

No 10

A G E N D A

BEAR RIVER TRI-STATE NEGOTIATING COMMITTEE MEETING

Preston Community Hall

Preston, Idaho

September 29, 1972
10:30 a.m.

- I. CALL TO ORDER
- II. SUMMARY OF MINUTES OF MEETING HELD JULY 20, 1972
- III. COMMENTS AND DISCUSSION OF IDAHO'S JULY 20, 1972 PROPOSAL
AND UTAH'S AND WYOMING'S RESPONSES
 - A. State of Wyoming
 - B. State of Utah
 - C. State of Idaho
- IV. COMMENTS FROM UTAH POWER & LIGHT COMPANY
- V. OTHER BUSINESS
- VI. DATE AND LOCATION OF NEXT MEETING



STATE OF IDAHO

IDAHO WATER RESOURCE BOARD

STATEHOUSE

BOISE, IDAHO 83707

BOARD
JOHN F. STREIFF, Chairman, Lewiston
GEORGE L. YOST, Vice Chairman, Emmett
FERRIS M. KUNZ, Montpelier
CHARLES J. MARSHALL, Jerome
JOSEPH H. NETTLETON, Murphy
THOMAS OLMSTEAD, Twin Falls
SCOTT W. REED, Coeur d'Alene
EDWIN C. SCHLENDER, Malta
R. KEITH HIGGINSON, Boise
Ex-officio Member
(Director, Department of
Water Administration)

No 10

September 18, 1972

MEMORANDUM

TO: Tri-State Bear River Negotiating Committee

FROM: Ferris Kunz, Chairman, Idaho Negotiating Committee

SUBJECT: Comments on Proposals

We have reviewed the statements of Wyoming and Utah in response to our proposal of July 20 and have the following comments. Before responding to the proposals by both states for increased upstream storage allocations above Bear Lake, we would like to know whether it is your intent to store and divert waters adverse to presently established rights of Idaho and Utah users below Bear Lake. Putting this question in terms of the water supply described in the July 20 report of the Technical Subcommittee, which use category is it that you would intend to capture and use with the proposed storage?

Since it appears to us that Wyoming and Utah are asking for greater fluctuation of Bear Lake in order to meet their upstream needs, we take the position that you should explore with Utah Power and Light Company the extent to which this can realistically be done. The Idaho Committee has sought to identify the magnitude of this problem at previous meetings. Since Wyoming and Upper Utah would be the beneficiaries of such increased fluctuation, we now suggest that you seek to determine from the Power Company the extent to which it could be accomplished as well as the cost.

Both states responded that negotiations regarding a lower basin division between Utah and Idaho should proceed. We assume from Wyoming's response that they will not later object if such negotiations proceed between the two states without Wyoming's participation. Idaho will propose at the September 29 meeting initiation of discussions on a division of a Cub River project followed by other lower basin elements.

for 
FERRIS KUNZ
Chairman

FK:lm

cc: Mr. Robert Porter

No 10

Unapproved

10/1/72

VERBATIM MINUTES

BEAR RIVER TRI-STATE NEGOTIATING COMMITTEE MEETING

PRESTON COMMUNITY HALL

PRESTON, IDAHO

September 29, 1972

10:30 a.m.

Received from
Connie Borrowman

Submitted by

Connie Borrowman, Secretary

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SUMMARY OF ACTIONS

1. Minutes of the meeting held July 20, 1972 in Evanston, Wyoming were approved. page 3
2. A motion was passed that the technical sub-committee be given the assignment of arriving at a figure of reasonable domestic use on a daily volumetric basis to be presented to the Negotiating Committee for its consideration at the next meeting. page 26
3. The Negotiating Committee approved a motion that Utah Power & Light Company be requested to review the hydrology study presented by the technical sub-committee in the meeting of July 20, to see if factual information can be provided that would indicate whether or not various modes of operation of Bear Lake can or cannot be made; and that cost figures of power revenue losses be provided if the various modes of operation of Bear Lake were implemented. pages 50-51
4. A motion was approved that the Negotiating Committee go on record as being in favor of the flood plain management plan and indicate to the individual states that the Bear River drainage is in need of such a plan, and that this should be pursued actively by the three states and other government entities involved. page 54

BEAR RIVER TRI-STATE NEGOTIATING MEETING

September 29, 1972

Preston, Idaho

THOSE PRESENT:

NEGOTIATORS:

Ferris M. Kunz, Idaho - Chairman

William G. Jenkins, Idaho

R. Keith Higginson, Idaho

Edwin C. Schlender, Idaho

J. C. Hedin, Idaho

Marion Olsen, Utah - Vice-Chairman

S. Paul Holmgren, Utah

Simeon Weston, Utah

Gordon Peart, Utah

Calvin W. Funk, Utah

Daniel F. Lawrence, Utah

Floyd A. Bishop, Wyoming

S. Reed Dayton, Wyoming

J. W. Myers, Wyoming

OTHERS PRESENT:

IDAHO

Alan C. Robertson, Idaho Water Resources Board, Boise

Jim Johnson, Idaho Water Resources Board, Boise

A. Sherwin Webb, Citizen, Preston

Elden Kingsford, Franklin Councilman, Franklin

H. S. Bradford, Citizen, Franklin

Theo J. Bell, Franklin County Water Board, Preston

O. E. Baugh, Franklin County

UTAH

Jim Christensen, Utah Division of Water Resources, Salt Lake City

Norman Stauffer, Utah Division of Water Resources, Salt Lake City

Dee C. Hansen, Utah Division of Water Rights, Logan

WYOMING

Tom Barker, State Engineer's office, Cheyenne

H. T. Person, Engineering Advisor, Laramie

Marvin Bollschweiler, Hydrographer Commission, Evanston

John A. Teichert, Supt., Water Division #4, Cokeville

Wallace Jibson, Project Engineer, U.S. Geological Survey, Logan, Utah

E. O. Larson, Federal Representative, Salt Lake City, Utah

Dean E. Bischoff, Area Engineer, U.S. Bureau of Reclamation, Logan, Utah

Clifford Alldredge, U.S. Bureau of Reclamation, Logan, Utah

R. B. Porter, Utah Power & Light Company, Salt Lake City, Utah

D. J. Watkins, Utah Power & Light Company, Salt Lake City, Utah

Connie Borrowman, Secretary, Salt Lake City, Utah

MINUTES

BEAR RIVER TRI-STATE NEGOTIATING COMMITTEE MEETING

September 29, 1972 - Preston, Idaho
10:30 a.m.

Verbatim Minutes of the Bear River Tri-State Negotiating Committee meeting held September 29, 1972 at Preston, Idaho. The meeting commenced at 10:30 a.m., with Chairman Ferris Kunz presiding.

CHAIRMAN KUNZ: Ladies and gentlemen - it is time to call this meeting of the Bear River Tri-State Negotiating Committee to order. You have all received notice from the Secretary, and with that notice there was an Agenda. The gentlemen here at the table have also another Agenda here in front of you; and so we will proceed with the second item of business, which is a Summary of the Meeting which was held July 20. I believe there is a Summary of those Minutes in front of you. At the request of the Secretary I will read this:

SUMMARY OF MINUTES of MEETING HELD JULY 20, 1972 EVANSTON, WYOMING

Summary of Minutes of Tri-State Bear River Negotiating Committee meeting held in the High School, Evanston, Wyoming, on July 20, 1972, at 1:30 p.m.

The meeting was called to order by the Chairman for the day, J. W. Myers.

Governors Stanley K. Hathaway of Wyoming, Cecil D. Andrus of Idaho, and Calvin L. Rampton of Utah were in attendance at the meeting; and each made brief remarks. They each expressed the thought that the basic concern of the states is in coming to agreement, without undue delay, on the division of the waters of the Bear River to best serve the interests of all concerned.

Mr. Floyd Bishop brought the Negotiators up-to-date with a brief history of the negotiations since the governors of Idaho, Utah, and Wyoming first appointed representatives in 1968 to form a Tri-State Negotiating Committee, "with an ultimate objective of reaching agreement regarding development of the unconsumed flows of the Bear River". Disagreement over the volume of unconsumed water supply and operation of Bear Lake continue to be problems of this group.

Daniel F. Lawrence presented the REPORT OF TECHNICAL SUBCOMMITTEE, using charts and graphs to show historic flows of the River, actual level of Bear Lake, the result of various fluctuations of the Lake, and an assessment of how much water upstream from the Lake remains uncommitted. This report indicated that the average inflow to the Lake is about 350,000 acre-feet per year. Under present conditions of use and Bear Lake management, the Lake would meet all downstream irrigation requirements and retain some water in storage at its lowest point. Additional water could be developed for upstream use above Stewart Dam; and the manner of Bear Lake operation is a major factor in the quantities available. Lowering Bear Lake spillway level only one foot reduces the possible added upstream depletion by approximately 20,000 acre-feet.

Robert B. Porter read a report of Utah Power & Light Company's water rights on Bear River; what contract obligations the Company has; and the Federal Power Commission licenses. There was considerable interest and discussion regarding this report.

Discussion of the Proposal presented by Idaho on February 3, 1972, followed. Mr. Ferris Kunz passed out copies of a statement, IDAHO COMMENT AND PROPOSAL ON INCREASE OF WATER USE ALLOWANCE ABOVE BEAR LAKE, bringing up-to-date Idaho's further consideration of the February 3 Proposal. Both Utah and Wyoming felt that, in view of the additional comments by Idaho, it would be necessary for them to further consider Idaho's statements before responding officially.

The following Motions were made and passed by the Negotiating Committee:

1. That Mrs. Connie Borrowman be permanent Secretary to the Tri-State Bear River Negotiating Committee;
2. That a complete verbatim transcript of the Minutes be provided to each state following each meeting, with a very brief summary of the Minutes prepared for review and adoption at the following meeting;
3. That there be a permanent Chairman, appointed on a yearly basis;
4. That Mr. Ferris Kunz serve as the first permanent Chairman, to serve from the present time until November, 1973; with Mr. Marion Olsen to serve as Vice-Chairman.
5. That assignments to the Technical Subcommittee, to the states, or to others, be stated specifically so that there is full understanding by all of what is expected;
6. That responses to proposals presented in any meeting be received from each state within one month following the meeting;
7. That any new proposals for consideration be presented to each state 30 days in advance of any scheduled meeting;
8. That a letter go to each of the three governors expressing appreciation for his attendance at this meeting.

(These letters were prepared by the Secretary and mailed over Mr. Myers' signature on August 4, 1972.)

The next meeting of the Tri-State Bear River Negotiating Committee was scheduled to be held on September 29, 1972; the time and place to be determined by Idaho.

Meeting adjourned at 4:45 p.m.

CHAIRMAN KUNZ: Gentlemen, you have heard the Summary of the Minutes. What is your pleasure?

MR. OLSEN: Mr. Chairman, I move the adoption of the Minutes as they have been read.

MR. DAYTON: Second the Motion.

CHAIRMAN KUNZ: I have a Motion, and a second by Mr. Dayton.

MR. LAWRENCE: Mr. Chairman, I am wondering if it might be appropriate to adopt the Verbatim Minutes as opposed to the Summary.

MR. OLSEN: That is what I had reference to, Mr. Lawrence, was the Verbatim Minutes which we all have a copy of.

CHAIRMAN KUNZ: Okay. Is that your question? -- Not this Summary.

Gentlemen, you have heard a Motion made and seconded. Are you ready for the question? All in favor say 'aye'. Opposed?

The Motion is carried.

Also in this material in front of you - at least one for each state - there is a mailing list. The Secretary has requested that this be looked at and if there are any revisions that she be notified so that she can keep the mailing list up-to-date. She noted also that the list of attendance was not presented in this Summary meeting, and that list is also there for your information.

The next item of business, under item No. III, is COMMENTS AND DISCUSSION OF IDAHO'S JULY 20, 1972 PROPOSAL AND UTAH'S AND WYOMING'S RESPONSES. The first state to be called upon will be the State of Wyoming.

MR. BISHOP: Thanks, Ferris. The Wyoming response to the Idaho Proposal, I think was mailed to everyone. If you'd like me to, I'll go through that response; probably some of the people here haven't been provided with a copy.

CHAIRMAN KUNZ: The floor is yours, Mr. Bishop.

. BEAR RIVER
TRI-STATE NEGOTIATING COMMITTEE
WYOMING RESPONSE TO THE IDAHO
PROPOSAL MADE JULY 20, 1972

The Idaho Negotiating Committee presented a proposal for the consideration of the Utah and Wyoming Committees on July 20, 1972. This proposal included major revisions of the Bear River Compact.

Idaho proposed that Article V be modified to increase the storage limitation above Bear Lake by 20,000 acre-feet. Additional depletion would be limited to 5,000 acre-feet per year from new uses of surface and ground water. Approval of increments of storage constructed and estimates of resulting depletions would be made by unanimous vote of the Bear River Compact Commission.

Idaho's proposed increase in the Compact storage allowance would be contingent upon assurances that Utah and Wyoming would support project proposals for the lower division in conformance with a basin plan agreed upon by the three states. Article IV, Section 3, Paragraph A, the water emergency provision for the lower division, would not apply to water storage developed after the compact modification became effective.

The Wyoming Committee appreciates the initiative exhibited by the Idaho Committee. Nevertheless, while Wyoming understands

AUG 25 1972

and shares Idaho's desire to protect the rights of existing water users, we feel that there are sufficient quantities of surplus water in average years to warrant significant new Compact storage allocations. The estimates of water above Bear Lake that is annually available for new uses, range from a minimum of 61,000 acre-feet to more than 100,000 acre-feet.

Since Idaho and Utah are seriously considering developing, independently, all water which arises in each state below Bear Lake, Idaho water users should regard, highly, Wyoming's requests for compact revisions allowing the use of slightly more than 1/3 of the water produced by Wyoming watersheds.

The persistent shortages suffered by water users in Wyoming above Bear Lake are unmatched in Idaho and Utah below Bear Lake. The full water supply available to most downstream Utah and Idaho water users was undiminished even during the worst recorded series of drought years in history. This fine water system would not be significantly affected by the increased storage capacity that Wyoming is requesting.

The Idaho Committee has expressed a desire for full knowledge of location of future storage reservoirs and the quantities of water for each purpose that would be used from this storage. In order for the Wyoming Committee to be able to specify such details of future developments, political control rather than economic realities would have to be the deciding factor in water development. There is simply no democratic process whereby the uses and locations of individual projects could be designated or selected.

The Wyoming Committee encourages the Idaho and Utah delegations to pursue solutions to their bistate problems that were suggested by the Idaho Committee in February, 1972. These suggestions include early agreement on the division of the yield of the proposed Plymouth reservoir between Idaho and Utah, and resolving the amount of Bear Lake exchange water to be included in that reservoir. The inclusion in a basin plan of identified capacities and specified divisions of yield from other potential storage units downstream from Bear Lake was also proposed. The Idaho Committee suggested that the Utah and Idaho staffs prepare an evaluation of these alternatives including possible allocation of costs directly associated with recreation

enhancement. We feel that extensive discussions of these and other important issues should continue.

The Wyoming Committee proposes therefore:

1. That Article IV3-E be amended to change the date of termination of water emergencies from October 15 to September 30.

2. That Article XIII be amended to definitely establish the time for the commencement for the next 20-year period for review of the Compact provisions and the process by which such a review may be undertaken.

3. That Article V A be amended to increase the allowable storage allocation within the State of Wyoming from the present 17,750 acre feet. The amounts of additional storage needed are:

- (1) 39,000 acre-feet of supplemental supply for presently irrigated lands;
- (2) 25,000 acre-feet for new municipal and industrial uses;
- (3) 36,000 acre-feet as a primary supply for new irrigated lands.

The use of this new storage will deplete 30,000 acre-feet or less per year. Only one-half of the most conservative estimate (61,000 acre feet) of average annual surplus would be consumed, or twelve percent of the quantity of water produced

in Wyoming.

Although such a magnitude of water development is small, and would have a negligible effect on consumptive uses downstream from Bear Lake, the economic environment of Uinta County and Lincoln County farmers and ranchers in the Bear River Basin would ^{be significantly} improved.

We respectfully urge the Committees of Idaho and Utah to consider this proposal, fully, before taking further action.

MR. BISHOP: That was Wyoming's formal response which was transmitted to the other Committee members.

Mr. Chairman, would you want to proceed with Utah's response before we get into discussion of the various details -- or, how do you want to proceed?

CHAIRMAN KUNZ: I would think, Mr. Bishop, that we will proceed here with the discussion of yours before we get into Utah's.

MR. BISHOP: Fine.

CHAIRMAN KUNZ: Floyd, you have received, I think, comment on this COMMENT of yours from Idaho. Is that not correct, Alan? Would you care to direct yourself to some of the questions that we raised there?

We could start here with No. 1 of your Proposal -- that Article IV-3E be amended to change the date of termination of water emergencies from October 15 to September 30. We were wondering why this date change? Would you care to speak to that at this time. Floyd?

MR. BISHOP: Oh, this is really not a very significant suggestion; but our philosophy is that our water year ends September 30, and actually we normally cease using water even before that. We plot the water as does the U.S. Geological Survey on a water year basis which ends September 30 -- it seems more logical that the water year normally used should be the water year provided for in the Compact.

MR. JIBSON: I think I made that suggestion -- that it was more practical for those reasons.

MR. KUNZ: Okay. The watermaster ceases measuring water on the 30th for that area? Okay.

MR. HIGGINSON: What do we save by changing? Save a little expense?

MR. JIBSON: Not particularly, Keith; but from a practical standpoint we end up September 30 anyway. We are through using water by September 30, and the records that I publish in the Bear River Commission report all end September 30 -- so, in reality, we have been using that date anyway.

MR. OLSEN: Does it have any effect on the allocation of water, being that you would close your season sooner and would allow storage water sooner on the system? Would that affect it any?

MR. JIBSON: No.

MR. LAWRENCE: Would someone just in ten words or less tell me what effect the water emergency does have? What does the Commissioner do - or - ? You are changing the date here 15 days. What does the Commissioner do during the water emergency that he doesn't do after?

MR. JIBSON: During the water emergency each state has an allocation of water - direct flow water - and each state affected has to divert within the allocation. Invariably by September 30, Wyoming is diverting less than their allocation because they have had killing frosts. As of today, Wyoming is diverting probably less than half of their allocation. After a water emergency they no longer have to abide by an allocation.

MR. HIGGINSON: Mr. Chairman, maybe I am confused. We are talking about Article IV-3E, and that is under the heading, Lower Division. There is a misprint in the Compact; and I am not sure if this is IV-3E -- I am wondering if it is just IV-E. If it is 3E then it is Lower Division that you are talking about having the water emergency; the other one spells out the Upper Division. It involves a misprint at this point in the Compact in the paragraph numbering. (on page 6 of my copy) You notice that under 3 there is a capital 'A' -- that should not be a capital 'A', it should be a small 'a'. And then that 'B' is part of Article IV - not a sub-article 3.

It is probably worth clarifying. Can we go back, you who have copies -- go back to page 4, Article IV. You then come down to an 'A' -- it talks about water emergencies, and then it divides that into Divisions. Under 'A' you have a 1. Upper Division; 2. Central Division; and 3. Lower Division. The sub-paragraphs under those numbers are small 'a', 'b', 'c', etc. So, when you get over on page 6, the capital 'B' that is there is directly under Article IV. So, Floyd, if I understand what you are saying, you are talking about Article IV-E, without the '3' being in there. The '3' should not be in there, because there is a misprint on page 6 under Lower Division -- where it says capital 'A' under Lower Division it should be a small 'a'. Just strike the '3' -- it should be 'IV-E'.

(There was considerable review and discussion among the Negotiators.)

CHAIRMAN KUNZ: Is there any further discussion then on this particular --

MR. JIBSON: Ferris, I have a copy of the Compact as it was sent to Congress, and it shows capital letters there -- and as I understand it, Keith said to delete Section 3 in Wyoming's statement? That doesn't seem consistent to me. The only problem is that you have used small letters instead of capital letters.

MR. HIGGINSON: It may not seem consistent; but it is correct.

MR. JIBSON: I don't see an Article IV-E.

MR. HIGGINSON: 'E' should not be under Article 3. It is not a part of Lower Division; it is under Article IV.

MR. JIBSON: Paragraph 'A' that you have referred to does belong under the Lower.

MR. HIGGINSON: Right; and it should be a small 'a'. But the capital 'E' is not a part of sub-paragraph 3.

MR. JIBSON: The lower case should be 'a', 'b', 'c', 'd' -- and then capital 'E' provides for all of the Divisions.

CHAIRMAN KUNZ: Right. Capital 'B' applies also; as do 'C' and 'D'. You have your regular 'A', which is the splitting of the Divisions. By scratching the capital 'A' and making a small 'a', that gets it right. We would then eliminate the '3' from Wyoming's Proposal.

MR. JIBSON: I think 'D' is questionable whether it applies to the Lower Division, or all.

CHAIRMAN KUNZ: 'D' should apply to all of them, wouldn't it, Wally?

MR. JIBSON: Well, you can read it either way. It could be applied to paragraph 'a' or it could apply to all Divisions.

MR. KUNZ: With the capital 'D' it would apply to all.

Any further discussion of this?

We will proceed on to item 2 of your Proposal. Are there any questions on that recommendation?

MR. OLSEN: Are you asking for an adoption of these recommendations?

MR. KUNZ: Not necessarily; we are just discussing.

MR. BISHOP: I would say, Mr. Chairman, that, as the first suggestion, is really not very significant.

MR. LAWRENCE: Mr. Chairman, I have a question, though. The time of commencement for the next 20-year period -- is that the next after the one we are in? Does that mean that we just say, 'o.k.', the Compact is under review now, and therefore, we will say that 20 years from today it will be reviewed again'?

MR. BISHOP: I think that was the thinking under which this Proposal was made. To me, the time of commencement of the next 20 years is not significant, really; the Compact provides that it can be reviewed at any time. I think the important part of that is the process by which such a review can be undertaken; and it is unclear how the process is done.

It seemed to us that if we are going to modify the Compact it might be helpful to spell these things out a little more clearly, so that it is obvious exactly how we go about further reviews of the Compact in the future.

MR. OLSEN: It would indicate that, at this date, we have made reference to the Article and have reviewed it; and of the interest; and for some reason.

CHAIRMAN KUNZ: Okay; let's move on to item No. 3 of your Proposal, Mr. Bishop. The number one question, I think, that Idaho asked you is to identify what water you are talking about here with the thought in mind, are you anticipating this extra foot on top of the Lake being used? Are you drawing the Lake down an extra foot; or what do you have in mind, there?

MR. BISHOP: We are talking about, of course, additional storage upstream and the operation of Bear Lake is beyond our jurisdiction. Certainly we assume that Bear Lake will be operated in conformity with the water rights that exist; with the full water rights.

MR. LAWRENCE: Has Idaho communicated to Wyoming something different than a letter Utah received September 18?

CHAIRMAN KUNZ: I don't think so; I think the same letter went to both states.

MR. LAWRENCE: I didn't see this one question in this letter, and that is why I wondered.

CHAIRMAN KUNZ: I don't have a copy of that letter.

MR. LAWRENCE: That's okay.

MR. BISHOP: If you would like me to respond to the question -- I would say that it is not our intent to store and divert water adverse to presently established rights of Utah and Idaho water users below Bear Lake. Realistically, I think we have to recognize existing rights and present water uses below the Lake. It seems to me that there should be a means whereby additional storage can be accomplished upstream without any adverse effect on the downstream rights. And I would hope you could pursue the conditions under which upstream storage could be accomplished. I agree that there needs to be a protection of existing downstream rights.

CHAIRMAN KUNZ: Probably I have re-worded my statement there, Dan. The thing I was referring to was this first paragraph - which category. Would Utah care to comment at this time upon this same question, or would you prefer to wait 'til we get into your discussion?

MR. OLSEN: I think we had better wait, hadn't we?

CHAIRMAN KUNZ: It is appurtenant either way that we could do this.

MR. OLSEN: I think we had better wait; then we will present the whole thing at the same time.

CHAIRMAN KUNZ: Mr. Bishop, the thing that seems to be a concern here on this water to Idaho is that this 61,000 that we identify is an average; and you have so many years when this average isn't available. It has taken some 4 or 5 real good years to bring this average up. There is a string there of 15 years, I believe, when this amount of water is not available. I presume you received the same comments from Utah Power & Light that we did. This is definitely going to be a different operation of the Lake in order to satisfy -- and so it would seem that one of the key early questions that has to be discussed and decided is the type of operation of Bear Lake. And when you get talking about that extra foot on top of the Lake which could supply that water which isn't being used now, then you have the question of the environment, the homeowners, and the recreationists. Would you care to address yourself to that, Mr. Bishop?

MR. BISHOP: Well, as I have previously said, it is fairly clear I think, the legal right to the use of the storage capacity in Bear Lake. When you get into discussions of restrictive use because of environmental considerations, you are in a fuzzy area. I am not sure who, even, is going to make the final determination of how that Lake is operated; but it seems to me that there is only one assumption that you can start out with. And that is that the Lake will be operated within conformity of the water rights that exist. If there is going to be any modification of that there are going to have to be some determinations made; and I agree, Ferris, that these things need to be discussed. But I would like to understand better who has the authority to make the final determination on how the Lake is going to be operated. It doesn't seem to me that there is any provision now for operating it other than in conformity with the legal rights that exist.

CHAIRMAN KUNZ: This is your interpretation? Alright. There is a place on the Agenda, Mr. Porter and Mr. Watkins, for your discussion here; however, if you want to interject as we go along, feel free.

MR. BISHOP: Mr. Chairman, I would like to have a little more discussion of the subject. I would like to have a little freer discussion. It is completely fuzzy to me on who has the authority to make the determination of how this Lake is going to be operated. I recognize that Utah Power & Light has rights in the Lake. Does Utah Power & Light have the final authority as to how the Lake is going to be operated, and do they have the authority to say that it is going to be operated other than in conformity with the rights that exist? I would like to have someone address themselves to questions of that kind.

MR. JENKINS: Just to clarify the question and narrow it a little more -- you mean at the present time? Under the present operation? And then speculate later on what might take place?

MR. BISHOP: Right. What I would like to know is who has the authority to determine what the operating conditions and criteria will be to Bear Lake?

MR. LAWRENCE: Mr. Chairman, I might offer a suggestion as to the manner of proceeding here. I am sure that the Power Company's statement is a very important matter for discussion today. I, like Floyd, have some questions on it. I wonder if it might be helpful for Utah to read her statement and the Power Company respond; and then we would have on the record the Power Company's letter, and then we could 'kick it around' all the way -- because I would think that this is a very pertinent part of our discussion today. You can proceed as you like; I would just offer that as a thought.

CHAIRMAN KUNZ: It would seem to me that inasmuch as the Agenda calls for discussion from Utah Power & Light, that possibly we are going to get into much more discussion of this under that item; and so I would propose that we continue through Wyoming's comment, and then into Utah's. And then when we get into Utah Power & Light I am sure we'll come back to some of these.

MR. OLSEN: I think what you are trying to do, Mr. Chairman, is clarify in our minds what the intent of Wyoming's proposal is so that we can consider it all as we proceed.

CHAIRMAN KUNZ: This is true. Just what they are saying in their statement.

MR. HIGGINSON: I am not sure, Mr. Chairman, that we really have an answer to what the clarification of the Wyoming proposal is. Wyoming says that there is between 61,000 and 100,000 acre-feet of water available to be developed. I think we still have in our mind a question as to what you are talking about. You say there is this kind of water that can be developed -- where is it? What water are you talking about?

The 61,000 - is that equivalent to the Technical Committee report of the average spills? And if so, that has to be conditioned upon a certain operating criteria of the Lake. In other words, you are talking about filling it to full capacity -- not worrying about what the Power Company says about providing for flood control, wave action, and things of that nature? And then the 100,000 figure comes from something else. Where is that water? And what kind of water are we talking about when we talk about a minimum of 61,000 to more than 100,000? In your proposal, what water are you specifically talking about?

MR. BISHOP: We are talking about, of course, the figures shown in the Technical Sub-committee report presented at the Evanston meeting. Tom Barker addressed himself to 100,000 acre-feet and can - better than I can --

MR. HIGGINSON: This 50,000 is equivalent to the 61,000 shown in the Technical report --

MR. BISHOP: Which is a long-term average as the availability of water --

MR. HIGGINSON: But those are still based on current Lake operations?

MR. BISHOP: That's correct.

MR. HIGGINSON: But there is less than what you are talking about if you go to a different Lake operation.

MR. BISHOP: And if you go to a different Lake operation you can then increase that 60,000 up to the 100,000 figure.

MR. HIGGINSON: Actually, if you go to a different Lake operation and you fill the Lake to its full capacity, you decrease the thing -- there is less spill.

MR. BISHOP: Well, if you operate the Lake throughout its full capacity to comply the full demand - from completely full and completely empty - you maximize the availability of water.

MR. HIGGINSON: So that's where the two figures come from. Is that right?

TOM BARKER: It would seem the Sub-committee report -- the estimate of 61,000 acre-feet was a very conservative estimate. If you use historic flows, etc., you will come up with more water. This is a most conservative estimate.

CHAIRMAN KUNZ: Isn't it still important that we stress that word 'average'?

MR. BARKER: Yes, it is.

CHAIRMAN KUNZ: To proceed somewhat farther, then, Mr. Bishop -- you have this letter in front of you? What would be your response to our second paragraph there?

"Since it appears to us that Wyoming and Utah are asking for greater fluctuation of Bear Lake in order to meet their upstream needs, we take the position that you should explore with Utah Power and Light Company the extent to which this can realistically be done. The Idaho Committee has sought to identify the magnitude of this problem at previous meetings. Since Wyoming and Upper Utah would be the beneficiaries of such increased fluctuation, we now suggest that you seek to determine from the Power Company the extent to which it could be accomplished as well as the cost."

What is your reaction to that paragraph, Mr. Bishop?

MR. BISHOP: I am not in complete agreement that Utah and Wyoming would be the sole beneficiaries of that kind of an operation of Bear Lake. It seems to me that Idaho water users also receive some benefit from the full utilization of the available storage capacity in Bear Lake. This goes to the question that I asked earlier, Mr. Chairman, and that is - who does have the authority to determine what the operating criteria is going to be? Is it really Utah Power & Light's authority? Or does the state of Idaho have the authority to determine what the operating criteria is going to be? I am very confused as to who we should be talking with. Hopefully, the Utah Power & Light statement might shed some light on this.

CHAIRMAN KUNZ: One more question that we raised here, Mr. Bishop -- and that was, that both Utah and Wyoming responded that negotiations regarding a Lower Basin division between Utah and Idaho should proceed. Now, are we correct in assuming from your response that, should Idaho and Utah get together, you don't particularly care whether you are present or aren't present; but then at some later date you would have no objection to such negotiation. Is this assumption correct? Or did you mean something different there?

MR. BISHOP: Mr. Chairman, we have said in the past, and we would like to say again, that we would encourage Utah and Idaho to discuss the project proposals that they have in mind at this time. I think it is a necessary step in our negotiations for Utah and Idaho to agree on how they want to develop the available water supply in the lower part of the River. We don't want to try to dictate to the other two states how they might develop that portion of the water supply. We would like to be informed as to what you are talking about; we would like it understood that we are not going to endorse any program that you come up with just because you come up with it. But we would like to encourage you to go ahead on your own; reach agreement; keep us

informed of what is going on; with the understanding that ultimately Wyoming will be involved in final approval of any program that is adopted for the entire River. Is that sufficiently confusing?

(Laughter)

CHAIRMAN KUNZ: I don't think it was our intent to try to pin you down to say, 'yes; Utah and Idaho get together and we will endorse whatever you come up with'. I am sure you are going to have the prerogative of review and so on.

MR. HIGGINSON: 'Veto' is the word.

(Laughter)

CHAIRMAN KUNZ: What we don't want to get into is to set a meeting with Utah and Idaho and invite you; and if you feel that you do not want to come, then not later be accused of having 'secret' meetings.

MR. BISHOP: We haven't accused you of having 'secret' meetings, Mr. Chairman. If such allegations have been made, they haven't come from Wyoming.

CHAIRMAN KUNZ: This we want to avoid, Floyd. Would Wyoming care to make any further statement at this time? Any questions that would like to be addressed to Mr. Bishop at this time?

Alright, then; let's proceed to item B under item III of the Agenda - which is the State of Utah.

MR. OLSEN: I would call on Mr. Lawrence to make the presentation for Utah. I think you all have copies of the proposal.

MR. LAWRENCE: All except Mr. Lawrence.

(Laughter)

(Mr. Lawrence then read Utah's statement, as follows:)

TRI-STATE NEGOTIATING COMMITTEE
BEAR RIVER

UTAH COMMENT ON IDAHO'S JULY 20, 1972, PROPOSAL

AND

UTAH'S POSITION ON INCREASE OF WATER USE
ALLOWANCE ABOVE BEAR LAKE

TO BE PRESENTED AT THE SEPTEMBER 29, 1972
TRI-STATE NEGOTIATING MEETING

The Utah Committee has carefully analyzed Idaho's proposal of July 20, 1972, and is of the opinion that this proposal--which would allocate the additional storage of 20,000 acre-feet and depletion of 5,000 acre-feet above Bear Lake--is unrealistically small and is unacceptable. The Utah Committee bases its position on the analysis of the hydrology of the Bear River System which was presented by the Tri-State Technical Subcommittee July 20, 1972. This study indicates that there is considerably more water available for development above Bear Lake than is suggested in the Idaho proposal. Further, it appears that there would be a serious question arise as to whether a project would be economically feasible for the limited quantity of water which is recommended by Idaho. Therefore, the Utah Committee proposes that Article V of the Bear River Compact be modified to increase the storage allocation above Bear Lake for Utah by approximately 35,000 acre-feet and limiting depletion for Utah above Bear Lake to 15,000 acre-feet per year. It is realized that there are certain problems involving the water rights of Utah Power & Light Company which will have to be resolved in connection with the allowance of any substantial quantity of additional storage above Bear Lake. However, Utah believes that these matters should be worked out contemporaneously with the negotiations among the three states.

The Utah Committee supports the position that Utah and Wyoming should receive like amounts of additional water allocation above Bear Lake.

The Utah Committee does agree with Idaho that reservoirs with storage limitations of less than 20 acre-feet should be excluded from the storage and depletion limitations of any proposed compact. With regard to the use of groundwater in the Upper Bear River Basin, Utah concurs in the Idaho recommendation that the storage and depletion limitation include both surface and groundwater--with the exception, however, that diversions from either surface or groundwater source for domestic uses for less than .015 c.f.s. be excluded from these limitations.

The Utah Committee earlier indicated a tentative approval of the concept of a Tri-State Authority whose approval would be required to implement the construction and use of any additional storage projects in the Upper Bear River Basin. This tentative approval was based upon the concept of a Bear River Basin development plan which would involve a project-by-project development rather than a specific allocation of water to each State. Since it now appears that we are returning to the proposition that a specific block of water be allocated to each individual state, Utah no longer favors the adoption of such a Tri-State Authority and believes that it should be left to each of the states to reallocate to its users the water which it receives.

The Utah Committee is interested in pursuing the concept of additional storage above Bear Lake in addition to the above 35,000 acre-feet conditioned upon construction of replacement storage below the Lake. It is the position of the Utah Committee that we should now proceed with

discussions for the allocation of the surplus water in the Lower Bear River Basin. Utah is of the opinion that it will be necessary for the states to reach an allocation of the entire surplus flow of this River System before any agreements can be finalized.

CHAIRMAN KUNZ: Mr. Lawrence, the Memorandum letter from Idaho also applied to the Utah comments. Would you care to address yourself to these questions that we have raised here?

MR. LAWRENCE: I guess your first question is about diverting adverse to present rights of Idaho and Utah below Bear Lake? Well, we agree, I am sure, with the principal and intent that Mr. Bishop stated. We support the concept that present rights in all states must be preserved and honored and protected as part of the law of the River. We further see no justification for modifying the operating of the River or any unit on it contrary to those rights that apply to Bear Lake. Unless there is some mechanism to change that.

MR. HIGGINSON: Dan, do I understand what you are saying? It sounds like you are contradicting yourself. Are you saying that you respect and honor all existing water rights - I assume by that that you mean the Power Company rights also - and that you don't intend to modify the present operation on the Lake; but yet you are talking about providing for Utah an additional 35,000 acre-feet of storage above the Lake, which obviously has to effect the Lake. You can't have both. That is why we asked the question. You say we should be allowed 35,000 acre-feet of new storage; we should be allowed 15,000 acre-feet of new depletion; and yet we don't intend to effect anybody. It is impossible, Dan; and so that is why we are asking - what are you proposing to do insofar as existing uses and operation of the Lake and water rights are concerned?

MR. LAWRENCE: Well, Keith, maybe you can explain a little further. If I interpret you correctly, you are saying that diversions upstream cannot be made without adversely the Power Company's right on Bear Lake?

MR. HIGGINSON: Except for the average of 61,000 acre-feet of spill -- which happens not every year.

MR. LAWRENCE: I guess you will still have to explain to me then, why our position is inconsistent. If we stored the water that was available, would that adverse the right?

MR. HIGGINSON: Are you talking about storing just the spill? And you are not talking about filling the Lake to its full capacity - which it hasn't been done in the past?

MR. LAWRENCE: No; I think we take the position that the Lake was filled within two inches of spilling this year -- and so it has been done in the past.

MR. HIGGINSON: So you are talking about using the Lake to its full capacity and its maximum drawdown?

MR. LAWRENCE: Yes, sir.

MR. HIGGINSON: That is a change in present operation.

MR. OLSEN: That would have to be.

MR. HIGGINSON: So you are talking about effecting the Lake -- in order to get this kind of storage.

MR. FUNK: This is a right on the Lake. Present operation may not be in compliance with the right on the Lake.

MR. HIGGINSON: Okay; we just want to understand that. And then as far as water rights not affecting water rights - you are talking about some effect on Utah Power & Light's water rights.

MR. LAWRENCE: That very well may be true. Any water rights affected and changed, of course, would have to be done by negotiation or other appropriate means.

MR. OLSEN: With agreement with those concerned.

CHAIRMAN KUNZ: Which leads us then to the next paragraph, Dan.

MR. LAWRENCE: We would agree that the time is now very appropriate that we have got to get down to the 'nitty-gritty' with the Power Company and explore the opportunities for working out solutions to our proposal.

CHAIRMAN KUNZ: The third paragraph there was more or less directed to Wyoming; and you've heard their response. Would you care to comment any further there, Dan, on Utah and Idaho possibly proceeding separately on some of the Lower Division?

MR. LAWRENCE: We were prepared to voice an approval when Idaho proposes that we initiate discussions between Utah and Idaho on the Cub River and other elements of the Lower Basin. We are in full accord with that.

CHAIRMAN KUNZ: Mr. Bishop; what questions would you like to ask Utah at this time?

MR. BISHOP: There are a couple of comments I would like to make, Mr. Chairman, if I may.

On the second page, Utah suggests a proper division between Utah and Wyoming's storage space would be equal amounts for each state. I recognize that this was discussed at the last meeting very informally. Having given it a little additional study, it appears to us that there are significantly greater potential for utilization of Bear River water within the basin of Wyoming than there is in upper Utah.

For this reason, I think the equal division of any additional allocation of storage space should be discussed between Utah and Wyoming in some detail before we agree on that. In other words, we are not ready to go along with a 50:50 division.

The next paragraph on page 2 suggests that modification of the Compact should include some limitation on the use of ground water. Wyoming is not in agreement with that.

I think Wyoming may have some interest in the same point that Utah had - of constructing additional storage provided that replacement storage can be provided downstream; that is, assuming that the replacement storage can be paid for by the beneficiary. In other words, I think essentially by recreational interests; or perhaps in the national interest. I think we would have serious problems in trying to finance replacement storage in the lower areas of the River in addition to paying for storage in the upper area for irrigation purposes. This replacement storage possibility has some attraction for us also - provided that it can be paid for by the proper beneficiaries.

MR. FUNK: Floyd, what uses of ground water would you permit? Isn't it conceivable that unrestricted granting of ground-water applications could -- you are, in effect, pumping out of the River, indirectly; but your final effect is depletion of River flow by ground-water use. What would you envision as a ground-water permission or limitation?

MR. BISHOP: Wyoming water law provides that in the event of an adverse effect by pumping ground water on the availability of water to present water rights, the ground-water right is regulated in conformity - that is, priority - with the surface water rights. It seems to me that this concept takes care of the problem; and we would prefer to be allowed to develop our ground-water capabilities in Wyoming without limitation of the Compact. We think that there are certain ground-water resources that can be developed and utilized in Wyoming without adverse effect on the River system.

MR. FUNK: Independent of the River? In the basin, but independent?

MR. BISHOP: Yes. The extent of those is unknown; and I think it would be very difficult to enter into a Compact agreement that would spell out the limitations of allowable ground-water development without having adequate information on availability of ground-water resources. I am sure we do not have that kind of information available in Wyoming. I don't know whether Utah and Idaho do or not.

MR. FUNK: May I ask you another question, Floyd. In projecting some of these needs and in keeping with the philosophy of reviewing the Compact and updating and going

about this thing progressively, how far ahead are you projecting in your needs? '39' and '25' and '36' -- is this a division for all eternity; or is this in the reasonable --

MR. BISHOP: In our water planning studies, we have looked at a time frame of 2020 for projection of needs, and this is within that time frame. It is about a 50-year projection. Obviously, projections 50 years in advance are somewhat arbitrary, but what we intended was a 50-year projection.

MR. JENKINS: I want to pose one question to Utah that is a little different than the area we have been discussing.

My concern that I wanted to solicit some comment from Utah on was the last paragraph contained in the Idaho Proposal at Evanston on July 20, pertaining to a proposed modification of Article IV, Section 3, Paragraph A, such that the delivery of water in the Lower Division without regard to the boundary lines shall apply only to those rights, both surface and ground water, in existence at the date of ratification of the revised Compact. Further rights would be permitted on the basis of a division agreed upon between Utah and Idaho to be contained in such revised Compact. I would just like to get a little feeling from Utah as to what their reaction is to such a proposal - page 4 of our Proposal on July 20 at Evanston.

MR. LAWRENCE: I think Utah perhaps is not prepared to answer your question, Mr. Jenkins.

MR. HIGGINSON: Mr. Chairman, in connection with that, I would ask that you consider the same amendment. That capital 'A' should be a small 'a' again. It is incorrect as a capital.

MR. LAWRENCE: Idaho proposed that:

"Modification of Article IV, Section 3, paragraph (small 'a') such that delivery of water in the Lower Division 'without regard to the boundary line' shall apply to only those rights, both surface water and ground water, in existence at the date of ratification of a revised compact. Future rights would be permitted on the basis of a division agreed upon between Utah and Idaho, to be contained in the revised compact."

I can plead innocent to this. I was not present at Utah's meeting when they prepared the answer, and that's why I had to call on help. I don't know why we didn't respond to that.

DEE HANSEN: There are several things involved. One was the ground-water business, and Cache Valley being one of the major ground-water inflows. We just didn't discuss it in much detail; and we would be foolish, I think, to make any statement right now.

CHAIRMAN KUNZ: That would possibly be an item that you would care to comment on at a later date.

MR. LAWRENCE: Yes; in fairness we should promise to consider that.

MR. OLSEN: You can make that in the Minutes, Connie, that we promise to do that.

MR. LAWRENCE: I'd better watch my choice of words.

(Laughter)

MR. HIGGINSON: Mr. Chairman, if I could knit-pick on this Utah comment again -- on page 2 of the Utah statement, where they are talking in this same place concerning ground water -- they suggest an exception that diversions from either ground water or surface sources for domestic uses for less than .015 second-feet be excluded from these limitations. The effect of that, from our experience, is that you don't exclude anything. Because even though I know that the Utah permit procedure has involved permits for .015 second-feet, from a practical standpoint there is hardly a well in the State that diverts less than that amount. That's 6.73 gallons per minute. Most pumps are designed to deliver 15 to 20 into a productive system. So, even though you are issuing permits of .015 second-feet a well, in all practicality, doesn't divert that amount. So, it is a knit-picking item; but if you put that exclusion in there you haven't excluded your domestic well.

MR. OLSEN: Do you want to comment on that, Dee?

DEE HANSEN: Well, most of the rights are based on the consumptive use; and although .015 is probably not realistic at an incontinent point, it is realistic as far as total use is concerned. In reality, you use far less than 7 g.p.m. over a 24-hour period.

MR. HIGGINSON: Mr. Chairman, my comment was that this statement doesn't talk about a daily or weekly or annual volume. It talks about a rate of diversion. I am saying that as a knit-picking item that isn't practical.

DEE HANSEN: Perhaps that should be limited in size of use rather than in volume.

CHAIRMAN KUNZ: Any further questions?

MR. OLSEN: Did you take a position in underground water in your response, Idaho? Would you review that for a moment for my information, or for the information of the group?

CHAIRMAN KUNZ: That's the point that I was thinking of that came to my mind.

MR. BISHOP: That's why we left it blank.

CHAIRMAN KUNZ: Because you left it blank, we put a figure in it.

MR. LAWRENCE: It was noted here, I think, that in Utah's position we talked about 6-7/8 gallons per minute. The Idaho statement, with a blank in front of it, has referred to gallons per day; and I think that kind of brings together the thing that Keith was mentioning, and being responded to. Perhaps some kind of a volumetric quoting per period volume rather than rate might be more appropriate.

MR. HIGGINSON: Mr. Chairman, I would just point out that the Idaho definition of domestic use provides 13,000 gallons per day, which will drown any domestic user; and its not usable either, so that is why our statement was blank on the subject. We don't want to use the Idaho statutory indication any more than we want to use the Utah. We've got to get something that is practical.

MR. OLSEN: Do you have a suggestion at this time?

MR. HIGGINSON: No.

MR. OLSEN: Well, it is a technicality that ought to be resolved; and if we can, we ought to put something together as we proceed.

MR. BISHOP: Mr. Chairman, might I suggest that that might be a proper assignment for the technical sub-committee.

CHAIRMAN KUNZ: Your suggestion is well taken, Mr. Bishop. According to one of the resolutions we adopted at the last meeting, would you care to put that in the form of a Motion?

MR. BISHOP: Mr. Chairman, I would move that the technical sub-committee be given the assignment of coming up with a figure of reasonable domestic use on a daily volumetric basis to be presented to the Negotiating Committee at the next meeting.

MR. HIGGINSON: I'll second the Motion.

CHAIRMAN KUNZ: You have heard the Motion made and seconded. Is there any discussion? Are you ready for the question? All in favor say 'aye'. Opposed?

Motion carried.

MR. OLSEN: Is there any comment on the limit of small reservoirs? Inasmuch as we are into this department, maybe it would be well if we give a little thought to that at least by our next meeting. Maybe we want to make another assignment; I don't know.

CHAIRMAN KUNZ: Well, I think Utah and Idaho have agreed there. Did Wyoming ever commit themselves to this 20 acres?

MR. BISHOP: It is in the present Compact.

CHAIRMAN KUNZ: It is in the present Compact, and we have never expressed any --

MR. BISHOP: It is a reasonable figure as far as we are concerned.

MR. OLSEN: Are we agreed, then?

CHAIRMAN KUNZ: We have got one point we are agreed on.

(Laughter)

MR. OLSEN: Well, I think the Minutes should show, then, that we are in agreement on that point.

MR. HIGGINSON: Mr. Chairman, I would think, however, that you would have to recognize that you can dry up a stream as quick by building 20 acre-foot reservoirs as you can by building one large one; and to the extent that the open-ended privilege of building 20 acre-foot reservoirs is abused it certainly is something that ought to come to the future review of the Compact Commission.

MR. OLSEN: Or as it affects any other stream flows. This could be included in spelling it out.

MR. JENKINS: Could I raise one other question for Wyoming? How do you feel about the depletion limits that Idaho had proposed in the last July 20 meeting?

MR. LAWRENCE: 5,000 acre-feet, I think he is talking about -- isn't it?

MR. JENKINS: Yes.

MR. BISHOP: I think our response was directed to that point. We agree with Utah's comment that it was inadequate. I could expand on that if you'd like.

ALAN ROBERTSON: How does Wyoming feel about the concept of a depletion limit?

MR. BISHOP: I think it is very difficult to implement and regulate, Alan; but on the other hand, I can see the logic behind that approach. Assuming that we can work out an administrative authority which will have probably interstate jurisdiction in regulating the uses of water, that is probably workable. I think you should realize that it isn't easily definable, the amount of depletion that is connected with any given use of water; and you are talking about an administration of water that is much more sophisticated than anything that we have at the present time. If you try to implement that kind of a requirement in a Compact agreement, that is the main

problem I see with the depletion limitation. I can certainly see the desirable aspects of defining what the depletion will be; and I agree with that.

CHAIRMAN KUNZ: Any further comment?

Gentlemen, it is approaching 12:00 o'clock. Mr. Roberts has arranged for lunch to be served at the dining room which has been reserved for us, at the "Poppin' Pin", which is the bowling alley on the south outskirts of town. They will serve a family-style roast beef, with salad and dessert, for \$1.75 a plate. At this time I think we shall recess for lunch; and reconvene at 1:00 p.m.

LUNCH

CHAIRMAN KUNZ: Folks, let's go to work. I think we are down to item number IV. Mr. Porter, you have the floor.

MR. LAWRENCE: Mr. Chairman, what about item III-C?

CHAIRMAN KUNZ: I should have explained that. I think that Idaho has pretty well been disposed of in the line of questioning as we went along here.

MR. LAWRENCE: As a matter of record, I am wondering if we hadn't ought to have Idaho's letter introduced as a part of the Minutes.

CHAIRMAN KUNZ: I would so direct.



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STATE OF IDAHO

IDAHO WATER RESOURCE BOARD

STATEHOUSE

BOISE, IDAHO 83707

September 18, 1972

MEMORANDUM

TO: Tri-State Bear River Negotiating Committee

FROM: Ferris Kunz, Chairman, Idaho Negotiating Committee

SUBJECT: Comments on Proposals

We have reviewed the statements of Wyoming and Utah in response to our proposal of July 20 and have the following comments. Before responding to the proposals by both states for increased upstream storage allocations above Bear Lake, we would like to know whether it is your intent to store and divert waters adverse to presently established rights of Idaho and Utah users below Bear Lake. Putting this question in terms of the water supply described in the July 20 report of the Technical Subcommittee, which use category is it that you would intend to capture and use with the proposed storage?

Since it appears to us that Wyoming and Utah are asking for greater fluctuation of Bear Lake in order to meet their upstream needs, we take the position that you should explore with Utah Power and Light Company the extent to which this can realistically be done. The Idaho Committee has sought to identify the magnitude of this problem at previous meetings. Since Wyoming and Upper Utah would be the beneficiaries of such increased fluctuation, we now suggest that you seek to determine from the Power Company the extent to which it could be accomplished as well as the cost.

Both states responded that negotiations regarding a lower basin division between Utah and Idaho should proceed. We assume from Wyoming's response that they will not later object if such negotiations proceed between the two states without Wyoming's participation. Idaho will propose at the September 29 meeting initiation of discussions on a division of a Cub River project followed by other lower basin elements.

Ferris Kunz
FERRIS KUNZ
Chairman

FK:lm

cc: Mr. Robert Porter

SEP 20 1972

CHAIRMAN KUNZ: Mr. Porter.

BOB PORTER: I may sound like a broken record again, because I have said this about three times already; but I want to emphasize it because I think --

MRS. BORROWMAN: Mr. Porter, could you talk a little louder.

(Mr. Porter then came up to the table and sat with the Negotiators.)

MR. PORTER: Okay; I started out to say that I have said this to you about three or four times already, and I'm going to say it again: that you have got to decide three questions before you can proceed any further down the road that you are on. First, you have got to decide, (1) Is Bear Lake to be drawn down for irrigation purposes without any consideration for recreational uses or are the irrigators prepared to forego some of their rights in order to provide a more stable Lake elevation, (2) Is Bear Lake to be filled to capacity whenever it is possible to do so despite the effect that such filling will have on the smaller homes and resorts, or do we leave some room in the Lake in order to give them some protection from flooding and from wave action during storms, and (3) Does the operation of Bear Lake take into consideration any flood control both around the Lake and downstream from the Lake.

Now, I think the technical sub-committee's report at Evanston in July posed the need to find answers to these questions, because that makes a heck of a lot of difference to the amount of water that might be available for upstream storage. Now from what has been said this morning, it looks as if Utah and Wyoming at the present time are prepared to ignore any interests of the people around Bear Lake; and I say to you that what we want is somebody to protect us from these lawsuits that are going to happen just sure as heck. I don't think Utah Power & Light is prepared to subsidize them entirely.

We talked some during lunch about flood plain zoning. It would be nice if we had it; but we don't have it. And that Bear Lake is pretty well completely occupied by homes on the west side and on the south side, and going up the east side.

Now the comments and proposals submitted by Idaho at the Evanston meeting could form a basis for proceeding further if you can get answers to these three questions that I just asked. But I would like to add one more -- and I think it was also discussed this morning. And I think it boils down to this question: Prior to this last 5, 6, 7 years when we have had more water than we have had on that stream for a long time, we had 15 successive dry years in which I believe there would have been no water for upstream storage. Now, is Utah and Wyoming prepared to go dry for

15 years, or have they calculated how much it would cost to build a reservoir big enough to carry over for 15 years and still supply 60,000 acre-feet of water annually? And I think there ought to be some study given that. I am not a member of the Committee, but I suggest to somebody that that be assigned to the technical sub-committee.

We have also reviewed the comments submitted by Utah under date of August 31, 1972 and are of the opinion that their assumption as to the availability of water for upstream storage is very optimistic; and I pointed it out in my preceding statement, but I think you have got to get answers to these first three questions first, because they make a heck of a lot of difference as to how much water you are going to have available.

I believe that is all that I have.

MR. OLSEN: Let me ask Bob a question, Mr. Chairman.

Who has the right or the authority to say whether or not Bear Lake can be maintained where it is, or whether it is going to be drawn up or down or fluctuated or anything? Now, who has it to say?

MR. PORTER: I think this is something this Committee ought to decide and write it into their new Compact; or ignore it completely and be prepared to face some lawsuits.

MR. OLSEN: Where do you fit into this as a Company?

MR. PORTER: We operate the Lake in the summer time under the directions of the Bear River water master, who is appointed by the State of Idaho. In the winter time we operate the Lake within the limits of the Compact.

MR. OLSEN: Do you have a say on how the Lake is held in reference to storage?

MR. PORTER: No.

MR. OLSEN: Who does?

MR. PORTER: Well, let's put it this way: We attempt to hold the Lake within the limits of storage, depending upon the kind of a year we have.

MR. OLSEN: But you do your own deciding on this; you are your own boss, so to speak, in determining how much you should draw off for a refill or for a runoff or for a flood or what might be coming?

MR. PORTER: During the winter time if we have some flood -- we utilize it for flood control to a certain extent on the lower --

MR. LAWRENCE: Mr. Chairman, by what authority do you do that, Bob?

MR. PORTER: I think the Dietrich Decree is the authority under which we operate the Lake. And of course the Dietrich Decree is a federal district court decree in Idaho; and within the limits of that Decree and the Bear River water master, is the determination of how we operate in the irrigation season.

MR. LAWRENCE: Does the Dietrich Decree tell you that you can, or cannot, operate it for flood control in anticipation?

MR. PORTER: It doesn't say a word.

MR. LAWRENCE: So when you do that, you are operating it under what?

MR. PORTER: We are trying to do the best job we can under the circumstances. Now, what I am asking you, as this Committee, in a new Compact are you going to tell us that we fill that Lake first, and then whatever water we have left over we turn loose?

MR. OLSEN: Would that do any good to tell you that?

MR. PORTER: If you get a Compact that is ratified by the three state legislatures, I am sure it would.

MR. OLSEN: That would have the effect necessary on you to govern the fluctuation, or whatever happens on the Lake?

MR. PORTER: Yes.

MR. OLSEN: Well, that is what I think we need to get into, and find out who's who, and who we are talking to and about, and who has the authority, and who doesn't. I don't know what authority we would have as a negotiating group in reference to whether or not -- what good is it for us to say, 'well, we are against drawing down the Lake to allow for any more building. We want to operate it higher than it is now'? What good would it do to say that?

MR. PORTER: If you put it in a Compact and got it ratified by the three legislatures.

MR. HOLMGREN: Mr. Chairman, I would like to make a comment here representing the people on the very extreme lower end of the Bear River. I want to compliment Utah Power & Light for the way they have run the runoff from Bear Lake. I think they have done a very fine job and I think as Bob has said, they don't have any specific rules governing some of the ways they run some of their facilities there - their operations - but I think they span a great number of years and have a great deal of experience, and we down in the lower end of the Bear River basin have experienced some very dry years due to the fact that that Lake was drawn down too low at times. We didn't experience a great deal of rain the following winter, and it jeopardized us the

next year. And I think the last - oh, as I recall, the last 15 to 20 years, the Lake has been held at a pretty high level, and we have prospered by it. In 1961, especially, it was a very dry year; and I remember that the Lake was drawn down pretty low that year. It got down to where we were almost out of pumping space there. But in holding the Lake at a pretty high level in anticipation of an unusually dry year, we were able to make it through in very good fashion.

So I personally think that sometimes in setting up a lot of rules and regulations and too much organization, you can actually jeopardize the management and handling of some of these things. What I want to say here is, I want to compliment Utah Power & Light for using their discretion and good common sense sometimes has run that thing pretty dog-gone well.

MR. LAWRENCE: Maybe I need to explain my question. I wasn't suggesting that the Power Company was doing anything wrong; but I was really asking, are they doing this as a public service - and do they need more direction? I think Paul has answered my question. Maybe it is better if they don't have the authority or the direction. But if we are going to write a Compact, do we need to write into it some of the things that you are doing now, voluntarily?

MR. PORTER: It would be pretty hard for me to answer that, Dan; unless we got down to specifics and started talking about specific things. I am not sure that I could give you a blanket answer.

I was going to add to what Mr. Holmgren said - that since 1934, to the extent possible, we have never drawn that Lake down below 5917 or 5918 during the winter time. We have the right within the Compact to draw it down to 5914; and we have never done that voluntarily during the winter. When we get below 5918 we stop; and we wait for the weather report along about the first of January or the first of February. If they are bad, that's where it stays; if we are getting a lot of water, we may let a little bit out. But I think Wally can tell you that since 1934, and with the exception of '51 and these last 4 years or 5 years, we haven't used water in the winter time at all.

MR. FUNK: Bob, I think the limit we are most concerned about is the upper limit rather than the lower. This year's operation, did this put any undue stress on Utah Power when it was nearly filled?

MR. PORTER: We were getting a little panicky.

MR. FUNK: What sort of pressure are you getting? Are you getting a threat from individuals, or collective groups, or --

MR. PORTER: Mostly from individuals up 'til now; although we are getting to the point where I am afraid they may be getting organized. Now, we had some pressure brought to bear on us from your Cache County people up there above Cutler because they were getting flooded. Well, there is nothing we can do about that. Most of your Cache County streams are responsible for that. We weren't releasing very much water out of the Lake at that time. We had, I think, 700 coming out of the Lake to try to bring it down; there was 5,000 second-feet going past Cutler. But most of our pressure comes from those farmers who, as Keith knows, are farming that flood plain from Montpelier down to Soda Springs. In '71 they took it pretty much on the chin. There was too darn much water. This year, we kept it pretty well under control. There are a couple of places where the ground is underneath the River -- lower than the River in elevation; and they don't maintain proper dikes or proper control and they do get a little bit of water.

MR. HIGGINSON: What about the area between Stewart Dam and the outlet canal?

MR. PORTER: Well, of course, up until '71 that had hardly been used. Oh, maybe 5, 6, 7 second-feet is all that has gone past there for 40 years. Now, we had to break it in '71 -- there was no other way to get the water down into the River, and there was quite a bit of flooding in that area. Now, we didn't release at Stewart this year -- we kept Stewart dry.

CHAIRMAN KUNZ: But you don't have Stewart shut off as tight as it was prior to a year ago. Isn't there more water? I thought it was running about 10 instead of 5 or 6?

DON WATKINS: It is within 6 or 7 feet; it usually always runs about 7.

MR. FUNK: Bob, to emphasize this question -- then you really haven't had a lot of pressure from home owners around the Lake this year?

MR. PORTER: We have had some; but fortunately we haven't done them any damage -- and until we do them some damage we don't hear from them. There have been two or three that have been after us.

MR. WATKINS: May I add something there. The amount of pressure we get from owners depends on the weather and the winds. This year we have been very fortunate to have all of the winds, so far as the property owners are concerned, - was east. With the density of construction around the Lake, generally we have southwest winds blowing to the northeast. The wave action in '65, I suppose, and in '71 - mainly in '65 - mainly because they weren't used to the high water after 15 years of being low, and the fact that we had some bad north storms blowing south --

MR. FUNK: In fact, isn't the threat to summer homes really quite minimal and could be taken care of by breakwaters and other measures?

MR. PORTER: It would be pretty expensive if each home owner had to put in his own breakwater. You are talking about a pretty sizeable hunk of money.

MR. FUNK: Well, it comes back again to the question we talked about this morning. Who is responsible?

MR. OLSEN: May I ask, what is being done by the Rich County Commission and the Bear Lake County commissioners with reference to a zoning program wherein this situation is not going to worsen but be caught up with and be looked into?

MR. PORTER: Ferris could probably answer better than I can. As I understand it, the two Commissions are primarily concerned at this particular moment with pollution problems.

MR. OLSEN: I think that's right; and --

MR. PORTER: Whether they are doing anything with zoning, I don't know.

DON WATKINS: Rich County has; Bear Lake County hasn't. Rich County has a master plan completed and they have a zoning board, but it doesn't help existing structures that are there.

MR. OLSEN: No, but these existing structures that are there, the people who purchased them would have no comeback onto us because they purchased them with their eyes wide open in what the situation was; and if they didn't, then they are at loss for not making proper inquiry into the problem that exists and in doing something about it prior to them purchasing the land.

MR. WATKINS: I think the situation probably is this -- that like any other zoning, which I am sure you are all aware of, there is a waiver for existing property owners when a new zoning ordinance goes into effect. This is the problem that the County Commissioners of Rich County have got.

MR. PORTER: I think what we have always said -- the water right picture doesn't favor the homeowner around Bear Lake. As a matter of fact, he probably has no rights of any kind. But he has quite a bit of influence both in Idaho and Utah, and in the national scene; and I think we have got to look at it just as a practical matter - not as a legal matter.

MR. OLSEN: And we'd better start looking, quick.

MR. HOLMGREN: I wanted to say this to Mr. Porter. I certainly wouldn't be dropping that Lake one inch if I were you, because I think it sets precedence; and I believe if you drop that Lake a foot, unless your zoning ordinances have specifically spelled out how many feet back from the Lake these new buildings should be constructed, - if you drop it 10 feet people will move just that much closer to the Lake. If you drop it 15, or 5, or whatever it is. Therefore, I would advise you, from a 'committee of one' here, to keep that Lake right up to where it has always been.

MR. PORTER: It has been within a fraction of a foot up to the high water mark each of the last two years.

MR. HOLMGREN: Good!

MR. OLSEN: Mr. Chairman, I think maybe then, in respect to this suggestion of Paul's, possibly we ought to pass a resolution by the three states in reference to this today, and take a position on this thing that you do something. It may be out of order; but I think we ought to talk to it.

MR. WATKINS: Mr. Chairman, may I make a comment. I have heard this 'common sense' used from time to time in the last 15 minutes here; and if this group takes that action, I don't agree with Mr. Holmgren on his statement because we have been releasing water - and with the irrigation demand, we are going to be releasing water all winter long, just because we know that next year on the average there's going to be 3½ feet of storage water come into the Lake next spring; and we have got to have some kind of draft on there, so we are going to be drawing water. That isn't what you said.

MR. HOLMGREN: I didn't mean to say that you had to hold it there 100% of the time.

MR. WATKINS: One of the things that influences our common judgment, and I think the problem here exists with anybody, is the exposure to legal liability. If this group wants to take this legal liability, I think we would be willing to do anything this group said. I am talking as the operator of Bear Lake and Bear River.

MR. PORTER: We have a legal liability for negligence; and if we can foresee that the Lake is going to fill, and we don't do anything about it to get a little leeway there, and we flood those people down below, we are probably pretty well stuck.

MR. OLSEN: I wish I could testify as Box Elder did in reference to your goodness, Bob. (Laughter) You know how my people feel in regard to the problem in Cache County.

MR. LAWRENCE: Mr. Chairman, I would like to come back to this just a little more -- Bob, or Don -- it seems to me that there is some legal implication if you habitually held the Lake one foot below maximum and made it a policy never to go up to maximum.

It seems to me that at least once during every year it ought to be good practice to let the people know where that maximum is by actually having to --

MR. PORTER: I think, Dan, that you have posed a question that we have looked at from all sides, and I think we have the right answer. We try to allow ourselves a half a foot on the Lake to take care of these rather sudden wet periods during the spring. If we don't have it, and they could show that we could have done it, I think we have a legal exposure to liability -- because it is that wet spring that raises havoc with the Lake and with the land down below.

MR. WATKINS: Usually it is that period from the latter part of April through June. The snow surveys are pretty good, I think, and we make our projections through, usually, elevation 23. This gives us a cushion.

MR. PORTER: I think if we didn't do that, Dan, as a lawyer I would think we have exposed ourselves to liability. We know from past years that it can happen as much as it can not happen.

MR. BISHOP: I would like to comment on the other side of the issue. It seems to me that you have a legal liability to make the maximum use of the storage capability of that facility; and I think you expose yourself to legal liability if you fail to do so and thereby end up in not being able to provide the water that decreed rights are entitled to downstream.

MR. PORTER: I think you posed the position that we are in just exactly, Floyd.

MR. BISHOP: I would like to ask this question, Mr. Porter. Let's assume that you have a dry year, or series of dry years, and it is necessary in order to meet these downstream rights to draw water down below what you have been used to doing it in recent years. I get the impression that you wouldn't draw it down below a certain level in the Lake?

MR. PORTER: No, I said we would; to supply the irrigation demands downstream we are required to draw it down as low as our pumps will take it. We have done it; and we would do that.

MR. BISHOP: Conversely, you would store to the maximum level if the conditions were such that you think you should?

MR. LAWRENCE: 5902?

MR. PORTER: That is the bottom of the Lake -- of the pump.

MR. WATKINS: I think what Mr. Porter has said was that when the water is available for storage that we have been holding up to a drawdown of about 18 or 17. When the

water is available. Now, it wasn't a matter of what we draw it down to; it was a matter of getting all in the Lake that we could and then releasing for irrigation. In '65, that's been a case where there was an excess water. If you end up at the end of the irrigation season at elevation 21 and your average year's record shows that you can expect on the average $3\frac{1}{2}$ feet, then you better draw a little bit more water out of that Lake, or you are going to flood, say, instead of 2,000 second-feet over those farmers that are used to maybe 1,000 feet, you are going to put 4- or 5,000 second-feet -- you are in trouble.

MR. BISHOP: It seems a little unfair to me that Utah Power & Light is saddled with this responsibility of the complete operation of the reservoir.

MR. HIGGINSON: Flood control on the River.

MR. WATKINS: If this body will take the liability --

MR. BISHOP: This body doesn't have any jurisdiction whatsoever. It seems to me that there should be some entity that does have jurisdiction - that can represent the various interests involved.

MR. OLSEN: I didn't hear what Watkins said. Call on him again.

MR. WATKINS: This is just an opinion of mine. I think that if anybody would take the liability in any particular instance, I think the Power Company would probably be willing to give up the respective or appropriate responsibility.

MR. PORTER: Of course we still want to operate the Lake for power purposes; and we think that we are doing it pretty well - and have done it.

MR. HIGGINSON: Couldn't this problem with regard to the maximum Lake level and your need to hold it a foot less or half a foot less than that level be solved by some change in the structure at Stewart Dam and the channel between Stewart Dam and the outlet?

MR. PORTER: I don't think so. Could it, Don?

MR. HIGGINSON: Why do you have to divert the water into the Lake? Why can't it go on down the River?

MR. PORTER: Because there is no River channel.

MR. HIGGINSON: I am talking about construction of a channel. Can't it be solved by construction of a channel down?

MR. PORTER: I don't think so. Over a period of 50-odd years that we have been operating that Lake, the channel below the outlet and below Stewart, but the River itself below the Lake will not hold more than 1500 - 1400 -- and yet historically, spring flows coming past Harrer have been 5- to 6,000.

MR. HIGGINSON: Okay. Now, what obligation does the Power Company have, by right or by anything else, to divert that water into the Lake?

MR. PORTER: Oh, I suppose from a technical, legal standpoint, maybe we have none.

MR. HIGGINSON: Then why is it a consideration?

MR. PORTER: I have a feeling that I am not sure that I would like to get involved in any litigations. We have done it for so many years --

MR. HIGGINSON: Have you done it for the purpose of providing flood control -- or have you done it for the purpose of filling your Lake?

MR. PORTER: Well, we've done it for the purpose of filling our Lake; and we have also practiced flood control. We have tried, the best we could, to not flood those farmers down below who have over the years depended upon us to get the water into the Lake and give them that much more land to farm.

MR. HIGGINSON: And have also encroached upon the stream channel until you could no longer use the stream channel to its full capacity.

MR. PORTER: That's right; and we may be stopped now from ever going back to the old practice. We may have a legal responsibility because we have done it for so many years, to continue to do so.

DAN ROBERTS: I want to ask a question. Isn't there a way out of this thing? Wouldn't some storage on Bear River below Bear Lake be able to take this up and hold it and get away from all this damage?

MR. BISHOP: Why not above Bear Lake? It would be more effective.

MR. PORTER: Your damage is primarily held from Montpelier to --

MR. WATKINS: I think an answer to that question is -- if you have a damsite that has the capacity to carry over during the dry periods they can take care of these wet years. But I think this comes back to Mr. Porter's first question - or second question - what size reservoir do you need to get a firm yield of what you want over 15 dry years, or over this dry period? We have been sitting in a wet period here since '65, and --

MR. MYERS: How many years during the dry period were you unable to fill your obligation to the water users below?

MR. WATKINS: Well, in '34 and '35 - there were two years --

MR. MYERS: Two years out of the 15.

MR. WATKINS: Right; in '34 and '35.

MR. PEART: A lot of that water was used for power during those dry years -- more so than would be now.

MR. PORTER: Before those years -- back in the '20's a lot more was used for power.

MR. MYERS: During these periods of dry years were you using a lot more water for power at that time?

MR. WATKINS: '34; yes.

MR. PORTER: Before '34, Don.

MR. WATKINS: Before '34; right. Since '34 -- no. In '61, which Mr. Olsen, I think, referred to as being a very dry and enormous drawdown, the operation then was the same as it is now.

MR. MYERS: We have had a dry year up home this year. Nobody else was, but we were very dry up there this year. And I was just wondering if your operation to use power was the same as it is now during those dry years, would you have been short on irrigating water? If you weren't producing any more power then than you are now with the water, would you have been short the two years, or would you have had sufficient water all the time?

MR. PORTER: In '35 for sure we would have been short.

MR. MYERS: One year, then.

MR. PORTER: At least one. It would be pretty hard to go back and calculate '34.

MR. FUNK: It seems to me that we aren't talking about a great mode of change in the operation of the Lake. We are going to put just a little more on the top; and we are not really concerned about the bottom except when we get a dry year. Now, upstream storage should enhance flood control; it should reduce the amount that goes past Harrer, depending on the amount and location of upstream storage.

MR. PORTER: We do not quarrel with you on these very wet years; but as I said before, there are going to be a lot of years when there isn't more than enough water to satisfy the irrigation demands below.

MR. FUNK: Well, now, this is an estimate on your part; and is not as yet borne out by figures presented by the sub-committee. And I think we need to get this out on the table and see what is realistic and what we are talking about here rather than estimates. I think we have - two states at least - have answered your two questions here. Bear Lake should be filled; and it should be drawn down to meet water rights as you have done in your past mode of operation. And I think it should continue with the reasonable judgment on flood control that you have operated it in. Assuming this, and that

we can fill this extra amount on top still within the legal limit of the Lake, maybe we ought to present to you a specific proposal, so that the Power Company could say, "If you were to put this upstream storage, we would lose this much water; and we would be damaged by this amount; and so, therefore, upstream construction would have to pay this cost in damage to Utah Power".

MR. PORTER: We are susceptible to that kind of an approach.

MR. LAWRENCE: I was just going to suggest that if we had a flood control problem, for instance, if we had 5,000 second-feet coming down a channel that can only handle 1,400, there are federal funds available to build flood control dams. And there is a site upstream where you could have a strictly flood control structure. I don't think we should completely write it off as being absolutely tied to irrigation use in any storage that we built upstream.

MR. PORTER: Well, I think I have said before that I am not satisfied that you have all the figures that you need yet.

MR. JENKINS: It seems to me that we have two areas of flooding that we are talking about. One is the flooding that would be caused by the variation in level of Bear Lake itself. The other is the flooding from too much water in the channel somewhere on the stream. The one area, perhaps, as to Bear Lake, we might consider examining with the view to making a recommendation to zoning commissions that some kind of flood plain zoning should be considered, and the hearings that come out of something of this nature would at least serve to perhaps bring this thing on the table and let people start to think about it a little more. What's built is built; but they're still building; and maybe we are not fully performing our obligation to outlining the problem as we see it in not being a little more vocal in suggesting to the appropriate bodies that they should look further into this facet of it strictly from the flood control, without worrying about the additional problems of pollution that is caused by extra high level to the Lake also.

MR. PORTER: I think you make a very good suggestion; and I have felt for quite some time that you need to review these questions with probably the two County commissions. And I am not so sure but that at one of your meetings, and fairly soon, you ought to invite at least the officers of that Bear Lake Home Owners' Committee. There's been a group of Bear Lake home owners organized for the last four or five years that I know of; and it wouldn't seem to me at all out of place to sit down and find out what they're thinking about - if its no more than just an informal.

MR. OLSEN: Or let them know what we're thinking about. That's the thing that we need to let them know.

MR. TEICHERT: I think you are thinking of flood control strictly below Bear Lake, and we have experienced quite a need for flood control above Bear Lake this past season. I imagine there has been \$1,000 worth of damage on the Smith Fork; and the water comes down and the channels of Smith Fork won't hold it. There aren't adequate culverts to get it back into the Bear River, and it follows the railroad bridge. My observation was that it didn't even get into Bear River and there was a lot of stream damage. So we are interested in flood control above Bear Lake.

MR. FUNK: It would seem to me that the technical sub-committee and Utah Power & Light should get together and each review, so that we can come up with some arithmetic that we all agree on, on this 15-year possible shortage. It would seem to me that this is something that we can resolve. And if this is a real issue it should be resolved. Therefore, I would make a motion that the technical sub-committee meet with the appropriate representative of Utah Power & Light and go over these figures and review again for us at a subsequent meeting and see if this 15-year shortage is in reality a threat.

MR. PORTER: Can I make a suggestion that might add to your motion? I think that the technical sub-committee might also review the entire period of record as to flows, with the idea of submitting to your Committee what they think would be the proper size reservoir that would have to be built upstream in order to provide whatever amounts of water they would provide on an annual basis and still satisfy all downstream rights.

MR. HIGGINSON: Are you talking about providing the 61,000?

MR. PORTER: Well, I would say not to leave it necessarily at 61,000, Keith, but maybe come up with two or three alternatives that you could have this much water guaranteed to you on an annual basis with this size reservoir. And maybe two or three different figures along that line.

MR. FUNK: Now, would you clarify that for me, Bob? We are talking about the water storage that Wyoming has requested?

MR. PORTER: Yes; and Utah has requested.

MR. FUNK: Right.

MR. PORTER: What I am -- you are in effect asking the technical sub-committee to determine how many years they would fill, how many they would not, and how many years they might be dry. Now I am suggesting that you go one step further and ask the sub-committee to also come up with maybe two or three alternatives as to the size reservoir built upstream. In other words, I am assuming you've got to have carry-over. How big has it got to be to give you 30,000 annually? How big has it got to be to give you 60,000 annually? How much has it got to be to give you 100,000 annually?

MR. FUNK: That is a rather complex question, because this won't be a single reservoir, and --

MR. PORTER: Well, what total storage? What would you have to have? Alan, that wouldn't be too difficult to come up with?

MR. FUNK: Alan?

MR. ROBERTSON: I would suggest that before we start with intensive studies that we just look at the 15 year period and multiply the 16 years by the yield and add a little evaporation, and --

MR. PORTER: Okay. That could be a second step afterwards.

MR. LAWRENCE: I would like to comment to Bob. First, we have had some dialogue with the Power Company. I frankly have been a little disappointed that we perhaps haven't communicated as good as we could. We maybe need to pursue that. And we have done a lot of work already; and if he will, I would like to call on Dr. Stauffer to just tell the Committee very briefly what kind of studies we already have along that line. And maybe we can, without too much effort, get back to the Power Company with some specifics.

DR. NORMAN STAUFFER: Of course, we have done studies in our own office; we have done studies with the Bureau of Reclamation Provo office in regard to the State Water Plan; and we have done studies with the State of Idaho with their model. We have sized in the upper Bear River the sizes of reservoirs needed to meet different levels of development, starting first of all with meeting supplemental needs. We have also coupled this with the operation of Bear Lake. In other words, the three questions that were posed today -- it does make quite a difference on whether you can use storage out of there or not. I think as we showed in the technical report in Evanston with the results from Idaho's model, that if the Lake is drawn to its full extent there were 30,000 acre-feet that could be developed for depletion. They also showed with this model that keeping the Lake a foot below high-water level and releasing for some power, that there is at least 10,000 acre-feet available for depletion. Now, we might want to have some specific studies spelled out because there are hundreds of combinations that you can look at. I think we have a lot of the answers in runs that have already been made by our models - by Idaho's models. What we need is a specific example of what we are looking for because there are so many combinations you can look at. Do you have any questions that you maybe could ask me, or Al or Tom?

MR. HIGGINSON: In connection with those figures you just gave us, those are average figures?

DR. STAUFFER: No; we ran operation models '27 through '65. These are the years that we always run.

MR. HIGGINSON: What kind of a reservoir are you going to have to have upstream? As I multiply it out just taking what Alan said and extending that, you take these 16 years and you're talking about yielding 60,000 acre-feet you have got to have a 960,000 acre-foot reservoir plus evaporation in order to carry you through those 16 years in which there is no spill. 960,000 acre-foot reservoir just to carry you through 16 dry years! - to provide 60,000 depletion.

DR. STAUFFER: Again, this depends. If Bear Lake is operated full range you don't need that much. Combining two types of water, as we put in categories last time -- we put in spills -- running the Lake full range -- you come into a combination of these, and the total reservoir required above is not that big. If you do want an answer, we need to know a specific question. The problem is that there are all kinds of combinations that you can run.

MR. BISHOP: Part of my concerns have already been answered through Dan's question. I would mainly just say it seems to me to be an improper approach to pick out 15 dry years of record and base your study on that. I think you ought to take a look at the total picture rather than trying to pick out the most adverse period. I think we need to look at how much storage it takes to provide carry-over, to make it possible to consume or deplete a certain amount of water during that 15-year period. But you shouldn't look at that 15-year period exclusively.

MR. FUNK: If we were to put in this motion that we were to tie it down to 70,000 additional acre-feet of storage above Bear Lake and for the technical sub-committee and Utah Power to both make their input into this specific problem, and then to get a specific answer from Utah Power on what this would do to loss of water over Power wheels, would this be a helpful bit of information for us in this negotiation?

MR. HIGGINSON: Mr. Chairman, I would want some clarification of the 70,000. Are you talking about 70,000 acre-feet of storage space, or 70,000 acre-feet of new storage each year regardless of the space constructed?

MR. FUNK: 70,000 space; and whether it filled or not would depend on runoff; and this, of course, was tied to average runoff.

MR. JENKINS: One further item I think might need to be clarified here would be, would this apply to Utah - this is the total amount - and then upper Utah and Wyoming would then share in that figure? Or is this Utah's; and then Wyoming's would be in addition to this? You use a 70,000 figure and we have 100,000 and a 35,000 figure before. We have used the figure as high as 135,000. You are taking somewhat half of this, and looking at that, then -- is that your thought?

MR. FUNK: Yes, as a specific problem to get specific answers. As Dr. Stauffer pointed out, you could have thousands of variations; this ties it to one.

MR. JIBSON: I just had one other comment on that. You have got to decide on a study like this where you are going to use that 70,000. Whether it is going to be partly on new land; whether it is going to be strictly for supplemental use.

(comments from group):

Or M & I.

Or industry.

Or consumptive use.

Or exported from the basin.

MR. JIBSON: I would like to make one other comment. This 16 years, I guess the Committee is aware of where it came from. The study brought out 16 dry years in a row. If you take the historical record, without any modification except just history as it occurred, this 16 years becomes 3 years from 1924 to '70. This may not be realistic to do it that way.

MR. LAWRENCE: Explain that again.

MR. JIBSON: It was brought up to 1965 conditions I think first by the Bureau of Reclamation; and then they backed up and re-operated the Lake and came up with 14 years in a row that you would have that there would be no storage available upstream. This was not the actual operation of the Lake, but a simulated operation based on 1965 conditions. I assume that the sub-committee took that study as a basis. In other words, bringing it up to present conditions as near as you can guess, but still it is a simulated operation of the Lake. It isn't actual operation of the Lake as it occurred.

MR. PORTER: But, Wally, you have got to take present conditions. Historical conditions don't prove anything.

MR. JIBSON: I am not taking issue with this; but I think you kind of get the concept if we start talking about 16 years that this is 16 years historical record.

MR. HIGGINSON: Wouldn't it have been under present conditions?

MR. JIBSON: We don't know. One guy's simulated operation of the reservoir might be a little different than another.

MR. HIGGINSON: And you're questioning the figure?

MR. JIBSON: No, I'm not questioning it particularly.

MR. HIGGINSON: You've either got to question it, or accept it.

MR. JIBSON: All I am saying is that it is not a historical record of the Lake.

MR. HIGGINSON: What I am saying is that you have either got to accept the figure as being representative of present-day conditions or you have got to question it.

MR. JIBSON: I don't know whether it is, or isn't, Keith. But if we take historical record without adjusting it, we only had three years in a row that there wouldn't be some storage available for upstream use.

MR. PORTER: But if you take that without adjusting it you haven't got a true picture of what is going to happen from here on out.

MR. JIBSON: Well, I don't know what the committee did with power water during this period of time. Did you allow for power usage during that period; or did you figure the reservoir was strictly for irrigation purposes?

MR. ROBERTSON: I think rather than go into the details, it would be sufficient to say that the three states have examined it and discussed it with the Bureau and the Power Company; and I wonder if it is worth pursuing?

CHAIRMAN KUNZ: Alan, would you care to comment on this resolution that is getting kicked around here?

MR. ROBERTSON: Well, in one sense I would like to remind the Idaho committee of the statement we have made; and I would like to see you discuss whether you want to participate in a study of that type.

MR. HIGGINSON: Mr. Chairman, on a point of order -- It appears to me that the motion that we are debating here is lost for lack of a second; and we ought to start over again. I don't believe that we have got a motion before us. We probably shouldn't be discussing this until we get a second to a motion that has been made; and I'm not sure what the motion is at this moment.

MR. LAWRENCE: Mr. Chairman, if I interpret what we've done here, the motion was intended to break the stalemate which we now have. We have been talking in generalities, I think, for several months with respect to the effect of upstream storage.

We have presented some model studies which have in them assumptions which have been agreed to for the purpose of the studies. But at no time have we involved directly the Power Company, nor have they responded specifically as to the effect that it would have on them and their rights. To some extent I think they have presumed that there would have to be some negotiation regarding Power Company uses. So I had thought that perhaps the motion was intended to get right down to specifics with some kind of a specific example that the Power Company could say, "this would affect us this way" and would have to respond, "This won't work because" -- I was hoping that was what we were getting at.

MR. FUNK: This was the intent of the motion -- to give us a defined area that we could get some specific answers rather than generalities meeting after meeting on the same subject.

MR. LAWRENCE: Mr. Chairman, this may be the responsibility of Utah and Wyoming to work directly with the Power Company as an assigned project and not involve the technical sub-committee as such.

CHAIRMAN KUNZ: This was more or less the feeling I think that Idaho tried to present here for your response.

I think the Chair will declare a 5-minute recess while you work up a motion here, Mr. Funk, that can be presented - with Bob Porter or whoever you want to have help you.

MR. FUNK: Thank you.

(Recess)

CHAIRMAN KUNZ: Do you have something ready, Cal?

MR. FUNK: I'm not sure. I can try it for size.

I feel that Utah Power has maybe dazzled us with a little footwork here, and has been evasive for a number of meetings. And really, the hydrology report that was presented at the July 20 meeting and signed by all of the three states, agreed on the information that I attempted to put into the motion that I stated previously. And that perhaps the main dissenter is Utah Power & Light. Maybe rather than action by the three states, we just need action by Utah Power & Light with this hydrology study that has already been presented; and if they are in disagreement with it, to present some factual information to support their position; and that an additional figure that we would need would be what would it cost us if we were to proceed in the

direction of the hydrology report that was presented at the July meeting. So I am wondering if we need a motion to all three states. I would like some input from these other states.

MR. BISHOP: Cal, what do you mean - what does it cost us? You mean compensation to Utah Power for --

MR. FUNK: Well, if there were 30,000 acre-feet of depletion above Bear Lake this would represent a loss in power revenue to Utah Power.

MR. BISHOP: And you would like to have them present an estimate of that figure?

MR. FUNK: Yes; so that upstream storage builders could incorporate this in the cost of their construction.

MR. PORTER: I don't think we have ever seen a copy of that report.

MR. FUNK: Well, this may be the problem, then, right here.

MR. PORTER: We discussed it with the technical sub-committee at that one meeting, and I thought we were fairly much in agreement; but I don't think I ever saw the report.

MR. LAWRENCE: Did you get a copy of the Minutes of the July meeting?

MR. PORTER: No; I haven't yet, Dan.

MR. OLSEN: Now you have.

MR. PORTER: Thank you.

MR. OLSEN: It is in there.

MR. JENKINS: Cal, one thing that bothers me just a little with your observation on this July 20 report on the hydrology. It presents a number of alternatives here. I think if you want to settle on the category C - the 30,000 -- I think that you need to then be specific and say which one you are talking about. The report as I read it presents several alternatives, and the Power Company - if they are the ones that are going to make the response - need to know which set of circumstances as presented here you are talking about using for their response or further investigation.

MR. FUNK: Would it be well to have them respond to all the alternatives that are in there, so we can see if they have determined a limitation that we haven't?

MR. PORTER: I have no objection.

MR. BISHOP: I think a range of alternatives is desirable.

CHAIRMAN KUNZ: In the technical sub-committee report there were several categories of water listed there.

MR. JENKINS: And several conditions of use of Bear Lake -- or, at least two. One was Bear Lake used to the maximum content, and the other was Bear Lake not filled above 5922.5.

CHAIRMAN KUNZ: Okay?

MR. FUNK: Bob, you get it coming and going. Is this alright?

MR. PORTER: Perfectly.

MR. FUNK: Could you give us those specific answers?

MR. PORTER: I'll do the best I can.

MR. FUNK: Including cost of loss of power revenue on the various alternatives?

MR. JENKINS: Would somebody review that second alternative? The cost part I got of it; what's the other one? What are you asking with regard to the 30,000?

MR. FUNK: Well, if the River were operated in this mode - depleted 30,000, is there enough water? Are we going to get a 15-year period that the upstream reservoirs would be empty?

MR. HIGGINSON: Again, Mr. Funk, I think it comes back to what size reservoir you are talking about.

MR. PORTER: We'll assume two or three.

MR. HIGGINSON: You'll assume a 960,000 one if it takes it in order to --

MR. PORTER: We'll work it both ways.

MR. FUNK: Would it be well to have some correlation with the sub-committee so that you understand their figures?

MR. PORTER: I think we may very well want to meet with them. Let us take a look at it first, and then we'll get in touch with them.

MR. ROBERTSON: I would just like to make one comment. In the sub-committee report there is a typing error. Exhibit 1 under the heading Mode 1 - Bear Lake use in maximum content, elevation 5902 to - it should be 5923.65 instead of .35. This was a typo error in our office.

CLIFFORD ALLDREDGE: This 16 years apparently came from our study at the Bureau. I would like to qualify it a little bit. This 16 years means there are 16 years of no spill out of Bear Lake; it doesn't mean there are 16 years of no available surplus

upstream. You could still deplete the upstream by 30,000 acre-feet during that 15-year period and still operate the Lake. It doesn't mean there isn't storable water; it just means there is no spill out of Bear Lake during that period of time. Operation of Bear Lake would be what would be detailed so you would still have to compensate the Power Company. There is water available.

MR. SCHLENDER: Mr. Porter, do you feel then that these three questions that you posed to us this morning that you felt had to be answered before we could do anything -- do you think now that studying the report kind of gives you a direction to go there where some of this, you can make some more definite approaches in those three questions, or do you think maybe any of them --

MR. PORTER: Well, I didn't really pose those questions, Mr. Schlender, to get answers for me. I felt those are questions that this Committee needs to answer for its own use before it gets too far along in these negotiations; because it will make a lot of difference as to how you are going to proceed. As far as I am concerned, on this request that you have made of me now, I don't need those answers. I'll make some assumptions and give you some alternatives.

MR. HIGGINSON: Mr. Chairman, in coming back to Mr. Funk's -- I assume it was a motion --

MR. FUNK: No, I was making a request of Mr. Porter; and he is responding very nicely.

MR. PORTER: I won't have to do the work.

MR. HIGGINSON: I am wondering if we shouldn't, for a matter of record, at least as a Committee, move that the Power Company be requested. If you will put your request in the form of a motion, I'll second it.

MR. FUNK: I'll attempt to do that.

Mr. Chairman, I move that the Utah Power & Light Company be requested to review the hydrology study that was presented by the technical sub-committee at the Evanston July 20 meeting, and see if they can provide any factual information that would indicate whether or not these various modes of operation of the Lake can or cannot be met; and, further, that they provide some cost figures of power revenue loss to the Power Company if these various modes of operation were implemented. Does that say what we want it to?

CHAIRMAN KUNZ: Do I hear a second?

MR. HIGGINSON: I'll second.

CHAIRMAN KUNZ: Okay; you've had a Motion made and seconded. Discussion.

MR. JENKINS: Do you want to limit their comment there to power revenue loss, or would you want them to expand beyond that into damages that might be sustained? This is very hypothetical, but at least let them allude to it to the degree that they felt appropriate?

MR. FUNK: This may be in order; and maybe we should say -- would it diminish their ability to meet downstream rights that they are now supplying?

MR. BISHOP: Isn't that implied in the Motion -- whether or not that this could be accomplished? I think it is implied.

MR. JENKINS: Yes; I guess that is right.

CHAIRMAN KUNZ: I would see no reason to alter the Motion to include that.

MR. PORTER: I think I understand what you want.

CHAIRMAN KUNZ: Any other questions or discussion? There is a Motion made and seconded; and questions have been called for. All in favor say 'aye'. Opposed?

Motion carried.

Mr. Watkins has got himself an assignment.

CHAIRMAN KUNZ: Any other questions of Mr. Porter here?

MR. LAWRENCE: Mr. Chairman, I guess I am the theoretical chairman of the technical sub-committee; and Mr. Porter said that if they had any questions they would get in touch with the committee at the necessary time. We would be delighted to help if we can add to the information.

MR. PORTER: Fine. We appreciate it.

MR. FUNK: As an afterthought, I am wondering if we should have any written input from the Power Company on flood control immediately below Bear Lake as it affects mode of operation? Is this of any value to us?

MR. HIGGINSON: I might point out that there is a provision and I am sure the other states are aware of it, for flood insurance through the National Flood Insurance Act of 1968. In order for local areas to be eligible for that insurance there has to be in effect flood plain zoning regulations or land use regulations. In order for those regulations to be adopted there has to be flood plain information reports and flood zoning information reports prepared. We have had a bill in the Idaho legislature on three previous occasions and are re-submitting it to the 1973 Idaho legislature. This would provide for the determination of those areas on streams and lakes which are subject to periodic flooding. That information would then be

transmitted to local government - whether it be city or county - and they would then have the responsibility and opportunity within a one-year period of adopting suitable and acceptable land use regulations within the guidelines. If they don't do so, then the states would have the authority to step in and regulate the development of land considering the flood hazards. That represents a potential, as far as I am concerned, in Bear Lake and areas below Bear Lake, of regulating developments that encroach upon the flood-carrying capacity of the flood plain. It also provides that what developments are already there may be insured so that if a flood does occur and they are damaged, they can be compensated -- in effect, bought out, and moved out of the flood plain. So it represents a potential for taking care of the kind of a problem that we are talking about. But it is off in the future, although we are going to make a real effort at it.

MR. OLSEN: Do you know whether or not we have that as a state law in Utah?

_____ : No, we don't.

MR. OLSEN: There is some talk to it. I am just vague on it. I have had some discussion on it with some. What is the status on it, if we don't? Is it about the same as yours?

MR. HIGGINSON: I can't tell you whether they are even going to consider it in Utah.

MR. OLSEN: Have we got notification on it, Dee?

MR. HANSEN: I don't think there is a bill.

MR. HIGGINSON: Montana passed a law this past session. They have it in Nebraska and California; New York; Connecticut; and a number of other states; but I don't think in Utah or Idaho.

MR. LAWRENCE: I don't think it needs to be a part of this meeting, but we have a representative in my office who works with the federal people in making the counties and cities aware of the flood plain insurance program; and there is a provision under that law that counties can adopt such ordinances.

MR. OLSEN: It is optional to the county, as I remember it.

MR. LAWRENCE: Again, in our own corner, we ought to consider some state legislation. We have talked about it.

CHAIRMAN KUNZ: Any further questions of Mr. Porter? Any more comments?

This brings us down to item No. V - Other Business. Mr. Bishop, do you have anything that you would like to mention? or any member of your delegation?

MR. BISHOP: Mr. Chairman, it just occurred to me that maybe we should pursue this flood plain management thing a little bit further. It might be helpful to pass a Motion by the Negotiating Committee recognizing the need for a flood plain management plan for the Bear River, including Bear Lake; and encouraging the states to adopt legislation that would implement a plan of this kind. Would that be helpful at all? If it would, I would move that this Committee go on record in favor of the flood plain management plan and indicate to the individual states that the Bear River drainage is in need of such a plan; and we feel this should be pursued actively by the three states and the other government entities that would be involved.

MR. OLSEN: And counties, I would like in that, too; because then you would bring the pressure from the county to the state rather than --

CHAIRMAN KUNZ: You have heard the Motion. Do I have a second?

MR. OLSEN: Second.

CHAIRMAN KUNZ: You have heard the Motion made and seconded. Discussion?

MR. JENKINS: Floyd, would we want to take and approach this merely from a recommendation coming right now as a result of this Motion; or will we want to examine it further and even get more specific in making recommendations that we see these kinds of problems and documenting it a little bit more before we went forward with just making our ideas known to them as it would stand at the present moment if we were to pass this?

MR. BISHOP: I think there would be value in pursuing it in a more specific way; but my thought was that the legislatures of the three states will be in session fairly shortly, and perhaps it would be of common impact on the legislatures to know that the people involved in this negotiating operation are aware of the problem and suggest that it be handled in this way. I don't think the Motion discourages further action on a more specific basis.

MR. OLSEN: Could I make one comment? Could we make an assignment to our legal counsel for our committees? Give them this responsibility. They could do the wording on it, and talk among themselves and come up with something that would fit the need.

MR. BISHOP: I would assume that each of the individual states would probably pursue it along those lines. I am sure we would.

MR. OLSEN: I was just thinking of tying them together while we are here. They would be so notified.

MR. HIGGINSON: Mr. Chairman, I don't usually like to volunteer for work; but we have done a lot of work in our office in connection with this flood plain program and flood plain information reports and flood zoning and so on, and if it were appropriate at the next meeting of this Committee I would be glad to give you a presentation on the whole concept of flood plain management; the implications of it; what is happening in the other states; what the effects are; how effective the flood insurance has been; and this kind of thing. If that would be of interest to the Committee.

CHAIRMAN KUNZ: We don't get very many volunteers around here.

MR. HIGGINSON: I am assuming you are going to meet before January.

MR. LAWRENCE: Mr. Chairman, I think it would be very helpful.

OTHERS: So do I.

CHAIRMAN KUNZ: We will have that for an Agenda item for the next meeting, then.

MR. OLSEN: Let's carry this Motion through that we had. Did we?

CHAIRMAN KUNZ: No; we were still discussing. The question has been called for. All in favor say 'aye'. Opposed?

Motion carried.

MR. LAWRENCE: Mr. Chairman -

CHAIRMAN KUNZ: Mr. Lawrence.

MR. LAWRENCE: I wonder -- maybe I could ask the Chairman to tell the Committee how he feels that we have handled or left the three questions posed by Utah Power, as the things that we need to decide. Have we decided not to do anything about them? Has the record been clear as to where each state stands with respect to this information?

CHAIRMAN KUNZ: Not in my mind, Mr. Lawrence. I am sure that our committee will discuss these questions further; and I think each state should. I don't expect any specific answers from any of us next time. On those three, I don't think we can beam it that soon.

MR. OLSEN: Between our own committee?

CHAIRMAN KUNZ: Between your own committee.

MR. OLSEN: I think we can.

CHAIRMAN KUNZ: All right. Do you think you can, Floyd?

MR. BISHOP: I think we are already decided. I don't think we have any problem; the only thing is, we don't have any jurisdiction.

CHAIRMAN KUNZ: Anything further you'd like to bring up, Mr. Bishop?

MR. BISHOP: Nothing, Mr. Chairman. Thank you.

CHAIRMAN KUNZ: Mr. Olsen -- under item V -- anything further you would like to bring up? Or your committee members?

MR. OLSEN: No. Does any of my committee have any business under V?

MR. LAWRENCE: What about the Idaho proposal that we initiate dialogue on Cub River project? Do that after this meeting; or as a part of this meeting? We got authority to do it. Is it just a matter of meeting together afterwards and getting something done?

CHAIRMAN KUNZ: I think possibly this would be the way to handle it, Dan.

MR. BISHOP: Mr. Chairman, one thought does occur to me. I would like to get Idaho's permission to meet with Utah without Idaho being present.

(Laughter - comments about 'secret meetings', being skeptical, etc.)

MR. JENKINS: Mr. Chairman, I was wondering if you just wanted to recap for all of us what some of the Agenda items are that are slated for the next meeting, just to make sure that if there is anything else -- We have put some of them in as we go along. Maybe we could just recap it and make sure that there aren't any other Agenda items that we want to add to the next meeting.

CHAIRMAN KUNZ: Let's see; there would be the Utah Power & Light presentation; Keith will come forth with his presentation; there was a Motion to the technical sub-committee for a domestic use discussion. Then there will always be the items for each state to comment on - whatever.

MR. SCHLENDER: I am still wondering how we are going to get some of these questions answered. Maybe the Power Company will have them; but it seems to me that some of these things could be agreed on, or at least get prepared to agree or disagree on, if they ask us. I hate to see them keep hanging on there, and not get as much decided as we can as fast as we can.

CHAIRMAN KUNZ: I think that is the assignment to each state, isn't it?

MR. LAWRENCE: I wonder if Mr. Watkins or Mr. Porter's other representative would add an estimate of when they might want to report back to this Committee?

MR. PORTER: We would like to have it for the next meeting. We'll try to have it by then.

MR. LAWRENCE: November 26th?

MR. PORTER: I would sort of hope that you won't have it on that day. You've got to be someplace else anyway. That is your Colorado River meeting.

(Discussion: Bear River Commission meeting the last Monday in November - whether or not to postpone the meeting)

CHAIRMAN KUNZ: This brings us to that question then; the date and location of the next meeting.

MR. LAWRENCE: We were prepared, Mr. Chairman, to invite you to Logan, I think, for a meeting immediately following the Bear River Commission meeting; but maybe there is some reason why we shouldn't have that.

CHAIRMAN KUNZ: We would not have this response from the Power Company. Do we have sufficient other things to take up?

MR. LAWRENCE: Maybe if we meet with Idaho separately and Wyoming separately, maybe we'll be pretty busy anyway.

MR. HIGGINSON: Maybe we ought to meet with Wyoming without Utah.

(Laughter)

MR. LAWRENCE: Well, in all candidness, I think we have all been pretty careful about keeping each other informed, and the technical sub-committee has done that, too. The other states have always had an invitation.

MR. FUNK: In the interest of productivity, I would like to see us meet and get the response from Utah Power. Would it be possible to have that soon after that week? A week after? I would hate to see us go into January.

(More discussion of where to have the meeting -- whether to hold it in conjunction with the Commission meeting -- possible dates -- etc. It was decided that the next meeting would be held Wednesday, December 20th, in Salt Lake City -- time and place to be determined by Utah.)

MR. HIGGINSON: Mr. Chairman, in connection with the Utah Power & Light statement and their three questions, it seems to me that one thing we ought to do somewhere along the line, is, as three states, to provide answers to those three questions. I think we need to take a position. Actually, there are four questions that they have asked. Those four questions require answers before we can proceed much further.

The information that they are going to come up with in their study will help us provide those answers. At some point along the line we have got to provide answers for those questions from each of the three states. If we are in agreement, then as a Committee we can have an answer; if we are not in agreement, we have got to do some further work with our negotiation. But I am wondering if the four questions asked by the Power Company cannot be an item of discussion at our next meeting and on the Agenda specifically to see if we, as a Committee, can reach agreement on those four questions.

CHAIRMAN KUNZ: I think this was Dan's thinking, too.

MR. SCHLENDER: That was what I had in mind, too. I was wondering why we can't at least begin to start getting answers.

MR. LAWRENCE: Does that mean then, that 30 days prior to December 20th we submit in writing and circulate to the other states, our views?

CHAIRMAN KUNZ: Yes; that is what was agreed on.

MR. OLSEN: You might reaffirm those two, Ferris. These are Motions that we passed in an affirmative nature in conducting our meetings.

CHAIRMAN KUNZ: That's right. These responses are to be 30 days following this meeting; and 30 days prior to the next.

MR. JENKINS: In connection with that, I am wondering if the Power Company's letter of September 18, 1972 to each of the respective states shouldn't be made a part of the record. I don't believe it has up until now. Mr. Porter made some observations from this letter; but I am wondering if the full letter shouldn't be incorporated into the record.

CHAIRMAN KUNZ: It can be as a part of the Minutes. I think it was referred to pretty much in its entirety, but -- you have no objections, do you? (to Mr. Porter). Alright, we will include a copy of that with the Verbatim Minutes.

Any other business?

Meeting adjourned at 2:50 p.m.

UTAH POWER & LIGHT COMPANY

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September 18, 1972

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OF COUNSEL

Mr. Daniel F. Lawrence, Director
Division of Water Resources
Department of Natural Resources
State Capitol
Salt Lake City, Utah

Dear Mr. Lawrence:

At the meeting of the Tri-State Bear River Negotiating Committee on April 17, 1972, I suggested that certain decisions were necessary with respect to three questions that I posed; namely, (1) Is Bear Lake to be drawn down for irrigation purposes without any consideration for recreational uses or are the irrigators prepared to forego some of their rights in order to provide a more stable lake elevation, (2) Is Bear Lake to be filled to capacity whenever it is possible to do so despite the effect that such filling will have on the smaller homes and resorts, or do we leave some room in the Lake in order to give them some protection from flooding and from wave action during storms and (3) Does the operation of Bear Lake take into consideration any flood control both around the Lake and downstream from the Lake. And the report of the Technical Subcommittee at the meeting in Evanston, Wyoming on July 20, 1972 again emphasized a need for answers to these questions and pointed out that the amount of water that might be available for storage upstream from Bear Lake would vary greatly depending upon such answers.

The comments and proposals submitted by Idaho at the Evanston meeting could form a basis for proceeding

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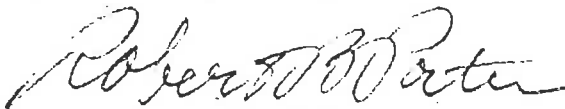
UTAH POWER & LIGHT COMPANY

further if answers to the foregoing questions could be agreed upon. In addition, one other matter requires consideration, and that is the matter of downstream irrigation rights. These must be recognized and a determination made as to whether they will be fully filled prior to any diversion to upstream storage or whether they will be subject to some pro rata reduction during the dry years that will come again. The relative size of upstream reservoirs will vary with the determination made in this respect.

We have also reviewed the comments submitted by Utah under date of August 31, 1972 and are of the opinion that their assumption as to the availability of water for upstream storage is very optimistic; but again I must emphasize my opinion that the manner in which the Tri-State Committee is proceeding is wrong and that nothing can be accomplished without first determining the answers to the questions I posed at the beginning of this letter.

I trust that this response to the Idaho and Utah comments can be given some consideration at the next meeting.

Yours very truly,



ROBERT B. PORTER

RBP:cjw