

Findings Concerning
the
Need for Compact Revision

A Report of the
Bear River Commission

Findings Concerning
the
Need for Compact Revision

A Report of the Bear River Commission

This report is made as a part of the
twenty-year review effort
provided for by Article XIV
of the
Amended Bear River Compact

November 18, 1997

ACKNOWLEDGMENTS

This is a report of the Bear River Commission. Much of the writings contained herein, however, were influenced by a large number of technical people, water users, people from the general public and, in a broad sense, stakeholders in the Bear River and its environs. The Commission appreciates the commentaries made by the public during this twenty-year review process. Their thoughts and statements provided the framework for this report. Members of the Commission's Technical Advisory Committee (TAC) and the Commission's staff were actively involved in the collection of information and the drafting of major portions of the report. Their contribution is greatly appreciated by the Commission.

Findings and Actions

After an 18-month period in which the Bear River Commission was involved in meetings, hearings, and research concerning the Bear River Compact, it finds that there is not now a need to amend the Compact. Many helpful suggestions and ideas have been advanced by Commission members, technical staff of the states, water user groups, and the general public. It is apparent that many new voices desire to be heard with respect to the management and operation of the Bear River and Bear Lake. The Compact gives authority to the Commission to get involved in a wide range of issues relating to the river. The Commission is the only formally constituted body with responsibility and jurisdiction over the entire river and because of this unique position, the Commission should provide leadership and a forum for discussion on issues that affect the entire river basin or major portions thereof. The Commission will create a Water Quality Committee with representation from the three State Departments or Divisions of Environmental Quality.

The Commission will rename the long-standing Records Committee, designating it as the Records and Public Involvement Committee, and instruct that committee to look for more opportunity for public involvement in Commission activities.

The Commission met on November 18, 1997 and, by formal action and resolution, implemented the above findings. The Commission's resolutions are attached to this report as Appendix A. The Bylaws of the Commission are a part of Appendix B of this

report, and the Bylaws have been amended to include the actions of the Commission on November 18, 1997 and as set forth in Appendix A.

Overview

The Bear River Compact grew out of informal meetings that began in March of 1943 between the States of Idaho, Utah and Wyoming. The Bear River crosses state lines in the three Bear River Basin states five times from its headwaters in the Uinta Mountains in Utah to its terminus in the Great Salt Lake (see Figure 1). Each of the states had developed their own water right laws based on the common law prior appropriation doctrine, and the river's crossing of state lines had, in effect, created six water right administrative units. Administration of the water rights in each of these six units was not taking into consideration rights of users in other units. Issues were very complex, divergent views were strongly held, and a formal accord was long in coming. The first official meeting of the Commission, as allowed under the then newly adopted Bear River Compact, did not occur until April of 1958. It is understandable that in 1996, when public comments were requested concerning whether or not there is now a need to revise the Compact, many commentors lack the historical perspective of the Compact. It is felt that before responses to comments are given in this report, it would be helpful to provide an overview and a history of the three-state water accord.

As stated above, informal meetings began as early as March of 1943 between representatives of the three Bear River Basin states - Wyoming, Idaho and Utah, to determine if there wasn't some accord that could be reached with respect to the allocation of the waters of the Bear River which, at some times during the season almost every year, appeared to be inadequate to meet all of the needs of the water users along the course of the river. Intense negotiations between the states began in December of 1954. The states, in February of 1955, signed an agreed-to Compact and then proceeded to seek state legislative and Congressional approval. Federal consent to the Compact was given by the Congress and signed by President Eisenhower on March 17, 1958. The Bear River Commission was created as an interstate agency to administer the Compact.

The Bear River Compact determines the rights and obligations of the signatory States of Wyoming, Idaho and Utah with respect to the waters of the Bear River. A copy of the Compact is attached to this report as Appendix B. Article XIV of the Compact states:

"At intervals not exceeding twenty years, the Commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such proposed amendments have been ratified by the legislatures of the signatory States and consented to by Congress."

With time, the states saw a need for additional provisions and the Bear River Compact was amended in accordance with Article XIII (Article XIV, Amended Compact) following several years of study and review of Compact provisions. Principal amendments and other changes are discussed elsewhere in this report. State amending legislation was approved in each state in the spring of 1979, and Congressional consent given February 8, 1980 by Public Law 96-189, 96th Congress.

On April 16, 1996, the Commission, meeting in Salt Lake City, determined that it was timely for the Commission to begin the twenty-year review, as required by the Compact, as to the need for revision of the Compact. The Commission appointed a special three-member committee, composed of Commission members, and instructed the committee to hold public meetings and return to the Commission and report their findings. The Commissioners assigned to the committee were Calvin Funk (Utah), James Crompton (Wyoming) and Rodney Wallentine (Idaho). Three public meetings were scheduled in each of the three states, with a special meeting being held in the Bear Lake area because of the Commission's sense of significant interest in the Compact by residents of that area.

The first meeting was held on July 16, 1996 in Evanston, Wyoming; the second meeting was held on July 17, 1996 in Logan, Utah;

the third meeting was held on August 5, 1996 in Montpelier, Idaho; and the fourth meeting was held on August 6, 1996 in Grace, Idaho. All in attendance at the four meetings were given an opportunity to provide oral comment and testimony, and then the public was given until August 27, 1996 to provide any additional written comment. Following the public meetings, the committee instructed the Engineer-Manager to prepare a book containing all testimony received, and that book "Bear River Commission Compact Review, Public Meetings and Testimonies, September 5, 1996" was made available to the public at a Commission meeting held in Salt Lake City on November 19, 1996.

A report given at the Commission meeting completed the special committee's assignment, and the information provided from the public meetings and the committee was taken under advisement by the Commission. A special assignment was given to the Commission's Management Committee to contemplate the recommendations made and the testimony given, and to report back to the Commission any actions that the Commission should take as a result of the twenty-year review. The Management Committee assigned the Engineer-Manager and the Commission's Technical Advisory Committee (TAC) to further analyze the information obtained and to suggest much of the text of this report.

Bear River Hydrology and Management

General

Much is known about the hydrology of the Bear River, its historic flows and its management, but from comments received it was apparent that some were unaware of important information. It was concluded that before responses were made to some of the comments, it would be helpful if the following background was provided in this report. Data is collected daily and weekly by the U.S. Geological Survey, PacifiCorp (dba Utah Power or Utah Power and Light) and state watermasters. The current data is compiled by the USGS, the Commission staff, and state water agencies and is published regularly. Flows along the Bear River are recorded, as are lake and reservoir levels. Also made of record are major and minor flows relating to irrigation diversions. Some of the data is available to administrators on a weekly basis, and some data can be collected by satellite transmission on a real-time basis.

The Commission does not get involved in the operation of the river unless conditions exist that trigger provisions of the Compact. The three administrative diversions of the River as provided for by the Compact are indicated on Figure 1. In the Upper and Central Divisions of the river, the Commission imposes interstate regulation on natural flows during many irrigation seasons. Divertable flows, as defined by the Compact, are determined in those divisions. When flow shortages are determined in those divisions, the Engineer-Manager instructs state watermasters on the amount of flow that can be diverted in various state sections of the river. In the Lower Division, there are provisions of the Compact for interstate regulation, but shortages to date have not been severe enough to prompt a request for interstate regulation between Utah and Idaho. During the irrigation season, on a regular basis (often daily or weekly), each state's watermasters regulate the diversion and flow of water to irrigation canals and other users. Those state officials record flow and distribute entitlements within their state. PacifiCorp operates the diversions into and out of Bear Lake. Storage is accomplished generally during the non-irrigation season, and during the irrigation season releases are made from Bear Lake storage to satisfy calls for stored water by downstream users that have contracts with PacifiCorp.

PacifiCorp operates five on-river, downstream, electrical generating facilities, and associated with three of those facilities are small storage reservoirs. Those small storage reservoirs are operated on a daily basis to regulate flows to accommodate peaking electrical generation needs and the requirements of downstream water users. During the non-irrigation season, PacifiCorp generates electrical power from river flows or flood control releases from Bear Lake that pass their generation stations. During the irrigation season, PacifiCorp is able to take advantage of natural flows that pass their generation stations plus flows that have been released from Bear Lake to accommodate downstream contract holders. Although the Compact allows PacifiCorp to release water from Bear Lake for exclusively power generation when the lake is above the irrigation reserve, this has not been PacifiCorp's operational practice for at least two decades. PacifiCorp has only released water from Bear Lake storage at times of downstream contract holder water demands, or at times when there is excess water, or projected to be excess water, over and above current or projected future demands to protect

against future unwanted very high flows and potential damage from flooding.

PacifiCorp plays a very important role in the river use with its very senior water rights to divert water from the Bear River and store water in Bear Lake, and its commitment by contract to the major water users of the river downstream. To accomplish their legal role on the system, PacifiCorp diverts the Bear River at Stewart Dam through the Rainbow Canal into Mud Lake. Mud "Lake" could be just as well described as a marsh. Water stored in Mud Lake is considered by the Commission to be a part of the Bear Lake storage. Mud Lake is a very important feature on the river system. It provides excellent habitat for wildlife and is a U.S. Fish & Wildlife Service reserve. At times, the levels in Mud Lake are manipulated by PacifiCorp at the request of the U.S. Fish Wildlife Service to accommodate wildlife management purposes. Most generally, Mud Lake is held at a near full level, which is most advantageous to the wildlife and accommodates the operational needs of PacifiCorp with respect to the operation of Bear Lake and the release of water to users downstream from Bear Lake.

Bear River waters diverted into Mud Lake are spread out through an associated marsh. The velocity of its flow is greatly reduced, and during the period of time that the water is in Mud Lake, there is an opportunity for a significant amount of silt to drop from the waters of the Bear River into the bottom of Mud Lake. The interaction of the waters with the marsh also allows for a significant amount of nutrients to be taken from Bear River waters and consumed in the marsh. Waters from Mud Lake can either be allowed to flow through the causeway or the Lifton pumping station directly into Bear Lake when the water level in Mud Lake is higher than that of Bear Lake, which is most often the case. During the storage season it is common for PacifiCorp to allow the waters diverted from the Rainbow Canal, after settling in Mud Lake, to flow into the north end of Bear Lake through a new control structure on the causeway.

Waters flowing into Mud Lake can also be allowed to flow directly to the outlet canal without entering Bear Lake and discharge through the outlet canal back into the Bear River. Waters stored in Bear Lake by PacifiCorp which are both diverted flows from the Bear River and natural flows collected from the Bear Lake Basin can either be allowed to flow by gravity through the Lifton station to the outlet canal and down the river system when Bear Lake is at a higher elevation than the outlet canal (Mud Lake), or the waters can be pumped at the Lifton station from Bear Lake into the outlet canal and delivered to the river for users downstream. During the irrigation season, often from mid-June until mid-September, the pumps are on at Lifton and stored waters are being released for use by contract holders downstream.

The Commission will only become involved in the regulation of the flows of the river for users as described above when provisions of the Compact call for the Commission's intervention under the auspices of a Compact-described water emergency. In the Lower Division, with the encouragement of the Commission, the states of Utah and Idaho have taken their already in-place accounting systems, which are facilitated by computer models, and adapted them so that a common accounting and river model system has been agreed to in the event there is a need for interstate regulation of the river system by the Commission. This commonly agreed-to accounting system, assisted by the commonly agreed-to computer models, can be used to assist the Commission in its operation of the Lower Division of the Bear River basin.

Bear River Hydrology

The following Bear River flow chart (Figure 2) shows the relative size of annual streamflows in the Bear River throughout its length, as well as tributary inflows, diversions, depletions, and groundwater

inflows, based on a 50-year period from 1941 to 1990. The path of the mainstem Bear River flow is indicated on the chart, beginning with the headwaters in the Uinta Mountains. The width of the mainstem and tributaries is roughly proportioned to average annual flow in acre-feet. The flow in acre-feet is shown at gaging station locations and other points on the chart.

Whitney	Summit	UT	West Fork Bear River	4,700
Sulphur Creek	Uinta	WY	Sulphur Creek	19,800
Neponset	Rich	UT	Bear River/Chapman Canal	6,900
Woodruff Narrows	Uinta	WY	Bear River	57,300
Woodruff Creek	Rich	UT	Woodruff Creek	4,100
Bear Lake	Rich	UT	Bear River	1,452,000
Montpelier	Bear Lake	ID	Bear River	4,050
Soda Point	Bear Lake	ID	Montpelier Creek	15,500
Oneida Narrows	Caribou	ID	Bear River	11,500
Twin Lakes	Franklin	ID	Bear River	14,000
Glendale	Franklin	ID	Mink Creek	11,000
Strong Arm	Franklin	ID	Worm Creek	4,500
Treasureton	Franklin	ID	Battle Creek	7,000
Porcupine	Franklin	ID	Battle Creek	12,800
Hyrum	Cache	UT	East Fork Little Bear River	18,800
Newton	Cache	UT	Lower Bear River	5,600
Cutler	Cache	UT	Newton Creek	17,000
Daniels	Box Elder	UT	Bear River	11,900
Deep Creek	Oneida	ID	Lower Malad River	5,400
Devil Creek	Oneida	ID	Deep Creek	4,450
St. Johns	Oneida	ID	Devil Creek	4,450
	Oneida	ID	Davis Creek	

Upper Division

The Upper Division includes the portion of the Bear River and its tributaries from its source in the Uinta Mountains to and including

Pixley Dam (a diversion dam), located in Wyoming between Randolph, Utah and Cokeville, Wyoming. There are five storage reservoirs with capacities over 4,000 acre-feet in the Upper Division as shown in the table. These include Whitney, Sulphur Creek, Neponset and Woodruff Creek on the tributaries and Woodruff Narrows on the mainstem. Woodruff Narrows Reservoir is the largest mainstem reservoir (57,300 acre-feet) on the Bear River.

The direct flow (natural flow) and storage water in the Upper Division is administered in Utah and Wyoming under state laws without direction from the Bear River Commission unless a water emergency exists. A water emergency exists when the divertable flow (direct flow), as defined in the Compact, is less than 1,250 second-feet. (For more information on how the divertable flow is defined in the Upper and Central Divisions, refer to Article IV.A. of the Compact found in Appendix B). The direct flow is then allocated to Utah and Wyoming sections of the river as specified in the Compact. The Engineer-Manager of the Commission makes these allocations weekly to the river commissioners of Utah and Wyoming for distributing under individual state laws. Stored water is not affected by water emergencies and is distributed by the river commissioners of each state under state laws. However, the total amount of water stored in a given water year is monitored by the Engineer-Manager to assure compliance of each state's storage allocation with the Compact.

Central Division

The Central Division is the portion of the Bear River and its tributaries from below Pixley Dam to and including Stewart Dam in Idaho. Stewart Dam is the diversion dam that diverts Bear River water to Mud Lake/Bear Lake. There are no major reservoirs in the Central Division. The direct flow in the Central Division is administered in Wyoming and Idaho under state laws without direction from the Bear River Commission, unless a water emergency exists. A water emergency exists when the divertable flow as defined in the Compact is less than 850 second-feet, or the flow of the Bear River at the Border Gaging Station, located at the Wyoming-Idaho state line, is less than 350 second-feet. The direct flow is then allocated to Wyoming and Idaho as specified in the Compact. The Engineer-Manager of the Commission makes these allocations weekly to the river commissioners of Wyoming and Idaho for distributing the allocated direct flows under their individual state water laws.

Water emergencies provided for in the Compact terminate on September 30 of each year unless terminated sooner or extended by the Commission. Water emergencies occur in the Upper and Central Divisions on a regular basis.

Lower Division

The Lower Division is the portion of the Bear River and its tributaries between Stewart Dam and the Great Salt Lake, including Bear Lake and its tributary drainage. There are several reservoirs on the tributaries in the Lower Division, as shown in the reservoir table.

To manage the mainstem flows, PacifiCorp has developed facilities and perfected water rights which enable the company to regulate (and use as a reservoir) the top 1.4 million acre-feet of Bear Lake's 6.5 million acre-feet of storage volume. To operate Bear Lake as a major and dependable reservoir, it was necessary to divert the flow of Bear River into Bear Lake. The Bear River has, at geologic times in the past, been a direct tributary to Bear Lake but it is not a natural tributary today. Between 1909 and 1918, the Stewart Diversion Dam, the Rainbow Inlet Canal, the Outlet Canal, and the Lifton Pumping Plant were built. The pumping plant was needed to lift water from the lake into the Outlet Canal, which returns the water to the Bear River. Operation of these facilities provides PacifiCorp with controlled storage in Bear Lake through a maximum range of 21.65 feet (elevations 5902.00 feet to 5923.65 feet), which represents 1,452,000 acre-feet of storage. The entire Bear River is diverted at Stewart Dam through the Rainbow Inlet Canal to Mud Lake. Water can then flow into Bear Lake or bypass Bear Lake by flowing directly from Mud Lake into the Outlet Canal back to the Bear River.

In accordance with many contracts with downstream water users, PacifiCorp provides water for irrigation diversions along the Bear

River in Idaho and Utah from Bear Lake down to and including the diversions from Cutler Reservoir at Cutler Dam. The Irrigation companies which divert from the Bear River under contract with PacifiCorp are given in the following figure (Figure 6):

Figure 6

**IRRIGATION CONTRACTS WITH PACIFICORP
FOR BEAR LAKE STORAGE WATER**

Company	Date of Contract	Amount
IDAHO	1919 ^a	20,000 ac-ft+
Last Chance Canal Company (24,000 acres)	1989 1919	supplemental
Thatcher Irrigation Company (1,700 acres)	1961 1916	Variable
West Cache Canal Company (15,000 acres) ^b	1989	12,000 ac-ft
Twin Lakes Irrigation Company (12,500 acres)	1912 1989	5,000 ac-ft 20,000 ac-ft
Cub River Irrigation Company (22,300 acres) ^b		Variable
Individual Pumping Contracts (19 contracts)		
UTAH		900 cfs
Bear River Canal Company (64,000 acres)		Variable
Individual Pumping Contracts (57 contracts)		

^aOriginal contract revised in 1984.

^bIncludes land in Utah and Idaho.

The three mainstem reservoirs, Soda Point, Oneida and Cutler, are operated by PacifiCorp for power head and temporary storage, not annual storage. Bear Lake releases to irrigators can take up to five days in travel time. Water conservation and management of the Lower Bear River System is enhanced by temporary storage and releases from these reservoirs.

The operation of Bear Lake is reflected in the historical Bear Lake hydrograph (Figure 7). During the 1920's to the late 1950's, power production on the Bear River was a major part of PacifiCorp's

generation facilities. Since that time, power production on the Bear River System has become a minor part of the total generation facilities of PacifiCorp. When the Bear River Compact became law in 1958, it established an irrigation reserve in Bear Lake (elevation 5,914.7 feet). The Compact prevents water being released for power purposes only when Bear Lake is below the irrigation reserve. The water released for irrigation when Bear Lake is below the irrigation reserve may be used for generating power. The Amended Compact provided additional storage rights in the Upper and Central Divisions but limited the storage rights to times when Bear Lake is above the upstream storage restriction elevation of 5,911.0 feet.

Since the mid-1960's, PacifiCorp has operated Bear Lake as if the irrigation reserve were at elevation 5,918 feet. This keeps the lake relatively high, which satisfies most recreational users and provides a good holdover storage for irrigators for use in times of drought. PacifiCorp lowers the lake to elevation 5,918 feet in the fall and winter, if the lake is above that elevation, to provide storage for flood control around the lake, as well as flood control along the Bear River below Bear Lake.

As a result of the recent drought and the need to dredge in Bear Lake to get water for irrigation out of the lake, and a lawsuit filed by Bear Lake interests against the U.S. Army Corps of Engineers, a settlement agreement was made between Bear Lake interests, the irrigators and PacifiCorp. As part of the settlement for dropping the lawsuit, the irrigators and PacifiCorp agreed to an Irrigation Water Allocation and Lake Recovery Proposal for Bear Lake. When Bear Lake is at or above the irrigation reserve, the maximum annual allocation remains 230,000 acre-feet. The maximum annual allocation decreases in stages to zero when the lake is at or below an elevation of 5,904 feet. This is two feet above the ability of PacifiCorp to pump from the lake. This reduced water allocation agreement will help keep Bear Lake at higher levels (the Settlement Agreement is Appendix C of this report).

Water emergencies in the Lower Division are not specified in the Compact as they are in the Upper and Central Division. For the Lower Division, the Compact states:

"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."

There has not been a petition filed for a water emergency in the Lower Division. However, a water user notified the Commission that filing of a petition was considered during the most recent drought. The Commission has been developing procedures for receiving, acting upon a petition and allocating water in the Lower Division. Public hearings have been held in Idaho and Utah. Interim procedures were adopted by the Commission at its November 18, 1997 meeting. The procedures provide for an accounting method to account for both Bear Lake storage water and direct flow, based on priorities, without regard to the Idaho-Utah boundary line. Each state has developed nearly identical computer models to account for use of direct flows and storage water as specified by the Commission.

Overview of Comments and Issues

Amending the Compact

At the public meetings and in written statements, many took the opportunity to speak directly about the issue of amending the Compact. There were many comments that the Amended Compact, as now in force and effect, was well-suited to serve the purposes of the Commission and the citizens from the three states of the Bear River drainage. Several of the statements were made by individuals, but many of the statements were made by representatives of government or quasi-governmental organizations. Additional and important comments to this same effect were made by organizations that represent hundreds, if not thousands, of residents of the area. A few comments were made by individuals that either did not believe amendments to the Compact were necessary, were not sure if amendments to the Compact would accomplish the solution of issues that they identified, or felt that amendments to the Compact were only warranted if accommodations by the Commission within the existing Compact could not be made to address contemporary needs and issues. Water users in the Upper and Central Divisions expressed frustration at the conspicuous imbalance of water emergency occurrences in their divisions when compared to the Lower Division. Concern was expressed on behalf of Wyoming users

in the Central Division about the heavy burden on Smith's Fork water rights to supply Idaho's flow allocation, and about the discrepancy between the Compact declaring Pine Creek flows tributary and a state court decreeing that they are not. But while there were suggestions from the Upper and Central Divisions that the Compact was not perfect and could perhaps be improved, they did not support an amendment at this time.

Only one individual who commented brought to the Commission a specific request with amendatory language concerning amendments to the Compact. It could be concluded that by nearly unanimous consensus, the commentors told the Commission that amendments to the Compact, at this moment in time, were neither needed, appropriate or desired if within the framework of the Compact a broader range of issues could be addressed.

The process of amending the Compact is complex, and it would be hard to justify the effort if the desired amendments would not be important to enhancing the Commission's opportunities to further the charges given to the Commission with respect to the three states' needs to administer the uses of the river across state lines. For an amendment effort to move ahead and succeed, there would first have to be concurrence by the three states on the need for amendment. A negotiating committee would then need to be convened, and that committee would have to reach consensus on amendment language. It is doubtful that consensus could be obtained unless the proposed amendments were advantageous to the citizens of each state. If the amendments were significant, then lengthy negotiations may be needed. History tells us that a few months would not allow enough time. If the amendments were not significant, then the committee may choose to proceed. Once a consensus by the committee was reached and amendatory language agreed to, the Commission would take actions after public comment.

Bills would then need to be drafted, introduced, passed by each state legislature and signed by each Governor. Once all three states had enacted such legislation for the amendment, sponsors would need to be found in both the House and the Senate, bills drafted and introduced, hearings held, and identical measures passed in both the House and Senate. Through the legislative process, particularly the federal process, there is opportunity for the three-state, agreed-to language of amendment to the Compact to be amended. Provisions could be deleted or new amendments added. If the federal Congress and the states were not in agreement on final amendatory language, the negotiation process could be long and intense. The Congress could, to accomplish a federal purpose, pass related legislation mandating certain actions or policies for the river. The last step would be for the President, as did Eisenhower and Carter, to sign the measure into law.

It should be realized that although the Compact requires a review by the Commission every 20 years, the Commission can, at any point in time within the next twenty-year review period, determine that amendments are needed and initiate the above described review and potential amendment process. This was the case with respect to the first amendments to the Compact. The original Compact was signed into law on March 17, 1958. The original Compact required the twenty-year review and so a review was required to be initiated by March of 1978. The first meeting of a negotiating committee to amend the Compact, however, was held in January of 1970, eight years before the required review. It was in February of 1980 that President Carter approved the amendments, 10 years from the first meeting of the Negotiating Committee.

Additionally, the ratification of the Bear River Compact could be held up in Congress by members of Congress who have some political disagreement with the members of Congress from Bear River Basin states. A case in point is ratification of the Fort Peck Compact in Montana. A compact to describe the reserved rights of the Indian tribes on the Fort Peck Indian Reservation was negotiated between Montana and the Assiniboine and Sioux tribes of the reservation in 1985. After ratification by the Tribal Councils and the Montana State Legislature, multiple attempts have been made to obtain Congressional approval. Because of concern with the water leasing language in the compact, Senators from the State of Missouri have repeatedly delayed the ratification.

For the reasons stated above, the Commission concludes it will not move to amend the Compact at this time.

Bear Lake Levels and Alternative Storage

Bear Lake elevations have been of concern to Bear River water users and Bear Lake area residents long prior to this twenty-year Compact evaluation effort. The extreme high and low water elevations which can occur in Bear Lake were recognized by the negotiators of the Compact. The irrigation reserve first established at 5912.91 feet was agreed upon to protect and conserve the available storage by not allowing the taking of water from the lake for only power generation when lake elevations were below a certain point. Article VI.D of the Compact states:

"The waters of Bear Lake below elevation 5,912.91 feet, Utah Power and Light Company Bear Lake datum (the equivalent of elevation 5,915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release for irrigation it may be used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used for the generation of power or for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to Paragraph A of this Article, the Commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:

Lake surface elevation,

"Additional Storage Utah Power and Light Company,

(Acre-feet) Bear Lake datum

5,000 5,913.24

10,000 5,913.56

15,000 5,913.87

20,000 5,914.15

25,000 5,914.41

30,000 5,914.61

35,500 5,914.69

36,500 5,914.70

After the enactment of this provision of the Compact, additional storage was built. The influence with time of the added storage on the irrigation reserve elevation is illustrated on Figure 7.

This provision of the Compact has had the effect of ensuring that during normal years and during times of drought, the lake remains at a higher level. The benefit of the irrigation reserve elevation to users above Stewart Dam is that additional storage can be accomplished. However, no diversion to additional upstream storage under Article VI.b. of the Compact is permitted unless the elevation of Bear Lake is above 5911 feet. Because the irrigation reserve elevation was established as a variable, as additional storage

was added above Bear Lake, downstream interests were protected. The end result has been that the lake's elevations are held higher and more constant than in years prior to the Compact. This is shown in Figure 7, which shows the history of Bear Lake elevations.

Because of recent extreme drought and low river flow years, and despite Compact constraints to protect lake levels, the elevation of the lake dropped at an almost unprecedented rate during the period over the last part of the 1980's and the first part of the 1990's. Storage during this time was restricted by the Commission at the Woodruff Narrows Reservoir and other upstream reservoirs. This is shown by the history of Bear Lake elevations, which also shows the almost record recovery due to a following very wet hydrologic cycle. As lake levels were at a very low point, PacifiCorp experienced difficulty in getting water to flow through the natural sand bar at the north end of the lake to the pumps at Lifton. This led to some dredging of the sand bar. Additional permits for dredging were sought and public concern over the depth of dredging and the lower lake level was expressed. This led the Idaho Water Resource Board, in May of 1993, to file an application for a minimum lake level at Bear Lake of 5902.0 feet. The Director of the Idaho Department of Water Resources, pursuant to Idaho law, held a hearing on this application and in 1994 granted the application.

At the public meetings, several comments were made that the storage and water level of Bear Lake needed to be further protected. Some suggested that additional storage opportunities should be investigated as a way to further protect lake levels from lowering in the future. A somewhat conflicting suggestion was that flows from the Bear River into Bear Lake should be reduced or terminated. Reduced contribution to the lake from the river, in and of itself, would have the effect of lowering lake levels.

The storage right on Bear Lake is for 1,452,000 acre-feet above elevation 5902 (5905.42 was the 1992 low elevation). Comparatively, the potential for storage at the sites of Smith's Fork, Rocky Point, Caribou, Oneida Narrows, Enlarged Hyrum, Barrens and Honeyville (highest to lowest) combined totals about 720,000 active acre-feet of storage (see Figure 8). The 300,000 acre-feet indicated for the Rocky Point site is for a 90 foot high dam that the most recent study shows to be infeasible. There is not a dam of any height at Rocky Point that currently would be feasible to construct. Totaling the storage capacity at all sites also fails to recognize that some sites are alternatives one to another. Bear Lake storage rights are much larger than the storage that could build as replacement storage by the relatively small, upstream sites the Smith's Fork and Rocky Point. Sites upstream of Bear Lake could only account for about 400,000 acre-feet even if the larger, perhaps not feasible, options are considered. Furthermore, if all reservoirs were constructed at all of the sites, one reservoir would take away from another's dependable storage. Most of the potential storable water that studies have identified is at sites far downstream from Bear Lake.

Figure 8. Potential Reservoir Sites Above and Below Bear Lake

Site Name	State	River Division	Maximum Potential Active Storage capacity in acre-feet
Smith's Fork ⁽¹⁾	Wyoming	Central	100,000
Rocky Point ⁽²⁾	Idaho	Central	300,000
Caribou	Idaho	Lower	40,000
Oneida Narrows ⁽³⁾	Idaho	Lower	77,000
Enlarged Hyrum ⁽⁴⁾	Utah	Lower	21,000
Barrens ⁽⁴⁾	Utah	Lower	75,000
Honeyville ⁽⁴⁾	Utah	Lower	107,000
TOTAL			720,000

⁽¹⁾ Reservoir sites above Bear Lake

⁽²⁾ The Rocky Point dam site was most recently investigated by the U.S. Army Corps of Engineers and found to not be feasible. The acre-feet in the active storage column is for a 90 foot high dam. It is not known if a small dam with less storage capacity would be more feasible.

(3) Several dam sizes at the Oneida Narrows site have been studied. The storage capacity indicated is in keeping with what has been referred to as the "Lower Oneida." This potential dam, although built in Idaho, would possibly provide much of its storage to users in Utah.

(4) These three dam sites are currently being studied by the Utah Division of Water Resources, Various dam sizes have been considered, but no consideration is being given, at this time to the building of all three dams. They are viewed as competing options.

Additional stabilization of lake levels is expected because of an agreement between downstream water users, citizen groups around Bear Lake and PacifiCorp. On April 10, 1995, what has been titled as the "Bear Lake Settlement Agreement" was signed. The agreement provides, among other things, that starting at a lake elevation of 5914, downstream users will restrict their call for Bear Lake stored water that they are entitled to under contract with PacifiCorp. Full annual allocation under the contracts is 230,000 acre-feet. When the lake is full at an elevation of 5923.85, there is 1,414,000 acre-feet of storage above the elevation of 5902. At the irrigation reserve elevation of 5914.7, there is 801,000 acre-feet in storage. The reductions in use of this storage are based on several lake elevations but is in terms of percentages of the full entitlement. Figure 9 indicates this agreed to reduction and the full agreement is made a part of this report as Appendix C.

Figure 9. Bear Lake Settlement Agreement - Reduction in Allocations Below 5916 ft.

Bear Lake Elevation	Storage Allocation	Percent of Full Allocation
5914	225,000	98%
5913	220,000	96%
5912	215,000	93%
5911	210,000	91%
5910	205,000	89%
5909	181,000	79%
5908	168,000	73%
5907	141,000	61%
5906	104,000	45%
5905	55,000	24%
5904	0	0%
5903	0	0%
5902	0	0%

The reality, when considering environmental, political and financial feasibilities of building new storage at some of the sites, is debatable, despite provisions in the Compact for development. River recreationists and some environmental interest groups have expressed opposition to any more dams on the mainstem of the Bear River and its tributaries. On the other hand, other recreationists, property owners, aesthetic interests and various additional environmental interests concerned with Bear Lake are calling for new dams to replace Bear Lake storage.

Additional storage provisions in the Compact allocate specific amounts for use in the respective states, and those allocations would need to be protected under any alternate or shared reservoir scenario. It would be inappropriate for the Commission to discourage efforts towards development of additional storage within the terms of the Compact. The development of additional storage would be done under each of the states' water right laws, and new storage would be junior in priority to the storage rights held in Bear Lake unless the Bear Lake storage right holders apply for and receive approval to move those rights to new storage sites. It is most appropriate for the Commission to have continued active representation on the Bear Lake Preservation Advisory Committee, formed by PacifiCorp to provide input regarding Bear Lake issues, and to encourage water conservation and the stabilization of lake levels whenever possible within the provision of the Compact and within the parameters of the state water laws of the affected states. The Commission finds that there has not been identified, at this time, a need to consider Compact revisions with respect to Bear Lake

levels or future storage allocations that are now allowed to the three states by the Compact.

Water Quality

General

When the three states were negotiating the Compact in the 1950's, the main area of concern was the allocation and fair distribution of water quantities. Water quality considerations were generally not an issue. Issues and circumstances have changed for water managers in the 1990's. Many of the comments in the current twenty-year review raised issues of concern with water quality in the Bear River Basin. During the drought of the late 1980's and early 1990's, Bear Lake levels dropped to levels not seen since the Dust Bowl days. Many residents of the Basin are concerned with the differing water quality of the Bear River proper as it co-mingles with Mud Lake and Bear Lake waters that tend to be much lower in sediment and nutrient load. A recent failure of the causeway and sediment load into Bear Lake was also mentioned in several comments. Most of the efforts of the Clean Water Act and the three State Departments or Divisions of Environmental Quality have been focused on point source discharges up to this time. However, more emphasis is being placed on the contribution of non-point sources by the state agencies and Environmental Protection Agency (EPA). EPA has been sued in both Wyoming and Idaho because of lack of enforcement of the Total Maximum Daily Load provisions of the Clean Water Act. How non-point sources are handled by the regulatory agencies in the future will have some impact on water quantity management and the state agencies whose mission is the regulation and administration of the water quantities of the three states.

Many comments at the public meetings indicated the Commission should increase its area of interest and concerns. Some comments went towards recreation, aesthetics and general river flow. All of the comments related to a broadening of the Commission's agenda concerning environmental issues. Most of the comments in this regard indicated that the Commission should be involved in water quality matters. Some comments included quotes from the Compact under Article III.C.5. which reads as follows:

"C. The Commission shall have powers to:

"5. Co-operate with State and Federal agencies in matters relating to water pollution of interstate significance;"

Others reminded the Commission that the Compact was created to address water quantity issues and this should be the focus of the Commission. They cited Article I.A that sets forth that the major purposes of this Compact are for distribution of quantities, and that those issues should therefore be overriding. There are governmental agencies and organizations that are in place to regulate water quality or to promote water quality enhancement. All three states, within their Departments or Divisions of Environmental Quality, have Water Quality units that regulate water quality, set standards and promote water quality protection and enhancement. The EPA administers federal laws concerning water quality. The EPA and the U.S. Bureau of Reclamation have recently provided grant money to assist with water quality programs. The Department of Agriculture, under the new Environmental Quality Incentives Program, has provided grants to agriculturalists to assist them in water quality enhancement programs. The U.S. Geological Survey is now beginning a major water quality data collection effort under that agencies' National Water-Quality Assessment (NAWQA) Program. The State of Utah has also funded and conducted water quality studies.

In 1993, a Water Quality Symposium was held in Logan, Utah. It was sponsored by federal, state and local government agencies and citizen groups. From the symposium, a need was identified for a three-state approach to solving interstate Bear River water quality issues and informal committee meetings were held on the subject. This grew into the formation of the Bear River Basin Water Quality Task Force. This task force is co-chaired by the Bear River Resource Conservation and Development (Utah and Idaho) and the Western Wyoming Resource Conservation and Development agencies. State and local government has representation on the task force, as do citizen groups. Although this task force lacks the official power to administer state and federal laws or to speak officially for the three states or EPA, a good spirit of cooperation has been created and, through the course of several meetings, the Task Force

has accomplished much in bringing together various interests and promoting specific water quality enhancing efforts. The task force goals have been stated as: 1) to measurably improve the overall water quality and stream integrity of the Bear River and its tributaries, including lakes and reservoirs, to support multiple beneficial uses and development; and 2) to develop and implement a coordinated tri-state basin-wide water quality planning approach with strong local involvement and leadership.

Another organization that spans two state lines (Utah and Idaho) in the Bear Lake Basin has also been created. This organization is the Bear Lake Regional Commission. It was created in 1973 in an effort to acknowledge the Bear Lake Valley (a bi-county, bi-state area) as a resource of regional significance and provide for its continued utilization and preservation. Although its efforts in the Bear Lake area have been broad-based, an important portion of its focus has been the water quality issues in and around Bear Lake. One of its stated objectives is to "Maintain a Bear Lake Water Quality Monitoring Program to: Maintain water quality data base; and Evaluate current water quality conditions in Bear Lake and the inflow and outflow waters." Through the efforts of Regional Commission members that represent local governments and interests, and the Regional Commission staff, and through an effective effort to raise funds from various sources, including state and federal grants, the Regional Commission can point to important accomplishments. They include maintaining the Bear Lake Water Quality Monitoring Program and fostering construction of sewage collection and treatment facilities.

During the public input period of this twenty-year review, the Task Force and others asked for a more active role of the Commission in water quality matters. More recently, the Task Force has asked the Commission to recognize the Task Force as an advisory body to the Commission on water quality matters.

The Compact provides authorities and responsibilities, both stated and inferred, as quoted above. There are also the general and obvious responsibilities that must receive more consideration with respect to the interface between water quantity and water quality issues. The Commission can help to forge partnerships at both the technical and policy levels. However, when it comes to water quality regulation, the Commission should ensure that the leadership responsibilities and authorities that exist within the three State Departments or Divisions of Environmental Quality be recognized and supported. The Commission will create a Water Quality Committee and that Water Quality Committee will include lead representatives of the water quality agency within each of the State Departments or Divisions of Environmental Quality. The Commission-created Water Quality Committee will provide the Commission technical and policy expertise with respect to matters of water quality, and the Committee can provide the appropriate point for input from the Bear River Basin Water Quality Task Force and other water quality organizations.

One way the Commission can broaden its area of interest and influence in the water quality area is by sponsoring or co-sponsoring workshops where a broad spectrum of interests can be invited to work on Bear River issues. Several comments indicated a need for a listening ear with respect to the Commission and its activities as it prepares to conduct Commission business. The Commission's staff, the Commission's TAC and other designated state employees can assist the Water Quality Committee and the Commission in facilitating the efforts of the Committee to allow for an exchange of a broadened range of ideas for all involved or seeking to provide input regarding water quality matters.

The above will be implemented without amendment to the Compact.

Bear Lake Causeway Failure

There is an earth causeway that separates Bear Lake from Mud Lake. PacifiCorp's Lifton Pumping Plant is located on that causeway, and east of the Lifton Pumping Plant there is a control structure that allows PacifiCorp to control the flow of water from Mud Lake into Bear Lake. On May 6, 1993, the original control structure washed out. Mud Lake was higher than Bear Lake at the time, and material from the earth causeway and silt from the adjacent bed of Mud Lake washed into Bear Lake as the water elevation in the two water bodies reached equilibrium. PacifiCorp has since designed and constructed a new control structure. During the public comment

period, the Commission received comment with respect to water quality issues concerning failure on the old structure and the design and operation of the new structure. The causeway and the structure are operated and maintained by PacifiCorp and are located in Idaho. The Commission has been advised that PacifiCorp and the State of Idaho are cooperatively evaluating the concerns expressed regarding the causeway structure and its operation. The Commission has no responsibility or authority with respect to the causeway, and the Commission finds that subject is not germane to the efforts of the Commission to look at the needs for Compact revision.

Commission Make-Up

General

Several comments suggested that the Commission membership should be broadened or that the Commission should represent a wider range of interests. The comments inferred that the Commission should take action in this regard.

The Bear River Commission is created by the Bear River Compact. Article III states:

"A. There is hereby created an interstate administrative agency to be known as the `Bear River Commission' which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The Commission shall be composed of nine Commissioners, three Commissioners representing each signatory State, and if appointed by the President, one additional Commissioner representing the United States of America who shall serve as chairman, without vote. Each Commissioner, except the chairman, shall have one vote. The State Commissioners shall be selected in accordance with State law. Six Commissioners who shall include two Commissioners from each State shall constitute a quorum. The vote of at least two-thirds of the Commissioners when a quorum is present shall be necessary for the action of the Commission."

As is learned from the reading of Article III, Commissioners from the three states shall be selected in accordance with State law. The governing state laws in this regard are as follows:

Wyoming

Wyoming does not have any set specifications that must be met by potential Commission members. Wyoming Statute 41-11-202 is the governing statute which states:

"The Governor of Wyoming shall appoint and designate such commissioners as may be necessary to represent the State of Wyoming on all negotiated interstate compacts, unless the compacts by their terms otherwise provide. The Governor of Wyoming, at his option, may serve as a commissioner for Wyoming on any compact commission, if permitted under the terms of the compact. The Governor may remove any commissioner he appoints as provided in W.S. 9-1-202."

Wyoming's Commission members have traditionally been the State Engineer, a resident water user from the Upper Division and a resident water user from the Central Division. Wyoming has experienced very low turn-over in its representation. The team of Wes Myers from Evanston and Reed Dayton from Cokeville served the State for over 35 years. At least one alternate has generally been named by the Governor.

Utah

The Utah law is as follows:

"There shall be three members of the Bear River Compact Commission from the State of Utah. One member shall be the Interstate Stream Commissioner of Utah and he shall be chairman of the Utah delegation. The other two Commissioners from Utah shall be appointed by the State Water and Power Board, with the consent of the Governor, and they shall hold office at the pleasure of the Water and Power Board and until their successors shall have been appointed and qualified. Each member shall be a bona fide resident of the State of Utah and one shall be a landowner and irrigator actually residing on and operating a farm within the Lower Division as defined by the Compact, and one shall be a landowner and irrigator actually residing on and operating a farm within the Upper Division as defined by the Compact."

"The Utah Water and Power Board may, with the consent of the Governor, appoint two alternate members of the Bear River Commission. One such alternate shall be a bona fide resident of the State of Utah and a landowner and irrigator actually residing on and operating a farm within the Lower Division as defined by the Compact and he shall be entitled to act at all regular and special meetings of the Bear River Commission whenever the regular member of the Commission from this same area is unable to serve and act. One such alternate shall be a bona fide resident of the State of Utah and shall be a landowner and irrigator actually residing on and operating a farm within the Upper Division as defined by the Compact and he shall be entitled to act at all regular and special meetings of the Bear River Commission whenever the regular member of the Commission from this same area is unable to serve and act. Each member of the Commission from Utah shall receive a per diem plus necessary expenses, as provided by law."

Idaho

The Idaho law is as follows:

"42-3502. Qualifications of commissioners of Bear River Compact. Two (2) of the commissioners shall be electors of the state of Idaho who are residents within the watershed of the Bear River in Idaho. One (1) commissioner may be the director of the department of water resources of the state of Idaho."

"42-3503. Terms of Bear River Compact commissioners Filling vacancies. The appointment of each commissioner shall be for a six (6) year term but may be terminated at the pleasure of the governor. Provided that the appointments of the commissioners first appointed shall terminate at two (2) year intervals beginning with the end of the first even numbered year after the Bear River Compact goes into effect. Vacancies shall be filled for the unexpired term in which the vacancy occurs."

Federal

The Federal representative, as stated by the above quote, Article III of the Compact, is appointed by the President.

As can be seen, the Compact gives the Commission no authority to appoint or nominate its membership. The Commission is a creation of the three states and the Federal government. Not only does the Commission have no authority with respect to membership selection, it is also most appropriate that the four governments creating the Commission should have total authority in designating their representation. It is obvious that if a resident or a group of residents in a given state desire to change their state's representation, their avenue is to approach the state appointing authority or to ask their state legislature to modify the state law. If the Commission were to take steps to control or influence this appointment process, either by policy, rule, bylaw or Compact amendment, it could be judged to be inappropriate by the states. No Compact amendment is found to be needed at this time in this subject area.

Multi-Purpose Use of Water

As expressed by some of the commenting public, the interstate Compact recognizes the value of efficiently using water for "Multiple purposes" (Article IA). It was stated that encouragement should be given water users to conserve and improve water use efficiencies. Further, reasonable efforts should be made to accommodate concurrent or simultaneous uses of the basin's water resources. Various interests seeking different uses of the same water can find some common operation and management tools if they come together and understand each others' objectives. A committee of the Commission could be assigned to foster more public involvement by the Commission. Other non-consumptive uses without a water right basis can often be accommodated while still satisfying established water rights.

The Compact, however, does not determine what constitutes "beneficial use", nor does it prioritize between competing uses or favor any particular use (except to restrict power-generation drawdown of Bear Lake and post 1976 storage allocations above Bear Lake). Protecting a specific use requires a water right, and bestowing a water right is the prerogative of the individual states as they decide how to allocate the water the Compact apportions.

It is true that the senior water rights were secured under the prior-appropriation laws in each state for uses traditional to past decades (such as irrigation, power generation, domestic, stock, municipal, flood control, storage). Those interests are represented well because they own the water rights the Compact was created to protect. This is not to say, however, that new uses or owners of junior water rights are prohibited by the states from recognition or protection, or that existing uses cannot be changed by the water right owners and the states to reflect different uses for fish habitat, wildlife, aesthetics, recreation, flood control, water quality, etc.

When competing uses cannot be accommodated simultaneously, Article VIII of the Compact recognizes that individual water rights are valuable private property rights that can be changed to a different use and ownership only under the laws of the respective states, not by confiscation. Without amending the Compact, provisions are already in place to allow for changing uses and establishing new uses. An amendment to the Compact to change provisions to Article VIII is not appropriate at this time.

Public Involvement

Some of the testimonies and comments received during the Compact review process included concerns that the Bear River Commission was not considering or providing leadership in the areas of recreation and environmental quality. There was also a frustration expressed relative to the public's access to the Commission. Although the responses were mixed, it appears the majority felt that changing the Compact was not necessary but the Commission should implement some changes to be more responsive to public concerns.

In order to be responsive, the Commission will restructure the existing Records Committee to include a public involvement responsibility. The restructured committee will be called the "Records and Public Involvement Committee" (RPIC). The TAC will provide the necessary technical support. The primary responsibilities of the RPIC will be to continue with oversight and administration of Commission records and to provide a forum for and to work with the public. Groups that have particular issues or concerns with the management and operation of the Bear River and Bear Lake could bring them to the RPIC. To facilitate RPIC operation, interested public groups should make their requests for presentation of their issues to the Engineer-Manager. The Engineer-Manager will then work with the public group and RPIC chairperson to establish meetings, presentations, field visits and other committee business. The RPIC will report to and make recommendations to the Commission.

Another function of the RPIC can be to facilitate the coordination of the many different water resource related programs, projects and

technical studies occurring in the Bear River Basin. This may include any number of activities, but the principle focus would be to provide pro-active leadership so as to enhance existing efforts, identify gaps and make recommendations that would improve these efforts. The RPIC may also sponsor or co-sponsor various conferences and workshops pertinent to the Bear River Basin.

In conclusion, it does appear that the Commission needs to be more responsive to the public and provide a stronger leadership role in the area of non-consumptive water uses in the Bear River Basin. It is not necessary to change the Compact in order to establish the RPIC nor to accomplish the requests of the commentors in this subject area.

FERC Relicensing

PacifiCorp is in the process of relicensing some of its power facilities with the Federal Energy Regulator Commission (FERC). It is a long and involved process, not fully understood by many, but at various points open to public comments. Some comments indicated a misunderstanding that the Commission is formally involved with this process and perhaps has some regulatory function to perform in this effort. Neither the Compact, nor the Commission, has a formal role in the FERC relicensing process, but the Commission is following the process, as all stakeholders on the river should.

Responsibility to Protect Apportioned Waters

Numerous comments were received concerning the role of the Commission and the Compact in protecting the agreed-to apportionment of the water of the Bear River. They cited this role as the reason for the initial compact and they further cited the purpose of the 1976 amendments as being to apportion additional Bear River water that would involve future storage.

The goal of the negotiators of the Compact was to establish rules for order on the river with respect to its use and to establish the amount of the remaining unused water each state would have jurisdiction to allocate. To provide for the peaceful development of water, the allocation of each state would have to comply with the rules established by the Compact. The Compact recognized each state's right to allocate water within the respective state. The unused amounts of water allocated to the respective states, along with the existing rights in each state, are administered by the state to which the Compact allocated the waters. All parties, whether individuals or otherwise, have the right in each state to enter the water rights arena and appropriate surplus or unused water, if any, or acquire existing rights to meet their needs.

The waters of the Bear River were put to beneficial use according to the statutes of the states where the water was diverted. The Compact recognizes that waters of the Bear River are administrated under state laws, but limits diversion in the Upper and Central Divisions based on percentages of available flow. Members of the negotiating committees of each state recognized that if additional water was going to be used in their respective states, the uncertainty of the status of the unappropriated (or unused) water of the Bear River had to be defined. The Bear River Compact recognizes the right to use all water placed to beneficial use prior to January 1, 1976 as a basis to work from in determining new depletion in each state. The Compact confirmed the right to water use for existing water rights in each state so a procedure could be established to allocate and account for additional water use, including ground water. If the negotiating committee could not identify a particular process that would be used to account for an additional water use, the Compact allowed for the establishment of a "Commission approved procedure" to make an accounting.

The Compact provided to the states of Idaho, Utah and Wyoming a method to manage the additional demands that are and will be placed on Bear River water. Without the Bear River Compact, no rules of order would exist to define how each state could administer the unused water. Without the Compact, uncertainty and costly inter and intra state litigation would be the norm, and most likely this would lead to disputes moving through Federal courts or directly to the U.S. Supreme Court. Article I of the Compact clearly states the leading purpose of the Compact. Article I.A. states:

"A. The major purposes of this Compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; and to accomplish an equitable apportionment of the waters of the Bear River among the compacting States.

Many who commented pointed to protection of apportioned waters as the most important role of the Compact. Many also stated that they felt the Compact and the Commission effectively accomplished this purpose. None felt that the major purpose of the Compact should be modified by Compact amendment.

Conclusions

The Bear River Commission has adequately considered the need for revisions to the Compact. The Commission has given full consideration to comments received. With the adoption of this report and the actions taken on November 18, 1997, the Commission has completed the review as required under Article XIV of the Amended Bear River Compact and finds that no amendments to the Compact are to be proposed by the Commission at this time.
