

PUBLIC HEARING

BEAR RIVER COMPACT COMMISSION

NOVEMBER 22, 1976

LOGAN, UTAH

PUBLIC HEARING

Logan, Utah

November 22, 1976

Public Hearing held in Logan, Utah, on November 22, 1976, concerning the proposed modification of the Bear River Compact. The meeting was held by the Bear River Commission, as required by law, and was presided over by Mr. Wallace N. Jibson, Chairman.

CHAIRMAN JIBSON: Ladies and gentlemen, it is past time that was scheduled for the public hearing conducted by the Bear River Commission, to begin at 1:00 p.m. There has been some misunderstanding in the time, but we have not changed from the time listed in the legal notices that were published in the papers.

The State of Utah will conduct an informational type meeting, not to exceed one hour; but before I turn the time over to Dan Lawrence, who is the Interstate Streams Commissioner for Utah, I would like to introduce the Commissioners who are here with us today, and who will be conducting the hearing after this preliminary meeting.

COMMISSIONERS PRESENT WERE:

Daniel F. Lawrence, Utah  
Paul Holmgren, Utah  
Calvin Funk, Utah (sitting for Gordon Peart)  
  
J. W. Myers, Wyoming  
George Christopulos, Wyoming  
S. Reed Dayton, Wyoming  
  
Griff Jenkins, Idaho  
Dan Roberts, Idaho  
Clifford Skinner, Idaho

Among others present were:

Dee C. Hansen, State Engineer, Utah  
Keith Higginson, State Engineer, Idaho  
  
Ed Skeen, Legal Advisor to the Bear River Commission  
Roland Robison, Solicitor's Office  
  
Ed Southwick, Chairman, Utah Board of Water Resources  
Marion Olsen, Bear River Negotiator, and Utah Board of Water Resources

The meeting was then turned over to Daniel F. Lawrence, who conducted the information meeting; following which, the formal Hearing was held.

CHAIRMAN JIBSON: We will go into our formal hearing. This is a public hearing, ladies and gentlemen, in which we would like anyone who desires to make a statement or give testimony to this Commission to feel free to do so.

The Commission sitting here at the table is actually conducting the hearing. In so doing, we have to observe certain formalities that are necessary to accomplish the purpose of this type of meeting.

As most of you know, legal notices have been published in all of the newspapers in the areas affected, giving a brief summary of the proposed changes and giving pertinent information on the hearings, time and place, and stating that a draft of the revised Compact was available in the County clerk's office in each County for examination by the public.

As you came in today, we distributed copies of the brochures prepared by Utah, along with a summary of the Compact revisions. So you should have those available.

Now, did everyone get a chance to sign this roll, which indicated whether or not you might want to make a statement today? It will serve as a roll for those attending the meeting also.

We have a number who have indicated that they would like to testify. We have a number who are undecided. I will call these in the order that I have them here. We would like those individuals offering testimony to come to the front, to the left of the table here, and use the rostrum where we can pick up your testimony with the mike. If you have written statements in additions to your oral testimony, they should be turned in to the Secretary. We want testimony to be pertinent to the proposed revised Compact. Following each statement, Commission members only may ask questions of the witness for the purpose of clarification. The Commission, however, will not respond at this hearing to the statements, and no debate will be permitted.

So with those instructions, we have the first one, Floyd Monson, an Idaho State resident, who wishes to make a statement.

FLOYD MONSON

I am Floyd Monson, from Preston, Idaho. I have been running the Union 76 station in Idaho before the Union 76 Company closed it; and I still run the business in town for Union 76.

I was born in Lava Hot Springs, Idaho. My father was ditchmaster for many years on the Topaz Irrigation System; and he was credited with saving many losses because he was a peacemaker with many people. This is the statement that I would like to make about the Bear River - because I am interested in keeping Idaho's water in Idaho, and to protect Idaho's future.

Under the proposed new river agreement, we in Idaho would lose our first rights on developing all the water for Idaho except for minimum flow for the fish and game that has to be let down the river, even during irrigation season, and the 125,000 acre-feet proposed for our future needs. The reason we would lose first rights is because the power company could not control the water for their own and our Idaho needs.

We already have first rights on Bear River water now to develop it in Idaho for our own and our future generations' needs. Why voluntarily place controls on ourselves? Even new irrigation wells not on the river in the whole Bear River drainage area would have to go through the new river compact and be counted against the 125,000 acre-feet proposed for our future needs. It is now law that irrigation wells have to have water meters on them. We have a good thing going for Idaho by keeping the water here in Idaho by keeping the river agreement closed the way it is now.

There is no reason to open the door to Utah and honor all their water filings before 1976, which contain demands for more water than we have water in Idaho, and voluntarily place strict controls on our future generations. Under the proposed new river agreement state lines would have no boundaries during a water-short year in Utah. Governor Andrus said 2 years ago, there would be no exportation of Idaho water. Our water in Idaho is our life blood for our future. This summer and fall has been water-short. We must be prepared for our future, for who knows that the dry seasons will not continue.

Union laws specify that the Power Company must hire full-time employees to run their generators on the river. Idaho is a Union state and if the Power Company loses control of the river they will not be able to run the power plants part-time on the river; they will just have to shut them down. The power rates will go up and what sprinkler irrigation farmer could afford this expense with the economy in the condition it is now for the farmer?

With Utah below us on the river, the only way to protect ourselves is to only let minimum flow down the river for the fish and game and store all the rest of the water up in Bear Lake for our future needs, and during irrigation season this is the way the power company has been handling things. The power company has been doing a good job, and it will not do Utah people any good to file on power water or minimum flow. Any intelligent person knows this is the way things must be kept going to keep ourselves in Idaho prepared for water-short years. Let me repeat, Utah's water filings below us have been trying to get our Idaho water for years and have not been able to touch it because the power company controls the water for our and their future needs. This proves we already have first right on developing the water for our Idaho people, with the river agreement closed the way it is now.

The water Mr. Budge's company sold Utah Power is land-use water and according to Idaho's laws must remain this way and cannot be used for anything else and only about 1/3 of it can be used for around the new proposed power plant for settling ponds on the land and the rest will still have to be used for agricultural usage. For Idaho it was a good thing he did what he did.

Under the new proposed river agreement all Idaho water above the decreed rights except for 125,000 acre-feet "we will lose all future first rights on, for developing the water for us and our future Idaho people". This includes all the water in the whole Bear River drainage area here in Idaho, including water for our future irrigation wells not on the river which now must be metered. We cannot ratify the new proposed river agreement and be fair to ourselves and our future generations here in Idaho.

I thank you.

Floyd Monson  
Preston, Idaho

CHAIRMAN JIBSON: Do we have any questions of Mr. Monson? Thank you, Mr. Monson.

The next testimony we have will be from James S. Hooper, Superintendent of power, Utah Power and Light Company.

MR. HOOPER: Mr. Chairman, members of the Commission, ladies and gentlemen. I am James S. Hooper, Superintendent of Power of the Utah Power & Light Company, Salt Lake City, Utah. I have a prepared testimony for your consideration.

Utah Power & Light Company

TESTIMONY

Public Hearings  
Bear River Compact Revision  
November 22, 23, 24, 1976

HISTORY

In 1909 Telluride Power Company started construction of facilities to divert Bear River waters into Bear Lake. In 1912 Utah Power & Light Company acquired the interest of Telluride Power Company, as well as Utah-Idaho Sugar Company water rights, real and personal property, and continued with the project. In 1918 Utah Power & Light finished construction of the Lifton Project which consisted of an inlet canal, pumping plant, outlet canal and dike. Subsequently, additional power plants and canal facilities were constructed, the last of which being Cutler Generating Station and Reservoir in 1928. The total original cost of the hydro facilities was approximately \$24,000,000. To date the Company has accumulated book depreciation in the amount of approximately \$7,000,000, leaving a net book value of approximately \$17,000,000.

WATER RIGHTS

Utah Power & Light Company has water rights on the river which are recognized by two Federal Court Decrees. Pursuant to the Dietrich Decree dated July 14, 1920, Utah Power & Light Company had the right to divert at Stewart Dam and to impound and store in the

Bear Lake Reservoir, consisting of Bear Lake and Mud or North Lake, all of the waters of Bear River to the extent of 5500 cubic feet per second, together with the waters naturally flowing into or arising in said Lakes. Pursuant to the Decree, the stored waters were to be released from the Reservoir at Utah Power & Light's pleasure for use at various points of diversion then existing or which thereafter were established by Utah Power & Light Company for the generation of electric power and for such irrigation or other beneficial purposes recognized by law as Utah Power may specify. Additional downstream water rights were also recognized in that Decree. In the Kimball Decree dated February 21, 1922, Utah Power & Light Company's water rights were specified. The Court adopted the Dietrich Decree language in terms of the use of the waters.

#### CONTRACTUAL OBLIGATIONS

Utah Power & Light Company has entered into several contracts obligating it to provide firm or continuous amounts of water for irrigation and other beneficial purposes. These contracts include the Utah-Idaho Sugar Company contract requiring the delivery of 900 second feet during the irrigation season and 150 second feet in the non-irrigation season; the West Cache Irrigation Company contract requiring the delivery of 150 second feet during the irrigation season; the Cub River Irrigation Company contract requiring the delivery of up to 20,000 acre feet annually.

There are several other annual water agreements such as

the one with Last Chance Canal Company, and Twin Lakes Irrigation Company requiring the delivery of specified amounts of water. The Power Company's operation of the level of Bear Lake is greatly influenced by these irrigation agreements.

EFFECT OF PROPOSED BEAR RIVER COMPACT AMENDMENT  
ON UTAH POWER & LIGHT COMPANY'S OPERATION

If the Bear River Compact Amendments are adopted in their present form and additional storage is fully developed the Company may be faced with shutting down the Bear River generating plants due to lack of economic justification of operating on a reduced output basis. In the event the Power Company must shut down the generating facilities of its five Plants it would be necessary to replace this capacity and energy by construction of additional steam electric generating plants. Replacement of the 100,000 Kw peaking capability now provided in the summer time would result in an estimated annual cost to our customers of \$7.5 million based on current costs. Additionally as previously indicated there is a remaining net book value of \$17,000,000 for the Bear River generating facilities which cost would be borne by Utah Power & Light customers.

In the event the Utah Power & Light Bear River System is retained with reduced water available resulting in a change of operating plan, the capacity replacement during the summer period would still be necessary by the construction of steam electric plants.

While some energy from the Plants would be available the continued expense of operation along with the necessity to replace summer capacity would result in an annual increased cost to Utah Power & Light customers of some \$12,000,000 per year.

#### UTAH POWER & LIGHT CARIBOU PROJECT RIGHT

Utah Power & Light Company in addition to its rights which have been specified has an interest in what is known as the Caribou Project Filing, which Filing is for the development of 40,000 acre feet of water at or near Soda Springs, Idaho. In light of the continued load growth in the Company's service area the Caribou Project right is essential and must be protected.

#### CONCLUSION

In conclusion, we wish to emphasize that Utah Power & Light Company has long standing water rights on the Bear River and pursuant to those rights has invested and plans to invest considerable sums of money in generating facilities. The replacement costs to Utah Power & Light Company's customers are great. These costs should be given careful consideration before adopting the proposed Amendments in their present form.

CHAIRMAN JIBSON: Do we have any questions for clarification?

MR. JENKINS: Mr. Hooper, what percent of the current total generating capacity of Utah Power & Light Company is represented by the five plants on the Bear River?

MR. HOOPER: The current energy developed by the Bear River plans is approximately 5% to 6% of the energy required for our customers.

MR. FUNK: Is Utah Power & Light now an exporter of power out of the State of Utah, regardless of source of generation?

MR. HOOPER: We have adequate generating capability to take care of our service territory. We've had additional surplus purchases that we do export out of our area.

MR. JENKINS: How does the Power Company contemplate - were we to have a repeat of the dry cycle of the '30s, and the water just not be available in the River - what would be the Power Company's contingency plan under present-day situation for meeting the power needs which would continue even with reduced flows?

MR. HOOPER: In meeting these needs, we would have to, under the contingent years, take care of this requirement out of our reserves. In planning a generating facility or a facility to take care of the load, reserve is considered for these contingencies and other plant contingencies.

CHAIRMAN JIBSON: Any other questions?

Thank you, Mr. Hooper.

Our next witness will be E. J. Holmgren, from Tremonton.

E. J. HOLMGREN

I'd just like to comment. My dad was on this water board many years ago, and they fought very hard for the water for Bear River Valley. But there is this question that goes through my mind: Now, there's water going into the Salt Lake, and it's got to be pumped. I don't understand this very well. And I'm sure somebody's entitled to that water. That's one comment.

The other comment -- Bear River Valley was the first to put water under irrigation system in the good old days. We should have a first right to that at this time. Now, any water that is going to waste, everybody knows it should be used. How to solve these problems, I'm sure that's why we're here. And I'm just putting it in short, easy talk that anybody can understand. And I'm sure this is what we're up here to try to solve, without any big words or anything.

That's all I had to comment today.

CHAIRMAN JIBSON: Any questions of Mr. Holmgren?

MR. LAWRENCE: Mr. Holmgren, are you representing yourself today, or a company?

MR. HOLMGREN: I'm representing the Bear River Livestock Association.

CHAIRMAN JIBSON: Thank you, Mr. Holmgren.

Our next witness will be Rulon Smoot, President of the South Box Elder Farm Bureau, Corinne.

MR. SMOOT: I'm Rulon Smoot, President of the South Box Elder Farm Bureau, and I live at Corinne. I have a prepared statement I would like to read.

The following statement is respectfully submitted by the North and South Box Elder Farm Bureaus and the Bear River Water Users Association, representing some 1600 water users holding contracts with Utah Power and Light Co. for the delivery of storage water from Bear Lake.

After serious consideration of the changes being proposed in the Bear River Compact and the need for such changes, most of which we agree with, it is our feeling as water users that we can not support the changes specified in Article V of the proposed compact.

Utah Power & Light Company has since the early 1930's delivered water to the farms and ranches receiving water from the canals that divert at Cutler Dam. Under both the Kimball and Dietrich Decrees, these canals became entitled to a total direct flow and by contract the Power Company guaranteed that this flow would always be available, either as direct flow or by the release of stored water from Bear Lake. In only a few years has this right been satisfied by direct flow. In most years the release of stored water from Bear Lake was necessary to satisfy the right. The draft compact now proposes to subordinate this right to receive released stored water to the construction of new dams for the storage of additional water upstream from Stewart Dam.

The compact negotiators have attempted to assure us that their computer will show that we will not suffer any impairment of our rights under the draft compact. Even assuming that this assertion were true, we submit that the upstream storage should not be given a priority ahead of our rights; and we submit further that any increase in upstream storage with a priority ahead of our right can only serve to jeopardize a right that up to now has always been satisfied in full.

For these reasons and others, we request that changes be made in the proposed compact that will guarantee that our rights will be protected and satisfied in full as they have been in the past.

Respectfully submitted,

North Box Elder County Farm Bureau

*Wesley Satt*

South Box Elder County Farm Bureau

*Arthur J. Smoot*

Bear River Water Users Association

*J. Lee Nelson*

CHAIRMAN JIBSON: Does the Commission have any questions in regards to this statement?

MR. MYERS: I would like to know how much storage water from Bear Lake your group uses annually?

MR. SMOOT: I don't have this information. It varies from year to year. In only two or three years since this contract with Utah Power & Light has the direct streamflow satisfied it. Of course it varies from year to year how much is taken out.

MR. JENKINS: Do you have any suggested language that would meet your objection to the current proposal?

MR. SMOOT: No; I don't have any to submit now. There has been some talking of a guaranteed level to the Lake, making the rights secondary to this - the additional water that is being talked about, the 28,000 acre-feet depletion being secondary to a level on the Lake - this would have to be worked out. We have, of course, no objection to using all the water on the Lake, except we insist that our rights be protected and this water be secondary to our rights.

CHAIRMAN JIBSON: Mr. Smoot, a question here, for clarification. If you are dependent on Bear Lake and the natural flow combined for your rights, if there were water in Bear Lake to satisfy your rights at any particular time, along with the natural flow, you would not have any objection in that particular year at that particular time, to storage upstream. Is that correct?

MR. SMOTT: Yes; if water was in the Lake and if our rights were protected, and these rights were secondary to ours, we would have no objection to any water being stored above it - as long as our rights were protected and we had a flow of water.

Now - I'm talking off the top of my head, and I'm not the last word on this thing - of course you understand that; but as long as our rights are protected, and as long as we have a guaranteed right to the original rights that we have now on the Lake, any water above that we think should be developed and should be divided.

MR. CHRISTOPULOS: What rights do you have now? What type of a contract do you have now?

MR. SMOOT: we have a contract of 900 second-feet in the summer, and 100, some odd, during their winter months.

MR. CHRISTOPULOS: This is part of the Sugar Company's contract?

MR. SMOOT: Yes; this is just part of the Sugar Company's contract.

MR. LAWRENCE: Mr. Chairman - correct me if I am not saying this correctly; but, George, I think the statement from the Farm Bureau suggesting that all of the water users, collectively, in Box Elder County would have the Sugar Company contract.

MR. SMOOT: That's the ones that we are talking about.

CHAIRMAN JIBSON: Any other questions?

Thank you, Mr. Smoot.

Next is Mr. Steven Bodily, President of the Cache County Farm Bureau.

STEVEN BODILY

I'm Steven N. Bodily of Lewiston, representing the Cache County Farm Bureau.

The following is a policy statement of the Cache County Farm Bureau: In view of vital importance of water in this area it is imperative that our water resources be developed for their maximum potential. We support revisions in the Bear River Compact that will make possible these developments. However, we feel that existing water rights must be protected. We share the concern of some of the lower division water users that the language of the proposed revision to the Bear River Compact does not adequately protect storage rights in Bear Lake. While stream flow over the last 45 years indicates that there would be no water shortage for lower division users with proposed changes in upper division storage, we feel that any risk of a shortage should be borne by those requesting the increase in storage and not by those with existing storage rights in Bear Lake.

Wording of the proposed revision could be changed to state that should Bear Lake reach a level critical to the storage of water for downstream use, water stored in upper division impoundments must be released to meet the water needs of downstream users based on prior rights.

We feel the risk of such a situation occurring is remove, but nevertheless is possible; and established rights should be protected.

Should it become a question of accepting the proposed revision as presently written or abandoning the revision altogether, we would prefer the proposed revision, allowing further development.

CHAIRMAN JIBSON: Any questions of Mr. Bodily? Thank you.

Our next witness is Edward Southwick, Chairman of the Utah Board of Water Resources.

STATEMENT REGARDING  
BEAR RIVER COMPACT MODIFICATION

November 22, 1976

I am Edward H. Southwick, Chairman of the Utah Board of Water Resources.

The responsibilities of the Board include the making of investigations and studies carrying out comprehensive planning and the implementation of plans which would bring about the optimum utilization of Utah's water resources to the end that "every mountain stream and every water resource within the State can be made to render the highest beneficial service". As a part of this responsibility, the Board is also charged with protecting Utah's rights to interstate streams water, and directing the negotiations with sister states.

To this end, the Board, in concert with the Governor, appointed negotiating teams, and has given general direction to Utah's negotiators.

It is the stated opinion of the Board of Water Resources that every aspect of the Bear River Compact and the Bear River system has been thoroughly investigated over the past eight years, and the negotiators from all three states are thoroughly aware of the consequences and implications of modifications to the Compact. The Board is convinced that it would be impossible for Utah to fully utilize the water resources which are available to the State without an agreement with Idaho and Wyoming as to an allocation of the water. This has been demonstrated in years past when water development projects have been considered, but failed to materialize - primarily because of the problem of water allocations between states.

The Board of Water Resources has carefully considered the modifications which are proposed. At a regular, public meeting of the Board, the Board unanimously approved the proposed Compact provisions. Therefore, it is the position of the Board of Water Resources, and its recommendation to the Bear River Commission, that the Commission proceed with the necessary public hearings and such minor modifications as might be prompted by the hearings, and present the revised Compact to the three State Legislatures and to the Congress of the United States for ratification.

CHAIRMAN JIBSON: Any questions of Mr. Southwick?

Our next witness will be Don Thornley, a stockholder in the Smithfield and Logan Water Irrigation Company.

MR. THORNLEY: Mr. Chairman, I have decided not to testify today.

CHAIRMAN JIBSON: We have come to the end of those who wanted to make statements. Do we have any others who wish to testify?

That is all we have.

Is there any other business of the Commission that we should take care of? If not, this Hearing will be adjourned.

Adjournment at 2:10 p.m.