

INTERIM PROCEDURES FOR LOWER DIVISION WATER DELIVERY**Adopted November 18, 1997****I. INTRODUCTION**

The Amended Bear River Compact makes provision in Article IV for the administration of the waters in the Lower Division of the Bear River at times when the Commission finds that a water emergency exists. More specifically, the Compact provides in Article IV. A.3. as follows:

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

These Procedures for Lower Division Water Delivery govern Commission action upon petitions filed pursuant to Article IV.A.3 of the Compact; provide the process to be followed in the declaration of a water emergency in the Lower Division; and describe how the waters in the Lower Division will be administered once a water emergency has been declared. The Procedures also provide direction necessary for the Commission to be prepared to declare a water emergency in dry years, and direction on how water delivery schedules are proposed, adopted and modified.

Prior to adopting these Procedures, the Commission received comment from representatives of the signatory States, and provided public notice and held public hearings in the affected areas within Idaho and Utah.

II. AUTHORITY

These Procedures are adopted pursuant to Article III.C.1 and Article IV.A.3 of the Amended Bear River Compact approved December 22, 1978, by the Commissioners from Idaho, Utah and Wyoming, and subsequently ratified by the legislatures of the three States and consented to by the U.S. Congress.

III. DEFINITIONS

The following definitions apply only to the application of these Procedures and are not to be interpreted as definitions for other administration of the Bear River Compact or other procedures adopted by the Bear River Commission.

- A. "Commission" means the Bear River Commission organized pursuant to Article III of the Amended Bear River Compact.
- B. "Compact" means the Bear River Compact, as amended on December 22, 1978.
- C. The term "accounting method" means an interstate river diversion accounting procedure together with appropriate criteria, both approved by the Commission, which when used by either Idaho or Utah will yield similar results for each diversion on the Bear River below Bear Lake.
- D. "Direct flow" means all water flowing in a natural water course except water released from storage or imported from a source other than the Bear River watershed.
- E. "Engineer-Manager" means an employee or contract employee of the Commission designated to act in accordance with these Procedures.
- F. "Groundwater" means any water withdrawn from wells at a rate in excess of 0.10 cfs within the Lower Division.
- G. "Lower Division" means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage.
- H. "River Commissioner" (not to be confused with members of the Bear River Commission itself) means the duly appointed State official authorized to distribute both direct flow and storage water in accordance with valid rights and storage allocations from Bear River or its tributaries. The term "river commissioner" includes the officials called "watermasters" in the State of Idaho.
- I. "State official" means the director of the Idaho Department of Water Resources or a designee, the Utah State Engineer or a designee, and the Wyoming State Engineer or a designee.
- J. "Stored water" means water stored in a reservoir in the Lower Division for release for beneficial use at a later time or water that has been released from storage into a natural channel for conveyance to a point of rediversion under the supervision of a river commissioner.
- K. "Water delivery schedule" means a list adopted by the Commission of water rights, ordered by priority, and established in accordance with the laws of the respective States without regard to state boundaries and deliverable against junior priority rights.
- L. "Water emergency" means any period of time that the Commission has determined in accordance with these Procedures that a water user in Utah, by reason of diversions in Idaho, is being deprived of water to which the water user is justly entitled.
- M. "Water user" means a person, corporation or other entity having a right to divert water from the Bear River in the Lower Division for beneficial use.

IV. PREPARATION

A. General Preparation

The Commission recognizes that if adequate preparation is not made prior to receiving a petition requesting the declaration of a water emergency, then the Commission may not be prepared to respond to the petition in a timely and appropriate manner. In particular, water availability data are required to determine if the declaration of a water emergency is justified. Because storage water is an important component to the river flows in the Lower Division, the proper allocation and accounting of storage water usage is vital to Lower Division water administration.

An accounting method pursuant to approved delivery schedule(s) will be used to account for the delivery of direct flow and stored water in Idaho and Utah. This method will also account for depletions resulting from the diversion of groundwater. The method has been approved by the Commission (see *Appendix B*).

The accounting method must be operational in advance of the declaration of a water emergency for the potential administration by the Commission to be effective. Therefore, Idaho and Utah State officials will maintain computer models in each state consistent with the accounting method so that the method can be utilized by either state and the results submitted to the Commission or its Engineer-Manager within three calendar days after receiving the necessary water availability data in any year that the Commission has determined that a declaration of a water emergency could occur.

B. Preparation Procedures

Preparation for potential Lower Division administration requires cooperation by State water resource personnel, river commissioners, PacifiCorp (dba Utah Power) and the water users in gathering necessary water availability data. In any year that the Commission determines that water supply conditions are such that a declaration of a water emergency could occur, the Commission, through its Engineer-Manager, will do the following:

1. The Engineer-Manager will notify the State officials that an emergency declaration could occur. The State officials will in turn immediately notify appropriate river commissioners or other persons or entities responsible for water distribution of the possibility that such a declaration could occur, and such commissioners or persons or entities shall collect and assemble and distribute to the State officials and the Engineer-Manager the water availability data necessary for the accounting method.
2. The Engineer-Manager will request the Idaho and Utah State officials to confirm to the Engineer-Manager that deliveries from the Bear River will be administered and all tributaries will be administered to the extent appropriate in Idaho and Utah during the upcoming irrigation season. Data on the impact of groundwater depletions on direct flow will be requested by the Engineer-Manager from each state. Any changes to the Procedures or to the delivery schedules based on these data will be made according to Section IX.
3. The Engineer-Manager will request Utah Power to notify the State officials of stored water allocations for the water users holding contracts with Utah Power for use of stored water.
4. The Engineer-Manager will monitor river flow and diversion data to ensure the water availability data necessary for the accounting method is readily accessible in the event a petition requesting the declaration of a water emergency is properly filed with the

Commission.

V. RECEIPT OF PETITIONS

A. General Filing Provisions

The Commission recognizes that the filing of a petition and any subsequent administration will require considerable effort and have significant impact upon water users. In order to safeguard against the taking of action upon petitions that lack merit, the Commission shall employ the following process for reviewing and acting upon filed petitions. The Commission recognizes its responsibility to act expeditiously on meritorious petitions in order to provide timely administration. The following criteria for filing and reviewing a petition are established to meet these varied objectives.

B. Minimum Filing Requirements

In order for a petition to be accepted by the Commission the petition must:

1. be filed on a form provided by the Commission (see *Appendix A* appended to these Procedures);
2. be filed with the Commission at the Commission's office by mail, electronic facsimile or in person, during regular office hours;
3. provide evidence that the water user filing the petition is entitled to the use of water from the Bear River main stem in the State of Utah and stating that he is not receiving water to which he is justly entitled; and
4. provide evidence the petitioner has contacted the State official in Utah, the State official in Utah has contacted the State official in Idaho, and the petitioner has been advised of the administration that is occurring.

C. Engineer-Manager's Initial Review

1. Upon receipt of a proper petition, the Engineer-Manager shall review the petition to determine that the criteria and information required by the Commission has been set forth satisfactorily in the petition, and the Engineer-Manager will attempt to verify the information contained therein.
2. Upon determination by the Engineer-Manager that the petition satisfies all of the criteria set forth in this Section V, he shall immediately notify the members of the Commission that the criteria for filing a petition requesting the declaration of a water emergency have been met. If the Engineer-Manager determines that the petition does not satisfy all of the required criteria, the petitioner shall be immediately notified so that corrections or additional information can be supplied. The Engineer-Manager shall make a written recommendation to the Commission regarding Commission action for any properly-filed petition. Within three calendar days of the receipt of a petition, the Engineer-Manager will notify the members of the Commission, State officials and the petitioner of the receipt of the petition and the recommendations made upon the petition.

3. Nothing herein shall be deemed to prevent the Commission, upon its own motion, from declaring a water emergency pursuant to Article IV.B of the Compact. Nevertheless, the Commission shall not declare such an emergency without first notifying State officials and receiving appropriate input from them.

4. Multiple petitions will, to the extent possible, be consolidated and considered together by the Commission.

VI. COMMISSION ACTION ON PETITIONS

A. Convening of Special Commission Meeting

Upon notice from the Engineer-Manager that a proper petition has been filed with the Commission requesting that a water emergency in the Lower Division be declared, the following procedures shall apply:

1. Within seven calendar days of the initial receipt of the petition from the Engineer-Manager, the Chairman of the Commission will convene a special meeting of the Commission to consider the petition.

2. In the event that the Chairman is unavailable, the Vice-Chairman will have full authority to convene and chair the meeting.

3. The ordinary ten-day notice requirement for Commission meetings provided for in the Commission bylaws is hereby deemed waived by the Commission members, in accordance with the bylaw provisions, for the purpose of acting upon petitions regarding water emergency declarations.

4. The required quorum to take action on a petition will be as set forth in Article III.A of the Compact. In order to expedite the consideration of a petition, the Commission meeting may be conducted via telephone conference.

5. At least a two-thirds majority vote by Commission members present is required for the Commission to take action on a petition.

6. If feasible under the circumstances, the petitioner and State officials may be invited to be at the meeting on the petition and present any additional appropriate information.

B. Actions of the Commission on Petitions to Declare a Water Emergency

The following actions may be taken by the Commission, once convened, to review a petition requesting the declaration of a water emergency:

1. The Commission may declare the existence of a water emergency in the Lower Division pursuant to Article IV.A.3 of the Compact upon a determination that the petitioner is being deprived of water to which the water user is justly entitled because of diversions in Idaho. If a water emergency is declared, the Commission will direct the Engineer-Manager to monitor water administration by the State officials in the Lower Division under the adopted delivery schedules, as well as provide any appropriate instructions to the

Engineer-Manager specific to the administration under the declared water emergency.

2. The Commission may determine the petitioner has provided insufficient evidence to support the request for declaration of a water emergency and, therefore, notify the petitioner that the Commission will not take action without further documentation.
3. The Commission may determine that, through no fault of the petitioner, insufficient information is available to the Commission to make a full determination on the petition. The Commission may direct the Commission staff, or request State officials, to gather the additional information required. The Commission shall set a time to reconvene its consideration of the petition.
4. The Commission may deny the petition upon a determination a water emergency in the Lower Division, as provided for in the Compact, does not exist because it has not been established to the satisfaction of the Commission that the petitioner is being deprived of water to which the petitioner is justly entitled because of diversions in Idaho.
5. The petitioner will be notified in writing of action relating to the petition within three calendar days of the Commission's action. Notification will be by certified mail to the address of record on the petition. The Commission will also provide public notice of the Commission's action.
6. Action of the Commission on a petition for declaration of a water emergency may be subject to a request for reconsideration by the Commission from a State official or an aggrieved water user. Requests for reconsideration must be received in the Commission office within seven calendar days of the Commission's actions. Following the receipt of a request for reconsideration, the Engineer-Manager will advise the Chairman and the Chairman will schedule a meeting within seven calendar days of the date of the request for reconsideration. At the meeting, the Commission may hear from the petitioner, State officials, or affected water users present and then will expeditiously render its opinion with respect to the request for reconsideration. Within three calendar days, all participating parties will be notified in writing of the Commission's decision.

C. Termination or Modification of Water Emergency Declaration

An affected water user or State official may provide information to the Commission to support termination or modification of the water emergency declaration. Based on such information, an affected water user may file a written request with the Commission to terminate or modify the water emergency declaration and the Commission will act in substantial accordance with the time lines and procedures set forth under Section A and B above. The Commission can also terminate or modify the declaration of a water emergency on its own volition. Unless terminated sooner or extended by the Commission, water emergencies shall terminate on September 30th of each year.

VII. RIVER ADMINISTRATION

Upon the declaration of a water emergency, the Idaho and Utah State officials through the river commissioners will share, on at least a weekly basis, all available stream flow and diversion measurements necessary for administration of river flows by the Commission pursuant to approved delivery schedule(s). The accounting and administration will be performed as often as reasonably feasible and necessary throughout the irrigation season given the availability of the necessary stream flow and diversion measurement data, as well as information about impacts from diverted groundwater. The river commissioners will, under the supervision of the responsible State officials, adjust diversions in their respective States to deliver all direct flow rights on the Commission adopted delivery schedule according to priority of right, without regard to state line, and also deliver all stored water in accordance with the allocations certified by Utah Power, with accounting made for depletions in the flow of the Bear River resulting from groundwater use. A report showing water delivery without regard to state line in accordance with approved water delivery schedule(s) shall be sent each week by State

officials from both Idaho and Utah to the Engineer-Manager for review. If the review suggests that delivery is not occurring correctly, the Engineer-Manager shall promptly notify the appropriate State official who shall direct the river commissioner to deliver in accordance with the adopted water delivery schedule.

VIII. WATER DELIVERY SCHEDULES

A. General Provisions

The Commission will adopt one or more water delivery schedules as provided in Article IV.D of the Compact. Water delivery schedule(s) are appended to these Procedures as included in *Appendix C*.

B. Modifications to Accounting Method or Water Delivery Schedules

Modifications to the accounting method, the existing water delivery schedules, or the adoption of additional new water delivery schedules, will occur as follows:

1. The addition of water delivery schedules or the modification of adopted schedules or of the accounting method will be in accordance with the provisions of Section IX of these Procedures.
2. The accounting method and adopted delivery schedules will remain valid and in force until formally amended by the Commission.
3. An exception shall exist for minor modifications to the accounting method or a water delivery schedule which will not materially affect the accounting method or the water delivery schedule and may occur as follows:
 - a. all minor modifications to the accounting method or a water delivery schedule must be reviewed by the Operations Committee at a special or regular meeting;
 - b. the notice and hearing requirements for amending the accounting method or a water delivery schedule as provided under Section IX of these Procedures shall not apply;
 - c. if the Operations Committee finds the proposed modifications are minor and will not alter the intent of the accounting method or delivery schedule, and will not materially affect water users, then by unanimous vote of the Operations Committee the accounting method or delivery schedule will be modified; and
 - d. if there is not a unanimous vote of the Operations Committee, then the modifications shall not be approved until they have been formally adopted by the Commission as provided for in Section IX of these Procedures.

IX. AMENDMENTS TO THESE PROCEDURES OR TO THE DELIVERY SCHEDULES

A. General

Upon adoption, these Procedures will remain in force until modified or rescinded by the Commission. Copies of the Procedures, then in effect, will be kept on file with the Commission, and with the signatory States, for public inspection.

B. Amendment Procedure

It is anticipated that amendments and additions to these Procedures, and to the delivery schedules, will be required as experience is gained in administering the Lower Division diversions. The following procedures apply when making such amendments:

1. The Commission will cause one of its standing committees to review proposed changes to these Procedures, or the delivery schedules, and to present recommendations thereon to the Commission. The Commission may, after any necessary review, discussion, investigation and notice, vote to adopt the changes as "proposed amendments" in accordance with the Commission's Bylaws.
2. Once "proposed amendments" have been accepted by the Commission, the Commission will provide public notice as follows:
 - a. Notice of the "proposed amendments" will be posted in the courthouses for each county in Idaho (Franklin, Caribou, Oneida and Bear Lake), Utah (Box Elder, Rich, and Cache), and Wyoming (Lincoln and Uinta).
 - b. The Commission will advertise in papers of general circulation, for two consecutive weeks, its intention to hold public hearings on the proposed amendments.
 - c. The Commission will notify the State officials, and the river commissioners in Idaho, Utah, and Wyoming, of the Commission's intent to amend these Procedures or the water delivery schedules.
 - d. Additional public notice may be given as the Commission deems appropriate.
 - e. The public notice, in general, will describe the "proposed amendments," the time and place for public hearing, and invite public input.
3. At least two public hearings in the Lower Division, one in Idaho and one in Utah, will be conducted as follows:
 - a. The hearings will be held by the Commission and conducted by the Chairman, Vice Chairman or designee as directed by the Commission.
 - b. The hearings will allow an opportunity for all present to comment on the "proposed amendments."
 - c. The record will remain open for fourteen calendar days following the last hearing to provide additional time for written comment.

d. A summary of the written comments and testimony received will be made under the direction of the Commission.

4. Subsequent to the hearings and receipt of public comment and after a ten-day notice to its members, as provided for under the Bylaws, the Commission will reconvene to act in whole or in part upon the "proposed amendments." Action of the Commission will be in accordance with the Commission's Bylaws.

portion is storage water.

8. If you are a contract holder for storage water in Bear Lake, identify the contract and its status including amount of water received this year and last year.

9. If your use or supply has been restricted, describe what you have done to determine that such restriction has not been due to junior diversions in Utah.

10. State the reasons which bring you to the conclusion that you are being deprived of water to which you are entitled because of diversion in Idaho.

11. Identify, if you can, the diversions in Idaho you believe are depriving you of water.

12. Give any additional information you have that you believe will assist the Commission in evaluating this petition and your allegations.

I represent that the above information is true and correct to the best of my knowledge and belief.

Signature and Title of Petitioner

IF SIGNED BY PERSON OTHER THAN PETITIONER, THIS PETITION MUST
BE ACCOMPANIED BY A SIGNED AND NOTARIZED POWER OF ATTORNEY

**Bear River Commission Approved Procedures for
Lower Division Water Delivery**

I. INTRODUCTION

The Bear River Commission's *Procedures for Lower Division Water Delivery*, to which this document is appended, provide for the description of an accounting method which can be used to account for the distribution of Lower Division main stem Bear River flows, including accounting of stored water, without regard to state line, pursuant to the water delivery schedule(s) set forth in Appendix C (see definitions found in III.C. of these Procedures). The purpose for describing the accounting method is to document the necessary logic and approach for water distribution and delivery calculations. The method described below is based upon appropriate hydrologic and water right accounting and distribution principles and upon provisions found within both the Dietrich and Kimball Decrees.

Upon the declaration of a water emergency, the administration of water deliveries will proceed as needed between the Commission and the States of Idaho and Utah and their respective river commissioners or watermasters. Both the States of Idaho and Utah will use their respective computer accounting models which implement the same methodologies as described below. In order to protect water users, the states will provide timely diversion measurements and regulation with weekly reporting to the Engineer-Manager as described in Section VII of the Procedures for Lower Division Water Delivery.

II. ACCOUNTING

During a Commission declared water emergency, the distribution and delivery of natural flows will be made to users within Idaho and Utah by priority and without regard to the state line. It is recognized that during much of the irrigation season, stored water releases from Bear Lake have a dramatic impact to the main stem Bear River flows in the Lower Division. It is further recognized that Utah Power controls these releases within restraints provided for by the Compact and under state water law to deliver stored water to contract users. The recognition of these contract holders and the segregation of stored water from the natural flow is vital to water accounting and delivery. Therefore, in a water emergency, the following will apply:

A. In order to properly account for water travel times and stored water delivery losses, the river will be divided into a series of reaches. Reaches are defined based upon available stream flow information and/or between points on the river where there are changes in hydrology, including at major points of diversion or tributary confluences. Once the reaches are defined, the natural flow gain (or loss as a negative gain) within the reach is calculated. The natural flow gain within a given reach is defined as the discharge from the reach, plus any diversions within the reach, minus the inflow to the reach, plus or minus changes in reservoir contents within the reach. Reach gains and natural flows available for diversion within each reach will be calculated and distributions will be made to users diverting under water rights for non-hydropower purposes set forth in Appendix C (Water Delivery Schedule No. 1) within that reach and downstream reaches, by priority.

B. Once all of the natural flow has been distributed, all junior rights will be distributed zero natural flow. If in the distribution process there is only sufficient natural flow to meet a portion of the rights with identical priorities, then distribution will be made on an equal percentage of the available natural flow to each right holder with the identical priority.

C. Main stem water users will be allowed diversions of stored water upon receipt by the Commission from Utah Power of storage allocations for that year in acre-feet by storage contract holder. The storage allocations provided by Utah Power may reflect the total storage limitations agreed to in the Bear Lake Settlement Agreement.⁽¹⁾

D. To properly account for use of all stored water from Bear Lake, a calculation of natural flow diversions and use of stored water released from Bear Lake will be made beginning on the date during the irrigation season when stored water was first released from Bear Lake.

E. Individual stored water use accounts will be tracked during the remainder of the water emergency and once the stored water allocated to an individual water user is fully used, the water user will not be allowed additional diversions of stored water unless the Commission receives notice from Utah Power that supplemental storage allocations have been made.

F. As provided for in the Dietrich Decree, "in order to compensate for the natural yield of the Bear Lake area," water released from Bear Lake shall include an amount of water to be "regarded as 'natural flow'" in the following amounts during the year:

50 cfs from April 20th to July 1st,

35 cfs from July 1st to July 15th,

25 cfs from July 15th to August 1st, and

15 cfs from August 1st to September 15th.

G. Stored water released from Bear Lake will be subject to transit losses as provided for in the Dietrich and Kimball Decrees so as to protect natural-flow water rights. The decreed transit losses are as follows: 1½ percent of the stored water flowing from the Bear Lake outlet works to above Grace Dam and an additional 1 percent transit loss for stored water remaining between each of the following points: Grace Dam and the diversion for West Cache Canal; between the diversion for West Cache Canal and the Idaho-Utah State Line; and between the Idaho-Utah State Line and Cutler Reservoir.

H. The movement of natural flow and stored water within the system will be subject to travel time as provided for generally in the Dietrich and Kimball Decrees. It has been determined that the travel time from Outlet Canal to Corinne is approximately 5 days. Therefore, the travel time used in the accounting models will be different from the travel time identified in the decrees.

I. A summation of total natural flow and stored water available for diversion by reach will be made and the appropriate division and regulation of such flows within the reaches will be the responsibilities of the states and their respective river commissioners or watermasters.

III. DISTRIBUTION

An integrated water delivery schedule of all Bear River Lower Division main stem water rights deliverable in both Idaho and Utah has been created and incorporated into the states' computer accounting models. During a water emergency, the states will provide timely diversion measurements and regulation with weekly reporting to the Engineer-Manager as described in Section VII of the Procedures for Lower Division Water Delivery. The following will apply:

A. Natural flow will be distributed according to priority of rights on the main stem Bear River in the Lower Division, based on Water Delivery Schedule No. 1 set forth in Appendix C.

B. Stored water from Bear Lake will be accounted for and distributed to storage water contract holders up to their contracted amount provided by Utah Power.

C. Tributary streams will be administered by state officials having jurisdiction in Idaho and Utah.

D. It is recognized that groundwater diversions have an effect on the flows of the Bear River. The States of Idaho and Utah are evaluating this impact, and a list of all groundwater rights with flow rates greater than 0.10 cfs has been prepared by the two states. Additional studies have been and are being performed by the states. Both states are committed to include appropriate groundwater effects in their water accounting and administration.

1. The Bear Lake Settlement Agreement is an agreement entered into on April 10, 1995 between PacifiCorp, the "Bear Lake Group," and the "Irrigators."