

PUBLIC HEARING

BEAR RIVER COMMISSION

DECEMBER 11, 1978

LOGAN, UTAH

BEAR RIVER COMPACT HEARING

Logan, Utah - December 11, 1978

10 a.m.

CHAIRMAN JIBSON: Well it's past time to start. Connie, and gentlemen- Our public hearing will come to order. I think first we should introduce the Commissioners who are seated at the table and who are presiding at this hearing.

We'll start down at the end with the Wyoming group. George Christopoulos, the State Engineer; then representing the Upper Basin of Wyoming, from Evanston, J. W. (Wes) Myers; John Teichert, who is representing the Lincoln County basin in the absence of Reed Dayton, is not here; and Clem Lord, our Interstate Streams Commissioner from Wyoming, will be sitting in for John.

Going to the Utah group: We have Paul Holmgren, representing the Lower Basin in Utah; Dan Lawrence, the Director of the Division of Water Resources, who spearheads the Utah delegation. We're happy to see Dan back with us. As most of you know, he has been recuperating from Open Heart Surgery. He looks just as good as he did the last time we were in meeting; so I guess he's coming along fine. We do not have the delegate from the Upper Basin of Utah, Rich County - Gordon Peart -

MR. LAWRENCE: Dee (Hansen), why don't you come up and sit for him?

CHAIRMAN JIBSON: From Idaho: We have Cliff Skinner, who represents the Upper Basin of Idaho. Cliff is from Dingle. He's presently serving as vice-chairman of the Commission. We have Dan Roberts, who represents the Lower Basin in Idaho; and we have Don Gilbert, President of the Last Chance Canal Company, who is representing the Central segment of the River in Idaho. We also have with us in the audience our ex-officio member from Idaho - Steve Allred, the Director of the Idaho Water Resources Division, who serves with the Idaho Commission without vote.

We have Connie Borrowman, our faithful secretary, When she's not working for the Bear River Commission she has a few hours to put in for Dan, as his Secretary. We also have, from Dan's office, Norm Stauffer

original Negotiating Commission for some 12 years in the formulation of the present Compact. New faces have replaced practically all of the old group. I would like to assure you that the Commission members have been, over the years, and are today, very dedicated representatives of their particular segments of the River, and of the three State Departments that deal with water resources.

Public information meetings were held two years ago, in Idaho and Utah, at least - I'm not sure that we had any in Wyoming; but detailed discussion took place in those meetings of the amendments that were being proposed at the time. In the ensuing two years, two or three significant modifications to those proposed amendments have been suggested, and are now incorporated in what we call the July 17, 1978 working draft of the Compact. Public informational meetings have not been repeated because the modifications, through quite significant, are brief, and have been summarized in the handout that you were given as you came in. These changes since 1976 are included as sub-paragraphs to the changes that were proposed in November, 1976. Legal notices that included a summary of principal changes since 1976 have been published in about 11 newspapers that are circulated throughout the Basin and, as I say, we did summarize the principal changes since our 1976 hearings. In addition, a working draft copy of the Compact has been forwarded to each county clerk and he was asked to display these in the county courthouse for public review and inspection for some weeks prior to the hearing.

The Bear River, as you know, has been administered now for some 21 years, since its signing into the law by President Eisenhower in 1958, under terms of the present Compact. This, in turn, came after many years of negotiation, and the negotiation centered about two major areas of conflict. Most of you are aware of these. First, the real need of an equitable division of natural flow water in the various states' sections of all three states, in the basin above Bear Lake. And the second major area of conflict was an allocation of storage above Bear Lake - again in all three states - that would not be junior in priority to the decreed rights that the Power Company hold in Bear Lake under the Dietrich Decree.

Debate will not be permitted relative to the statements at this time.

Now, with this introduction, we will devote the remainder of the hearing to those statements and testimony. And if there are any whose names I do not call, who would like to give testimony, you will be given that opportunity after we hear from the others.

We are primarily a Utah group here today; although some from Idaho are here - Last Chance Canal Company. Two years ago we did take a few minutes for Utah to make a statement. I would be happy to entertain that today, if you would like, Dan, or should we go ahead with our testimony at this time?

Okay - the first one that I come to here that desires to make a statement is Marion Olsen. Marion is President of the Utah Water Users Association.

MARION OLSEN

MR. OLSEN: Ladies and gentlemen; I'm glad to be here today and sit in on the discussion in reference to the division of the Bear River Compact. For many years I have been very interested in the developing of the unused, unappropriated water of the Bear River - that water that bypasses the users, and ends up, unused, in the Great Salt Lake. I'm a firm believer that for this natural resource - the time has long passed that development ought to be made. And I feel that enough background work has been done, enough discussions have been held, enough information has been brought forth - and to my knowledge all parties involved and interested in the use of the waters and the ownership of the Bear River have been involved in meetings and their problems, their questions, have been aired. And I feel that the proposal that is before us now is a good one. I think it's very timely that we move forward with the proposed amendments to the existing Compact; that the unused water be appropriated into the various categories of appropriation that have been mentioned in the proposed amendments, whereby development can begin on the River.

There was one part of the proposal, Mr. Chairman, if I am within the limits of my rights today to discuss here, just briefly. There was a question raised by our board of directors - and it applies to pertaining to the division to storage under the additional allowance granted to the upper Bear River we would not be permitted to store if the water level in Bear Lake was below 5911 feet. The question arose as to what time of the year was that determination to be made in Bear Lake? It would be necessary for us to start storing in our reservoir commencing maybe in March which is, I would think, the low point as far as Bear Lake is concerned. In other words, Bear Lake may reach above this figure in April; or if it doesn't reach it in April or May we wouldn't be allowed to store; yet it may reach it at that point and we would be denied the privilege of storing.

Would we be allowed to store, and then to spill in the case the level of the Bear Lake didn't reach that point? And we wondered if there was a date determination on when this requirement would have to be met?

CHAIRMAN JIBSON: May I answer briefly? We don't have set dates for storage of the additional allocation above Bear Lake. We do have stipulations that this storage cannot take place when it would interfere with direct flow rights in any section of the River, or other prior storage rights. So what it amounts to, essentially, is that in most years we can legally store from about October 1 or October 15 - occasionally we continue to pull Bear Lake down until the 15th for sugar beet acreage, and so forth - from about October 1 to the 15th, on through the high-water period, and beyond the high water period until such times as direct-flow rights in any River section cannot be filled because of natural flow there. So, therefore, it would^{not}/be tied directly to the elevation of Bear Lake. But when you mentioned that the elevation of Bear Lake might be the lowest in March or April, this would be the case only if they were releasing water from the Lake for flood control purposes; and at that time you wouldn't need to worry about the 5911 anyway. So, generally speaking, when 5911 may come into effect, it would probably be in the fall of the year that it might restrict your storage. If it were near 5911 by the time the snowmelt runoff brings the Lake above 5911, then you would be permitted to store. So it would vary in some years.

MR. HANSEN: Well, I know; but isn't it true that if Bear Lake is at 5911, the chances of Bear Lake filling and spilling are almost non-existent in one year?

DR. STAUFFER: Yes, to fill and spill. Their storage isn't subject to that spill.

MR. HANSEN: Their other storage isn't.

MR. LAWRENCE: Neither is this. Bear Lake doesn't have to spill to permit storage; it has to be above the 5911.

MR. HANSEN: That's true. But what Joe's worried about just isn't going to happen. It just can't happen. We've never had a year that run that much water off.

CHAIRMAN JIBSON: Well, as far as the spill water, I think in connection with what you said, Dee, that if you had a series of years that brought the lake down below 5911 - and we remember that the 5911 is only about 3 feet below the Lake elevation in 1977 - and if we had a series of years to bring it down to 5911, you may not have supplies to fill this additional water upstream; and I think that would be quite likely, at least in some of your reservoirs. Because when the Lake is down there it means that we have deficient runoff in the entire Basin.

MR. LAWRENCE: But if I visualize it right, they store their 36,000 during that period in the fall and winter flow; and if the Lake did get up to 5911 - supposing it was 5910.9, or something - if it did get up to 5911, if they had the other allocation filled they could store in high water.

CHAIRMAN JIBSON: Right. If they had enough to fill the 36,000.

MR. LAWRENCE: I generally agree with Dee that it's not very probable.

MR. FRANCIS: Alright, Mr. Chairman; with that testimony on the record from the experts, we would accept that we need not worry about this situation occurring - so I would like to present this written statement for the record:

But after the Commission adopts this, or something very similar, then of course it has to go to the legislators. I felt it should be on the record that each state has given up more than it wanted to - essentially more, I think, than where we started from. It has been a good effort. I think it has been a very statesmanlike effort on the part of the participants; and I certainly hope that we all knew what we were doing as far as our citizens were concerned. That we were representing the feeling of the people, and that would show up when we go to the legislatures.

MR. ROBERTS: Wally, I have a comment I would like to make.

I'm Daniel Roberts. I'm from the Preston area. And because we don't have too many people here today, I'd like you to know, and I'd like it to be a part of the record, that our people were notified. I personally took our summary that was prepared by the Idaho people to be distributed to our irrigation people and others in Idaho who were interested in this; and I personally went to Malad last Friday and saw to it that those people had this information; saw that they personally had an invitation to attend this meeting so that they wouldn't come back and say that they didn't know about it. So I did that last Friday. And then I did the same thing in Franklin county.

Our people may be at Montpelier tomorrow; but I wanted it as part of the record that everybody was notified. There were two publications in the local paper and then I made sure these personal invitations were given out; so our people were notified and knew that these meetings were being held. And they were invited to come and give testimony if they desired.

CHAIRMAN JIBSON: Thank you.

MR. HANSEN: Just for clarification purposes - and this may be a small point - on the summary sheet, paragraph 4, it indicates that a portion of the original draft that pertained to the Migratory Bird Refuge had been dropped; and that's true. The last sentence in 4a there, bothers me a little bit; and I'm sure it wasn't intended in the summary. But it says, "Eliminating the reservation in no way restricts further development for the Refuge." I think that sentence ought to be removed, because I think that has to be in accordance with State law; and I don't want anything going out that would mislead the opportunities they have. They

MR. HOLMGREN: That's right. But one of the problems we had was the ability to put into operation facilities that would offset the lack of water coming out of the Logan River and other areas. And we did experience quite a loss of water in the initial phase of our irrigation that year. And still, when the pumps were started full-blast on Bear Lake, we did get our water even though it was a little late.

But Lloyd, I was hoping you would get here; and I hope you got the explanation from these technologists as to why they feel that 5911, if it ~~ever~~ dropped that low, that storage above Bear Lake would probably be ineffectual on the elevation of the Lake anyway. I know A.V. Smoot, if he were here, he'd be raising this question. But I feel, as Dan has mentioned, that - actually, it seems a little low for me, just as it does/^{not} for Mr. Francis, being on two different ends of the River - but with the explanation that Norm Stauffer has made, and Dee Hansen, and Dan Lawrence, these fellows that have studied the River - I feel that if it ever got that low that nobody would have any advantage over anyone else. Mother Nature would have to solve the problem.

One other think I wanted to ask Dee - and you touched on this Bear River Migratory Bird Refuge situation, and possibly the explanation was good enough; but I'm sure that we on the Lower Bear are concerned because they are our next-door neighbor; and I was wondering if you would explain how this 120 acre-feet - where it would come from it the Bear River Bird Refuge elected to develop it? Now, that is still on the River? That wouldn't come out of Utah's allocation?

MR. HANSEN: Let me go back to the intent when we originally negotiated the 120,000.

MR. HOLMGREN: You say it was in there last year?

MR. HANSEN: Yes. The intent, when we initially sat down as three states and worked that out was that the Bird Refuge presently has a right for 1,000 cubic-feet per second of direct flow rights. There was some question raised by the other states that this isn't a beneficial use in the full amount; and perhaps that's true. Maybe they can't beneficially use a full 1,000 cubic-feet per second if it were available all the time. That amounts to some 700,000 acre-feet.

MR. HANSEN: I didn't mean to give you an epistle; but I had to go back and build a foundation.

CHAIRMAN JIBSON: There is another figure in connection with 5911 that might be of interest to this group. That represents useable storage - 556,700 acre-feet - which is 39% of the total useable storage, what we call useable storage in the Lake; and what we call useable storage is that amount above what the pumps were able to reach in the mid-30s. So, we are talking about 39% of the total amount.

MR. HOLMGREN: Mr. Chairman, would that give us 2 years water supply? In rough figures?

CHAIRMAN JIBSON: Idaho, and I suppose Utah, has done considerable study on what this would amount to; and it would give us a supply to take care of any sequence of dry years that we have experienced in the period of record. I believe that was the conclusion, was it not?

MR. HANSEN. About three years.

CHAIRMAN JIBSON: Three years, but any sequence.

MR. HANSEN: If you had three years like '77 you probably couldn't do that.

CHAIRMAN JIBSON: Yes; you couldn't take three of the worst years and put them back-to-back; but any sequence.

MR. ALLRED: With '77 you could get about 2½ years.

MR. HANSEN: But in history that has never occurred. We have never had three years back-to-back like '77, which we hope we don't.

CHAIRMAN JIBSON: Okay. We have two then, who are undecided -

MR. HUBBARD: I think what I may have said if I had spoken, Paul has covered.

MR. HOLMGREN: I didn't mean to 'steal your thunder', Lloyd. I thought you came in a little late; and Mr. Francis has been discussing this 5911, and I thought I would tie it in with our situation.

MR. HUBBARD: I might ask this much, by way of inquiry. I guess the fact that the Compact as proposed has been lowered to 5911- as irrigation reserve?

CHAIRMAN JIBSON: No.

MR. LLOYD: If you have time, I'll make a statement.

CHAIRMAN JIBSON: We have plenty of time.

MR. LLOYD: I will take a couple of minutes, then.

SHERMAN LLOYD

Mr. Chairman, and gentlemen of the Commission;

My name is Sherman Lloyd.

I find myself in rather an unusual circumstance; and I'm here, I suppose you might say to represent the environmental matter. I'm an owner of property at Bear Lake; and I read the testimony two years ago, and I found no reference to any concern about preserving the integrity of the Lake. And it would seem to me, despite what Dan Lawrence has said about the sensitive nature of this, that since you are making a decision that is going to last 20 years, it might be appropriate to maybe consider the input of a paragraph which might refer to the environment of the Lake.

I'm not a speculator there; I've owned property on the Lake, 1 acre, for about 25 years. I have not sold any of the property for a profit, and I don't intend to buy or sell for profit. There are now some 5,000 people in Utah and Idaho, principally along the Wasatch Front of Utah, who do own property on the Lake. Many of them are recreational users. I, personally am not a recreational user, unless you call swimming in the Lake and having your grandchildren paddle around in the Lake recreation. I am concerned about preserving the environmental integrity of the Lake.

I happened to be in the Utah Legislature 22 years ago when Lon Hopkin and Laurence Johnson provided the impetus, on the Utah side at least, for this Compact. I gave my support at the time, because it was obvious that if Utah or any of the other intermountain states were going to blossom like a rose, we had to try to open up all of the arable land that we could, and give supplemental irrigation to the marginal lands. And I have always been a champion of multiple use.

I should have said that I represent no one; this is a personal observation that I'm making. I represent no one, and no one has asked me to represent them). But when the Lake goes down to 5911 - or even 5917, the way it is now, or any other artificial drawdown - trees grow up there, as you know; people farm out on the land, which I don't see anything wrong about that - maybe that's all to the good; but the States of Idaho and Utah own that relicted land. The problems of our civilization concerning brine and pollution of shorelines are tremendously aggravated, I don't know what it does to the ecology of the Lake.

And so I guess what I would just say, in summary, is that since all 9 members of this Compact Commission are irrigators, or represent irrigators, that perhaps my suggestion that, while it may not be operative now, still at this time you are making a decision that's going to last for 20 years, I think that's a great responsibility that you have. And I personally would like to see a sentence or a paragraph, at least, relating to the increasing importance of the realilites of the definition of multiple use. I was hoping that the Department of Interior would make some comment as to that. The Idaho State Engineer, two years ago, made some comment, at least passing reference, to the environment of Bear Lake itself. I was hoping that perhaps the Department of Interior might offer a suggestion that would be acceptable to you gentlemen that have this responsibility.

I don't mean to oppose, in any way, this Compact. I know that you all have given it very deep and thorough-going consideration; the technicians in the field made their very constructive input; those of you who I have talked with, I have the greatest respect for and the input you are making. And again I emphasize that I recognize the necessity of an arid country such as we have in this area, making every possible constructive use of every drop of water we have. That is really what I suggest - that in your deliberations, in your considerations, you consider, in addition to the overriding needs for irrigation, the other good and proper uses of the rare amount of water which we have. Thank you.

CHAIRMAN JIBSON: Any questions of Mr. Lloyd?

Is there anyone else, now, who would care to make a statement?

MR. FERRY: You know, last time, as far as you people and the Board, we had a good chance of passing it in the Utah Legislature. In fact, I'm sure it would have passed.

I think it has a good chance of passing this time. I encourage you to speed it up as much as you could. You know, you can pre-file.

And it was prepared, and we had public hearings - last time, I know, Wyoming had a stiffer deadline than we had in Utah. Of course, we go for 60 days. We would hope that we would have ours ready to go. Of course there is the possibility of something that we haven't thought of that would have to have an amendment; and while we were still in session we could make a change if we needed to. I just encourage you to go with haste as you have been doing; and we would be more than happy to help in any way that we could.

Thank you.

CHAIRMAN JIBSON: Senator, unless we get some repurcussion that might call for amendments, we have tentatively set December 21 for a Commission meeting; which we hope would be an approval meeting by the Commission. So anytime thereafter we could have this prepared for filing.

MR. FERRY: Is that a public meeting?

CHAIRMAN JIBSON: Yes. All Commission meetings are public meetings.

MR. FERRY: I wonder if I might be notified so that I could be there.

CHAIRMAN JIBSON: You bet. We will.

MR. FERRY: I would like to come down so that we are well aware of what is going on. Because that's the best time to make changes; before it comes into final draft.

CHAIRMAN JIBSON: We have a conflict or two with that date of the 21st; but we will settle it, and meet as early as we can.

MR. LAWRENCE: What we're also trying to do, Senator, is set up a briefing meeting with the Governor before that time; because both he and the Legislature have to concur. And we thought we'd invite you to that briefing meeting, if we can get him to set a date when he can meet with us.

CHAIRMAN JIBSON: I might state that under the present Compact, which will still apply to water rights of beneficial use prior to January 1, 1976, that there's a provision in the Compact that states - under this type of water emergency, if Utah users are being deprived of water because of adverse uses in Idaho, that a water emergency can be declared after public hearings and notification and so forth, in which we can 'erase' the State line and set up a priority system between Utah and Idaho. Now, you may say, "Well, if this is the case, and it didn't occur in 1977, when would it occur?" The fact of the matter is, as long as there is Bear Lake water in the River, the user up here who is pumping, - regardless of his right, or anything else - if his water's there, he's not worried about it. Now, if we reach a point where Bear Lake cannot satisfy their commitments and you are all on natural flow, this provision in the Compact can be very real; and there would be a priority schedule prepared without regard to State lines. But I've watched it in two fairly-dry years, particularly; and in each case, though you did have a delay in 1977 - and I might say that all of us so-called 'experts' were fooled in 1977 because we had assumed that there would be greater contribution out of Cache Valley, for one thing -but by the time we would have been able to set up any kind of priority schedule in 1977, the water that the Power Company was bringing down the Lake then took care of your needs. And took care of the needs of a lot of these uses that were junior to it, also.

Frankly, as I foresee it, as long as Bear Lake water is there we probably will not have that situation arise, to where we have to set up those priorities. But, I feel that it still is an important provision in this series of years when Bear Lake water just is not there to satisfy them.

MR. LAWRENCE: Mr. Chairman, could I expand on his question just a little?

Apparently, according to Paul, there were some days - I don't know how many - when the Lower Bear River was short. What is the mechanics when they're short of water? Do they call on the Power Company to deliver more; do they go to the State Engineer and say 'hey, we're not getting our water'; or, where do they go, and how could you eliminate time-loss and implement a program within a matter of 24 hours or something? What is the process?

If he talked with Utah Power & Light there would have been a lot of help coming. But under the circumstances it seemed that everyone felt that someone else was going to do the job. When I found out; when I learned from Wally that the Logan River, and Blacksmith Fork, and the Little Bear were flowing the lowest amount of water in the history since we had been keeping records, when I contacted Utah Power & Light they were not cognizant of this fact.

Historically, over the years, the early spring runoff takes care of Cutler Dam pretty much. Utah Power eventually comes in about the middle of May or even as late as June and starts filling the River; and I believe at that time they had - I can't remember how many second-feet, but it was very low, that they were pumping. - and here we were down here 'starving', you might say, for water. And it was just the fact that they - when I communicated with the people at Lifton they were shocked; absolutely shocked; and the man was very gracious and told us that he would immediately put 1,400 second-feet of water in the River, which was 100 over flood, he said, and would cut 100 second-feet loose from Oneida to get that water down.

Well, there was at least a week - and I'm sure Miles, and Lloyd, being on the low end of the canal system say it was even more than a week - before the water got there. But this was, I think, a communication problem. And if I have to blame anyone - and he doesn't work for us anymore - but I think it's the fact that, even though he was a conscientious fellow trying to do his job, this was something that he didn't know. And I think if we'd had our old man that has been there for years, I think he would have taken care of it, and we wouldn't have had this problem. But it was solved; but it did scare us. It made us believers, I'll tell you.

CHAIRMAN JIBSON: I don't think it would happen again because we learned by experience; and we saw something happen in '77 that none of us, in our memory, had actually seen on some of these rivers. The supply at Smiths Fork, for instance, was 65 percent of 1934. 1934 was the driest year we had experienced in our period of record. And although Logan River was just about exactly equal with '34, that spring runoff dropped extremely fast, and it was an unfortunate situation; but I don't believe even today,

CHAIRMAN JIBSON: Well, the Commission certainly planned to keep this provision in the Compact; and, as I mentioned, if Bear Lake ever gets to the point that they can't put it down there, there's going to be some drastic regulation in the Lower Basin. We can depend on that.

MR. HUBBARD: Those drastic regulations would probably get some drastic reactions.

CHAIRMAN JIBSON: What I hated the thoughts of was ever going up and asking a man to shut the water off his alfalfa so they could get it down to the birds at the Refuge.

MR. HANSEN: We almost faced that one year, didn't we?

MR. ROBERTS: Idaho had the National Guard go through Sugar City when I was just a youngster in 1934, to sit on the headgates in Teton Basin so the water could go down to Twin Falls, under such a situation.

SENATOR FERRY: I wonder if I could ask a question? I notice a representative from the Power Company is here. The last time we thought we had the Compact pretty well worked out, and then we had some disagreements with the Power Company. Have they met and gone over this? Are they in agreement with the existing changes?

CHAIRMAN JIBSON: I was hoping they would make a statement today; but their silence would seem to be approval.

MR. FORSGREN: We realize there has been compromise. Basically, what I think has happened, Senator, is that the Lower Division rights below Stewart Dam, those Power Company rights, are fully protected. Above, we think there's been a compromise, and we raise no objection to there being additional storage capacity of 28,000 acre-feet depletion. We feel that this was put in there, in my mind, as a compromise. We feel, in our judgement, this is going to be it. The Power Company won't be called upon to give up any more water rights from what we have. So that there is an equitable portion of the River.

MR. LAWRENCE: I think he means 'yes', Chairman.

(Laughter)