

Jibson

MINUTES OF THE
BEAR RIVER COMMISSION
SPECIAL MEETING
FEBRUARY 17, 1977

BEAR RIVER COMMISSION

Minutes of Special Meeting held in Salt Lake City, Utah

February 17, 1977

Minutes of a Special Meeting of the BEAR RIVER COMMISSION held at the Hotel Utah Motor Inn, Salt Lake City, Utah, on Thursday, February 17, 1977. The meeting commenced at 1:30 p.m., with Chairman Wallace N. Jibson presiding.

THOSE PRESENT:

UNITED STATES

Wallace N. Jibson, Chairman and Federal Representative,
Logan, Utah

COMMISSIONERS

IDAHO

William G. Jenkins, Malad
Daniel Roberts, Preston
Clifford J. Skinner, Montpelier

UTAH

Daniel F. Lawrence, Salt Lake City (Secretary-Treasurer)
Paul Holmgren, Bear River City
Gordon Peart, Randolph

WYOMING

George Christopulos, Cheyenne
J. W. Myers, Evanston
S. Reed Dayton, Cokeville

LEGAL ADVISOR

E. J. Skeen, Salt Lake City

ALTERNATES AND OTHERS IN ATTENDANCE

R. Keith Higginson, Ex officio Member, Boise, Idaho
Don Gilbert, Alternate Commissioner, Grace, Idaho
Steve Allred, IDWR, Boise, Idaho
Alan Robertson, IDWR, Boise, Idaho
Joe Hedin, Preston, Idaho
Randy Marshall, T. N. Ireland & Co., Idaho

Calvin W. Funk, Alternate Commissioner, Richmond, Utah
Simeon Weston, Alternate Commissioner, Utah
Dee C. Hansen, Utah State Engineer, Salt Lake City
Mark Page, Utah State Area Engineer Office, Logan
Roland Robison, Ass't Regional Solicitor, Salt Lake City
Norman Stauffer, Div. of Water Resources, Utah
Marion Olsen, Div. of Water Resources, Utah
Blair Francis, Woodruff Narrows Reservoir, Utah
R. B. Porter, Utah

John A. Teichert, State Bd. of Control, Cokeville, Wyoming
Marvin Bollschweiler, St. Bd. of Control, Evanston, Wyoming

Ted Arnow, U.S. Geological Survey, Salt Lake City, Utah
Clifford Alldredge, U.S. Bureau of Reclamation, Salt Lake City
Donald G. Stewart, U.S. Fish & Wildlife Service, Denver, Colo.
Ned I. Peabody, U.S. Fish & Wildlife Service, Utah

J. G. Haight, Utah Power and Light, Utah
Thomas W. Forsgren, Utah Power and Light, Utah
John G. Anderson, Utah Power and Light, Utah
J. S. Hooper, Utah Power and Light, Utah

Connie Borrowman, Secretary
Geralee Murdock, Secretary

Douglas Palmer, Deseret News

M I N U T E S

BEAR RIVER COMMISSION MEETING
February 17, 1977
Hotel Utah Motor Inn
Salt Lake City, Utah

Minutes of the Bear River Commission Meeting held February 17, 1977, at the Hotel Utah Motor Inn at 1:30 p.m., with Chairman Wallace N. Jibson presiding.

CHAIRMAN JIBSON: Ladies and Gentlemen, the meeting will come to order. This is a special meeting of the Bear River Commission; and, as is customary, we'd like to have introductions from the three States. We'll start with Idaho.

MR. JENKINS: I'm Griff Jenkins, Compact Commissioner from Idaho. On my left Cliff Skinner and Dan Roberts, Compact Commissioners that have been aboard for some time, and a new alternate Compact Commissioner sitting at the right of Keith Higginson here is Don Gilbert, Grace, President of the Last Chance Canal Co. We also have here present from Idaho, Steve Allred, the Director of the Investigations Division of the Department of Water Administration; Alan Robertson, our Hydrologist; and Joe Hedin, a former Compact Commissioner; and of course, Keith Higginson, our Director of the Department of Water Administration for the State of Idaho.

CHAIRMAN JIBSON: Wyoming.

MR. CHRISTOPULOS: I'm George Christopoulos, Compact Commissioner; Wes Myers, Compact Commissioner; Reed Dayton, Compact Commissioner. Also from Wyoming are John Teichert, who's our Division Superintendent of Water Division 4; and Marvin Bollschweiler.

CHAIRMAN JIBSON: Utah.

MR. LAWRENCE: We have on my right, Mrs. Borrowman - Connie, my secretary; who today is secretary to the Bear River Commission; and Mrs. Murdock who will be here assisting in case we have any amendments and feel like we want to get a typed copy quick - she's here if that develops into a possibility. Commissioners from Utah are myself, Paul Holmgren, and Gordon Peart. We have Dee Hansen, State Engineer. We have Marion Olsen, Board of Water Resources; and Calvin Funk, alternate Commissioner; and Sim Weston, alternate Commissioner from the upper division. We have Norman Stauffer of my staff, and there are several other Utahns here. Mark Page from the State Engineer's office. Mr. Francis from Water Users Upper Basin.

CHAIRMAN JIBSON: From the Power Company we have John Anderson, Senior Vice President; Tom Forsgren, Attorney, next to John; Jim Hooper, Superintendent of Power; Bob Porter - I don't know what he is -- (laughter). Jay Haight, Hydrologist of the Power Company.

In front of them we have my boss, Ted Arnow, District Chief of the USGS in Salt Lake. Over here, we have Cliff Alldredge, Bureau of Reclamation; and Roland Robison, with the walrus mustache, is from the Solicitor's office and one of our legal advisors.

MR. PEABODY: Maybe we'd better introduce ourselves, I'm Ed Peabody, Manager of the Bear River Refuge.

MR. STEWART: I'm Don Stewart, Chief Hydraulics Engineer for the U.S. Fish and Wildlife Service.

CHAIRMAN JIBSON: We're glad to have you with us, gentlemen. We have E. J. Skeen, the Legal Advisor to the Commission.

READING OF MINUTES OF LAST MEETING

CHAIRMAN JIBSON: Our last meeting of the Commission was a regular meeting held November 29, 1976. As has been customary, I will give a brief review of the Minutes. Those on the mailing list have either received a copy of the Minutes in this form, or a copy of the three Hearings and the Minutes in this cover. There have been some minor corrections in the Minutes from the copies that appeared here - primarily typographical errors. We do have a few extra copies of the Minutes with us today for those who didn't get them, and would like to get a copy.

Most of you who attended the Hearings will recall that the statements were made from a prepared text; and we have a prepared text here, so those of you who would like a copy of this can pick them up later. We can make additional copies later for others who are interested. I will summarize the Minutes, and then we can discuss any changes and approve them.

Review of Minutes of Regular Meeting November 29, 1976

A regular meeting of the Bear River Commission was held in Salt Lake City beginning at 10:00 a.m., November 29, 1976.

All commissioners and officers of the Commission were present. The Chairman reviewed minutes of the special meeting held October 13, 1976, which were then approved as circulated.

Bert Page discussed the Financial Report for the Secretary-Treasurer. An unexpended cash balance of \$57,522 will have an obligation against it of \$49,800 payable September 30, 1977.

The Assistant Secretary's report showed 1976 streamflow to be only about 70 percent from the Uintas and 100 percent or above elsewhere in the basin.

Discussing additional secretarial and legal costs in connection with Hearings and extra meetings, the Commission authorized expenditures for fair and reasonable costs to cover these amounts.

The Chairman distributed copies of responses from Federal Agencies, and discussion followed particularly with reference to the proposed Refuge allocation. It was agreed that we would at a later date take another look at the wording.

Suggested modifications to the Compact were then discussed, article by article, with differences of opinion expressed on some proposed changes. After much discussion, it was agreed that a committee would be selected that would include two from each State, a Power Company representative, our legal advisors, and the Chairman. This committee would try to resolve the differences as were expressed in the Hearings and in the regular meeting. After selection of the committee, the meeting adjourned at 4:38 p.m.

APPROVAL OF MINUTES OF LAST MEETING

CHAIRMAN JIBSON: To those of you who have had a chance to review the Minutes, do we have additions or corrections to the Minutes as they were circulated? Can we have a Motion then for their approval.

MR. DAYTON: I would so move.

MR. JENKINS: I'll second it.

CHAIRMAN JIBSON: It's been moved and seconded that the Minutes be approved. All in favor say 'aye.' Those opposed? The Minutes as circulated, then are approved.

REPORT OF THE CHAIRMAN

CHAIRMAN JIBSON: I think at this time, unless the Secretary-Treasurer has a report on his operation, I would like to discuss very briefly this committee operation, and then go on from there with the discussion of our proposed changes. Dan, do you have anything to report?

MR. LAWRENCE: No sir, I do not.

CHAIRMAN JIBSON: The special committee included, as a basic group, Dan Lawrence, and Dee Hansen, representing Utah; Keith Higginson and Griff Jenkins, representing Idaho; George Christopulos and Reed Dayton, from Wyoming; John Anderson, representing Utah Power and Light Co., and the Chairman. We did have additional people in from time to time to assist in the deliberations of the Committee. The Committee met January 19, in Salt Lake City; January 20, in Logan; and February 2, in Salt Lake City. An additional meeting, held on January 24 at the Power Company offices, included only the technical sub-committee of the original Negotiating Committee, Power Company officials, and myself. In all of the meetings considerable time and effort was directed toward incorporating some kind of provision in the Compact that would give the Power Company

the degree of protection that it felt was needed for their direct flow rights, also for their storage rights; while at the same time allowing for further development above and below Bear Lake. The Committee failed to reach an agreement along these lines, and it was generally agreed that little would be gained by continuing to meet. Especially in view of legislative deadlines, we felt that we should report back to the full Commission without further meetings. The Committee did agree however, on the concept of, and the amount of, a protective level in Bear Lake against the new storage that would be allocated above Bear Lake. Here again, this was to satisfy the critics below Bear Lake who felt that they were not being adequately protected with the additional storage upstream. We then returned basically to the September 30 draft of the Compact with the inclusion of a protective level in the Lake, a change in the definition of 'developable' water, and a few other changes primarily for clarification and editing.

This then, is the draft that the Secretary-Treasurer mailed to those on the mailing list on February 4, and a corrected copy on February 9. This draft has been introduced into the Utah and Wyoming legislatures - to be held in abeyance until this Commission meeting today gives either approval or disapproval, or makes any changes to the draft that might be deemed necessary.

So that's where we are today. I had planned on going through the new draft, at least the revisions - not only the initial revisions, but those that the Committee is recommending - and taking them up Article by Article. In view of some State caucuses this morning, I don't know that this will be the best way to proceed. Ed, do you have a suggestion on this?

MR. SKEEN: I think perhaps we just ought to take up the definition in Article II, paragraph 32, and proposed changes in Article V.

CHAIRMAN JIBSON: Do you all have copies of the draft as we now have it written? We have some extras here.

We have a question from Mr. Christopulos.

MR. CHRISTOPULOS: On the first page of this February 8, draft, line 28 & 29, about the equitable apportionment of the waters. That was added subsequent to our last meeting, wasn't it?

CHAIRMAN JIBSON: I believe it was.

MR. CHRISTOPULOS: That wasn't agreed to in our last meeting.

MR. LAWRENCE: That's correct. It was added by the Chairman and the attorney.

MR. CHRISTOPULOS: That's what I thought. I think we have to talk about that also, because that's a new idea in this thing; but I'm willing to talk about the other two items first.

CHAIRMAN JIBSON: Okay. We'll come back to that. As a matter of

fact, hopefully we can come back and go through each change and get concurrence or non-concurrence on each change.

The first thing we'll discuss then, as Ed suggested, is the definition on page 5.

You will recall in the September 30 draft, as we call it, that was used in the hearings - in that draft we defined 'developable water' in this way:

"'Developable water in the Lower Division' means available water, surface and underground, which had not been put to beneficial use prior to January 1, 1976, which may be developed and which when put to use will not interfere with the rights to the use of waters which had been used beneficially prior to January 1, 1976."

The suggested change by the Committee in this definition is:

"'Developable water in the Lower Division' means water, surface and underground, which had not been put to beneficial consumptive use prior to January 1, 1976, and which when put to use will not interfere with rights to the use of waters which had been consumptively used for beneficial purposes prior to January 1, 1976."

The reason, basically, I believe for changing this was that in the original definition that includes beneficial use, both consumptive use and non-consumptive use, there obviously is no developable water in the Lower Division with the exception of three streams in Cache County - Logan, Blacksmith Fork and Little Bear River that have a reservation against the Cutler power rights, and the areas below Cutler which would not be affected by prior uses. So, this was changed to include consumptive use only, which is essentially the definition used in the original Compact as concerns upstream storage. Do we have any discussion on this definition?

MR. LAWRENCE: I'm not sure that your statement is absolutely true. Maybe for practical purposes there would be very little, but you said that there obviously is absolutely no developable water.

CHAIRMAN JIBSON: Perhaps we shouldn't have confined that to those three streams as total exceptions. I think it should be understood that there are other exceptions to the direct-flow power rights in the Lower Basin.

Keith, did you have a comment?

MR. HIGGINSON: May I ask a question - if anyone could give a definition of the Bird Refuge right, as to whether that's a 'consumptive' or a 'non-consumptive' right?

DEE HANSEN: It takes a certain amount of water running through

to flush the ponds, and that's nonconsumptive in that context. There's also a certain amount of consumptive use involved in the growing of the foliage that the ducks feed off from, so it fits into both categories.

MR. HIGGINSON: Evaporation off the ponds as they're being flushed is a consumption? Does that make them a consumptive right?

MR. HANSEN: Yes, that's the purpose of the filing, and so you see it does.

MR. HIGGINSON: Given that definition, and given what Wally just said, the amount of water, therefore, that's described in paragraph 32 is very limited, is it not? In effect, zero?

CHAIRMAN JIBSON: You mean under the initial definition?

MR. HIGGINSON: The initial definition.

CHAIRMAN JIBSON: Yes. Well, this was the point I made. With a few exceptions, there would be no developable water. There are some exceptions.

MR. HANSEN: There are times, Keith, when the flow through Cutler Dam exceeds the rights of Utah Power and Light Co., and also exceeds the rights of the Bird Refuge. At that time there would be some developable water under the old definition. But I agree with you; it's very restrictive, and doesn't provide for a great deal of development.

MR. LAWRENCE: It wouldn't be sufficient to justify the time of this Commission to worry about dividing it up.

CHAIRMAN JIBSON: I wouldn't think that it should be defined.

MR. LAWRENCE: What I mean is, for all practical purposes - Keith's right; and you're right.

CHAIRMAN JIBSON: The definition in paragraph 32, then, is open for discussion.

MR. HANSEN: Mr. Chairman, there has been some discussion. I'm sure Utah Power and Light will want to bring this up, if we don't. I guess I favor the definition the way it now stands, because of what Keith says. I think if we don't put 'nonconsumptive', or put 'consumptive' beneficial use then there's nothing that we really ought to be sitting around this table talking about dividing; because there is very little, if any. However, in respect to the Power Company's concerns, I think we, somewhere else in the body of this document, have to define that if the development of this water interferes with a nonconsumptive use right owned by Utah Power and Light, or someone else, that some compensation should be provided for. I think we've worked on that in previous meetings, and I would suggest that we give rise to that again. We prefer the language that is in definition 32 remain as is now.

MR. MYERS: Under the new draft?

MR. HANSEN: Under the new draft.

MR. MYERS: That's 'beneficial and consumptive'?

MR. HANSEN: Yes. But, Wes, in keeping with that, I think we have to recognize that there's another problem; and we have to treat it somewhere.

MR. MYERS: I understand that. I wasn't quite sure whether you meant both words or just 'consumptive'.

CHAIRMAN JIBSON: Do we have further discussion on this? Cal?

MR. FUNK: Mr. Chairman, because of the pace of things that happened, perhaps there is some information that Utah Power and Light has given part of this group, but not all of the group, that maybe ought to be heard - since it bears on this and related points. Maybe it would be timely - I submit to your judgement on that - as to whether that should be heard now, or not.

CHAIRMAN JIBSON: Some of the points that have been made, of course, apply to a subsequent section; but also apply to this. Certainly, if the Power Company would like to make a statement at this time, we would be glad to hear their statement. I'm sure it will apply also to another section that will be referred to later in the meeting.

MR. FORSGREN: I think we generally concur with the problems stated by Mr. Hansen, State Engineer of Utah - indicating that our concern is we have nonconsumptive water rights on the River below the Lake, and we would want those protected; or at least an understanding of the problem raised by Dee and feel like if we could have some language given in the body of the document, itself, that at least explains that those power rights are there; and if taken, would require compensation, that would probably satisfy our concern.

CHAIRMAN JIBSON: Dan?

MR. LAWRENCE: May I ask Mr. Forsgren a question? If paragraph 32 on page five of the February 8, copy were left as it is, and the Commission considered discussing and satisfying the Power Company's concerns in other paragraphs of the Compact, would this be acceptable to the Power Company?

MR. FORSGREN: I think we could put some language in Article IV, probably at the end, identifying the Power Company's nonconsumptive rights and indicate that the development of the water right must be subject to satisfaction, compensation or not, of those Power Company rights.

CHAIRMAN JIBSON: I wonder if it might be wise, rather than to vote to accept this definition or not to accept it at this time, to come back to it after a discussion of Article V and its ref-

erence to this.

MR. LAWRENCE: It seems to me, Mr. Chairman, that we can't vote on any paragraph until after we refer to all of the possible amendments which would be introduced; and then you would approve each of them in context with how the other amendments relate. I don't see how you could separate out one paragraph and consider it alone.

CHAIRMAN JIBSON: If this is satisfactory with the Commission, we'll move ahead.

MR. STEWART: The Fish and Wildlife Service, and of course the Bear River Refuge, uses water, which at times is nonconsumptive, to flush the pond; and when we have disease outbreaks; the salt content is high; and we feel that this would have to be guaranteed to us and have just a compensation factor built in. We would object to this as Dee has stated, there is something else added to define and protect, consumptive and nonconsumptive use.

CHAIRMAN JIBSON: I think in general, in past meetings, we have considered, when we talk about nonconsumptive use, primarily the Power Company rights through five power plants. I have not thought about your rights down there as being nonconsumptive rights; but what you say is true, so your rights are in the same category as the power rights in that respect.

MR. STEWART: It is a consumptive right as far as we are concerned; as far as being on the end of the river and demanding more of that water. You have to realize that this is not a local Refuge, or a State Refuge, it's a National Refuge. It's for the United States, and the citizens of the United States.

CHAIRMAN JIBSON: Well, you can consumptively use the entire amount anytime that you want to consumptively use it; but if you desire not to use all of it consumptively by flushing your ponds, you don't have to. Is that the way we understand it?

MR. STEWART: Well I don't know whether you can define it as 'desire'; it's the operation or the interest of the Refuge, the protection of the Refuge itself.

CHAIRMAN JIBSON: Any further comments before we move to Article V?

The pertinent section of Article V, as far as proposed amendments are concerned, starts with Paragraph B which we might read as it is in the present draft.

MR. HIGGINSON: Could we start ahead of that, with the material that's been stricken there? That's another change that's been made since the last meeting, and I'm wondering the rationale for that striking.

CHAIRMAN JIBSON: In the present Compact in paragraph A of Article V -

"but in order to attain the most beneficial use of such additional storage consistent with the requirements of future water development projects, the three Commissioners for Utah and the three Commissioners for Wyoming are hereby authorized, subject to ratification by the legislature of Utah and the legislature of Wyoming, to modify by written agreement the allocations of such additional storage."

It was called to our attention by Mr. Skeen that this wording in the Compact was not acceptable when the pact reached Congress; and rather than take it out of this particular section they added a paragraph at the end of the Compact - and perhaps we could read that.

Ed reminds me that it isn't a modification of the Compact. It's in the statute that approved the Compact. They added three paragraphs, and the first states, merely that all Federal offices and so forth, will cooperate with the Commission. The next one says, in Section 3 "Any modification of the allocation of storage rights contained in Article V shall become effective only when consented to by the Congress." This has been discussed in our last meeting and also in the committee meetings, and it was felt that rather than cause this type of a question again in the Congress that it perhaps is not too practical a condition anyway. At least we've been operating for 19 years, and I haven't seen either Utah or Wyoming agree to any type of division other than the 50/50 division provided for in the Compact. So it was felt that perhaps we should delete it - not only in connection with the present allocated storage - but in connection with any additional storage upstream; and for this reason it has been deleted.

MR. HIGGINSON: Wally, the reason I raised the question - I remember the discussion; but as I recall the discussion, the gist of it was that we should leave it in and let Congress strike it if they want to strike it.

CHAIRMAN JIBSON: This was the initial consensus of opinion, that Congress could strike it.

MR. HIGGINSON: I hadn't heard any other discussion beyond that.

MR. LAWRENCE: I'm sure Keith's right.

MR. HIGGINSON: That's the only discussion on that subject, and I'm wondering why it got struck.

MR. SKEEN: I'll probably take the blame on that. Rather than submit another Compact to the Congress with that objectionable language in, I figured it would be better to strike it out now so that question will not be raised. Congress can't modify the Compact after it gets there; and to make it effective without resubmitting it to the three-State legislatures. In other words, when it gets before Congress, they can't simply strike out provisions or insert provisions and make a new Compact without it

going through the same process of being approved by the three legislatures. Rather than have the question in at all, I figured it would be best to take it out. I'll take full responsibility for that.

CHAIRMAN JIBSON: I think Keith, that you were the one who suggested that this might be the answer.

MR. LAWRENCE: I haven't got too good of a memory, but it's my understanding that the formal action by the Commission was to leave it in and let it happen.

(See discussion, pages 65-66, Minutes of November 29th Meeting when it was suggested that the wording be deleted, but formal action was not taken.)

MR. HIGGINSON: It could be taken care of a different way. Simply add to the Compact draft "and such revision shall be consented to by the Congress". All the Congress said, "You can't do it unless we approve it". It didn't say we didn't have the authority to do it; they said, "You don't have the authority to do it without our approval". Simply add that to the present language and it would have taken care of it also.

MR. SKEEN: It could be handled by adding that consent of Congress to the present language. It's another possibility.

MR. HIGGINSON: I don't have any objection to it. It wasn't what we agreed to before. That's all I'm saying.

CHAIRMAN JIBSON: I guess after a lot of discussion we did agree to leave it in; but I do recall in discussing this you mentioned the fact that it didn't appear to be a practical means of any further division of the water. We can come back again and discuss this.

MR. HIGGINSON: No. I just wanted to make sure everybody was clear on what happened on that language.

CHAIRMAN JIBSON: You may find a few changes like this. Most of them I can 'pass the buck' to Ed on.

MR. SKEEN: I'll be glad to stand behind them on whatever we've written in here.

CHAIRMAN JIBSON: Okay, shall we go to Paragraph B then? As would be revised in the original Compact we say:

"In addition to the rights defined in Article V. Paragraph A. above, further storage entitlements above Stewart Dam are hereby granted. Wyoming and Utah are granted an additional right to store in any water year 70,000 acre-feet of Bear River water and no more for use in Utah and Wyoming to be divided equally; and Idaho is granted an additional right

to store 4,500 acre-feet of Bear River water and no more in Wyoming or Idaho for use in Idaho. Entitlements granted under this paragraph and other appropriations for water including groundwater developments in the Upper and Central Divisions after January 1, 1976 shall not result in an average annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet beyond the annual depletion of the Bear River and its tributaries above Stewart Dam occurring as of January 1, 1976. The additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. There shall be no diversion of water to storage above Stewart Dam under this Paragraph B when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power & Light Company datum (the equivalent of elevation 5,913.75 feet, based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947.) Thirteen thousand (13,000) acre-feet of the additional depletion above Stewart Dam is allocated to Utah, and thirteen thousand (13,000) acre-feet is allocated to Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho. Estimated water depletion which would occur under this paragraph B. shall be determined by a Commission approved procedure. Prior to actual diversion of the water, the appropriation and diversion of water shall be approved within each State by the appropriate State official. The separate States shall report annually to the Commission the quantity of such depletion approved during the year. Depletion rates will be estimated by the best currently available procedure for such use, location, and method of diversion."

CHAIRMAN JIBSON: We've added the storage elevation. I was thinking we made another change up in (1) or (2). No; only the addition of the protective level in Bear Lake - 5,911 feet was added. (Also, last four sentences were formerly paragraph 'E').

MR. FUNK: Mr. Chairman, due to the fact that Utah Power & Light has offered an alternative wording in Article V. For the education of all of us and for discussion it might be well to hear what that offering is.

MR. LAWRENCE: Mr. Chairman, I have a typed copy which has been given to me this morning. I could read that, if you'd like.

CHAIRMAN JIBSON: Okay.

MR. LAWRENCE: I think I would like to for the reason that Utah may offer it as an amendment.

CHAIRMAN JIBSON: Okay Dan, if you'd like to read it and show us where it is to be inserted and what it replaces.

MR. LAWRENCE: Beginning on page 13, line 9. The Power Company's suggestion of change doesn't begin until we start with "and shall not be exercised when the effect thereof shall be to impair or interfere with", and that's on line 9 of page 13. So if you'll start with line 9 on page 13, and we would scratch the 1 so they would read "the additional storage rights shall be subordinate to and shall not be exercised when the effect thereof will be to impair or interfere with existing direct flow rights,". You scratch the for also. Draw a line through for, and it reads:

"additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with existing flow rights and storage rights in any river division as determined and recognized in the state in which such additional water is diverted to storage; provided however, that with respect to the rights now existing or which may hereafter be established for non-consumptive hydropower purposes such rights may be acquired, provided just compensation is paid therefor in the event the holder of such rights requests compensation,"

and then they scratch all of the rest of the sentences. That is the change and all the rest is the same as we have it in the February draft.

MR. FUNK: Mr. Chairman, before we get into a discussion on this or a consideration in caucus or whatever route you want to go, it might be well to have the Utah Power & Light representative expand on this, as was done this morning, or any clarification of this, or their rationale behind it. I would think it would be good to hear an expression from them.

CHAIRMAN JIBSON: Would you like to comment on it, Tom?

MR. LAWRENCE: Tom, would you come up a little closer so that we'll be sure and hear you.

MR. FORSGREN: We had two essential changes that we wanted to submit to the Commission for their consideration. Basically, this that Mr. Lawrence just indicated would give the Power Company the protection we feel we need for the rights which we have, in terms of the Article V. Paragraph B. water rights. This same sort of language we would be interested in having in Article V. Paragraph C as well. In other words, protecting whatever water rights we have. That was one possible amendment to the Compact that we propose.

The other was more in the form of a compromise, and hopefully would be able to help the whole Compact and the Commission to be settled at this time. That proposal, basically, is that we would withdraw our proposal that this protective language be included in Article V. Paragraph B, and that Article V. Paragraph C. be deleted completely. What that does in effect, I think, is say that Idaho, Wyoming and Utah are granted that additional right to store

that 74,500 acre-feet of water and deplete it to the extent of 28,000 acre-feet without objection from the Power Company in terms of raising questions on our water rights or seeking compensation for these amounts of water. We then would want to have the Article V. Paragraph C. deleted completely from the Compact; and that section, as you recall, has to do with the spill water that occurs in the years of heavy spring runoff.

CHAIRMAN JIBSON: Do you all understand what this second proposal is that Tom has made? Any question on that?

MR. LAWRENCE: I think, then, you're saying that Paragraph B. would be left as in the Commission's draft, which is before us - the February 8th version; and Paragraph C would be deleted insofar as the reference to permission to store the Bear Lake spills - when Bear Lake is spilling.

MR. FORSGREN: Yes, I think at least that one may be what we would submit that may be considered by the Commission as language. In addition, in Article V. Paragraph B is a sentence to the effect that Power Company rights are waived and no compensation sought. That would be to keep the document consistent so everybody would understand what's happening as we go along.

CHAIRMAN JIBSON: Any comments? Wyoming, you've been mulling over this proposal for all of an hour.

MR. CHRISTOPULOS: I think we're overwhelmed. (Laughter) I don't know whether we feel that we are in a position to comment. We, I think, basically feel that what is being done and what it says is pretty much what we want to stand on in the present Compact, and I think anything beyond backing off from that position certainly couldn't occur today, if we do anything.

MR. MYERS: And that includes Paragraph C.

MR. CHRISTOPULOS: Yes. I think that's our position.

MR. FORSGREN: Mr. Chairman, could I make one other observation. It would be our proposal that in the event this compromise appears reasonable to Wyoming and the other States, that we would want to insure that the language is in the Compact that would, in effect, make this the equitable portion of the stream, and that this problem would forever be laid to rest and be taken care of now. If you don't have any objection - just to sort of reiterate what I've said. In Article V. Paragraph B language we do; but we wouldn't want to be bound by Article V. Paragraph C. If that were accepted, we would want it to be understood and the language in the Compact perfectly clear indicating that this constitutes an equitable apportionment of the stream and would not be re-opened at a later date.

CHAIRMAN JIBSON: I understand, Tom, when we were discussing the definition of 'developable water' that you thought if the definition stood as we have it in the present draft that your proposal

here might take care of it? Are you tying this part of the proposal at all to that definition?

MR. FORSGREN: No, I think the concept on the developable water below the Lake is that the Power Company has certain water rights and we're interested in having those protected. If we need to work out some language and talk about developable water in terms of consumptively used water only, and then in additional language recognize power rights, I think we should do that. But that's a separate thing.

CHAIRMAN JIBSON: You would sooner keep that separate either from your suggested Article V, or from your second suggestion?

MR. FORSGREN: Yes.

CHAIRMAN JIBSON: This additional storage also affects Utah. Do you have any comments to the second proposal - the deletion of Paragraph C?

MR. LAWRENCE: I don't think we'll make any comments. We'd like to ask all the questions that we can to be sure that there's a discussion, and then I would probably suggest a very short recess so that we could discuss them among the Utah group.

MR. MYERS: I'd like to bring out one thing here about this 'equitable' and 'once and forever'. This is an act of the legislature - a Congressional act; and no legislature, by its action, can bind any future legislature. If we put this in here, and say this is 'once and for all', we're binding the legislatures that come in the next generation. We can't do that.

MR. FORSGREN: If I could respond to that - I think the law's clear in the Supreme Court of the United States that when States make these Compacts that they are binding in the future. I don't think that's going to be a problem. That's the reason why we want to point this out - that when the Compact is completed it will be binding. We want to make sure that Wyoming and the other States realize that.

MR. MYERS: It's binding unless it's changed; but if all three of the State legislatures change this, then it is no longer binding.

MR. FORSGREN: If we put in the language, I think, that it is an equitable apportionment of the River; and I think that will lay to rest the problem.

MR. MYERS: Let's carry that a little further. This 28,000 feet depletion is an equitable share for the contribution of 300,000 acre-feet of water plus a million to a million and a half acre-feet. If 28,000 is an equitable share of a million and a half - then I'm fooled; because I don't think it is. I don't think that I can say that that is an equitable distribution. Maybe so; but I don't think it is. There's no use arguing that. That isn't

what we want to be debating now; we just want to ask questions. But I don't feel that we can tie this down forever.

CHAIRMAN JIBSON: Of course, the Compact itself is not tied down forever. Provisions of the Compact must be reviewed at intervals not exceeding 20 years; regardless of whether we think we're tying it down forever - we are not.

MR. MYERS: Dan, we can tie it down for 20 years.

MR. CHRISTOPULOS: I'd like to ask Tom if he would repeat what he said about Article V. Paragraph C. It was the last statement you made when you alluded to equitable distribution.

MR. FORSGREN: I didn't mean to tie that particularly to equitable division of the stream among the States. All I am saying there, is that we are proposing as part of the compromise, that in the event Article V.B is adopted and the Power Company raises no issue with the storage and the depletion figures that are in there, as far as that same package we would propose that "C" be deleted.

MR. CHRISTOPULOS: Okay, but then I thought you also offered something with Article V.C remaining, but with some sort of other language in there too.

MR. FORSGREN: No; that was jumping back to the developable water; the water below the Lake.

CHAIRMAN JIBSON: Well, Tom, maybe I need a little clarification. This first proposal that you gave is a separate proposal, and Paragraph C would stay in, with this first proposal?

MR. FORSGREN: Yes.

CHAIRMAN JIBSON: Is that what you meant, George?

MR. CHRISTOPULOS: Yes.

MR. FORSGREN: Oh, I see. Yes, there's some suggested amended language in this same packet.

MR. CHRISTOPULOS: Actually you had two alternatives, more or less. Is what you're proposing an Article V-B and C, modified; or a V-B. modified dropping V-C?

MR. FORSGREN: Yes.

MR. JENKINS: I'd like to pose a question to the Power Company then, under this proposal that they're putting forth. There are times when studies have shown in the technical subcommittee that there are some 500,000 acre-feet of water that is spilling at Bear Lake - on the average perhaps 100,000 acre-feet. How, then, would the development or the control of these flows be addressed under your proposal?

MR. FORSGREN: The spillwater?

MR. JENKINS: Yes.

MR. FORSGREN: Well, under the second proposal that we have, that section would be deleted and the Power Company would be entitled to use that water for generation if necessary - as is the case now.

MR. JENKINS: There would be no possibility then of holding this in upstream storage to preclude the problems that at least prior to this year we were seeing in the Great Salt Lake?

MR. FORSGREN: By our saying that we would want that paragraph out doesn't mean that that could never be developed. All we are saying is that we don't want to tie to the operation that that table prescribes, and that if those waters are sought in the future that they would be acquired as any other water right is acquired.

MR. HIGGINSON: Excuse me, Mr. Chairman, but let's make sure we understand. You have indicated that you want Paragraph C deleted. With Paragraph C deleted there is no opportunity, as I read the Compact, for any development of that water above Bear Lake. You are in effect foreclosing the development of the flood or the spill waters of Bear Lake.

MR. FORSGREN: No, I don't -- well --

MR. HIGGINSON: How would you do it? Because the limitation is in Paragraph B.

MR. FORSGREN: Just with an arm's length transaction. Somebody coming to us and saying 'we'd like to buy your water right', and we saying 'we'll sell it'.

MR. HIGGINSON: You don't have anything to sell.

MR. FORSGREN: We have a nonconsumptive right.

MR. HIGGINSON: Are you going to sell it for consumptive irrigation purposes? There isn't a State Engineer around this table that will approve that.

MR. FORSGREN: You didn't state that as the situation. I'm saying that if somebody wants to buy our right for whatever worth it might be --

MR. HIGGINSON: For nonconsumptive uses somewhere else?

MR. FORSGREN: Yes. Pulling our Paragraph C doesn't foreclose that water being acquired.

MR. HIGGINSON: You know that's very problematical that that would

ever happen - that somebody would want to buy your nonconsumptive right for some nonconsumptive use.

MR. MYERS: Recreation.

MR. HIGGINSON: You are in effect saying that the water should continue to be used as it spills from Bear Lake or is released for flood control purposes from Bear Lake for hydropower, and then waste into Great Salt Lake.

MR. FORSGREN: I'm not so sure I say waste into Great Salt Lake.

MR. HIGGINSON: After you use it.

MR. FORSGREN: We would use it. If someone wants to file on it below Cutler, then the way is open for that. We're not suggesting that it need be wasted.

MR. HIGGINSON: That's probably fine for lower Utah, but it doesn't help the rest of us any.

MR. FORSGREN: The other way we propose to handle it is have the storage take place as provided in the Compact now, under Article V. Paragraph C - and just recognize our rights, that they are valid. That we propose be done under Paragraph B.

MR. LAWRENCE: Do I understand it correctly, Mr. Chairman, that the Power Company's suggestion is to trade a firm withdrawal of any right to the 74,500 storage for the limitation of all storage to that amount?

MR. FORSGREN: Yes; that's right.

CHAIRMAN JIBSON: Do we have any other question or comment on this proposal? Would you like to take a recess at this time and discuss it in your own groups?

MR. MYERS: Is that all the things we have to discuss?

MR. JENKINS: I'm wondering if there aren't some other areas, and that we could discuss them all at once? If there are other areas of change and concern maybe we could get those, and then have one caucus do the job.

CHAIRMAN JIBSON: Should we go ahead and read Paragraph C?

MR. CHRISTOPULOS: I don't feel that Paragraph C has to be read. All it is, is the method whereby waters could be stored under certain conditions that are considered to be -

CHAIRMAN JIBSON: We made a few changes in this. We wouldn't have to read it again. Maybe I can explain them. In our last meeting we raised the question of bypass water from Bear Lake as being measured in this release; so, Ed and I worded it this way. I'd

like to know if this meets with your approval. Let's read "b." part of Paragraph C.

"Releases of water from Bear Lake or the bypassing of water for flood control purposes shall not be made at any time if the effect thereof is to lower the water surface elevation of Bear Lake at the end of any month below the elevation specified for that month in the table below. For the purpose of this section, during the period of October 1 through April 1, a flood control release or bypassed water is defined as any flow in excess of twenty (20) cubic feet per second measured at a point or points determined by the Commission."

Our thinking here was that rather than tie down these points of measurement we would word it this way, and by measuring at Stewart Dam and the outlet canal, primarily, we would be able to prevent any bypass water that would not be included in this. Does this seem to take care of the question you had, Wes, in regards to the bypass water?

MR. MYERS: I'm sure it does.

CHAIRMAN JIBSON: I think that was the only change we made in Paragraph C. In discussions with various groups outside our meetings, there seemed to be some question as to the actual operation of Paragraph C, and what it would do, and what it would not do, and so forth. Are there any specific questions here that maybe we could clear up with the committee members who wrote the paragraph?

For instance, the question came up this morning from one of the Wyoming group, why did we set an elevation of 5,917.6 above which storage could take place, and then still tie to the elevations on the bottom of page 14 under subparagraph b? I'm not sure whether or not I explained that reasoning to the extent that they wanted it explained.

MR. HANSEN: In respect to the fact that it's been suggested that Paragraph C might be deleted - if that's the decision, then there's no sense discussing any of the facts relative to Paragraph C. It would seem that maybe we ought to bypass it until we determine that. I guess you can't bypass everything, but it seems pretty important to find out if we can meet the suggestion of the Power Company. I have concerns; and don't want to express them until after the Utah group's voiced its opinion - but it would seem that we are maybe to a position where there's no sense spending a lot of time on Paragraph C if we're going to vote to take it out.

CHAIRMAN JIBSON: This is true. If it stays in, I think perhaps it is a little complicated and maybe could be explained a little further. We can go ahead and check anything else that there may be a question on before we do recess. As Ed and I looked over some of these Articles for editing, we checked Article VIII on

the bottom of page 17, and made a few minor changes there. We're not entirely sure on what we had in mind on Article VIII.

MR. LAWRENCE: I don't think Utah has any objection to Article VIII as it's written.

MR. JENKINS: What were the changes?

CHAIRMAN JIBSON: It wasn't anything of much consequence except to ask about authority. Let me read the part in the initial draft that was changed and then read our wording of it here.

In the initial draft we say,

"Water from another watershed or source which is caused to enter the Bear River by actions within a State may be claimed exclusively by that State and use thereof by that State shall not be subject to the depletion limitations of Articles IV and V. Proof of any claimed increase in flow shall be the burden of the State claiming such, and shall be approved by the three Commissioners of each of the other two States."

MR. SKEEN: We were a little concerned of what the "or source" means.

CHAIRMAN JIBSON: We wondered whether you were talking about possibly cloud seeding or a possible source from the Blackfoot Reservoir area.

MR. HIGGINSON: That's right.

CHAIRMAN JIBSON: If this was the purpose of the Article, in editing we wanted to be sure we didn't change any words that would change the meaning that you wanted in there.

MR. SKEEN: The only change was here - "which enters Bear River" - we changed it to read, "which is caused to enter". Purely a word change.

MR. LAWRENCE: Haven't you got a little change to make there? - "water which enter by actions"? Doesn't it enter as a result of action? In our first draft we had "which is caused to enter by actions".

CHAIRMAN JIBSON: We say "water which enters the Bear River by actions".

MR. SKEEN: I don't think there's any difference.

MR. HIGGINSON: I seed clouds over Utah and it snows in Wyoming - whose water is it? Idaho did it; so now whose water is it?

MR. LAWRENCE: You can see several claims in that last sentence.

MR. HIGGINSON: If you can prove it.

MR. LAWRENCE: Yes.

MR. SKEEN: The proof is the burden.

MR. HIGGINSON: I don't think it makes any difference to put that 'proof' thing in there.

CHAIRMAN JIBSON: The first sentence in the Article was changed a little bit. It first said "stored water or water from another watershed or source may be turned into the channel of the Bear River in one State", etc. We said, "may be turned into, or find its way into, the channel." Okay?

Let's go to Article X. There was one suggestion made in our last meeting to the effect that the Power Company having so many days in which to appeal.

MR. SKEEN: We abbreviated on the assumption that the State law would control in each State.

MR. HIGGINSON: Mr. Chairman, I'd like to point out Article X. We are not doing what this says now. If you interpret literally it says "upon the filing of an application you shall transmit a copy to the Commission." We don't do this. We do it in six-month intervals because the Commission approved that procedure. Now, would this mean that the Power Company would get them in six-month intervals also? If so, then they're past our protest period; they're past Dee's protest period; and I don't know about George's, but they're past the protest period prescribed in our statutory provisions - if they're going to file an official protest based upon these transmittals. So, either we're going to have to transmit these on a daily basis as we receive applications, or do something different than we are doing in the past. Is that the intent?

CHAIRMAN JIBSON: That would pose a problem. The Power Company, of course, has a copy of the summary of applications as we present it to the Commission, because they usually have a representative there.

MR. LAWRENCE: It seems to me that there ought to be a time with which those copies or notifications are filed in every case. The Power Company has no recourse if they didn't have that notice immediately.

CHAIRMAN JIBSON: Of course, the Bear River Commission has no recourse either. They have only the right to protest, the same as any individual.

MR. LAWRENCE: Why don't we put a time limit in right after the word 'Commission'?

MR. HIGGINSON: My preference is to delete it. I can't see how

the Power Company's entitled to any more direct notice of applications than any other water user on the system. We don't notify the U.S. Fish & Wildlife Service; we don't notify the Last Chance Canal Co.; we don't notify any other user on the system; and I don't see why we should notify the Power Company directly.

MR. FUNK: Isn't the State Engineer charged with protecting their rights, anyway, without sending them a copy? Aren't you charged with protecting rights anyway? You go through a normal procedure. It's advertised; any applicant can later pick it up.

MR. HANSEN: I'd hate to see us have to start singling somebody out - because there have been others ask for the same privilege, and under the statutes it would be almost impossible. We do advertise it subject to protest. I think that ought to be good enough for the Power Company, too.

MR. FUNK: I think they're protected without the additional.

MR. HANSEN: They're able to protest everything that comes in right now.

MR. CHRISTOPULOS: I think I'd like to mention that I think that this hasn't been agreed to anyway. It's just something that's been added for discussion, hasn't it? I move that we delete it.

CHAIRMAN JIBSON: You are speaking only about part of the last sentence, "and to the Utah Power and Light Company". It's been moved that we delete this. Is there a second?

MR. LAWRENCE: I'll second it.

CHAIRMAN JIBSON: Any further discussion? All in favor? Opposed?

MOTION CARRIED

CHAIRMAN JIBSON: I don't believe there's any question on the other part of the revision in Article X that states:

"nor shall any such application be approved if the effect thereof will be an increase in depletion of the flow of the Bear River and its tributaries beyond the limits authorized in each state in Articles IV and V of this Compact."

That takes us through the entire draft.

MR. HIGGINSON: Can we come back to George's first question before we caucus?

MR. LAWRENCE: I think we should.

MR. HIGGINSON: The equitable apportionment in Article I.

MR. CHRISTOPULOS: Of course, I think this all goes to how

satisfactory a Compact we might come up with. Certainly the question's been raised by Wes Myers about when we do finally come up with a finished product, certainly it's subject to change as conditions change or as times change. Again, I don't feel that this is anything we agreed to. I think it was just put in as a point of discussion.

MR. LAWRENCE: Could I talk to that, Mr. Chairman? Does Article XIII give us the protection that Wes would be concerned about? Or is that null and void if we add this clause in Article I?

CHAIRMAN JIBSON: I mentioned a few minutes ago that I thought Article XIII did take precedence over any statement such as this in Article I. We still have the right - not only the right, but the obligation - to review the provisions of the Compact at intervals not exceeding 20 years. And, we may propose amendments. Certainly an amendment could be proposed that might accomplish a second equitable division of the River.

MR. MYERS: I think that is touched up in an inacting clause. It says "providing for an equitable apportionment of the waters among the Compacting States." I don't see any need in putting it in.

CHAIRMAN JIBSON: I think what Dan did was take it out of here, and moved it up here, when he proposed the Bill.

MR. HIGGINSON: The Bill would be titled differently.

MR. MYERS: In other words if we strike it here we should strike it from the title?

MR. HIGGINSON: Right.

CHAIRMAN JIBSON: You wouldn't have to.

MR. MYERS: I think you do have to if you're making an amendment on a bill.

MR. HIGGINSON: Yes, you would.

MR. FUNK: May I ask a question to Utah Power and Light? In all of the discussions we've had I'm not aware of any dramatic change that's hinted, or proposed, or implied, in the operation of the River by this Compact modification that has been suggested. Yet I get the feeling that Utah Power feels very much threatened now; that this will enable some sweeping change to take from them their power rights. If we were able to get to some compromise that would permit this revision to go forward, what is your position on rights? Would you continue to let irrigation applications that are pumping out of the River, using power, and the lesser projects that have historically been permitted to go ahead - would you permit that to happen? I assume from what you've said that your real objection would come if there were any larger project

that would substantially injure your power rights. Could you make a statement on that as to what your feelings are?

MR. FORSGREN: We're interested in any applications which would adversely affect the power rights, whether they be large or small. We've talked about cutting off the finger; fearing, before. We think that that cumulatively may have an adverse effect on us. Mr. Anderson has indicated before that due to the shortage of power and the problems we're having now we feel that the Bear River system is a valuable source of energy to us. I don't know what more I can say. Generally speaking, we will be opposed to any application which would adversely affect our rights. And we feel that cumulatively small ones, as a group, may do that.

MR. FUNK: But historically they've been premitted to go ahead - say, someone could put a pump in and run a power line down to the River and irrigate or whatever, and would that policy continue?

MR. FORSGREN: Not necessarily. Let me speak to this business of having an equitable apportionment of water. I suspect the reason we're submitting a compromise on this is to save having to have the equitable apportionment of the River decided by the Court. If it could be done by Compact - that's fine; we'd like to do it. But whether it be done by Compact, compromise, or settlement, or whether it's done by the Court, we want to get it done so that there's peace on that River once and for all, and that's the reason we're trying to compromise here - and come up with some sort of an equitable apportionment of that River. We don't want to have these kinds of problems in 20 years - or ever. I think it's the position of the Power Company that if we can't settle what the equitable apportionment is on the basis of a compromise settlement, we want the Court to determine it. We don't want to live with this up in the air forever and ever.

MR. CHRISTOPULOS: It seems to me that the Power Company has come forward with a compromise as far as the Upper River is concerned - because they have made an offering of some kind of language that would perhaps, if the States accepted it, try to settle this issue. I don't see that in the Lower River, below Bear Lake at all in the language. It seems to me that it's open-ended. Really, other than what effects that might occur in Wyoming or the Upper Basin, you don't have any real statement. It seems to me again, that I don't feel from our standpoint that we are in a position today to say whether we accept what's been offered the Upper Basin. Likewise, it doesn't seem to me that we are at a point where we know whether the Lower Basin has been taken care of, because the question is still there. We haven't settled a thing in the Lower Basin.

MR. FUNK: I have no credentials as a prophet, or projection as to what might happen - but I think as the growth comes to Utah this invaluable water resource is just absolutely necessary for further growth. You're never going to find peace on the River.

There's a step-by-step logical progress of population and other pressures that an alternate source of power is going to have to be made ultimately, and compensation will have to be made to the Power Company. I just can't think that in this area that we have that water that we can continue to run down the channel for non-consumptive power use. Ultimately, whether it's 100 years, or whenever, there will be some higher priority use required of water.

MR. HANSEN: It seems to me that 20 years ago when the Commissioners sat around and arrived at the first Compact, I think at that time they thought they were making, maybe not in legal terms, an equitable apportionment; but they divided the water they thought was available to divide at that time. Times changed. Power Company demands changed. So we came back in 20 years with a surplus amount of water that we thought was able to be divided. Maybe 20 years from now there'll be no hydro-plants on the River. The situation then has changed. I agree that then maybe you'd want to look at the possibility of another division. I think that's the way it ought to be. I don't feel we ought to seal it up now and forever, because we can't foresee the future; and I don't know what it means to put equitable apportionment in there, but I think that's what we're doing right now. We've agreed as three states that we've divided the flows of the River. In 20 years that may not be the case. We may look at it differently. We've got more records and situations change.

MR. MYERS: That's what I was trying to say, but you said it much nicer.

MR. HIGGINSON: I'd like to hear a comment from the Power Company concerning George's comments with regard to the Lower River. Do you have anything in mind in regards to the Lower River? Now, the language that is in this draft, would in effect not recognize your nonconsumptive hydro-power rights. It'll only subordinate the new uses to the consumptive uses.

MR. FORSGREN: I'm sure that what we've proposed in there, Keith, is language of attitude to recognize the Power Company's non-consumptive rights.

MR. HIGGINSON: In other words, strike the word 'consumptive'.

MR. FORSGREN: Well, Dee has some objection to doing it that way. He'd rather put some other language in saying that the Power Company has some nonconsumptive rights; and not let consumptive uses interfere with those rights. I think the concept is the same.

MR. HIGGINSON: You're not suggesting some kind of an equitable apportionment of the Lower River, just the Upper?

MR. FORSGREN: Well, the Upper River hasn't been adjudicated. This compromise that we are proposing would be in lieu of adjudication of that portion of the River. That's the purpose for that.

MR. HIGGINSON: Well, the Lower River hasn't been adjudicated either, has it? between Utah and Idaho and the Power Company.

MR. FORSGREN: Wouldn't decrees do that?

MR. HIGGINSON: Decrees are binding as to the parties of the decree. The State of Idaho is not a party of the decree; as far as an equitable apportionment, as far as the State of Idaho's share of an interstate stream.

MR. FORSGREN: I guess we could say that our feelings aren't as strong that there isn't an equitable apportionment between the Lower end of the River, as is the case on the Upper.

MR. HIGGINSON: You are, in effect, saying that the present Compact constitutes an equitable apportionment of the Lower River, and in effect commits the water to present usage and the waters running into Great Salt Lake must continue to run into Great Salt Lake.

MR. FORSGREN: You keep tying our operation into the waters running into the Great Salt Lake. It just happens that the power plants are located on that portion of the River. If they were at the headwaters of that River and nobody took anything below it would still run into the Great Salt Lake; so I don't see what relevance where the water goes after the Power Company uses it for its nonconsumptive rights has anything to do with what we're talking about.

MR. HIGGINSON: Well, my point is, Mr. Chairman, that we're talking about an equitable apportionment; and the only language we have, which the Power Company has, in effect, consented to, is the 28,000 acre-feet above the Lake and that would constitute, in their opinion, an equitable apportionment of the waters above Bear Lake. But there's no similar agreement concerning additional development below Bear Lake that would constitute also an equitable apportionment of developable water in that portion of the River. They, in effect, say that they want full recognition of their hydro-power rights, which, in effect, says no development.

CHAIRMAN JIBSON: We have been talking about two definitions in our studies. One gives full recognition to power rights, which in effect as Keith says, stops further development. The other gives no recognition at all to power rights, which is the way it is worded now being tied to consumptive use. So we're worlds apart on these definitions. Whether or not we can compromise is the question.

MR. HANSEN: Let me speak a little bit to that. The reason I opposed changing Definition 32 is, as both Keith and I have indicated in the past, if you just say "beneficial use", power production is a beneficial use. If we say that and stop at that I think there is nothing left to develop unless it's below Cutler Dam. The reason that I thought we ought to put some

other language that would satisfy the Power Company is that we recognize that you can't take their rights without providing some kind of compensation. It's a right that has to be recognized in the State of Utah; and I assume in the State of Idaho. The suggested compensation language is only to get at that, so the Power Company is satisfied that their rights aren't simply going to be taken without some sort of compensation being given. I think Keith and I at least, nearly came to that conclusion in a previous meeting with some suggested language, and I think that's about where we're at. If we can agree that they have a right, and if you take it that there has to be some sort of an arrangement made, - then we can go ahead.

MR. LAWRENCE: I need to catch up, Mr. Chairman. I misunderstood you earlier I think, Tom. Now, I think that you have not agreed to Paragraph 32 as it is. Is that right?

MR. FORSGREN: Those amendments I gave to you initially are okay without the word 'consumptive'.

MR. LAWRENCE: Mr. Chairman, in private discussion, Mr. Skeen had some substitute language for Paragraph 32 in Article II. I wonder if we could have him read that so each of the States might hear that as a possibility.

MR. SKEEN: I'll read what I had down here, but I think the level effect is about the same, as taking out the word 'consumptive' and 'consumptively'.

"Developable water in the Lower Division means water, surface and underground, which when put to use will not interfere with rights to the use of water which had vested prior to January 1, 1976."

The word 'consumptive' or 'consumptively' is not used.

MR. HIGGINSON: Could you give us a definition of when a right vests?

MR. HANSEN: There isn't any.

MR. SKEEN: It is a common legal expression in the water law; and I know that there are several definitions, depending on the context in which it's used. In some States it's vested when it's certificated. In some instances it would create a preliminary right which would vest later, and it's sometimes referred to as a vested right. I think it has a common legal meaning and it means a right which has been initiated and prosecuted to a conclusion to where it would be perfected.

MR. HIGGINSON: Is it possible that that definition could cover an application that's pending in some State offices?

MR. SKEEN: In Utah, it wouldn't cover a water right that's simply

evidenced by an application that was filed and not acted upon by the State Engineer.

MR. HIGGINSON: What if a permit has been issued and there's been no development under the permit?

MR. SKEEN: If an application has been approved by the State Engineer, but not certificated, it is my offhand opinion that would be classified as vested; but until it's approved I'd say it is not a vested right.

MR. CHRISTOPULOS: What establishes a priority date in Utah?

MR. SKEEN: When it's filed, gone to the State Engineer, but it's just in process until it's approved.

MR. CHRISTOPULOS: But if it's approved and then is perfected, then doesn't it go back?

MR. SKEEN: Then it's priority goes back to the date it was originally filed. There's a good many applications that are filed and never get approved.

CHAIRMAN JIBSON: Ed, what is the practical difference between a vested right and the way it is worded in the original draft - 'put to beneficial use'?

MR. SKEEN: As to beneficial use, we call it a procedure in Utah and it's certificated.

CHAIRMAN JIBSON: So it's vested.

MR. SKEEN: It's obviously vested. It eliminates the question up until the time it's approved.

CHAIRMAN JIBSON: Let's consider the direct-flow rights of the Power Company through their plants. They're beneficial-use rights, but aren't they also vested rights as of today?

MR. SKEEN: I'd say they are. I don't think there's any question about their being vested rights.

MR. HIGGINSON: Mr. Chairman, I think it's an appropriate time for a recess.

CHAIRMAN JIBSON: Would you all like to recess then? Let's be back at 3:20 p.m.

R E C E S S

CHAIRMAN JIBSON: The meeting will come to order again. We have a problem on time. George Christopoulos is going to have to be at the airport in 20 minutes. I don't know how many others also will have a problem on time.

MR. CHRISTOPULOS: I would like to make a motion. I make a motion that we table consideration of the Compact at this time; but that the Commission and Negotiating Team continue to work on it, and see if we can't come up with an acceptable Compact by the next legislative season.

MR. ROBERTS: I'll second the Motion.

CHAIRMAN JIBSON: It's been moved and seconded. Do we have any discussion?

MR. LAWRENCE: I think any discussion would be redundant.

MR. HIGGINSON: It's a nondebateable motion. Go ahead.

CHAIRMAN JIBSON: All in favor? All opposed?

MOTION CARRIED

We ought to continue our discussion here in line of what might have taken place in our recess. Is there something that we can be looking at before our next meeting?

MR. LAWRENCE: Mr. Chairman, I make a Motion that we meet two weeks from today.

CHAIRMAN JIBSON: It's been suggested that we meet two weeks from today.

MR. LAWRENCE: I'll amend that. I do feel that we ought to maybe discuss the effect of the action which the Commission took. Does this mean that we're going to wait for two years now to make any attempts to continue the Bear River Compact amendment? Does it mean that we want to figure out if there's any way that we can solve our problems immediately and try to catch any special sessions which might occur in our legislatures? I'd like an expression from the other States.

MR. CHRISTOPULOS: My Motion indicated that we should continue to pursue it and attempt to try to get an acceptable Compact by the next session. I'm talking about a year from now. I'm agreeable to meeting immediately. Do you want to set a tentative date?

CHAIRMAN JIBSON: Do we want to meet before our April meeting? Our Annual Meeting is the third Monday in April. Is there any point in meeting before that?

MR. MYERS: Wally, are you talking about the Negotiating Committee or the Commission?

CHAIRMAN JIBSON: I'm talking about the full Commission. If you want to put this back in the hands of the special committee that was appointed in order to continue negotiations, that's another thing.

MR. MYERS: I don't think Wyoming should say - because in Wyoming we're the same committee. So Utah and Idaho decide which committee - because we're the same committee in Wyoming.

MR. JENKINS: Mr. Chairman, I'm wondering if we shouldn't leave that up to the three State Engineers and yourself to determine if they feel that it would be fruitful to have a meeting before our regular meeting in April. If they do, why then it would be visualized that, if you want to call it, the 'Mini-Committee' might see fit to try and have something additional for the entire Compact Commission to look at before the meeting on the 18th of April.

CHAIRMAN JIBSON: You're thinking then is that the Commission itself would not meet before the 18th? A committee of the three State Engineers could do so if they felt it was desirable.

MR. LAWRENCE: What is the committee of the three State Engineers to do with this Commission, officially?

CHAIRMAN JIBSON: You mean the State Engineers' Committee?

MR. LAWRENCE: Is that what you mean? There is a State Engineers' Committee and that Committee would be instructed. --

CHAIRMAN JIBSON: We have a State Engineer's Committee within the Commission. I'm not sure if that is what you're referring to.

MR. JENKINS: I believe that should be changed to the 'Chairman of each State delegation'. They could negotiate with the Federal Chairman and determine if a further negotiating meeting should take place prior to the regular Commission meeting on the 18th of April.

CHAIRMAN JIBSON: You've heard that suggestion. Does it sound okay to the group?

MR. MYERS: Leave it to the call of the Chairman when they decide.

MR. FORSGREN: Mr. Anderson asked me to indicate that if the Power Company could be of any assistance to you in this we'd be glad to. Just contact Mr. Anderson.

CHAIRMAN JIBSON: How do you want to proceed for the balance of our meeting today? Do we have anything that came up at recess that anyone feels should be brought to the group today?

MR. TEICHERT: We were just noticing this paragraph C, this elevation 5,917.60 as allowed storage; and yet we come over on the other page to October and we have a point of 5,919 that you have to have in the reservoir at that time to store with. There is over 100,000 acre-feet of storage between those two; and it doesn't seem to be consistent that you should allow one to store, but the other takes it away from you. It would take you all

winter long to get that much storage in Bear Lake. I don't think the two sets of figures are in agreement.

CHAIRMAN JIBSON: Of course, there is a reason for that; and maybe one of the Negotiating Committee could give you a real quick explanation on why we're using 17.60, and then higher elevations on the Lake.

(The second group of elevations is used with reference to allowable amounts to be retained or released.)

ME. TEICHERT: The graduation is the thing. If there is much difference there you are not going to do much spilling in the month of October.

MR. MYERS: I think that's one of the things we probably better discuss; because the Power Company isn't too happy with it, and I'm not sure the Upper River people are completely satisfied. I think we'd better kick it around and look at it a little and see what it's really going to do to all of us. I think that's one thing we'd better look at and study a little deeper and see what's going to happen. What it really does. If it isn't any good to us, there's no need of it. If it isn't any harm to the Power Company it's no good that way. I said that backwards. (laughter) Maybe that's what I meant. What I'm trying to say — it's got to be of mutual benefit, or there's no good in it. The more I look at it and the more I figure on it, I'm not sure that it's doing what it's supposed to be doing. Maybe it is; I don't know. Maybe I'll come out and say that it's 100%, but I know I've done some figuring on it the last day or two and I can't really like it.

MR. JENKINS: Mr. Chairman, I'm wondering - it hasn't been too frequent we've had representatives from the Bird Refuge here - if they would care to express any thoughts or comments on what they've heard today. It might be helpful to all of us, that while they're here if we knew what they might have to say - if there are any additional comments they'd care to make.

CHAIRMAN JIBSON: Would either of you two gentlemen care to comment? I assume that you both have read the draft of the Compact particularly as applies to paragraph B.

MR. ROBISON: I think what has been said has been rather thorough as far as the Bird Refuge. We would be concerned about a definition of consumptive use that might impair that 1,000 cfs that they have under certificated right from the State Engineer of Utah. So, the position that they had taken with respect to the Utah Power and Light's proposal was a favorable one. That is, that the consumptive use provision be stricken; but that some provision be made to compensate Utah Power and Light. That's the position that the Fish & Wildlife Services would have favored, but that's now by the board; and must be considered, I guess, when negotiations take place further.

CHAIRMAN JIBSON: Any other comments? I mentioned one thing to the special committee regarding the Operations Committee. We might be irrigating in March, if there's any water with which to irrigate; and I would just like to remind the Committee as to who they are. The present Operations Committee consists of: Reed Dayton, Cliff Skinner, and Gordon Peart - and I assume that we may reach a point where some decisions have to be made as between storage and direct-flow usage prior to the Commission meeting. We may get the Committee together and talk it over.

MR. HAIGHT: Could I ask a question? It might be a possibility of declaring a state of emergency below Stewart Dam in the Lower Division. That's still provided for, I suppose?

CHAIRMAN JIBSON: Oh, yes, the Compact is intact until it is changed. We may have that situation arise.

MR. FUNK: This is irrelevant to many of the issues today; but Jay, how many acre-feet have you pulled off the Lake since the irrigation season ended last fall?

MR. HAIGHT: Last fall we drew it down to 18.6, I believe; and it's now down to 18.2. That's 0.4 of a foot lower.

MR. FUNK: That's all you've pulled off since September?

MR. HAIGHT: That's the net. It went up during the Spring. We're drawing it down. The net difference between last year and this time this year is about 0.4 of a foot.

MR. FUNK: That's not the question. What's your drawdown been since last September?

MR. HAIGHT: It's down about a foot and a half as I remember, something like that.

MR. LAWRENCE: Don't you know how many acre-feet that you have run through the Lake since September?

MR. HAIGHT: Not off hand. We certainly have a record of it. I think about 100,000 acre-feet.

CHAIRMAN JIBSON: Anything further that anyone wants to bring up? If not, the meeting will stand adjourned.

MEETING ADJOURNED AT 3:40 p.m.