCorp, a representative of the Bear River Commission, a representative from each of the Utah and Idaho Departments of Water Resources, and such other interested parties who have an interest in promoting the goals enumerated below. The purpose of the task force will be to address and attempt to resolve through compromise and negotiations disagreements between the parties and other multiple users concerning the use, operation and management of Bear Lake. Among other things, the goals of the Advisory Committee will include the following:

- a. To promote water conservation and efficient use practices;
- b. To promote more reliable water supplies in Bear Lake and Bear River for all users;
- c. To promote soil and energy conservation and improved water quality;
- d. To pursue means other than litigation to resolve conflicts;
- e. To periodically review the Allocation Proposal and recommend changes in that policy to PacifiCorp as may be appropriate; and
- f. To promote the concept of a single allocation model for administration of water on the Bear Lake/Bear River System.

The Advisory Committee will first meet in May, 1995, and at least annually thereafter prior to the annual spring meeting of the Bear River Compact Commission.

6. The parties hereby acknowledge and agree that the Bear Lake Storage Allocation and Recovery Plan is a voluntary plan for allocating water in times of shortage, when nature does not otherwise provide a full supply, and nothing in this Settlement Agreement shall be construed as an abandonment or forfeiture of any appropriated, contract or other rights belonging to the parties.

7. Copies of this Settlement Agreement shall be provided to the U.S. Army Corps of Engineers and Idaho Department of Lands and become a part of the record in the pending Dredging Permit Proceedings, and also will be provided to the Bear River Commission, Idaho Department of Water Resources, and Utah Division of Water Resources.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and the year first written above.

LAST CHANCE CANAL COMPANY

By: *W. Marcus J. Subb*

CUB RIVER CANAL COMPANY

By: _____

WEST CACHE CANAL COMPANY

By: *Joseph G. Larsen*

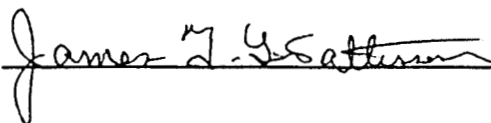
BEAR RIVER CANAL COMPANY

By: *Richard E. Egan*

IDAHO PUMPERS ASSOCIATION

By: 

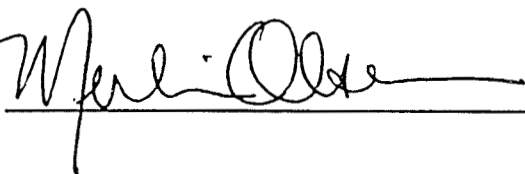
UTAH PUMPERS ASSOCIATION

By: 

BEAR RIVER WATER USERS ASSOCIATION

By: 

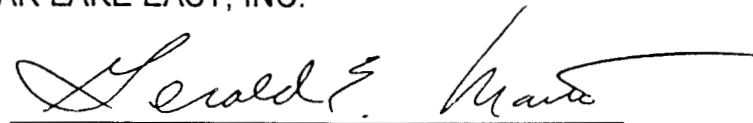
BEAR LAKE WATCH, INC.

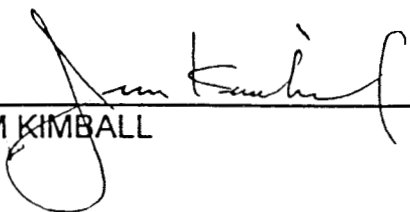
By: 

EMERALD BEACH, INC.

By: 

BEAR LAKE EAST, INC.

By: 



JIM KIMBALL

PACIFICORP

By: 

IRRIGATION WATER ALLOCATION AND
LAKE RECOVERY PROPOSAL FOR BEAR LAKE

<u>Calculated Elevation¹</u>	<u>Storage Content(A.F.)</u>	<u>Calculated Evaporation</u>	<u>Calculated Net Storage Avail.</u>	<u>Annual Allocation²</u>	<u>Balance Preserved For Lake Recovery</u>
Full 5923.85	1,414,000				
5914.7 (Irr. Reserve)	801,000	(125,000)	676,000	230,000 (100%)	446,000
5914	754,000	(125,000)	629,000	225,000 (98%)	404,000
5913	688,000	(125,000)	563,000	220,000 (96%)	343,000
5912	621,000	(125,000)	490,000	215,000 (93%)	275,000
5911	557,000	(125,000)	432,000	210,000 (91%)	222,000
5910	497,000	(125,000)	372,000	205,000 (89%)	167,000
5909	428,000	(125,000)	303,000	181,000 (79%)	122,000
5908	365,000	(125,000)	240,000	168,000 (73%)	72,000
5907	302,000	(125,000)	177,000	141,000 (61%)	36,000
5906	240,000	(125,000)	115,000	104,000 (45%)	11,000
5905	180,000	(125,000)	55,000	55,000 (24%)	0
5904	119,000	(125,000)	0	0 (0%)	119,000
5903	59,000	(125,000)	0	0 (0%)	59,000
5902	0		0	0 (0%)	0

* Footnotes are found on the following page.

(1) The "Calculated Elevation" represents the estimated, maximum lake level, in any given year, calculated by adding the forecasted amount of storable spring runoff to the actual quantity of water in storage on March 1 of said year. Full lake is 5923.65. The "irrigation Reserve" under the Bear River Compact is 5914.7' to 5902'.

(2) The "Annual Allocation" represents the total, estimated quantity of water available to be delivered to holders of contracts with PacifiCorp. The maximum historic delivery of 245,000 acre feet (1961) shall be available at all elevations above the "irrigation reserve". The reduced allocations available at each elevation below the "irrigation reserve" of 5914.7 shall be subject to the following conditions:

- (a) The stated allocation available at each elevation is subject to the maximum flow rates deliverable to PacifiCorp facilities and other operating and legal constraints.
- (b) The total Annual Allocation shall be allocated among the contract holders, subject to contract limitations, on a per-acre basis, based upon 151,000 total irrigated acres as set forth in the attached schedule entitled Contract Holders - Bear Lake Storage. By virtue of the fact that Bear River Canal Co. has the earliest contract with PacifiCorp and has no acre-footage limitation under its contract, any water allocated and available for use, which is in excess of the water to which the holders of contracts with PacifiCorp are entitled under their respective contracts, shall be available for use first by Bear River Canal Co., up to 48.6% of the total allocation, and then to other contract holders as may be agreed upon between the contract holders.
- (c) Unused water under the allocation may not be accrued or carried over by any contract holder to any future year and will remain in the lake for additional recovery.
- (d) PacifiCorp will not deliver storage water from Bear Lake to new contracts or

otherwise, over and above the existing contracts.

- (e) No allocation of water will be made to the contract holders on March 1 if the Calculated Elevation of the lake is 5904' or below. If, however, on March 1 of any year the Calculated Elevation is higher than 5904', PacifiCorp will pump, if necessary, and subject to legal and operating constraints, to deliver the Annual Allocation until such time as its operation, together with anticipated evaporation, is expected to result in a calculated lake elevation of 5902' after evaporation and deliveries.