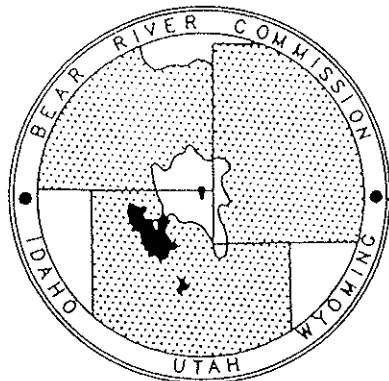


# BEAR RIVER COMMISSION

106 West 500 South, Suite 101  
Bountiful, UT 84010-6232  
(801) 292-4662  
(801) 524-6320 (fax)



## MINUTES

### BEAR RIVER COMMISSION SPECIAL MEETING NINETY-SEVENTH COMMISSION MEETING

Dunmar Motel  
Evanston, Wyoming  
August 13, 2001

#### COMMISSION MEMBERS

##### Chair

Denice Wheeler

##### Idaho Members

Karl J. Dreher  
Rodney Wallentine  
Dean M. Mathews

##### Utah Members

D. Larry Anderson  
Blair Francis  
Charles W. Holmgren

##### Wyoming Members

Patrick T. Tyrrell  
James Crompton  
John A. Teichert

#### ENGINEER-MANAGER

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

A special meeting of the Bear River Commission was called to order by Chair Denice Wheeler at 9:00 p.m. on Monday, August 13, 2001 at the Dunmar Motel in Evanston, Wyoming. It was explained that this is a special meeting of the Bear River Commission called to address the issue of a requested dredging permit(s) by PacifiCorp to potentially remove the sandbar, when necessary, at the north end of Bear Lake so that waters can flow to the Lifton pumps. The Commission meeting was necessary because of a public meeting scheduled by the Army Corps of Engineers and the Idaho Department and Lands for August 16 at Montpelier regarding the requested permit(s) by PacifiCorp. This late evening meeting was called following the first day of a tour that the Bear River Commission and other invited participants had been involved with in the Upper Bear River. An agenda was proposed and approved. It is made a part of these minutes as Appendix A. It was noted that this is a special meeting and the minutes of the previous meeting, which was the annual meeting of the Bear River Commission held in April of this year, have not yet been presented to the Commission for approval. It was determined that both the minutes of the annual meeting and the minutes of today's meeting will be presented to the Commission for its approval at the November Commission meeting. Chair Wheeler requested that all in attendance introduce themselves. Appendix B reflects those who participated in the meeting.

The Commission staff had prepared a statement that potentially the Commission might adopt and the adopted statement would then potentially be presented at the August 16 public meeting concerning the dredging permit. After a lengthy discussion, it was determined that the Commission desires to submit a statement at the public meeting and that further the August 10 draft circulated previously to the Commission represents a document close enough to the sense of the Commission with respect to the statement that this document can be used as a document to be marked up by the Commission at this meeting.

Chair Wheeler asked Larry Anderson to read the August 10 draft statement. The statement was read in its entirety. Chair Wheeler then moved through the draft statement paragraph by paragraph and asked Commission members for desired changes or modifications. Many of the proposed changes were discussed at some length by the Commission and finally every paragraph in the draft statement, with modifications, was agreed to and supported by the Commission. The Commission then moved the adoption of the amended position and, with a proper second, the motion was approved. The approved statement is attached to these minutes as Appendix C.

The discussion then went to how the position should be presented at the public meeting, which is scheduled for August 16, 2001 at 6:30 p.m. at the National Oregon California Trail Center, 420 North 4<sup>th</sup> Street, Montpelier, Idaho. It was pointed out that Engineer-Manager Barnett has already been requested to present a discussion of the Bear River, Bear Lake and the Bear River Compact at the public meeting. It was felt that if the Engineer-Manager is to present a factual presentation as an expert at the public meeting, it may not be appropriate for him to later, in the same meeting, address the body as an advocate for a position. Hence, it was concluded that Vice Chairman Rodney Wallentine should present the Commission's position at the public meeting.

There was no other business to come before the Commission and Chair Wheeler declared the Commission meeting adjourned at 11:00 p.m.

**Proposed Agenda  
Special Bear River Commission Meeting  
August 13, 2001  
9:00 p.m.  
Dunmar Motel  
Evanston, Wyoming**

Chair Denice Wheeler

Call to order 9:00 p.m.

- |       |  |            |
|-------|--|------------|
| I.    | Introductions                                      | Wheeler    |
| II.   | Approval of agenda                                 | Wheeler    |
| III.  | Very brief overview of the August 16 meeting       | Barnett    |
| IV.   | Explanation of the requested dredging permits      | PacifiCorp |
| V.    | Discussion of the draft position statement         | Wheeler    |
| VI.   | Comments from the audience                         | Wheeler    |
| VII.  | Action on the draft position statement             | Wheeler    |
| VIII. | Follow-up actions and the presentation - August 16 | Wheeler    |

Anticipated Adjournment 9:45 PM

**ATTENDANCE ROSTER**

**BEAR RIVER COMMISSION  
SPECIAL MEETING**

Dunmar Motel  
Evanston, Wyoming  
August 13, 2001

**IDAHO COMMISSIONERS**

Karl J. Dreher  
Rodney Wallentine  
Dean M. Mathews

**WYOMING COMMISSIONERS**

Patrick T. Tyrrell  
James L. Crompton  
John Teichert  
Jade Henderson (Alternate)

**FEDERAL CHAIR**

Denice Wheeler

**UTAH COMMISSIONERS**

D. Larry Anderson  
Blair R. Francis  
Charles Holmgren  
Joe Larsen (Alternate)

**ENGINEER-MANAGER & STAFF**

Jack A. Barnett  
Don A. Barnett

**OTHERS IN ATTENDANCE**

**IDAHO**

Bill Ondrechen, Department of Water Resources

**UTAH**

Todd Adams, Division of Water Resources  
Sherman Hoskins, Department of Natural Resources

**WYOMING**

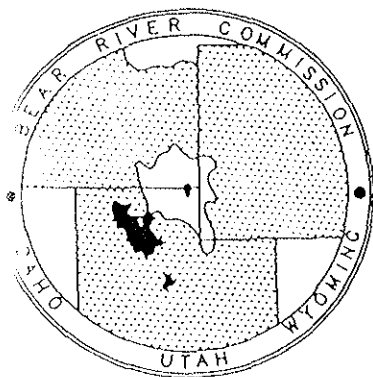
Kevin Payne, State Engineer's Office  
Don Shoemaker, Water Commissioner  
Kevin Wilde, State Engineer's Office

**OTHERS**

Carly Burton, PacifiCorp  
Jim Christensen, Bear River Water Cons. District  
Rolf Esche, St. Charles, Idaho  
Steve Hicks, Bear River Bird Refuge  
Kelly Holt, PacifiCorp  
Christin Jensen, Fish Haven, Idaho  
Ron Jensen, Fish Haven, Idaho  
Eulalie Langford, LOVE Bear Lake  
Gary Niglen, PacifiCorp  
Dick Sjostrom, Bear Lake Wildlife Refuge  
Al Trout, Bear River Bird Refuge  
Jody Williams, PacifiCorp  
Cheryl Willis, USF&WS

# BEAR RIVER COMMISSION

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August 16, 2001

U.S. Army Corps of Engineers  
 Idaho Department of Lands

Re: Application NWW No. 012200820  
 Statement of Position of the Bear River Commission made at a  
 public meeting - Montpelier, Idaho

#### COMMISSION MEMBERS

##### Idaho

Denice Wheeler

##### Idaho Members

Karl J. Dreher  
 Rodney Wallentine  
 Dean M. Mathews

##### Utah Members

D. Larry Anderson  
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The Bear River Compact is the federal/state law that was created to ensure the equitable apportionment of the waters of the Bear River between the three states and their water users. The Compact was negotiated by the states, ratified by the U.S. Congress and signed by President Dwight D. Eisenhower. The Compact assures water users that their entitled water will be delivered without outside intervention. The Compact recognizes the rights of PacifiCorp to store water in Bear Lake and to deliver said stored water to the irrigation contract holders downstream. The original Compact was amended in 1980. The Compact addresses water quantity issues but it also directs the Commission to cooperate with state and federal agencies on water quality matters of interstate significance.

To clearly state the purpose of the Compact, we include the following quote from the Amended Compact Public Law 96-189:

#### *An Act*

To consent to the amended Bear River Compact between the States of Utah, Idaho, and Wyoming.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is given to the amended Bear River Compact between the States of Idaho, Utah, and Wyoming. Such compact reads as follows:*

## "AMENDED BEAR RIVER COMPACT

"The State of Idaho, the State of Utah and the State of Wyoming, acting through their respective Commissioners after negotiations participated in by a representative of the United States of America appointed by the President, have agreed to an Amended Bear River Compact as follows:

### "ARTICLE I

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

"B. The physical and all other conditions peculiar to the Bear River constitute the basis for this Compact. No general principle or precedent with respect to any other interstate stream is intended to be established.

More recently, as Scottish Power was acquiring the assets of PacifiCorp, the three states and the company entered into two agreements dated October 5, 1999 and April 18, 2000 that commit the company to operate the lake and the river with respect to its rights in a manner that has historically been the case. Dredging is a part of that historic operation. If the historic management of these water resources were not to be followed in the future, citizens of this region would be denied most important rights and economic havoc would be wrought throughout the region.

Also in the recent past, the irrigation water users, environmental interests and Bear Lake property owners and PacifiCorp have entered into the important Bear Lake Settlement Agreement dated April 10, 1995. This agreement is intended to assure wise multiple (non-hydropower) uses of Bear Lake as a reservoir and has the potential of, at times, holding the lake at higher levels. This agreement is so new that the current two dry years are really the first test of that agreement and the opportunity to dredge the migrating sandbar is implicit in the implementation of the agreement. The Commission notes that the Settlement Agreement limits the irrigation users to an allocation of 245,000 acre-feet of Bear Lake stored waters this irrigation season. It is with this understanding as to the maximum use of Bear Lake waters this year that the Commission has prepared this statement.

The Commission has considered the dredging application filed by PacifiCorp and now under consideration by the Army Corps of Engineers and the Idaho Department of Lands. The Commission submits this statement to be considered by both agencies either collectively or separately. The Commission notes that for almost a century, stored water has been pumped from Bear Lake by the facilities of PacifiCorp at Lifton and that the pumped water has been used by

citizens in Idaho and Utah to foster the economy of this region. The Commission further notes that dredging of the migrating sand bar in the lake adjacent to the pumps has been necessary when the lake is at various levels to allow the stored water to flow from the lake to the pumps. Since operation of the Lifton pumps began, dredging has occurred at approximately six year intervals.

Prior to the upper 21.65 feet of Bear Lake being operated as a reservoir, there was a natural outlet at the north end of Bear Lake that allowed water to flow north from the lake to the Bear River. That natural outlet was west of the Lifton pumps and the Lifton facilities were not built at the low point in the natural sand dam often referred to as the causeway that impounds the lake at the north. The 1915 plans to build the Lifton plant, as drawn, give details as to the channel needed to be dredged so that lake water could freely flow to the pumps across the submerged sand bars a short distance into the lake. The needed channel was dredged in 1916 and the plant was completed and put into operation by 1918.

From that date forward, periodic dredging to keep the channel open has been needed. At higher lake levels, it appears that along the shore currents are most active and these currents provided the energy to move sand laterally and fill in the established channels. The more than 80 years of continuous delivery of water from Bear Lake to downstream irrigators could not have occurred without periodic dredging. Dredging was required for water to be delivered during the drought of the 1930's and the associated lower recorded lake levels. The troubling migrating sand bar appears to form at various elevations and has been formed as high as elevation 5914 in the past.

With the above fully considered, the Bear River Commission urges the approval of the formally filed dredging application to allow dredging to elevation 5902 as requested by PacifiCorp. The Commission notes that, as filed by PacifiCorp, a single application was filed as a request to both the Army Corps of Engineers and the Idaho Department of Lands. This holding of a joint meeting by both agencies indicates the intentions of the two agencies to work cooperatively together and the Commission trusts it will result in prompt action by both. The Commission believes delays in favorable action on these permits beyond a reasonable period of a few months will jeopardize the water supply to 150,000 acres of irrigated farmland in southern Idaho and northern Utah. If drought conditions continue or even if near average precipitation conditions are experienced next winter, dredging will be required at the start of the 2002 irrigation season.

The Commission further requests that conditions of approval not be placed on these applications that would impose restrictions on PacifiCorp with respect to the dredging that this would prevent PacifiCorp from operating in the manner that has historically been the case. To do otherwise would frustrate the purpose of the Compact and would violate the recent agreements between the three states and the power company dated October 5, 1999 and April 18, 2000. Conditions of approval that require reasonable care in dredging to prevent unnecessary sediment problems downstream are acceptable.

**U.S. Army Corps of Engineers**  
**Idaho Department of Lands**  
**August 16, 2001**  
**Page 4**

Bear Lake water has been used primarily for irrigated agriculture, and the Compact restricts and sets forth conditions as to when the company can release Bear Lake's water for power purposes. The landmark elevation, referred to in the Compact as the irrigation reserve, is elevation 5914.61. However, the last third of a century PacifiCorp and its predecessor have operated the lake exclusively for the storage and release of water to the contract holders downstream or for anticipated future flood control storage space that will greatly benefit the residents downstream. This self-imposed restriction by PacifiCorp at elevation 5918 is 3.39 feet higher than the Compact irrigation reserve. Power generation has occurred downstream of Bear Lake as an ancillary benefit to the water delivery and flood control purposes. The states, by virtue of the recent agreements, have all the needed assurances that the lake and the river, as far as PacifiCorp has control and jurisdiction, will be operated in the future as it has in the past third of a century.

The Commission asks that the agencies promptly give favorable consideration to this application. Denial of this application, unnecessary permit conditions or unreasonable delays could encroach on property rights and water rights and violate provisions of the Compact. The Commission is confident that a prompt and wise determination can be made in the near future on this application for permits and offers its resources to help answer any questions that might arise during this process.



Denice Wheeler  
Denice Wheeler  
Chair

In behalf of the Bear River Commission