

# BEAR RIVER COMMISSION

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## MINUTES

### BEAR RIVER COMMISSION REGULAR MEETING NINETY-THIRD COMMISSION MEETING

Utah Department of Natural Resources  
Salt Lake City, Utah  
November 16, 1999

#### COMMISSION MEMBERS

##### Chair

Denice Wheeler

##### Idaho Members

Karl J. Dreher  
Rodney Wallentine  
Don W. Gilbert

##### Utah Members

D. Larry Anderson  
Blair Francis  
Charles W. Holmgren

##### Wyoming Members

Gordon W. Fassett  
James Crompton  
John A. Teichert

#### ENGINEER-MANAGER

Jack A. Barnett  
Suite 101  
106 West 500 South  
Bountiful, UT 84010

The regular meeting of the Bear River Commission was called to order by Chair Denice Wheeler at 1:00 p.m. on Tuesday, November 16, 1999 at the Utah Department of Natural Resources Building in Salt Lake City, Utah. This was the ninety-third meeting of the Commission. Chair Wheeler welcomed everyone to the Commission meeting. It was requested that all in the audience introduce themselves. A list of all individuals in attendance at the meeting is attached as Appendix A.

Chair Wheeler presented the agenda for the meeting and indicated that one agenda item would be moved in order to accommodate a presenter's schedule. It was moved that the agenda be approved with flexibility. The motion was seconded and carried. A copy of the approved agenda is attached as Appendix B. The Commission then considered the proposed minutes from the Annual Meeting of the Commission held on April 20, 1999 in Salt Lake City. Karl Dreher pointed out one change on page 8 and indicated that the consultant name should be Spatial Dynamics rather than Special Dynamics. Larry Anderson had one minor change on page 8 that he gave to the Engineer-Manager. There was a motion to accept the minutes with the two minor changes. The motion was seconded and carried.

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Chair Wheeler then moved to agenda item VII, the report of the Water Quality Committee. Don Ostler reported that the Water Quality Committee met on Monday, November 15. Idaho has appointed a new member of the committee, Dave Mabe from Boise. Audrey Cole from Idaho was also in attendance at the meeting. The committee has continued its discussion of the TMDL's on the Bear River. This is the requirement of the Federal Clean Water Act when any water body is impaired. A TMDL has to be done, which is an identification of pollution sources. A determination is made as to how much pollution loading (and from what sources) can be allowed to meet the standards, and then a plan is applied to ensure point source and nonpoint source discharges will not exceed the budgeted loading. The Bear River throughout Idaho and Utah is listed as impaired. The Wyoming section is currently being studied. Idaho and Utah are actively conducting TMDL's throughout the entire reach of the Bear River in those two states.

The Water Quality Committee discussed standards issues. The committee had previously identified differences in state standards as the river crosses state lines. With a few exceptions, the committee has decided that those differences are not substantially important in terms of managing water quality. One difference which was discussed was temperature standards, particularly between Wyoming and the Idaho border. There is work continuing with regards to a possible adjustment of those standards for compatibility. The Bear River Symposium was discussed and the Water Quality Committee felt very positive about the symposium. There was a good atmosphere of sharing information. Some of the antagonism seen in the past was not present. The committee would like to encourage the Commission to consider such events and activities in the future. The committee talked about a specific need to have a symposium or forum on the Bear River. A report was received from the Water Quality Task Force. There was also a report from the USGS on its work with regards to the NAWQA study, an extensive water quality monitoring effort throughout much of northern Utah, including all of the Bear River. The study is still in the data collection stage. It will probably be another year and a half to two years before the real assessment of the data occurs and a report is prepared.

The committee discussed some of the difficulties the three states are having with regards to TMDL's and working with federal agencies, particularly federal land management agencies. The three states are working to find a way to get active participation from the federal agencies. There were no questions for Mr. Ostler.

The time was then turned to Larry Anderson for the Secretary-Treasurer report agenda item III. Anderson asked Randy Staker to report on the financial status of the Commission. Staker had previously distributed two Statements of Income and Expenditures to the Commissioners. A copy of those pages is attached as Appendix C. Staker quickly reviewed the income and expenses. Page one reflects the income and expenses of the Commission for the period of July 1, 1998 to June 30, 1999. The total income through June 30, 1999 was \$182,799.04, which includes \$81,466.81 carried over from the last fiscal year. The expenses for this same period totaled \$94,441.47. The cash balance as of June 30, 1999 was \$88,357.57. Staker explained that some line-items were over budget and some were under budget. In the Treasurer Bond & Audit line-item, the expense was almost double the budgeted amount due the auditing of two fiscal years. Copies of the financial

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reports were distributed to Commission members. After this Commission meeting, fiscal year 1999 will be submitted to the auditor. Page two shows a detailing of the expenditures during the period. Page three reflects the income and expenses of the Commission for the period of July 1, 1999 to October 31, 1999. Staker pointed out that a new line-item has been included to reflect the income and expenses for the symposium held in September. The total income through October 31, 1999 was \$130,968.85. The expenses through this same period totaled \$22,777.29. The cash balance as of October 31, 1999 was \$108,191.56. There were no questions for Staker. It was moved that the financial reports be accepted. The motion was seconded and carried.

Chair Wheeler turned to agenda IV and asked Jim Kolva to give the report on stream gaging. Kolva indicated that at the April Commission meeting, Kimball Goddard presented to the Commission information concerning the proposed restructuring of the U.S. Geological Survey. The restructuring was subject to Congressional approval. The House has approved the restructuring. The Senate agreed to a few things but not the whole restructuring plan. Because of the Continuing Resolution #5, none of the plans have been implemented. What this does to the agreement between the USGS and the Commission concerning stream gaging is that instead of the 54/46 match that was proposed, the USGS has been instructed to go back to the previous formula of 50/50. The price of the gaging stations has gone up. The Commission had approved the \$48,400 stream gaging amount for FY 2000. The cost now is \$48,685. There were no questions for Kolva. It was moved that the Commission approve the increase in the stream gaging amount, which amounts to \$285 above the contracted level. The motion was seconded and carried.

The Commission moved to agenda item V and requested that Karl Dreher give a report on the agreements of future river and lake operations. Dreher indicated that agreements had recently been reached with PacifiCorp and Scottish Power in association with their proposed merger. As a side note, Dreher noted that the merger was approved yesterday in Idaho by a vote of two to one, with the president of the Idaho PUC voting against the proposed merger. Early in the merger discussions in Idaho, the issue of water rights was raised as a potential concern given the history of utility ownership changes that have been occurring. In the Bear River, there has been a long-standing cooperative relationship with Utah Power and Light and subsequently with PacifiCorp. This relationship has worked well for all concerned. There is a concern that this relationship, as it has been manifested in operation of Bear Lake and Bear River facilities, not be changed because of the merger.

In the summer, the parties began working on an agreement that would maintain the status quo. In October, an agreement was signed by PacifiCorp, Scottish Power, the State of Idaho (through the Department of Water Resources), the State of Utah (through the Division of Water Resources) and the State of Wyoming (through the State Engineer's office). A copy of the October 5, 1999 agreement is attached as Appendix D. Dreher reported that in its decision yesterday, the Idaho PUC relied heavily on the wording in this agreement. Dreher read a few excerpts from the PUC decision. The crux of the agreement is really in two statements whereby the parties agree that "PacifiCorp's water rights are constrained by the historic practice of not making a delivery call for hydropower generation; and Bear Lake is operated, consistent with long-standing historic practice

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and applicable laws, primarily as a storage reservoir to satisfy contracts for existing irrigation uses and flood control needs in the three states, with the use of water for hydropower generation being incidental to the other purposes for which the water is being released.” Dreher pointed out that another part of the agreement called for the development of an operating agreement. PacifiCorp and the states are beginning to develop this operating agreement. There were no questions for Dreher.

Jeff Fassett indicated that Wyoming’s Public Service Commission has also approved the merger. Fassett requested a copy of the Idaho PUC decision from Dreher. Larry Anderson expressed appreciation of the effort made to complete the document in a timely manner. Jody Williams indicated that at the time that PacifiCorp and the three states have a draft operating agreement that all are comfortable with, the draft will be available to all interested parties for review and comment. Specifically, a Bear Lake Preservation Advisory Committee meeting will be called.

Karl Dreher clarified that the second agreement will address details that need additional clarification. There will be a public hearing/public input process. It was pointed out that this merely a matter of information to assure the Commission that nothing is changing in regards to the Commission’s involvement with Bear Lake and Bear River. The agreements being discussed are not between the Bear River Commission and Scottish Power. The agreements are between the states and Scottish Power/PacifiCorp. Jeff Fassett indicated that one way to bring Commission perspective to the process is for Jack Barnett to sit in on the meetings and review the documents.

The time was then turned to Kelly Holt for the report from Utah Power, agenda item VI. Holt distributed handouts and reviewed the information found in the handouts. A copy of the handouts is attached as Appendix E. Holt indicated that they are currently evaluating the conditions on the Bear River. It is expected that they will move their target from 5918 to a higher level in the next week or two. There were no questions for Holt.

Chair Wheeler moved to agenda item VIII, the report of the Records & Public Involvement Committee. Commission Holmgren reported that the Records & Public Involvement Committee met during the morning. Commissioner Gilbert (ID) and Commissioner Teichert (WY) also serve on the committee. They discussed stream gaging and the keeping of records. There is always some consideration given to dropping stream gaging sites due to the high cost of maintaining the gages. The Technical Advisory Committee has recommended that the Commission keep the existing gages. The cost of operating the gages increased by \$285 this year and the committee recommended that the Commission pay this additional amount. The Commission is still waiting for the USGS to develop a better funding practice. One stream gage that occasionally has been evaluated as being a gage that could be dropped is the Pescadero gage. This gage is being used for the NAWQA study and so its future is in good shape for now. Kolva reported to the committee that the Blacksmith’s Fork gage which was eliminated several years ago is going to be brought back into operation. Logan City will fund this gage.

Holmgren indicated that Don Barnett reported to the committee that the Tenth Biennial Report is moving ahead. The cover photo for the report will be the State Line gage. Another item

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discussed by the committee was the Bear Lake Symposium held in September. The committee felt that the symposium was a worthwhile effort. Holmgren turned the time to Jack Barnett to give the details of the symposium. Barnett indicated that a great amount of help came from the Bear Lake Regional Commission, in particular Craig Thomas and Judy Holbrook. The Commission appreciated the support from the Bear River Water Users Association, PacifiCorp and the U.S. Geological Survey's LACS group. Barnett expressed appreciation to the R. Harold Burton Foundation for their grant of \$4,500. At the last Commission meeting, Richard Burton, the president of the Foundation approached Jack and expressed an interest in sponsoring this type of an event. PacifiCorp and the Bear River Water Users Association paid for the two breaks during the symposium. Barnett referred to the income and expenditures for the symposium found on Appendix C, page three. On paper, the Commission came out whole financially. It should be realized that a lot of time was spent on the effort. A publication was prepared for symposium participants. Craig Thomas expressed the appreciation of the Bear Lake Regional Commission for the opportunity to participate with the Commission on the symposium and offered the services of the Bear Lake Regional Commission for cosponsoring future events.

Holmgren indicated that the Records & Public Involvement Committee recommends that the Commission proceed with a summer of 2000 tour/symposium dealing with one segment of the Bear River. It was moved that in the summer of 2000 the Commission have a tour/symposium on one or two areas of the Bear River and that possibly this continue each year until the river has been covered. Jeff Fassett indicated that he had received good reports of the symposium held in September. The commitment that the Commission is making is that the Records & Public Involvement Committee will work closely with Jack Barnett to plan this tour/symposium. The motion was seconded and carried.

Holmgren further reported that there is interest in the posting of the 10<sup>th</sup> Biennial Report on the Internet. The committee is looking into the possibility of having a Bear River Commission website. Another item discussed in the committee meeting was the process for getting information to the public. Press releases were sent to newspapers throughout the Bear River Basin in order to inform the public about the Commission meeting. Chair Wheeler thanked the Standard Examiner in Ogden for having a representative present at the Commission meeting. There were no questions for Commissioner Holmgren.

Chair Wheeler moved to agenda item IX, the report of the Operations Committee. Jim Crompton indicated that the committee met during the morning. He reported that the Woodruff Narrows Reservoir was at 36,160 and Sulphur Creek Reservoir is near full. There was no regulation on the river in 1999. There were no questions for Commissioner Crompton. Jeff Fassett pointed out that during the committee meeting, those present were briefed by PacifiCorp on the status of some revised contracts. It was unclear whether those contracts had been negotiated and fully executed. Carly Burton indicated that PacifiCorp has been working with the states for a considerable period of time to review the storage water use historically using a single model concept. There were two contracts that needed revision, one with the West Cache Canal Company and one with the Last Chance Canal Company. Both contracts have been signed. The West Cache contract will now

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allow for maximum use of 29,700 acre-feet of storage water which was the maximum use as shown under the single model concept. The Last Chance contract will be revised to reflect the maximum annual use of 40,000 acre-feet with no 10-year cap on their use. Burton stated that there was considerable discussion on that particular issue and several meetings were held. Dave Styer did a lot of work on the issue. PacifiCorp's concern was that this revision and all the contracts combined would mean no net loss/no net gain to Bear Lake storage water. Fassett asked if there were any further contract modifications necessary as a result of the combined modeling work. Burton indicated that small irrigators' contracts never did have an amount tied to their contracts. There is now an allocation to the small irrigators of storage water which had never been there before. There wasn't really a modification. The number that represented their combined use will be the official number. Fassett pointed out that Burton had said the West Cache contract was adjusted to reflect the actual historic amounts that had been diverted. He asked if the 40,000 number was from a similar analysis and if it was the cap for Last Chance? Is that similarly a historic amount that has been used? Burton pointed out that the number remained the same. The actual historic maximum use was 38,200. On that basis, PacifiCorp left the contract the same. Blair Francis asked if this had any interactions with the level that Woodruff Narrows has held to in dry years. Burton indicated that it did not.

Karl Dreher asked Burton when he expected the amended Last Chance contract to be executed. Burton indicated that the contract was executed today. Larry Anderson indicated that for the record it should be noted that discussions have been held with the Bear River Canal Company and they have expressed concern over the signing of these two contracts. They intend to indicate their displeasure to PacifiCorp. They are not in agreement with the amount of water in the two contracts.

Chair Wheeler moved to agenda item X, the Engineer-Manager report. Jack Barnett reported that the Technical Advisory Committee (TAC) had received the assignment to look at the impact of ground water depletions with regards to the Lower Division procedures. As a preface, Barnett reminded the Commission that a year ago the Commission adopted Interim Procedures for the Lower Division. At the last Commission meeting, the Commission adopted two appendices and those two appendices need to be readdressed in the November 2000 Commission meeting. Those two appendices need to be modified or re-adopted at that time. The ground water issue needs to move along so that the Commission can address the issue by that November 2000 Commission meeting. Utah and Idaho members of the TAC are analyzing the ground water depletions that are occurring in the two states. The TAC was confronted with the knowledge that because of a different approach, Utah's analysis of their depletion was going to be based on looking at flows that had recorded from wells in the basin via a study made by the USGS while Idaho's investigative efforts were to look at the land that was being benefitted by sole supply and supplemental irrigation. Municipal uses are also being determined. Idaho will then fix a depletion based on those uses. The TAC was assigned to look at the Idaho portion of the Cache Valley where both data bases are potentially available. Idaho has been engaged in a study over the last several months, with a consultant, to determine the use of ground water in Idaho. Utah, through a contract with the USGS, had for two years received data in the northern end of Cache Valley in Idaho. One of the assignments to the TAC was to see

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if you take the two pieces of information and compute depletions, how close are the two numbers. Good progress has been made in this regard. Utah has been able to take the data available to it and determine what Utah would assess as the depletion for ground water use in Idaho. Utah reported this number to the TAC at a meeting held yesterday. Idaho gave a report at the TAC meeting on its progress. Barnett asked Hal Anderson to report on Idaho's progress.

Hal Anderson reported that the only records that the Idaho Department of Water Resources had regarding the ground water use were water right records. The initial evaluation of what was depleted in the Idaho portion of the Bear River ground water was based strictly upon what the water right records showed. Experience has taught us that the numbers developed from water rights may not accurately represent what is being depleted in the system. Karl Dreher was successful in getting an appropriation from the legislature for the Department of Water Resources for contract funds whereby field work could be done to evaluate what is actually occurring with ground water in the Idaho portion of the Bear River Basin and also in the Malad River area and in the Central Division. Spatial Dynamics was the firm which Idaho contracted with to do the field work. Anderson, with the aid of a computer and a projector, then explained and showed the preliminary data which has been received from the contractor. The contractor took the water rights records, made phone calls and arranged to meet with the individuals to map the areas being irrigated with ground water. They also worked with Pete Peterson, the Watermaster, to collect the information. The contractor was told to be opportunistic and if a well was sited to try and collect information. The involvement by users was strictly voluntary. The contractor took a digital camera and collected a visual record of the point of diversion. Anderson indicated that the effort has been completed for the Lower Division and parts of the Central Division are still to be completed. The data is contained in one CD. Now Idaho can take the information available, use the approved procedures associated with the Bear River Compact and calculate a depletion consistent with the procedures. The information will be public information. Anderson reported that the contract amount was \$50,000. This amount does not include staff time of the Department that is part of the ongoing effort.

Karl Dreher indicated that Idaho has made a significant investment in hardware and software above the \$50,000. This is part of the unified direction that the Department is headed in with the water rights data. Idaho, as part of the ground water management area, is contemplating requiring the well owners to measure their withdrawals with random checks by the Department. In the near term, based upon the data that the contractor collected as to how a well is used in a qualitative sense, Idaho is proposing to estimate the quantity based upon Commission procedures. Anderson then answered questions from the audience. Jack Barnett then summarized that the TAC received Utah's analysis of the depletions in the northern end of Cache Valley only yesterday, along with Idaho's report. The TAC did not intend to come back to the Commission with findings today but to report that good progress had been made. The TAC will meet when Idaho is ready to come forth with tabulated information.

Barnett then reported that the Interstate Council on Water Policy (ICWP), a nationwide group, has a subgroup and that subgroup is trying to form a coalition of compacts. Sue Lowry has been participating in this group. Lowry gave a little background information on the group. The

group has been around, in some form or another, for 30 to 35 years. Traditionally it has been an organization of just states across the U.S. The group went through a period of time where several states withdrew their membership. A few years ago the group broadened their membership scope to groups like water management districts. The quasi governmental groups have become quite active in the ICWP. The interstate groups, particularly in the east, felt that it would be to their benefit to discuss with one another the problems being experienced. This led to a two-page declaration being distributed which stated that communication and cooperation are beneficial for the member commissions. A joint meeting between the Western States Water Council (WSWC) and the ICWP will be held in March in Washington, D.C. The declaration was sent to the WSWC ahead of the joint meeting so the Council could begin to think about whether it made sense for groups such as the WSWC or the Bear River Commission to join the ICWP. This is not a time-sensitive issue. The question was asked about the qualifications for membership. Lowry indicated that there are no dues. The ICWP did receive a \$25,000 or \$30,000 grant from the Environmental Protection Agency to pull together a data base and develop a website for interstate river issues. The ICWP has made the commitment to maintain the website and will post information that would be of interest to interstate groups.

Barnett indicated that one final item is that PacifiCorp reports that the FERC licensing is in the final application stage. There were no questions for Barnett

Chair Wheeler moved to agenda item XI, the report of the Management Committee. Larry Anderson indicated that the Management Committee met during the morning and had a general discussion on issues. There were no new work items for the TAC or for the Engineer-Manager.

The Commission then moved to agenda item XII, the state reports. Larry Anderson introduced Norman Weston as a new Alternate Commissioner in the Upper Bear River Division. Weston replaces Dean Stuart who passed away in May. Mr. Weston is a County Commissioner and is the Chairman of the Rich County Commission. He was appointed by the Governor of Utah and will serve for four years. Mr. Weston took a few minutes and gave a little of his history and explained his interest in the Bear River. Blair Francis then read a Resolution of Appreciation for Dean M. Stuart. A copy of that resolution is attached as Appendix F. It was moved that the resolution be passed by the Commission. The motion was seconded and carried. Jack Barnett was directed to send the resolution to Dean Stuart's family.

Anderson then reported that Utah is improving security in the state buildings. Employees will now wear a picture name badge and all visitors will be required to have a visitor's pass. The system should be in place by April. Anderson then indicated that all commissioners had received a copy of a second draft report dated September 10 entitled "Bear River Development Project." Utah's effort in this regard has been discussed for several years. Utah is continuing its investigation of Bear River water development. Utah has looked at dam and reservoir sites. The Honeyville site in Box Elder County has been the most talked about and investigated site. The Barrens site in Cache Valley has also been investigated. For the past three or four years, the effort has been concentrated on the water quality evaluations of the Bear River. There was a lot of opposition to the site at



Honeyville by local residents. A public meeting was held on August 5 in Logan as part of a Board of Water Resources meeting. The public was invited to share their concerns and issues relating to the Bear River. A short presentation was made of the "Bear River Development Project" document. Utah believes there is a four-step process in the development of the Bear River. The first step is the development of an operating agreement with the Weber Basin Water Conservancy District to change the operation of Willard Bay. The second step will be to install a pipeline from the Bear River to Willard Bay. A diversion facility would be built. Water would be stored in Willard Bay during the non-irrigation season and during the spring runoff. The diversions are downstream of all irrigation diversions and the water would be diverted into Willard Bay during the period of time that the Bear River is at its highest quality. It would be during the period of time when the Bear River Bird Refuge has the least need for the water. The modeling has always included the water needs of the Bear River Bird Refuge. The Refuge has a right for 1,000 second-feet.

The third step in the development would be to construct a conveyance facility and a treatment plant to move the water from Willard Bay down along the Wasatch Front to as far as Salt Lake County. The demand for water today is in Salt Lake County, and the County has a right under the Bear River Development Act for 50,000 acre-feet. The next demand likely to come on line will be that of Weber & Davis Counties. These counties have the right to 50,000 acre-feet. Utah believes that by operating Willard Bay in a different manner, the yield out of Willard Bay can be increased by as much as 75,000 acre-feet. The fourth and final step would be the building of a dam on the Bear River. The people in the public meeting were told that at this time the State did not see moving ahead on the construction of a dam on the Bear River until the people in Cache and Box Elder Counties decide that they want a reservoir. Utah's calculations and model runs indicate that it will be somewhere around 2040 to 2050 before an additional major water development would be needed in the Bear River. The Salt Lake County area will need additional water between 2015 and 2020, based on population projections. The project is moving forward slowly. The Salt Lake County Water Conservancy District and the Weber Basin Water Conservancy District are in the process of buying rights of way for a pipeline for the treatment plant that they have proposed to build in Weber County. They have purchased most of the land for the treatment plant. There will probably be another draft of the Bear River development document.

Chair Wheeler asked Larry Anderson what the cost factor comparison is of the development plan. Anderson indicated that Utah has rearranged how the facilities should be built and moved the dam building to the very end and moved the pipeline up front. The pipeline between the Bear River and Willard Bay is somewhere around \$50 million. To move the water from Willard Bay to Salt Lake County, building a 70-mile, large diameter water transmission line and a water treatment plant is in the neighborhood of \$300+ million. The cost to build the Honeyville Dam was around \$60 million and the cost to build the Barrens Dam was around \$84 million. All these figures are included in the development plan document.

The time was turned to Jeff Fassett for Wyoming's report. Fassett reported that the new water planning process is proceeding. The Bear River Basin was the first basin to be involved in the process. Some people may not be aware that Wyoming imports water into the Bear River

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drainage high in the headwaters of the Bear, above Sulphur Creek Reservoir. There are some diversions from the Green River Basin that come into the Bear River Basin within Wyoming. Wyoming has been working with some new appropriators as a result of the last drought. New measuring devices have been installed on the divide so that they can monitor and measure what is imported to separate out that Green River Basin water from the Bear River Basin water as that use is made downstream in reservoirs and for irrigated lands.

The time was turned to Karl Dreher for Idaho's report. Dreher indicated that he did not have anything further to report beyond what he previously presented. Chair Wheeler then moved to agenda item XIII and asked for other items to be brought before the Commission. There being no other items, the Commission moved to agenda item XIV, the scheduling of the next Commission meeting. It was determined that the next Commission meeting will be held on Tuesday, April 18, 2000. There was a motion to adjourn the Commission meeting. The motion was seconded and carried and the meeting adjourned at 3:02 p.m.

## ATTENDANCE ROSTER

### BEAR RIVER COMMISSION REGULAR MEETING

Utah Department of Natural Resources Building  
Salt Lake City, Utah  
November 16, 1999

#### IDAHO COMMISSIONERS

Karl J. Dreher  
Rodney Wallentine  
Don W. Gilbert

#### WYOMING COMMISSIONERS

Gordon W. Fassett  
James L. Crompton  
John Teichert  
Sue Lowry (Alternate)  
Gordon Thornock (Alternate)  
Jade Henderson (Alternate)

#### FEDERAL CHAIR

Denice Wheeler

#### UTAH COMMISSIONERS

D. Larry Anderson  
Blair R. Francis  
Charles Holmgren  
Norman A. Weston (Alternate)

#### ENGINEER-MANAGER & STAFF

Jack A. Barnett  
Don A. Barnett  
Nola Peterson

#### OTHERS IN ATTENDANCE

##### IDAHO

Hal Anderson, Department of Water Resources  
Audrey Cole, Division of Environmental Quality  
Pete Peterson, Watermaster

##### UTAH

Todd Adams, Division of Water Resources  
Will Atkin, Division of Water Rights  
Bob Fotheringham, Division of Water Rights  
Robert King, Division of Water Resources  
Bob Morgan, State Engineer  
Don Ostler, Department of Environmental Quality  
Paul Riley, Division of Water Resources  
Randy Staker, Division of Water Resources  
Norm Stauffer, Division of Water Resources

##### OTHERS

John Atkins, Senator Mike Crapo's Office  
Randall C. Budge, Bear River Water Users Association  
Carly Burton, PacifiCorp (Utah Power)  
Lee Case, U.S. Geological Survey  
Claudia Conder, PacifiCorp (Utah Power)  
Marcus J. Gibbs, Last Chance Canal Co./Bear River Water Users Association

**APPENDIX A**  
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Kelly Holt, PacifiCorp (Utah Power)  
Scott Johnson, PacifiCorp (Utah Power)  
Jim Kimbal, Bear Lake Preservation Advisory Committee  
Jim Kolva, U.S. Geological Survey  
David B. Styer, Bear River Canal Company  
Craig Thomas, Bear Lake Regional Commission  
Al Trout, Bear River Refuge  
Jody Williams, PacifiCorp (Utah Power)  
Melisa Wilson, Standard Examiner

AGENDA

Bear River Commission Regular Meeting  
November 16, 1999

Utah Department of Natural Resources  
Auditorium  
1594 West North Temple  
Salt Lake City, Utah

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COMMISSION AND ASSOCIATED MEETINGS

November 15

9:30 a.m. Technical Advisory Committee Meeting, Room 314 Barnett  
1:00 p.m. Water Quality Committee Meeting, Room 314 Ostler

November 16

8:30 a.m. Operations Committee Meeting, Room 314 Crompton  
10:00 a.m. Records & Public Involvement Committee Mtg, Room 314 Holmgren  
11:00 a.m. Informal Meeting of Commission, Room 314 Barnett  
11:15 a.m. State Caucuses and Lunch Dreher/Fassett/Anderson  
1:00 p.m. Commission Meeting, Auditorium Wheeler  
3:30 p.m. Potential adjournment

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REGULAR COMMISSION MEETING

November 16, 1999

Convene Meeting: 1:00 p.m., Chair Denice Wheeler

- I. Call to order Wheeler
  - A. Welcome of guests and overview of meeting
  - B. Approval of agenda
- II. Approval of minutes of last Commission Meeting Wheeler  
(April 20, 1999)
- III. Report of Secretary/Treasurer Anderson
- IV. USGS stream gaging FY 2000 Kolva
- V. Agreements of future river and lake operations Fassett/Dreher/Anderson
- VI. Utah Power Holt
  - A. Bear Lake levels
  - B. Deliveries in 1999
  - C. Future operations

**APPENDIX B  
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|-------|--|----------|
| VII.  | Report of the Water Quality Committee                | Ostler   |
|       | A. Cooperation between states                        |          |
|       | B. Coordination with USGS NAWQA study                |          |
|       | C. Other   |          |
| VIII. | Report of the Records & Public Involvement Committee | Holmgren |
|       | A. Biennial reports                                  | Holmgren |
|       | B. Bear Lake Symposium                               | Barnett  |
|       | C. Other   | Holmgren |
| IX.   | Report of the Operations Committee                   | Crompton |
|       | A. Status of reservoir storage                       |          |
|       | B. River regulations in 1999                         |          |
| X.    | Engineer-Manager report and items from the TAC       | Barnett  |
|       | A. Ground-water depletions study                     |          |
|       | B. Other   |          |
| XI.   | Items from the Management Committee                  | Anderson |
| XII.  | State Reports  |          |
|       | A. Utah  | Anderson |
|       | B. Wyoming   | Fassett  |
|       | C. Idaho   | Dreher   |
| XIII. | Other Items  |          |
| XIV.  | Next Commission Meeting                              |          |

**Anticipated adjournment: 3:30 p.m.**

BEAR RIVER COMMISSION

STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD OF JULY 1, 1998 TO JUNE 30, 1999

INCOME	CASH ON HAND	OTHER INCOME	FROM STATES	TOTAL REVENUE
Cash Balance 07-01-9	\$81,466.81			\$81,466.81
State of Idaho			\$30,048.00	30,048.00
State of Utah			30,000.00	30,000.00
State of Wyoming			30,000.00	30,000.00
US Fish & Wildlife		\$5,300.00		5,300.00
Interest on Savings		\$5,984.23		5,984.23

TOTAL INCOME TO JUNE 30, 1999	\$81,466.81	\$11,284.23	\$90,048.00	\$182,799.04
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DEDUCT OPERATING EXPENSES

EXPENDED THROUGH U. S. G. S.

	APPROVED BUDGET	UNEXPENDED BALANCE	EXPENDITURES TO DATE
Stream Gaging	\$46,295.00	0.00	\$46,295.00
SUBTOTAL	\$46,295.00	0.00	\$46,295.00

EXPENDED THROUGH COMMISSION

Personal Services Jack	\$37,830.00	(\$1,735.36)	\$39,565.36
Travel (Eng-Mgr)	1,200.00	658.91	541.09
Office Expenses	1,400.00	(258.80)	1,658.80
Printing Biennial Report	2,200.00	899.29	1,300.71
Treasurer Bond & Audit	1,200.00	(1,220.00)	2,420.00
Printing	1,400.00	(1,260.51)	2,660.51
Contingency	6,000.00	6,000.00	0.00
SUBTOTAL	\$51,230.00	\$3,083.53	\$48,146.47

TOTAL EXPENSES	\$97,525.00	\$3,083.53	\$94,441.47
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CASH BALANCE AS OF 06-30-99			\$88,357.57
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STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD OF JULY 1, 1999 TO OCTOBER 31, 1999

INCOME	CASH ON HAND	OTHER INCOME	FROM STATES	TOTAL REVENUE
Cash Balance 07-01-99	\$88,357.57			\$88,357.57
State of Idaho			\$0.00	0.00
State of Utah			30,000.00	30,000.00
State of Wyoming			0.00	0.00
US Fish & Wildlife		\$5,600.00		5,600.00
Symposium Income		\$5,500.00		5,500.00
Interest on Savings		\$1,511.28		1,511.28
 TOTAL INCOME TO OCTOBER 31, 1999	 \$88,357.57	 \$12,611.28	 \$30,000.00	 \$130,968.85

DEDUCT OPERATING EXPENSES

EXPENDED THROUGH U. S. G. S.

	APPROVED BUDGET	UNEXPENDED BALANCE	EXPENDITURES TO DATE
Stream Gaging	\$46,735.00	46,735.00	\$0.00
 SUBTOTAL	 \$46,735.00	 46,735.00	 \$0.00

EXPENDED THROUGH COMMISSION

Personal Services	Jack	\$38,960.00	22,726.65	\$16,233.35
Travel (Eng-Mgr)		1,200.00	605.20	594.80
Office Expenses		1,600.00	1,316.78	283.22
Printing Biennial Report		2,000.00	1,851.53	148.47
Treasurer Bond & Audit		1,250.00	1,250.00	0.00
Printing		1,600.00	1,144.02	455.98
Contingency		6,000.00	6,000.00	0.00

 SUBTOTAL	 \$52,610.00	 \$34,894.18	 \$17,715.82
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SYMPOSIUM EXPENSES 5,061.47

TOTAL EXPENSES \$99,345.00 \$81,629.18 \$22,777.29

CASH BALANCE AS OF 10-31-99 \$108,191.56





# Office of the Attorney General

Governor  
Jim Geringer

Attorney General  
Gay Woodhouse

Water & Natural Resources Division  
123 Capitol Building  
Cheyenne, Wyoming 82002  
307-777-6946 Telephone  
307-777-3542 Fax

Deputy Attorney General  
Thomas J. Davidson

October 22, 1999

Mr. Norman K. Johnson  
Utah Attorney General's Office  
Natural Resources Division  
Post Office Box 140855  
Salt Lake City, Utah 84114-0855

Mr. Phillip J. Rassier  
State of Idaho  
Office of the Attorney General  
Natural Resources Division  
Water Resources Unit  
1301 North Orchard Street  
Boise, ID 83706-2237

Mr. Brent R. Kunz  
Hathaway, Speight & Kunz, LLC  
Post Office Box 1208  
Cheyenne, WY 82003-1208

Mr. Paul J. Hickey  
Hickey, Mackey & Evans  
Post Office Box 467  
Cheyenne, WY 82003-0467

Dear Norm, Phil, Brent, and Paul:

Enclosed please find one of five originals of the *Agreement Regarding the Bear River System*, dated October 5, 1999, with original signatures of each of the five signatories. On behalf of the Wyoming Attorney General's Office and the State Engineer's Office, we wish to express our sincere appreciation to each person involved in negotiating this agreement for their diligent efforts. We enjoyed working with you and look forward to doing so in the future.

Truly yours,

Handwritten signature of Thomas J. Davidson.

Thomas J. Davidson  
Deputy Attorney General

Handwritten signature of Brian C. Shuck.

Brian C. Shuck  
Assistant Attorney General

Enclosure

cc: Jim Fell, Jody Williams, Jeff Fassett, Sue Lowry

## AGREEMENT Regarding the Bear River System

This Agreement is entered into this 5<sup>th</sup> day of October, 1999, by and among PACIFICORP, an Oregon corporation ("PacifiCorp"); SCOTTISH POWER plc, a public limited company registered in Scotland ("ScottishPower"); the STATE OF IDAHO, by and through the Director of the Department of Water Resources ("Idaho"); the STATE OF UTAH, by and through the Director of the Division of Water Resources, ("Utah"); and the STATE OF WYOMING, by and through the State Engineer ("Wyoming"). PacifiCorp, ScottishPower, Idaho, Utah, and Wyoming are individually referred to as a "Party" and collectively as the "Parties."

### RECITALS

A. PacifiCorp operates hydroelectric plants on the Bear River and holds water rights in the Bear River and Bear Lake (such hydroelectric plants and water rights referred to herein as "Bear River System"). PacifiCorp's water rights in the Bear River System are subject to the Amended Bear River Compact among the States of Idaho, Utah and Wyoming, as well as the laws of the three States, and other obligations.

B. PacifiCorp and ScottishPower are parties to a merger transaction that is currently the subject of approval proceedings before the public utility commissions in the States of Idaho, Utah and Wyoming.

C. The Parties recognize the need to assure the public utility commissions of the States of Idaho, Utah, and Wyoming, and the other public officials and water users of the three States that PacifiCorp's merger with ScottishPower will not affect the operation of the Bear River System or PacifiCorp's ownership or exercise of its Bear River water rights.

D. By this Agreement, PacifiCorp and ScottishPower intend to assure the States of Idaho, Utah and Wyoming that PacifiCorp or ScottishPower will not make any separate agreement with any State individually regarding PacifiCorp's or ScottishPower's water rights in the Bear River System.

### NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. Both ScottishPower and PacifiCorp agree that:
  - a. PacifiCorp's water rights are constrained by the historic practice of not making a delivery call for hydropower generation; and
  - b. Bear Lake is operated, consistent with long-standing historic practice and applicable laws, primarily as a storage reservoir to satisfy

contracts for existing irrigation uses and flood control needs in the three States, with the use of water for hydropower generation being incidental to the other purposes for which the water is being released.

2. The Parties agree to jointly negotiate an enforceable Bear River System Operations Agreement consistent with the provisions set forth in paragraph 1. With respect to the Bear River, the Operations Agreement shall confirm and continue PacifiCorp's historic practice of utilizing its water rights primarily for existing irrigation uses and contractual obligations. The Operations Agreement shall be made available for public review and comment in each of the three States.

3. This Agreement, the Operations Agreement, or any other agreement that may be entered into with PacifiCorp and/or ScottishPower concerning utilization of PacifiCorp's water rights in the Bear River System may be recorded in the County Recorders' Offices of the appropriate counties and shall be provided to the public utility commissions of the respective States within 10 days of execution of the document.

4. Approval and execution of the Operations Agreement by each of the States of Idaho, Utah, and Wyoming shall be required for the Operations Agreement to be effective.

5. The Parties commit to use their best efforts to complete negotiation, review, and execution of the Bear River System Operation Agreement within sixty (60) days of the execution of this Agreement.

6. No agreements between PacifiCorp and/or ScottishPower and one or more of the States concerning utilization of PacifiCorp's water rights in the Bear River System shall be effective unless jointly approved by all three States.

7. Nothing in this Agreement, nor in any Operations Agreement, shall be interpreted to modify, limit or enhance any rights or obligations of the three States under the laws of the States and the Amended Bear River Compact.

8. Consideration. ScottishPower and PacifiCorp acknowledge receiving sufficient consideration for the commitments contained in this Agreement and waive any argument that they might have in any judicial proceeding that no consideration exists to support this Agreement or that the consideration received is not sufficient.

9. Binding Effect of Agreement. This Agreement is intended to be a final and binding settlement agreement between the three States and ScottishPower and PacifiCorp, jointly and severally, and inures to the benefit of, and is binding upon, the representatives, successors in interest, and assigns of each entity.

10. Sovereign Immunity. Each of the three States and their various agencies do not waive their sovereign immunity by entering into this Agreement and fully retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.

11. Capacity to Execute Agreement. ScottishPowerandPacifiCorp each warrant and represent that the person executing this Agreement is empowered to do so on behalf of such company and thereby binds each entity by signing this Agreement.

12. Waivers. The failure to object to any breach of any term or condition in this Agreement shall not constitute a waiver and no failure to object shall be deemed a waiver of any prior or subsequent breach.

13. Entirety of Agreement. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and oral agreements. No promise or inducement has been offered or made except as herein set forth and this Agreement is executed without reliance upon any statement or representation by any other Party or their agent.

14. Modification. This Agreement may be amended or modified only by a written agreement signed by each of the Parties to this Agreement.

15. Execution of Agreement in Parts. Due to time constraints, the Parties acknowledge that it is not possible to have all Parties sign the same copy of this Agreement. Therefore, the Parties agree that this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Signatures. In witness whereof, the Parties to this Agreement through their duly authorized representatives have executed this Agreement and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and the year first above written.

PACIFICORP

By: 


DENNIS P. STEINBERG  
Senior Vice President of PacifiCorp

SCOTTISH POWER plc

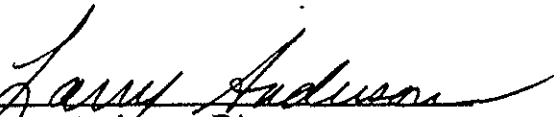
By: 

MATTHEW R. WRIGHT  
Manager of Scottish Power plc

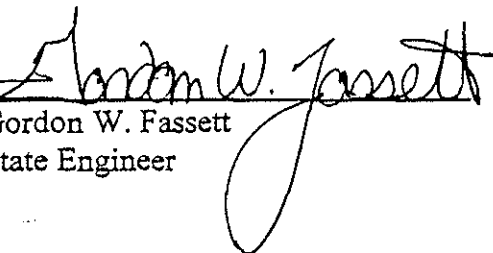
STATE OF IDAHO

By:   
Karl J. Dreher, Director  
Department of Water Resources

STATE OF UTAH

By:   
Larry Anderson, Director  
Division of Water Resources

STATE OF WYOMING

By:   
Gordon W. Fassett  
State Engineer

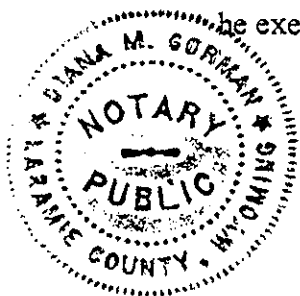
APPROVAL AS TO FORM:

By:   
for Wyoming

ACKNOWLEDGMENTS

STATE OF Wyoming )  
 ) ss.  
COUNTY OF Laramie )

On this 5<sup>th</sup> day of October, 1999, before me, Diana M. Gorman, a notary public of the State of Wyoming, personally appeared DENNIS P. STEINBERG, a Senior Vice President of PacifiCorp, known or identified to me to be the person who executed the foregoing instrument on behalf of PacifiCorp, and he acknowledged to me that he executed the same.

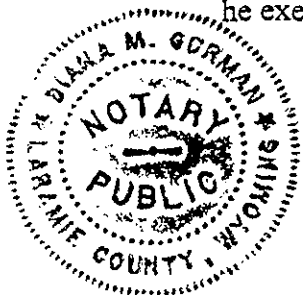


Diana M. Gorman  
NOTARY PUBLIC FOR WYOMING  
residing at:  
739 Cypress Lane  
Cheyenne, WY 82009

My commission expires: 2/21/02

STATE OF Wyoming )  
 ) ss.  
COUNTY OF Laramie )

On this 5<sup>th</sup> day of October, 1999, before me, Diana M. Gorman, a notary public of the State of Wyoming, personally appeared MATTHEW R. WRIGHT, a Manager of Scottish Power plc, known or identified to me to be the person who executed the foregoing instrument on behalf of Scottish Power plc, and he acknowledged to me that he executed the same.



Diana M. Gorman  
NOTARY PUBLIC FOR WYOMING  
residing at:  
739 Cypress Lane  
Cheyenne, WY 82009

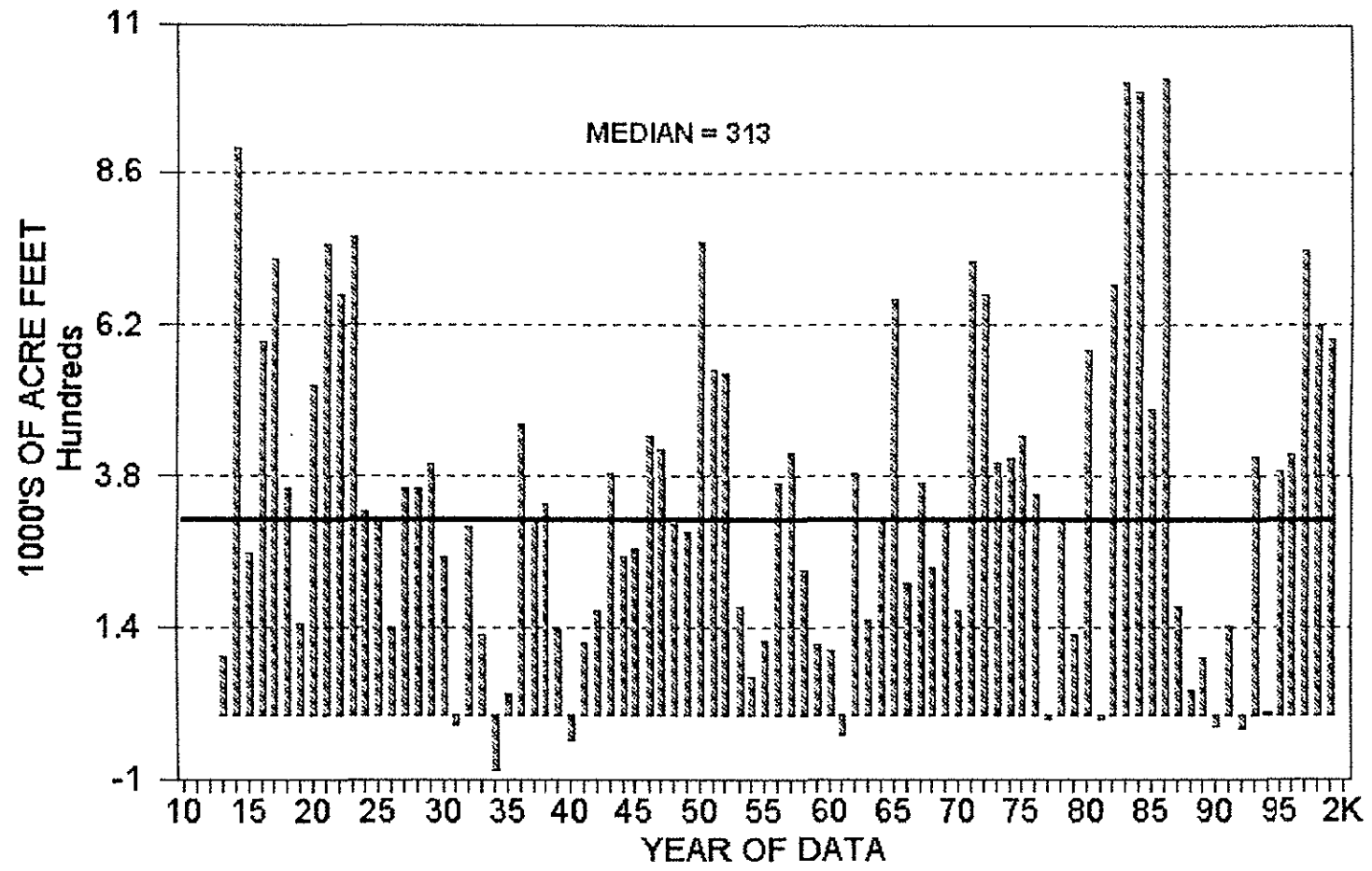
My commission expires: 2/21/02

BEAR RIVER/BEAR LAKE OPERATION  
1999

The Bear River Basin experienced another remarkable water supply in 1999. Bear Lake elevation peaked at 5922.69 feet, only a foot below the historic high and .16 feet below last year. Net runoff to Bear Lake for the water year amounted to 598,000 acre feet, which was 191% of average. This compares with 619,000 acre feet (198% of average) in 1998. The system was regulated primarily to minimize flooding potential along the Bear River below Bear Lake. Outlet Canal release for the 1999 water year ending on September 30 was equal to 620,000 acre feet, about 200% of average. Releases at the Outlet occurred during the entire water year. Runoff was much in excess of irrigation demands as reflected in the seasonal runoff volume of 662,000 acre feet for the Bear River near Collinston (below Cutler Plant) from May 1 through September 30.

As of October 31, 1999, Bear Lake elevation was 5920.26 feet compared with 5920.92 a year ago. Releases will be scheduled throughout the fall and winter to lower the lake to 5918.0 by April 1. The releases will be evaluated on a monthly basis and will be modified based on snowpack, precipitation and runoff forecasts in the coming months. The current release is 860 cfs compared with nearly 1200 cfs last November. Accumulated mountain precipitation as of November 15, 1999 is only 14% of average compared with 83% in 1998.

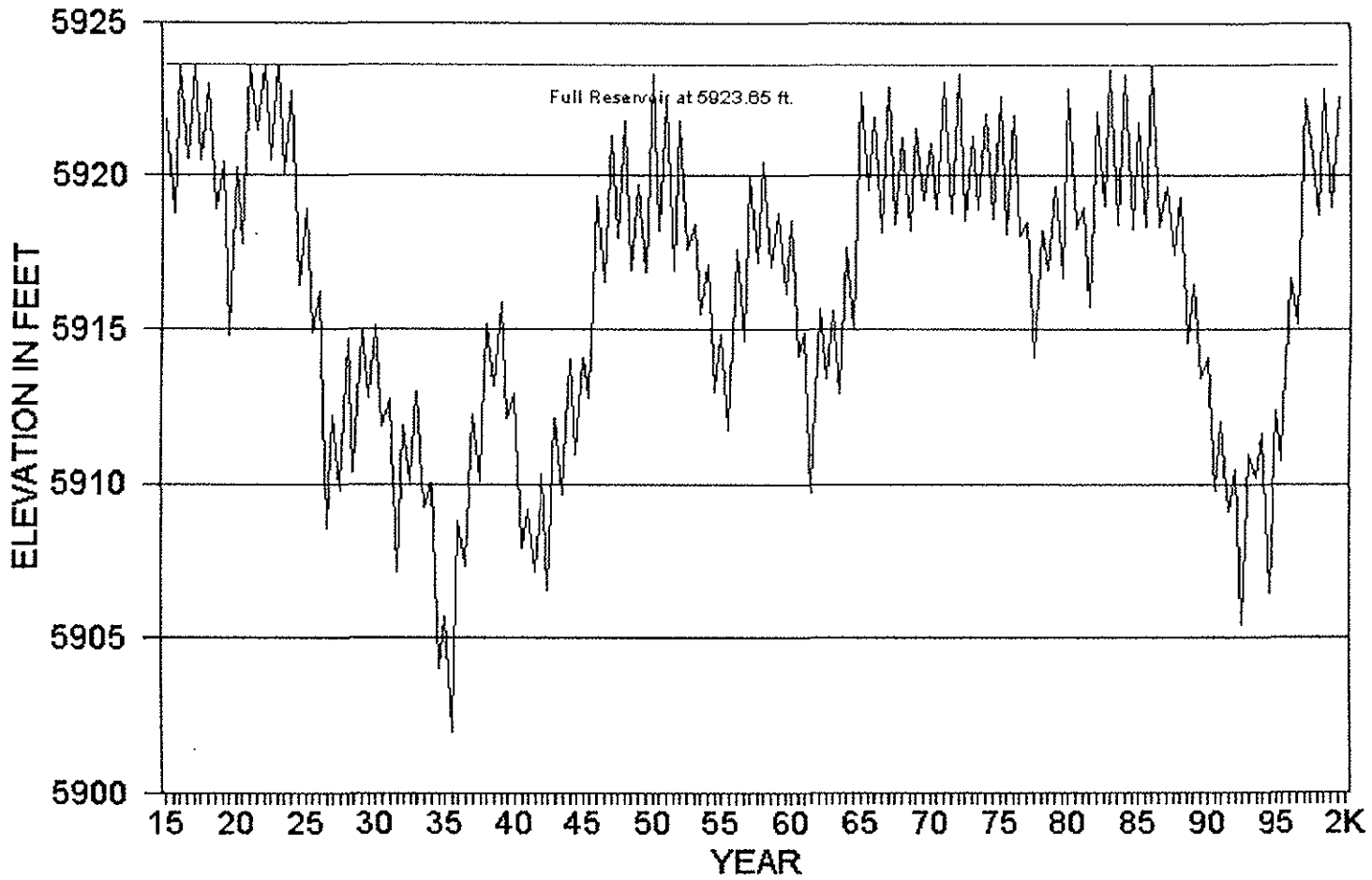
# BEAR LAKE NET RUNOFF FROM 1913 - 1999





# BEAR LAKE ELEVATION

FROM 1916 TO 1999



RESOLUTION OF APPRECIATION  
FROM  
THE BEAR RIVER COMMISSION  
HONORING

DEAN M. STUART

The Bear River Commission wishes to respectfully express its appreciation in the memory of Dean M. Stuart for his many years of service and devotion to the Bear River Commission, through the following Resolution:

WHEREAS, Dean M. Stuart was appointed as an alternate Bear River Commissioner for Utah in the Upper Bear River Division by Governor Scott Matheson in April 1983, and was reappointed twice by Governor Norman Bangert, and again by Governor Michael Leavitt, serving continuously for 16 years until his death in May, 1999; and

WHEREAS, he loved farming and working with livestock and ran a successful ranching operation with his family in Rich County continuing the family tradition of farming and ranching; and

WHEREAS, he was active in civic affairs and served on many boards and presidencies in the livestock industry; and

WHEREAS, he served as bishop and many other callings in The Church of Jesus Christ of Latter-day Saints earning him respect and gratitude from Church members; and

WHEREAS, Dean's service to the Bear River Commission has contributed to the successful cooperative management of water resources in the Bear River basin of Utah, Idaho and Wyoming in compliance with the Bear River Compact; and now

THEREFORE BE IT RESOLVED, that members of the Bear River Commission and Commission staff express deep appreciation to Dean Stuart and his family for his exemplary service to water, land and livestock issues in the Bear River Basin.

Resolution passed by the Bear River Commission on November 16, 1999.

  
\_\_\_\_\_  
Denise Wheeler, Federal Chairperson  
Bear River Commission