

MINUTES OF MEETING OF
BEAR RIVER COMPACT COMMISSION
Salt Lake City, Utah, March 26 and 27, 1951

Meeting No. 4

A meeting of the Bear River Compact Commission was held at the State Capitol, Salt Lake City, Utah, on March 26 and 27, 1951. The following representatives of the United States and the States of Idaho, Utah, and Wyoming were present.

United States

E. O. Larson, Federal Representative and Chairman of Compact Commission
E. J. Skeen, Legal Adviser to the Federal Representative
H. A. Hunt, Meeting Secretary

Idaho

Fred M. Cooper, Compact Commissioner
W. J. Hunter, Compact Commissioner
Mark R. Kulp, State Reclamation Engineer and Compact Commissioner
A. L. Merrill, Special Assistant to the Attorney General of Idaho

Utah

Joseph M. Tracy, Compact Commissioner
Clinton D. Vernon, Attorney General of Utah
C. O. Roskelly, Assistant State Engineer

Wyoming

L. C. Bishop, Compact Commissioner
David P. Miller, Assistant Compact Commissioner
E. B. Hitchcock, Assistant Compact Commissioner
P. L. Spaulding, Assistant Compact Commissioner
H. T. Person, Adviser
H. S. Harnsberger, Attorney General of Wyoming
E. C. Gradert, Assistant Compact Commissioner
S. R. Dayton, Assistant Compact Commissioner
F. B. Myers, Assistant Compact Commissioner

Federal Agencies

Lesher S. Wing, Federal Power Commission
Warren T. Murphy, Department of Agriculture
W. V. Iorns, U.S.G.S.
M. T. Wilson, U.S.G.S.
Reid Jerman, Bureau of Reclamation
Francis V. Olson, Fish and Wildlife

The meeting was called to order by the Chairman at 10:35 a.m. The minutes of Meeting No. 3 held at Evanston, Wyoming, on December 19, 1950, were read, and were approved subject to two minor changes. The first change was the addition of the words "all of the" just ahead of the sum \$4,332 on the eleventh line of the next to last paragraph on page 4 of the minutes. The second correction is in the fifth paragraph on page 2. The second sentence in the paragraph was deleted.

The Chairman introduced Mr. Warren T. Murphy of the Office of the Secretary, Department of Agriculture, and Mr. Lesher S. Wing of the Federal Power Commission.

The Chairman then outlined the agenda for the meeting stating that most of the time would be spent discussing the draft of the Bear River Compact recently prepared by the drafting committee. He requested Mr. Vernon, Chairman of the Drafting Committee to report on his committee's activities.

Mr. Vernon reported that the drafting committee had held two meetings. The first meeting was held in Salt Lake City, March 6-7, 1951. At this meeting a memorandum prepared by Mr. Skeen outlining a new basis for a compact was considered first by the full committee and then by State groups separately. After a detailed discussion the committee requested Mr. Skeen to prepare a draft of compact to reflect its views. Following the first meeting a draft of compact was circulated to the committee members for study. The second meeting was held in Salt Lake City, March 25, 1951, at which time the draft was again considered and revisions were made. Time did not permit a complete detailed analysis of the last few pages. Changes made at the second meeting are shown in draft.

Mr. Tracy suggested that Mr. Vernon read the draft of the compact through and then read each part separately for discussion. This procedure was adopted by the Commission.

The following is a summary of the discussion of each article and the conclusions reached. The preamble was approved.

Article I

Mr. Kulp said a clause should be added indicating that one of the purposes of the compact is to protect vested rights. Mr. Skeen answered

that such a clause had been considered but was not felt necessary. Chairman Larson stated that the point should be noted and a decision withheld pending a study of the rest of the compact.

Article II

It was decided to identify the locations of the gaging stations described in paragraphs (k), (m), (n) and (o) by reference to section, township and range.

Paragraph (e) was deleted by common consent and the remaining paragraphs were relettered.

New (f) was amended upon motion of Mr. Spaulding to read: "the term 'vested rights to the use of water' means water rights established prior to the effective date of this compact in each signatory state under its state or territorial law."

Paragraph (h) was amended to make the dates inclusive to avoid misunderstanding. The remaining subparagraphs were approved.

Article III

A decision was reached to pass over Section A, approve Section B, approve Section C (except Part 2 which requires more study) approve Section D, and add as Section E the language on Page 13 of the tentative draft of compact as revised January 16, 1950, relating to changes of location of gaging stations.

Article IV

Mr. Iorns suggested a tentative figure of 450 second feet in the first 2 blanks of Section A and explained that a rigid permanent figure is difficult to establish. He stated that in Section A the word "water" should be changed to "natural flow water." Further, in the first sentence of Part 2 of Section A the word "natural" should be inserted before the word "flow." Mr. Iorns then gave the following definition of what he believes constitutes the natural flow in the Central Division.

Natural flow = 107% of Smith Fork near Border
+ 155% of Pine Creek
+ Bear River above Sublette

Mr. Iorns then discussed the application of water to the land and return flow. He pointed out that an emergency may occur in one of the three divisions and not in the others and that Article IV should be re-drafted to make it possible for the Commission to direct water distribution in one section and not in the others.

Chairman Larson suggested that Section A be given further study by the Engineering and Drafting Committees.

Section B was referred back to the drafting committee for further study. The meeting was adjourned for the day at 5:05 p.m.

The meeting reconvened at 9:15 a.m. Tuesday March 27, 1951, and the discussion of the Articles of the draft of the compact was continued.

Article V

It was generally agreed that Part 1 of Article V, Section A, should remain in the compact. Part 2 was discussed and Mr. Iorns furnished information regarding possible storage above Bear Lake and suggested, for purposes of discussion, that an aggregate reservoir capacity of 150,000 acre-feet be permitted above Bear Lake with storage in any year limited to 40,000 acre-feet. Mr. Merrill asked Mr. Iorns if that would take power water from the stream. Mr. Iorns answered that the 40,000 acre-feet would be from power water. Mr. Wing stated that a reduction in flows would not reduce the capacity of the existing plants but would reduce the electrical energy output.

Chairman Larson asked Mr. Irvine of the Utah Power and Light Company to make a statement regarding the Company's power rights on Bear River. Mr. Irvine stated that water rights cannot be arbitrarily taken away from users in the Lower Division. It should be the purpose of the Commission to adjust and work out an equitable solution to the problem of additional storage above Bear Lake compatible with the rights of all parties concerned. The Utah Power and Light Company is willing to assist in making a study of the questions and will cooperate in all ways possible, but will make every effort to protect its rights against illegal encroachment.

At the suggestion of Mr. Vernon a motion was made by Mr. Spaulding and seconded by Mr. Tracy that the Commission invite the water users below Bear Lake to study the effect upon their rights of additional storage in various quantities above Bear Lake and that the water users above Bear Lake continue studies to determine their storage needs. The motion passed unanimously.

Finances for the commission were discussed. Mr. Iorns stated the requirements. Mr. Bishop stated that he did not have Wyoming's full share of money immediately available but could probably arrange to obtain it if other states felt the full amount was needed. It was agreed by all states to go along with the present program.

Mr. Murphy of the Department of Agriculture made a statement briefly outlining Farmer's Home Administration and Production Marketing Administration problems as affected by Part 3 of Section A, Article IV. He summarized by saying that the present wording would not interfere with the operation of the two agencies in the Bear River Area.

Mr. Merrill suggested that Section A of Article V be referred back to the Drafting Committee for further study. His suggestion was adopted.

The remainder of Article V, Section B through F inclusive was approved except that Chairman Larson directed the Drafting Committee to consider Mr. Merrill's suggestion that compensation for losses of the Idaho kilowatt tax be included in Section E if power production in the state is reduced by storage above Bear Lake.

Mr. W. M. Burton representing the Deseret Livestock Company made a statement reviewing its storage and canal rights. He requested that the commission give careful consideration to the water rights for the Chapman Canal.

Article VI

Mr. Wing suggested that the first paragraph be changed to state that the interstate rights be given the same standing in the states in which water is diverted as other state rights. Mr. Spaulding moved and Mr. Cooper seconded the motion that the drafting committee change the first paragraph to conform to Mr. Wing's suggestion. The motion passed.

Article VII

This article was approved except that paragraph (c) was tentatively changed to read "to impair, extend, or otherwise affect any rights---"

Article VIII

Mr. Merrill suggested the wording of Article VIII be amended by changing the wording from "state and Federal" to "state or federal" and that a statement as to venue be added. Chairman Larson asked the drafting committee to consider and study the proposed changes.

Article IX

This article was amended to provide for a public hearing on proposed amendments to the compact. The clause, "which do not affect the basic principles upon which the compact is founded," was deleted.

Articles X and XI

These articles were approved. Mr. Merrill suggested that another article be added expressing the idea that if a court decides that a part of the compact is unconstitutional then the remainder of the compact remains in force. No formal action was taken on the suggestion.

Mr. Wing stated that everyone would have to work energetically if the compact is to be ready for the 1953 sessions of the three state legislatures. Many important problems will have to be solved and time

passes very quickly. Mr. Wing suggested that the commission endeavor to agree upon a compact by January 1, 1952. This would allow a year for submission to and study by the water users.

The commission approved the idea that representatives of the Utah Power and Light Company and U-I Sugar Company meet with the Engineering Committee on Lower Division problems.

Mr. Olsen of the Fish and Wildlife Service stated that his Service was interested in Bear River Water and would be glad to cooperate with the Commission.

Chairman Larson stated that blocks of unappropriated water in the lower reaches of the river at certain times of the year are unappropriated and can be conserved and used if an appropriate compact is made. There is a possibility of rearranging the use of waters of Bear River for the benefit of all without detriment to anyone.

The next commission meeting was set for Thursday and Friday June 21-22, 1951, at Salt Lake City, Utah. The Drafting and Engineering Committees will set dates for their own meetings. Chairman Larson adjourned the meetings at 3:50 p.m.