

No 3

MINUTES OF THE  
BEAR RIVER NEGOTIATING COMMITTEE MEETING  
EVANSTON, WYOMING  
JULY 28, 1970

TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| Those in Attendance . . . . .  | 1           |
| Minutes of the Meeting . . . . .   | 2           |
| Report of the Technical Sub-Committee . . . . .                                | 7           |
| Report of the State of Wyoming on Wyoming Bear<br>River Water Rights . . . . . | 11          |
| Report of the State of Utah on Utah Bear River<br>Water Rights . . . . .       | 16          |
| Report of the State of Idaho on Idaho Bear River<br>Water Rights . . . . .     | 28          |
| Mailing List . . . . .   | 32          |

BEAR RIVER NEGOTIATING COMMITTEE

Meeting in Evanston, Wyoming, July 28, 1970

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The following individuals were in attendance:

|                     |                                      |         |
|---------------------|--------------------------------------|---------|
| Michael H. Anderson | Wyoming Water Comm. Dist. 4          | Wyoming |
| Ethan F. Axtmann    | Water Resources Div.                 | Utah    |
| Dean E. Bischoff    | U.S.B.R. Area Engineer               | Utah    |
| Floyd A. Bishop     | Wyoming State Engineer               | Wyoming |
| Jim Christensen     | Water Resource Board                 | Utah    |
| S. Reed Dayton      | Commissioner                         | Wyoming |
| Peter Etcheverry    |                                      | Wyoming |
| Cecil Foster        | Compact Commission                   | Idaho   |
| Calvin Funk         | Bear River Negotiating Comm.         | Utah    |
| Jack R. Gage        | Spec. Assistant Att'y General        | Wyoming |
| Dee C. Hansen       | Div. of Water Rights                 | Utah    |
| Gordon E. Harmston  | Dept. Natural Resources              | Utah    |
| R. Keith Higginson  | Dir. Dept. of Water Admin.           | Idaho   |
| Pete Hutchison      | Wyo. Water Planning Program          | Wyoming |
| William G. Jenkins  | Compact Commissioner                 | Idaho   |
| Dallin W. Jensen    | Utah Att'y General's Office          | Utah    |
| Wallace N. Jibson   | U.S. Geological Survey               |         |
|                     | Bear River Comm.                     | Utah    |
| Ferris Kunz         | Water Resource Board                 | Idaho   |
| Hubert C. Lambert   | Utah State Engineer                  | Utah    |
| Daniel F. Lawrence  | Dir. Div. Water Resources            | Utah    |
| Robert R. Lee       | Water Resource Board                 | Idaho   |
| J. W. Myers         | Bear Riv. Compact Comm.              | Wyoming |
| Marion Olsen        | Vice-Ch. Utah Bd. of Water Resources | Utah    |
| Gordon Peart        | Bear River Committee                 | Utah    |
| H. T. Person        | Advisor, Bear Riv. Comm.             | Wyoming |
| Robert B. Porter    | Att'y, Utah Power & Light Co.        | Utah    |
| Frank O. Reeder     | Utah Bear River Committee            | Utah    |
| Alan C. Robertson   | Idaho Water Resource Bd.             | Idaho   |
| Edward H. Southwick | Utah Bd. of Water Resources          | Utah    |
| LeRoy Stanger       | Idaho Water Resource Bd.             | Idaho   |
| John Teichert       | Supt. Water Div. #4                  | Wyoming |
| Alvin Teuscher      |                                      | Idaho   |
| Harold Walter       |                                      | Idaho   |
| Donald J. Watkins   | Hydrographer Engineer                | Utah    |
| Simeon Weston       | Utah Bear River Committee            | Utah    |

BEAR RIVER NEGOTIATING COMMITTEE

Summary of Minutes of Negotiating Committee Meeting Held in  
Evanston, Wyoming, July 28, 1970

The meeting of the Bear River Negotiating Committee was called to order in Evanston, Wyoming, July 28, 1970, at 9:30 a.m., by Mr. J. W. Myers, temporary Chairman. Each one present was invited to stand and introduce himself. Mr. Floyd Bishop of Wyoming then gave a brief review of the status of negotiations to date and what had been accomplished in prior meetings. He mentioned the appointment of a technical sub-committee at the April meeting. This sub-committee is to make a report at the meeting today. Mr. Bishop also mentioned that each state is to provide an analysis and summary of water rights within that state at this meeting.

Mr. Bishop said that there is need for continuing discussion of technical matters before the real problem of allocating the compact can proceed. He stressed the fact that Wyoming is desirous of going ahead as rapidly as possible.

Utah is in a preliminary phase of orientation, Mr. Lawrence said. Developments in the past 15 years have changed conditions somewhat, and he felt that they are not yet ready for rigid formal voting status because of the need to develop some area of mutual concern. He felt the need to talk in an informal way and reach understanding among the delegates. He expressed the hope that today's discussions of water rights would lead to greater understanding of the problems each state must face and consider in its negotiating. "We in Utah are anxious to pursue this thing and keep it alive and working," he said.

Mr. Ferris Kunz stated that Idaho believes that flexible arrangements have been proper and that progress has been orderly.

The Report of the Technical Sub-Committee was given by Mr. Lawrence. (Copy attached.) Discussion of the models followed. Both models, given like data, would respond in a like manner. However, these models are based on different relationships. Idaho's model will test operational management of the system; Utah's model will interpret the system and the interrelationship of water. They should be used jointly, and will complement each other. Bob Lee mentioned that the models are working tools, and that both models should be used. If the results are conflicting or dissimilar these can probably be resolved. Mr. Lawrence said that allocation of the Bear River is complex and there are many interrelationships in the system. The models should be invaluable tools in giving an understanding of the implications of any possible negotiating item.

Mr. Floyd Bishop expressed some concern about the "continuing effort to upgrade the position of these computer models." He asked how long these studies go on and at what point they can do "what we want them to do?"

Mr. Christensen answered that answers are available now. Upgrading is going on, and as more information is available they will be improved; however, they can be very useful now and can provide substantial information already.

Mr. Le Roy Stanger suggested that "we take our time and not rush into this thing." He felt the computers should be used as much as possible, with as much and as complete data as is available.

There are other things besides the inputs into the machine that must become a part of the study, Mr. Lee said. The models are able to determine much for the hydrology of the system, but beyond that there is the matter of judgment, of "give and take," which must be used to determine allocation of the water.

Mr. Bishop felt that the technical sub-committee needs some direction of how the Negotiating Committee would like them to proceed. Agreement on the hydrology of the River apparently is the next logical step, he said. Mr. Lee stated that if the report of the technical sub-committee is accepted, they will know how to proceed. He felt that formal action to accept the report or change it, or whatever, was now needed.

Mr. Marion Olsen made a motion "that we do accept the report of the technical sub-committee and that they be directed to proceed in determining further the hydrology of the River." Ferris Kunz seconded; and the motion was passed unanimously.

Reports on the water rights of each of the three states were next presented. Mr. Floyd Bishop stated that the Wyoming Deputy State Engineer was unable to attend the meeting, but he had outlined the report, and Mr. Bishop was prepared to give it. (A copy of Wyoming's Report is attached.) Briefly: Mr. Bishop said that all waters have been declared the property of the State by the Wyoming constitution. To acquire a water right in Wyoming for either surface or groundwater, an application must be filed with the State Engineer. There are no exemptions for stock or domestic use; these also require application. The application must be accompanied by a map certified by a registered engineer, and time limits are imposed for beginning and completion of the work. The State Board of Control meets semi-annually to consider and act upon water rights applications, changes, and adjudications. Decisions of the Board are subject to court appeal. Mr. Bishop presented figures of actual irrigated acreages in the State compared with the acreages used in the Compact negotiations. These seemed to compare favorably.

Mr. Dee Hansen presented Utah's water rights report. (A copy of Utah's Report is attached.) He displayed a map of Utah sections of the Bear River Basin, showing the sub-basins within the Utah Basin. The office of State Engineer was established in Utah in 1903. Prior to that time, water was appropriated by diligence claim. Application must now be filed with the State Engineer to appropriate water, and he has the power to approve both surface and underground rights. Up to 14 years is allowed to show proof, provided diligence is shown. Utah is now in the process of adjudicating the waters of the state--progress is being made, but much remains to be done.

Water rights in Idaho exist in many different forms, according to Mr. Keith Higginson. (A copy of Idaho's Report is attached.) These forms include: Use rights, claims, permits, decreed or adjudicated rights. Approval of any application is made subject to all prior rights. The "Dietrich Decree" contains the major water rights on the Bear River. There is no unappropriated surface water in the Bear River drainage in Idaho except for flood flow periods when water is spilling past power plants, Mr. Higginson said. Rights on many of the small tributaries have not been adjudicated, nor have any groundwater rights. The "Dietrich Decree" needs to be reviewed and updated to reflect changes of the past 50 years, but there are presently no plans for this, he added. He said the rights of the Utah Power & Light Company were adjudicated in a federal court.

Following the explanation of the water rights and how they are handled in each state, there was some discussion of whether groundwater is included in the Compact. Some of the delegates felt that underground water was covered by the Compact; some felt that if it was not actually mentioned it was certainly the intent that it be included; some felt that there was no provision at all for handling this water. This point will need clarification.

Mr. Lawrence suggested that since there are obvious differences in the handling of water rights in the three states, agreement must be reached for dealing with these problems.

Mr. Higginson felt that depletion is the best way to divide the River. Each state should know how much it can deplete the system under its entitlement, and each state should determine its own efficiency of water use. He said that how the water is used in each state should be of no concern to the others.

Mr. Lawrence mentioned that water rights are not now administered by depletion in any of the states, and asked how advisable it was to reduce diversion rights to total depletion. It would certainly require a modification in the present limitations, Mr. Bishop said.

Mr. Jibson suggested that depletions would have to be worked on a five or ten-year basis, or something similar. He said the administrative problems of day-to-day depletion would be too great to handle. Mr. Bishop added that the political problems involved might be even greater than the practical problems.

Mr. Lawrence asked if there would then need to be some kind of restriction on the types of diversions that were allowed. Mr. Bishop said that certainly maximum use of the water was needed.

The need for understanding and for clarification of areas of mutual concern is of prime importance, Mr. Lawrence stated. He felt that discussions such as today's are very necessary in determining problems and reaching agreements.

REPORT OF TECHNICAL SUB-COMMITTEE  
TO THE TRI-STATE BEAR RIVER NEGOTIATING COMMITTEE  
July 28, 1970

In the meeting of the Tri-State Negotiating Committee in Salt Lake City April 21st a Technical Sub-Committee was formed to assist the negotiating committee. The Technical Sub-Committee met in Boise, Idaho on July 14th and discussed its role as related to the Bear River negotiations. The purpose and scope of the Technical Sub-Committee's role as viewed by the designated representatives are summarized below:

The Technical Sub-Committee will function as the official coordinating body for the technical staffs of the three states. This coordinating body should be viewed as a mechanism for providing compatability of basic data, and for reviewing studies conducted by the various states. The Technical Sub-Committee will not replace or interfere with the activities of the technical staffs of each of the various states and will not have the capability of performing joint detailed studies in most areas.

Primary function of the Technical Sub-Committee will include the following:

1. The Technical Sub-Committee will attempt to reach agreement on the water supply availability under present day conditions at key locations.
2. The Technical Sub-Committee recognizes that during the course of negotiations a number of proposals will be made related to specific projects or associated means of development of the uncommitted water supply. The effects of these proposals on the water supply availability at specific locations under present day conditions will be evaluated jointly through the use of hydrologic models and other available tools.

It is further recognized that the effects of these proposals will require evaluation in such areas as:

- |  |  |
|--|--|
| 1. Operation studies                   | 7. Wildlife requirements for water                 |
| 2. Reservoir site data                 | 8. Economic aspects of water use                   |
| 3. Agricultural uses of water          | 9. Water rights                                    |
| 4. Electric power                      | 10. Water quality                                  |
| 5. M&I requirements for water          | 11. Irrigable land available                       |
| 6. Aquatic life requirements for water | 12. Water-related recreation data and requirements |

A report of results under item one can be made available at the next meeting of the Tri-State Negotiating Committee.

At the meeting of the Tri-State Negotiating Committee in April the Technical Sub-Committee was directed to submit a report on the status of hydrologic models as they pertain to the Bear River negotiations. The professional staff members of each state met on May 14 in Logan, Utah, and discussed this matter in some detail. As a result of that meeting and a Technical Sub-Committee meeting in July 14, in Boise, Idaho, we submit the attached summary outline of the major factors regarding Bear River hydrologic models. The Technical Sub-Committee reports that hydrologic models are available, providing modern high-speed tools that can greatly facilitate our ability to serve the negotiating team.

This concludes the report of the Technical Sub-Committee.

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Dr. Robert R. Lee, Director  
Idaho Water Resource Board

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Mr. Daniel F. Lawrence, Director  
Division of Water Resources  
Utah Dept. of Natural Resources

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Mr. Floyd A. Bishop  
Wyoming State Engineer



advantages and capabilities of each method or model would be utilized to compliment data and information generated by a given model to better describe the resultant effects of alternative operational or management decisions.

THE STATUS OF WATER RIGHTS  
IN THE BEAR RIVER BASIN IN WYOMING

BY

FLOYD A. BISHOP  
WYOMING STATE ENGINEER

Presented to Bear River Negotiating Committee  
Evanston, Wyoming - July 28, 1970

1. BRIEF SUMMARY OF WYOMING WATER LAW

a. First surface water laws enacted in 1875 and comprehensive laws enacted along with Constitution in 1890.

b. Territorial Engineer's Office established in 1886.

c. Territorial rights established by filing of Statement of Claim prior to statehood and subsequent filing of proof of appropriation, after statehood, with State Board of Control.

d. Wyoming Constitution declared "all natural streams, springs, lakes or other collections of still waters to be the property of the state".

e. Since statehood the only way a water right can be acquired in Wyoming is by securing a permit from the State Engineer.

f. State divided into 4 water divisions (Bear River is in Water Division No. 4) - 4 Water Division Superintendents and State Engineer constitute Board of Control.

g. Board of Control meets semiannually and adjudicates or "finalizes" all water rights, considers amendments and corrections, changes in point of diversion, etc., for all adjudicated rights.

2. PROCEDURE FOR OBTAINING WATER RIGHTS

a. Water right application must be filed for all rights in State Engineer's Office. This includes both surface and ground water and for all uses. There is no exemption for stock or domestic or any other use.

b. Priority date is established by date of filing of application in State Engineer's Office.

c. Nearly all filings must be accompanied by map, showing proposal, prepared by engineer or land surveyor qualified to practice in Wyoming.

d. Definite time limits are imposed in the granting of a permit within which work must be commenced, completed and beneficial use made.

e. There is a simplified procedure for filing for stock reservoirs with capacity of 20.0 acre-feet or less or with height of dam of 20.0' or less as well as for the filing of stock and domestic wells for up to 25 gallons per minute.

f. All water rights are adjudicated by Board of Control and not by Courts.

### 3. BEAR RIVER RIGHTS

Actual irrigated acreage in the Wyoming sections of Bear River compares favorably with the figures used in the Compact allocation.

#### IRRIGATED ACREAGE -- BEAR RIVER BASIN -- WITHIN THE STATE OF WYOMING

|           | <u>UPPER DIVISION</u> |                       | <u>CENTRAL DIVISION</u> |                     |
|-----------|-----------------------|-----------------------|-------------------------|---------------------|
|           | <u>Upper Wyo.Sec.</u> | <u>Lower Wyo.Sec.</u> | <u>Div.Wyo.Sec.</u>     | <u>Total</u>        |
| Jibson    | 32,447 acres          | 10,160 acres          | 14,808 acres            | 57,415 acres        |
| Wyo.Water | 31,321 "              | 8,053 "               | 19,313 "                | 58,687 "            |
| Planning  | + 2,000 idle          | + 589 idle            | + 1,412 idle            | + 4,001 "           |
| Program   | <u>33,321 acres</u>   | <u>8,642 acres</u>    | <u>20,725 acres</u>     | <u>62,688 acres</u> |

NOTE: The Wyoming Water Planning Program figures were based on county lines. An adjustment would be necessary within the Wyoming Section of the Central Division and the Lower Wyoming Section of the Upper Division to make these figures comparable with the Jibson figures.

IRRIGATED ACREAGES IN COMPACT SECTIONS

|                         | <u>UPPER DIVISION</u>  |                        | <u>CENTRAL DIVISION</u> |              |
|-------------------------|------------------------|------------------------|-------------------------|--------------|
|                         | <u>Upper Wyo. Sec.</u> | <u>Lower Wyo. Sec.</u> | <u>Wyo. Sec.</u>        | <u>Total</u> |
| Jibson                  | <u>1/</u> 42,487       | <u>2/</u> 8,278        | <u>3/</u> 17,284        | 68,049       |
| <u>4/</u> Banner Report | <u>1/</u> 42,350       | <u>2/</u> 8,280        | <u>3/</u> 17,695        | 68,325       |

1/ Includes Chapman Canal acreage in Utah under Wyoming Allocation 7,889 A. & Francis Lee & Bear River Canal Acreage in Utah under Wyoming Allocation. (2,151 A.)

2/ Excludes BQ Westside Canal acreage in Wyoming under Utah Allocation. (1,882 A.)

3/ Includes Cook Canal acreage in Idaho under Wyoming Allocation. (2,476 A.)

4/ Report made to Wyoming State Engineer, December 1968 by J. T. Banner and Associates, Inc., Consulting Engineers.

WATER WELLS COMPLETED THRU. 1963

| Area          | No. of Irr. Wells | Total GPM     | O.S. Acres   | S.S. Acres   | No. M & I Wells | Total M & I GPM |
|---------------|-------------------|---------------|--------------|--------------|-----------------|-----------------|
| Lower Bear R. | 14                | 18,291        | 2,037        | 2,145        | 4               | 1,085           |
| Upper Bear R. | 6                 | 3,469         | 169          | 439          | 7               | 4,420           |
| Thomas Fork   | --                | ---           | ---          | ---          | -               | ---             |
| Smith's Fork  | --                | ---           | ---          | ---          | -               | ---             |
| <b>Total</b>  | <b>20</b>         | <b>21,760</b> | <b>2,206</b> | <b>2,584</b> | <b>11</b>       | <b>5,550</b>    |

Summary of Water Right Permits issued since 1964

| Type & No.      | CFS   | A/F    | Acres Orig. Sup. | Acres Supp. Sup. | Total GPM |
|-----------------|-------|--------|------------------|------------------|-----------|
| Stock Res. - 30 |       | 56.71  |                  |                  |           |
| Irr. Res. - 2   |       | 168.19 |                  |                  |           |
| Ditches - 9     | *3.13 |        | 164              | 127              |           |
| **Wells - 6     |       |        | 248              | 1,555            | 6,375     |

\* Includes Stock and Domestic Use.

\*\* Some wells not yet drilled.

DIVERSION FIGURES

| YEAR | (42,487 Acres)<br>UPPER WYOMING SECTION<br>Total Diverted<br>(ac-ft) |       |                                | (8,278 Acres)<br>LOWER WYOMING SECTION<br>Total Diverted<br>(ac-ft) |       |                                | (17,284 Acres)<br>WYO. SECTION (Cent.Div.)<br>Total diverted<br>(ac-ft) |       |                                |
|------|--|-------|--------------------------------|---|-------|--------------------------------|---|-------|--------------------------------|
|      | Nat flow   | Stor. | af/ac                          | Nat flow  | Stor. | af/ac                          | Nat flow  | Stor. | af/ac                          |
| 1960 | 81,500   | 4,500 | 2.02                           | 12,900  | 0     | 1.56                           | 51,700  | 0     | 2.99                           |
| 1961 | 52,500   | 2,900 | <sup>low</sup><br><u>1.30</u>  | 5,400   | 0     | <sup>low</sup><br><u>0.65</u>  | 37,400  | 0     | <sup>low</sup><br><u>2.16</u>  |
| 1962 | 107,600  | 4,500 | <sup>high</sup><br><u>2.64</u> | 20,000  | 0     | 2.42                           | 100,600   | 0     | <sup>high</sup><br><u>5.82</u> |
| 1963 | 75,100   | 3,600 | 1.85                           | 22,500*   | ?     | 2.72                           | 87,500  | 0     | 5.06                           |
| 1964 | 90,100   | 4,000 | 2.22                           | 21,400  | 0     | 2.59                           | 77,400  | 0     | 4.48                           |
| 1965 | 88,200   | 4,000 | 2.17                           | 23,000  | 0     | <sup>high</sup><br><u>2.78</u> | 85,700  | 0     | 4.96                           |
| 1966 | 69,100   | 5,000 | 1.74                           | 16,200*   | ?     | <u>1.96</u>                    | 57,400  | 0     | 3.32                           |
| 1967 | 98,500   | 1,700 | 2.36                           | 17,900  | 0     | 2.16                           | 82,600  | 0     | 4.78                           |
| 1968 | 97,200   | 2,000 | 2.34                           | 12,000  | 0     | 1.45                           | 69,500  | 0     | 4.02                           |
| 1969 | 110,200  | 9,000 | 2.81                           | 16,500*   | ?     | 1.99                           | 73,300  | 0     | 4.24                           |
| Avg. | 87,000   | 4,100 | <sup>avg.</sup><br><u>2.14</u> | 16,800  | -     | <sup>avg.</sup><br><u>2.03</u> | 72,300  | 0     | <sup>avg.</sup><br><u>4.18</u> |

\* Includes storage

STATUS OF UTAH WATER RIGHTS ON BEAR RIVER SYSTEM

Report for Tri-State Negotiating Committee Meeting  
Held in Evanston, Wyoming, July 28, 1970  
by Dee C. Hansen, Area Engineer  
Northern Utah Area Office

The State Engineer is charged with the general administrative supervision of the waters of the State and of the management, appropriation, apportionment and distribution of this first public resource. Water appropriation must first be initiated in his office irrespective of use, purpose or for long-range planning. The State Engineer may also make a determination of water rights on a stream or water source, and in doing so accomplish a complete water study of the drainage. He has the authority to define district boundaries, to establish water districts and to appoint water commissioners and supervise their work.

The State Engineer is vested with broad discretionary powers in the use of water. He is allowed wide latitude in making decisions regarding water appropriation, resource study and arbitrating disputes between water users.

The office of the State Engineer was not created to adjudicate rights between parties but to administer and supervise appropriation and use of the waters of the State of Utah. The State Engineer's Office was first organized in 1897. In 1901, the State Engineer was given general supervision over distribution of water. In 1903 his duties were extended to water appropriation, water resource investigation and water adjudication. The statutes and organization of the State Engineer's Office as established were adequate. However, in recent years the development of the water

Determination of Water Rights, Bear River Section of Summit County, was signed by the district court making it an interlocutory order covering all of the water usage in that area.

The total irrigated acreage in the Summit County Subdivision is 5,200 acres.

#### Rich County

The Rich County Section has also been completely mapped, all claims were taken and submitted to the district court, protests were solved and a final order was signed by the district court making the Rich County Section also an interlocutory order covering all water usage.

The total irrigated acreage in the Rich County Section is 62,000 acres. Some of this acreage is estimated since there was not time available to go through the Proposed Determination of Water Rights in Rich County and determine the exact acreage. However, it is felt that this is a fairly accurate figure.

#### Cache County

The Cache County Section has been divided into a number of smaller units to permit the completion of specified areas. At the present time, we have completed the Little Bear River Section and the Blacksmith Fork River Section. The Little Bear River Section has been signed by the district court making it an interlocutory order covering all water usage. The Blacksmith Fork River Section is presently before the court awaiting the solution of some of the protests. It should be signed by the district court making it an interlocutory order covering all water usage in that area in the near future.



The surveys have been completed on the Logan River Section and approximately 800 claims have been taken to date. It is estimated that the Logan River Section will take at least an additional two years to complete.

The Cache County Section has 118,000 acres. Much of this acreage was obtained from the Soil Conservation Service records and surveys by the State Engineer's Office.

#### Box Elder County

The Box Elder County Subdivision has had no survey work done and a very limited number of claims have been taken covering water usage. The rights in this area are covered by previous court decrees, diligence claims or applications on file with the State Engineer's Office.

Under the East and West Side Canals owned by the Sugar Company, there is a total of 63,950 acres. There are some additional acreages that are irrigated by return flows, drains etc. However, there is no accurate figure on this acreage at this time.

#### Water Usage

I have tabulated on the attached sheets the water usage from selected canals which have permanent records maintained by the use of recorders or they have been checked either weekly or daily by a water commissioner. I have tabulated the total usage in acre-feet delivered for specific years and the acre-feet per acre for the same years. Also listed is the average acre-feet per acre for the years listed.

An interesting comparison would be to compare the Bear River, Rich diversion for the year 1961, which was an extremely low water year. We

show a compact delivery of 30,500 acre-feet which is 2.9 acre-feet per acre as opposed to the delivery to the East and West Side Canals under the Sugar Company rights which show 3.69 acre-feet per acre on the East Side Canal and 3.42 acre-feet per acre on the West Side Canal. This indicates to me the value of Utah Power and Light supplying water by contract to the Sugar Company from the reserves of Bear Lake. You should keep in mind that during the period of time that Utah Power and Light is pumping water from the Bear Lake to be passed down to the Sugar Company, all users between the diversions and Bear Lake benefit from this pumpage by the Power Company.

#### Storage vs. Surplus Flow - Bear River

Recently I took the time to plot an average daily flow record for 12 years of record on the Corinne gaging station, as indicated in Figure 1, and superimposed over this flow figure the direct flow rights of the Bear River Bird Refuge for 1000 cubic feet per second and the storage applications presently on file with the State Engineer filed by the Bureau of Reclamation for proposed projects. As can be seen by examination of Figure 1, the storage proposed just within Utah would more than utilize the average excess flow of the Bear River. In addition to this, I am aware of several filings in Idaho which would also use surplus flow from the Bear River.

The Bear River is a valuable resource to Northern Utah and should be developed to its ultimate capacity in a manner which would be most beneficial to all those concerned.

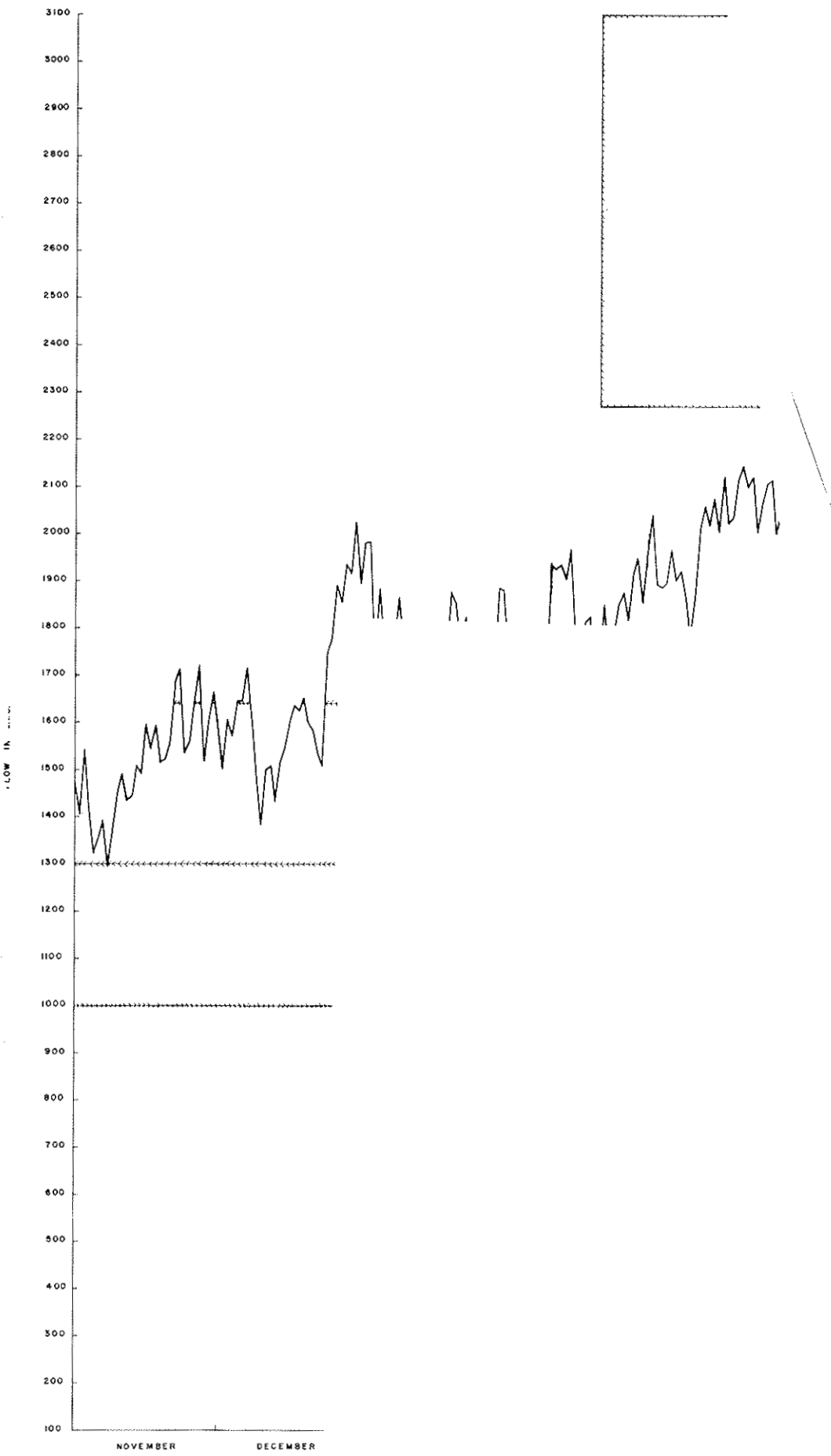


TABLE 1

CANAL COMPANYLITTLE BEAR RIVER - CACHE COUNTY

| Hyrum Irrigation Co. |              | <u>Acres 2,310.80</u>   |                    |
|----------------------|--------------|-------------------------|--------------------|
|                      | <u>Years</u> | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|                      | 1964         | 6,944.80                | 3.01               |
|                      | 1965         | 7,595.28                | 3.28               |
|                      | 1966         | 10,444.40               | 4.52               |
|                      | 1967         | 9,175.90                | 3.97               |
|                      | 1968         | 10,849.80               | 4.69               |
| Average              | 1969         | 12,924.00               | 5.60               |
| Ac.Ft./Acre - 4.19   |              |                         |                    |

| Wellsville East Field |              | <u>Acres 2,898.73</u>   |                    |
|-----------------------|--------------|-------------------------|--------------------|
|                       | <u>Years</u> | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|                       | 1964         | 6,838.10                | 2.36               |
|                       | 1965         | 6,382.58                | 2.21               |
|                       | 1966         | 8,127.20                | 2.82               |
|                       | 1967         | 6,373.30                | 2.21               |
|                       | 1968         | 6,434.90                | 2.22               |
| Average               | 1969         | 7,258.00                | 2.53               |
| Ac.Ft./Acre - 2.39    |              |                         |                    |

TABLE 1 - Continued

| <u>CANAL COMPANY</u>    |              | <u>LITTLE BEAR RIVER - CACHE COUNTY</u> |                    |
|-------------------------|--------------|---|--------------------|
| Paradise Irrigation Co. |              | Acres <u>1,841.47</u>                   |                    |
|                         | <u>Years</u> | <u>Ac.Ft. Delivered</u>                 | <u>Ac.Ft./Acre</u> |
|                         | 1964         | 5,872.06                                | 3.18               |
|                         | 1965         | 9,584.69                                | 5.20               |
|                         | 1966         | 11,240.00                               | 6.09               |
|                         | 1967         | 11,000.00                               | 5.98               |
|                         | 1968         | 11,194.70                               | 6.08               |
| Average                 | 1969         | 14,060.00                               | 7.13               |
| Ac.Ft./Acre - 5.60      |              |   |                    |

| <u>CANAL COMPANY</u>          |              | <u>LOGAN RIVER</u>      |                    |
|-------------------------------|--------------|-------------------------|--------------------|
| Logan Smithfield<br>Hyde Park |              | Acres <u>3,390</u>      |                    |
|                               | <u>Years</u> | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|                               | 1964         | 14,016                  | 4.13               |
|                               | 1965         | 17,663                  | 5.21               |
|                               | 1966         | 16,238                  | 4.79               |
|                               | 1967         | 15,124                  | 4.47               |
|                               | 1968         | 15,873                  | 4.68               |
| Average                       | 1969         | 17,013                  | 5.02               |
| Ac.Ft./Acre - 4.66            |              |                         |                    |

TABLE 1 - Continued

| <u>CANAL COMPANY</u>                       |              | <u>LOGAN RIVER</u>      |                    |
|--|--------------|-------------------------|--------------------|
| Logan Northern                             |              | Acres 3,600             |                    |
|  | <u>Years</u> | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|  | 1964         | 15,665                  | 4.36               |
|  | 1965         | 19,543                  | 5.43               |
|  | 1966         | 16,224                  | 4.51               |
|  | 1967         | 15,802                  | 4.39               |
|  | 1968         | 16,578                  | 4.59               |
| Average                                    | 1969         | 17,037                  | 4.73               |
| Ac.Ft./Acre - 4.68                         |              |                         |                    |
| <hr/>                                      |              |                         |                    |
| Twin Canals - Hyde Park<br>and North Field |              | Acres 2,260             |                    |
|  | <u>Years</u> | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|  | 1964         | 5,743                   | 2.54               |
|  | 1965         | 6,623                   | 2.93               |
|  | 1966         | 3,114                   | 1.37               |
|  | 1967         | 6,655                   | 2.94               |
|  | 1968         | 7,561                   | 3.35               |
| Average                                    | 1969         | 4,694                   | 2.07               |
| Ac.Ft./Acre - 2.53                         |              |                         |                    |

TABLE 1 - Continued

| <u>CANAL COMPANY</u>  |              | <u>LOGAN RIVER</u>      |                    |
|-----------------------|--------------|-------------------------|--------------------|
| Logan Northwest Field |              | Acres 3,000             |                    |
|                       | <u>Years</u> | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|                       | 1964         | 5,980                   | 1.99               |
|                       | 1965         | 6,469                   | 2.15               |
|                       | 1966         | 5,928                   | 1.97               |
|                       | 1967         | 7,084                   | 2.49               |
|                       | 1968         | 8,750                   | 2.91               |
| Average               | 1969         | 9,918                   | 3.31               |
| Ac.Ft./Acre - 2.47    |              |                         |                    |

| <u>CANAL COMPANY</u> |              | <u>BEAR RIVER - RICH COUNTY</u> |                    |
|----------------------|--------------|---------------------------------|--------------------|
| Bear River Diversion |              | Compact Acres 34,870            |                    |
|                      | <u>Years</u> | <u>Ac.Ft. Delivered</u>         | <u>Ac.Ft./Acre</u> |
|                      | 1964         | 99,437                          | 2.85               |
|                      | 1965         | 133,000                         | 3.82               |
|                      | 1966         | 87,648                          | 2.51               |
|                      | 1967         | 134,373                         | 3.85               |
| Average              | 1968         | 117,928                         | 3.38               |
| Ac.Ft./Acre - 3.28   |              |                                 |                    |

TABLE 1 - Continued

CANAL COMPANYBEAR RIVER - BOX ELDER COUNTY

| East Side                     | <u>Acres 11,378</u> |                         |                    |
|-------------------------------|---------------------|-------------------------|--------------------|
|                               | <u>Years</u>        | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|                               | 1961                | 41,810                  | 3.69               |
|                               | 1962                | 37,170                  | 3.27               |
|                               | 1963                | 36,670                  | 3.23               |
|                               | 1964                | 36,140                  | 3.18               |
|                               | 1965                | 40,240                  | 3.52               |
|                               | 1966                | 45,520                  | 4.01               |
| Average<br>Ac.Ft./Acre - 3.41 | 1967                | 34,530                  | 3.04               |

| West Side                     | <u>Acres 52,572</u> |                         |                    |
|-------------------------------|---------------------|-------------------------|--------------------|
|                               | <u>Years</u>        | <u>Ac.Ft. Delivered</u> | <u>Ac.Ft./Acre</u> |
|                               | 1961                | 180,790                 | 3.42               |
|                               | 1962                | 170,360                 | 3.24               |
|                               | 1963                | 172,990                 | 3.29               |
|                               | 1964                | 160,290                 | 3.06               |
|                               | 1965                | 182,240                 | 3.47               |
|                               | 1966                | 202,740                 | 3.86               |
| Average<br>Ac.Ft./Acre - 3.35 | 1967                | 164,280                 | 3.13               |



THE STATUS OF WATER RIGHTS  
IN THE BEAR RIVER BASIN IN IDAHO

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by

R. Keith Higginson, Director  
Idaho Department of Water Administration

Introduction

Water rights in the Bear River Basin in Idaho exist in many different forms. Some rights can be accurately described, while many others have been established by reason of use but are, as yet, undefined. A brief description of each type of water right follows:

- A. Use Right -- Such rights are established by diversion and application to a beneficial use. No permit is required and no record is made of the extent of such right. A person can still appropriate surface water by this so-called "constitutional" method, but the authority to do so for ground water was cut off in 1963. These appropriations are covered by Article XV, Section 3, of the Idaho Constitution which guarantees the right of the public to appropriate water. However, many Idahoans misunderstand this guarantee as a prohibition against a mandatory permit statute. It has never been so construed. What the courts have said is that the present statute is not mandatory and exclusive.
- B. Claim -- In 1967, the Legislature provided for the filing of claims to water rights established by diversion and application to beneficial use. The purpose of this was to provide a means of recording and inventorying existing uses and preserving testimony for future use. This procedure allows the recording of claims-to-use rights. Such claims are not approved by our Department, although notice of each is published for public information. Such claims are prima facie water rights subject to adjudication by the court.
- C. Permit - License -- A right may be acquired by obtaining a permit from the Department, applying the water to beneficial use, submitting proof of such use, and receiving a water license. This procedure was established in 1903 for surface water and in 1951 for ground water. The 1967 Legislature combined the two acts so that the procedure is now uniform. A license is a prima facie water right subject to adjudication.
- D. Decreed - Adjudicated Right -- A right in each of the three previous categories may subsequently be reviewed, defined and limited by the court. Such action of the court is usually final, although many decrees are incomplete as to all the detail necessary for proper regulation of use and must be reconsidered. In 1970, the Legislature provided for the first systematic determination of water rights. Under that act, the Department may be authorized to gather information and prepare a proposed finding of water rights for consideration by the court. No basin-wide study of water rights in the Bear River Basin is presently planned under this act.

Quantities of Water Appropriated

For administrative purposes we have divided the state into hydrologic units or basins. Three of these fall within the Bear River Drainage. Unit 11 includes the Bear River and its tributaries from the Utah and Wyoming borders downstream to the Soda Point Dam. Unit 13 is the Bear River and tributaries from Soda Point Dam downstream to the Utah border. Unit 15 is the Malad River drainage. A summary by diversion rate or storage of the water rights on record is listed below. Care must be taken in using these figures, since they contain considerable duplication. For example, the rights of the Utah Power and Light Company are included in both the permit-license and decreed rights figures. Also, the rights covered by the major decree are listed only under Basin 11.

| Type of Right  |     | Hydrologic Basin |           |           |
|----------------|-----|------------------|-----------|-----------|
|                |     | 11               | 13        | 15        |
| Use            | cfs | Unknown          | Unknown   | Unknown   |
|                | AF  | Unknown          | Unknown   | Unknown   |
| Claimed        | cfs | 6,196.58         | 0.16      | .03       |
|                | AF  | -                | -         | -         |
| Permit-License | cfs | 4,077.76         | 5,954.17  | 176.60    |
|                | AF  | 61,799.00        | 24,634.86 | 19,155.00 |
| Decreed        | cfs | 8,692.70         | 399.97    | 5.80      |
|                | AF  | -                | -         | -         |
| Totals         | cfs | 18,967.04        | 6,354.30  | 182.43    |
|                | AF  | 61,799.00        | 24,634.86 | 19,155.00 |

Water Right Provisions

The so-called "Dietrich Decree" contains the major water rights on the river. A few of its provisions would probably be of interest. The Bear Lake storage rights of the Utah Power & Light Company consist of 3,000 cfs right of 1911 priority, and 2,500 cfs right of 1912 priority, to divert river flows through the Dingle and Rainbow inlet canals for storage in Mud and Bear Lakes ". . . together with the waters naturally flowing into or arising in said lakes. . . . and to be thereafter released from said reservoir at the Plaintiff's (Company's) pleasure . . . for use at various points of diversion now existing, or which may hereafter be established by the Plaintiff for the generation of electric power, and for such irrigation or other beneficial purposes, recognized by law, as the Plaintiff may devote or dedicate said released stored waters, by use, sale, rental, or otherwise."

This rather unusual right has been somewhat modified by the Compact's Irrigation Reserve provision inasmuch as the company's withdrawal of water from the lake solely for power is limited to water above a certain storage elevation. The legal implications of the Compact provisions upon the prior federal court decree may need to be established.

Judge Dietrich included in his decree several rights under which water was diverted in Utah. While recognizing that the determination of such rights was beyond his jurisdiction, he provided that they should be recognized to the extent that, in the administration of the Idaho rights, we must see that there is delivered at the Utah state line such quantity as is necessary ". . . together with natural increment below said Utah line, to satisfy said rights in accordance with their dignity and priority . . ." This provision could be further modified by implementation of the provisions of Article IV A.3.a. of the Compact with regard to interstate delivery schedules in the Lower Division.

It can be said that there is no unappropriated surface water in the Pear River Drainage in Idaho except for flood flow periods when water is spilling past the power plants. However, there may still be opportunity for additional project development in the event satisfactory arrangements can be made with present right holders. The Department has recently issued or is currently considering a number of applications for storage projects as follows:

| Right No. | Applicant                   | Source                       | Quantity   | Status                      |
|-----------|-----------------------------|------------------------------|------------|-----------------------------|
| 11-2159   | Montpelier Irrigation Co.   | Montpelier Cr.               | 4,000 AF   | Approved-Under Construction |
| 11-2160   | Farmers Land & Irrig. Co.   | Soda Creek                   | 2,500 AF   | Approved-Completed          |
| 11-2162   | Caribou Water Devel. Co.    | Bear River                   | 40,000 AF  | Approved-P/D-4/73           |
| 11-2164   | Ovid - E.Liberty Irrig. Co. | Emigration and Canyon Creeks | 2,500 AF   | Approved-P/D-5/77           |
| 13-7007   | U.S. Bureau of Reclamation  | Cub River                    | 45,000 AF  | Pending                     |
| 39297     | U.S. Bureau of Reclamation  | Bear River                   | 325,000 AF | Pending                     |

Approval of any application is made subject to all prior rights and we assume that the Power Company's rights will be recognized in development of any of these projects by storing only during periods when the Company cannot use the entire flow or by making satisfactory arrangements to compensate the Company for loss of power revenue.

### Ground Water

The Compact has no provision governing the ground waters of the Bear River Drainage. However, I feel that they cannot be ignored since they represent a tremendous potential in certain areas and development may affect streamflow. Our ground-water law protects the prior right holder but provides that a reasonable exercise of this right shall not block the full economic development of the resource. The prior appropriator is protected in the maintenance of "reasonable ground-water pumping levels" which may be established by the Department. Our first attempt at establishing such levels statewide is now in final draft form and will be published soon.

### Summary

In conclusion, I think it is safe to say that we can identify the rights to divert the major quantities of Bear River water in Idaho. Rights on many of the small tributaries have not been adjudicated, nor have any ground-water rights. The Dietrich Decree is dated July 14, 1920. It probably needs to be reviewed and updated to reflect changes which have taken place in the past 50 years. However, there are no plans to do that at present.

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