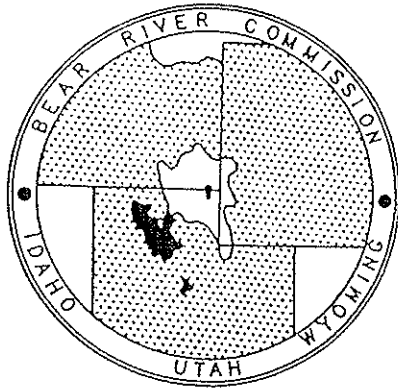


BEAR RIVER COMMISSION

106 West 500 South, Suite 101
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(801) 292-4662
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MINUTES

BEAR RIVER COMMISSION REGULAR MEETING ONE-HUNDRED THIRTEENTH COMMISSION MEETING November 18, 2008

The regular meeting of the Bear River Commission was called to order by Chairman Dee Hansen at 1:15 p.m. on Tuesday, November 18, 2008 at the Utah Department of Natural Resources building in Salt Lake City, Utah. This was the one-hundred and thirteenth meeting of the Commission. Hansen asked all Commissioners and those in the audience to introduce themselves. An attendance roster is attached to these minutes as Appendix A.

COMMISSION MEMBERS

Chair

Dee C. Hansen

Idaho Members

David R. Tuthill
Rodney Wallentine
Marcus J. Gibbs

Utah Members

Dennis J. Strong
Blair Francis
Charles W. Holmgren

Wyoming Members

Patrick T. Tyrrell
Sam Lowham
Gordon Thornock

ENGINEER-MANAGER

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

The Commission then reviewed and approved the proposed agenda for the meeting. A copy of the approved agenda is attached to these minutes as Appendix B. The draft minutes of the April 22, 2008 Commission meeting were then discussed. Pat Tyrrell suggested a few editorial changes and also indicated a statement on page 5 of the proposed minutes needed to be changed. The current sentence reads "The Commission will continue to do the following" and then it lists a number of things, including intervening and participating in applications on water right changes. The intent of that sentence is such that it should read "The range of alternatives open to the Commission could include ..." The changes were given to the Commission staff. A motion was made that the minutes be approved with the suggested changes. The motion was seconded and carried.

Chairman Hansen moved to agenda item III, the report of the Secretary-Treasurer. Commissioner Dennis Strong asked Randy Staker to report on the budget. Staker distributed and reviewed handouts reflecting the statement of income and expenditures and a proposed budget. Copies of these handouts are attached to these minutes as Appendix C. The expenses in FY 2007-2008 totaled \$119,247.21. The Commission collected from the U.S. Fish & Wildlife Service \$6,750 and the Commission earned \$5,201.88 in interest on the savings account. The carry-over amount for FY 2008-2009 is \$98,634.34. Staker noted that \$35,000 has been collected from each state for the assessment. The billing should have been for \$40,000 for each state. An additional invoice for \$5,000 will be sent to each state. The \$40,000 was the amount approved for the FY 2008-2009 budget. So far in this fiscal year \$7,055.02 has been collected from the Fish & Wildlife Service. That agency is now being billed on a monthly basis. Pat Tyrrell reminded the Commission that Wyoming's budget for FY 2010 and FY 2011 will be due next summer and he will need to know the projected budgets for those years at the April 2009 Commission meeting. There was a motion to approve the report of the Secretary-Treasurer. The motion was seconded and carried.

Chairman Hansen then moved to agenda item IV and asked Jack Barnett to discuss the consideration of a Commission position on new filings. Barnett indicated there had been a presentation in the Operations Committee meeting regarding five filings that might be of significance to the Commission. In the past there has been discussion about what attention the Commission should give to these types of filings/proposals. Barnett indicated he had been given instructions to provide information to the Commission. The TAC was also given the assignment to look at a potential Commission position. The TAC met and discussed various options and the TAC asked Barnett to draft a document. The document has been circulated to the TAC and the Management Committee. Barnett asked for instructions from the Commission regarding this issue. Pat Tyrrell indicated this will take some work and this is a little premature in construction. It is a valuable thing for the Commission to consider its role. So far the Commission has gone in the direction to simply keep Commission members informed of the filings so that the states, as signatories, can determine if they want to comment or raise an issue. As the Commission goes forward, each state will need to determine the definition of standing relating to this issue by virtue of the fact that each state is signatory to the Compact. Each state could talk with the respective legal counsel for guidance. It is a little early to adopt a position but Tyrrell encouraged the TAC or the Operations Committee to continue to discuss this issue and the states should make sure their interests are preserved in the document.

Following a brief discussion, the Commission determined the TAC should continue to work on this and a draft document should be brought before the Commission at its April 2009 meeting. The document will be circulated to Commission members at least 30 days in advance of the next Commission meeting. Dave Tuthill indicated he felt the presentation given during the morning meetings was very good and there should be the same level of presentation at the April meeting.

The Commission then moved to agenda item V, the final report to the EPA. Jack Barnett stated that this has been an evolving situation and gave a brief history of the EPA grant. The Commission received a 3-year grant from the EPA for more than \$700,00 under the Targeted Watershed Initiative. With the orchestration of the Water Quality Committee and under the direction of the Commission, contracts were entered into with Utah State University (USU). Most of the funds were to go to USU and the contracts called for the completion of work by September 2007. The EPA came back to the Commission and urged that the Commission request a no-cost extension of the grant. An extension was granted and the grant was to terminate on September 30, 2008. USU has responded well and the report was ready on September 30, 2008. There is a Steering Committee and that committee has looked at the draft final report and made comments. A second deadline was given to USU for last Thursday, November 13, and USU sent a finalized report before the deadline. The report totals about 300 pages but the report itself is only 37 pages and the rest of the pages are appendices. Barnett distributed copies of the 37-page report. USU reported it had completed all of the tasks and deliverables identified in the contract, yet there was \$80,000 yet to be expended. There had also been budgeted \$20,000 for contingencies. In a communication with the EPA, Barnett learned that the Commission could not spend any of the grant monies on any efforts after September 30, 2008. Learning that \$80,000 had not been expended by USU and learning that the contingency amount could not be used was disappointing. In conversations with Mike Allred, the Water Quality Committee and the Management Committee it was determined the Commission would ask for another extension of time. Barnett indicated he called the EPA and the EPA said yes to the extension. There is no break in the timing of the grant so all expenses incurred since September 30, 2008 will be covered. The Water Quality Committee has asked the Steering Committee to determine which tasks could best be performed in the future to expend the majority of the remaining funds. The thing that was always holding up the progress of the grant effort was the notion of pollution trading. It is felt that the best use of the remaining funds would be an outreach program with respect to pollution trading.

The EPA has always had the hope that there would be some pollution trading that might come out of the grant. The EPA has always been told this could not be promised. There is the potential for a real trade on the horizon. There have been discussions about having the EPA arrange perhaps two workshops, one in Denver and one

in Seattle, to report on the accomplishments of the grant. The Commission committed to do four things: 1) create a Water Information Systems (WIS); 2) create a model that would allow for analyzing trading; 3) analyze the opportunities for trading; 4) create an outreach program. The Commission is required to keep the efforts within the confines of what was initially proposed as far as general thrusts and general categories.

Barnett indicated he met with the Management Committee earlier in the day and it was determined the continuing management of the grant will require funds. The Commission should consider whether some of the funds yet to be expended should be designated for administration. Barnett suggested that he get back to the Commission via e-mails and memos to get approval for the way the Steering Committee should go with respect to the grant. With respect to the final report to the EPA, it is the sense of the Water Quality Committee that it has been good to get the document to this point. The report will be added to as accomplishments are made this final year. A final report should be put together by midsummer so that the Commission gets a final document to the EPA before the deadline of September 30, 2009. There was a motion that the Commission provide direction to the Engineer-Manager to move forward over the coming year with the EPA grant with the concept that given the extension that has been obtained the remaining \$80,000 be expended on additional research resulting in a report and that the \$20,000 remaining in the administrative fund be reviewed for expenditure relative to the administrative activities that are yet to be conducted, including website work, the workshops and any other activities associated with the project. The motion was seconded. There was a further direction that the Engineer-Manager work with the Water Quality Committee in making decisions. The motion was carried.

Barnett then discussed trading. USU has created a model that can be used to allocate to every farm field in the Cache Valley the load associated with the irrigation practices on that field. This is far beyond what the EPA or any other watershed has been able to do. It was noted there has been some validation of the calibration of the model. The modeling effort is focused mainly on the Little Bear River drainage and on the main stem of the Bear River from Cutler Reservoir to Oneida Reservoir. One of the big obstacles has been that one cannot get information from the Department of Agriculture about their producers. That is very confidential information.

Mike Allred then was asked to discuss Cutler Reservoir and Logan City. Allred reported that Cutler Reservoir was identified as not meeting its beneficial use as an aquatic fishery as a result of low dissolved oxygen and nutrients were identified as the linkage between the low dissolved oxygen and the pollutant that was identified as phosphorus. Summer and winter were the two seasons which were modeled and as the basin was assessed it was found that winter was the critical season and played a bigger impact to the effects to the reservoir. In the winter there are reduced flows from the tributaries in the Logan River, the Little Bear and the Bear River. The discharge from Logan City's treatment facility goes directly into Cutler Reservoir. In the wintertime the sewage accumulates in ponds. Because of the downstream requirement for meeting a phosphorus concentration below Cutler Reservoir of .075 mg/l, which was established by the TMDL that is in place for the lower basin, Cutler Reservoir has to meet the outflow. The most difficult time for that to be met is in the wintertime. In moving toward completing the TMDL, approaches have been looked at that would help reduce the nutrient loading and would not bear undue economic hardship on the population. An adaptive implementation approach has been looked at that would have the potential to include a water quality trading in the form of an allocation for Logan City.

There is a large area of agricultural land that is irrigated from the ditch that runs from the Logan lagoons to the wetlands. During the summer months when that water is being used, it runs across the fields as flood irrigation and the return flow goes directly to Cutler Reservoir. When the fields are harvested, the water is kept in a ditch and the ditch runs to Cutler Reservoir so there is a large nutrient load to the reservoir. There is a proposal to look at putting in a pipeline and pivot irrigation systems pressurized with the effluent to irrigate those lands. This would alleviate more than the required reduction and would allow for the reduction of nutrients. The Division of Water Quality has met with Logan City and outlined two basic approaches to implement the TMDL. The traditional

approach would be giving the limits based on the TMDL study and open the permit and give a 5-year compliance time-frame in which to meet the TMDL. The second option would be an adaptive implementation where reductions would start but an allocation would be given based on the required reduction and the pipeline and additional nonpoint source efforts would be funded to achieve the reduction. The decision as to which option will be taken is up to Logan City. Logan City has indicated it is interested in looking at an adaptive implementation approach.

There is an advisory committee in place which has been meeting for four years in the development of the TMDL. Bob Fotheringham has taken over as the chair of the committee. If Logan City opts to move ahead with trying to control the nonpoint sources, they are responsible for implementing but their approach will be reviewed and approved by the committee. Logan City has been given the option and has been told the committee is open to an adaptive implementation approach. There have been negotiations with Logan City and they are aware that they need to submit a proposal. There have been discussions regarding what financial input would be needed in order to offset the cost of their load to a nonpoint source. Through this mechanism the advisory committee would identify what the biggest component would be and so the modeling effort that has been put together with the targeted watershed grant would be looked at and the areas within the drainage would be looked at to determine what would yield the biggest results in terms of reducing the phosphorus load. Those areas would be targeted first. Connelly Baldwin asked if any portion of the adaptive implementation would be considered a water quality trade in terms of semantics. Allred indicated it would be considered a water quality trade. The document USU provided talks about credit trade versus an allocation trade. A credit trade would be where you put practices onto a specific farmer's land and he has so many credits to sell. An allocation trade would be where the point source divides so much money to be used on agricultural nonpoint sources and projects are identified later.

Barnett gave an example, randomly using dollar amounts. Perhaps it would take \$40 million for Logan City to upgrade its treatment plant. Within five years Logan City would have to spend that \$40 million and then may have to spend \$3 million in operation and maintenance costs. The option could be to put \$4 million per year into a fund and each year, if it is successful, Logan City can keep moving ahead as long as that approach works. One of the decisions Logan City needs to make is whether it wants to operate a plant that requires money up-front and annual O&M or whether it wants to invest in improving the activities in the nonpoint source areas. Much of what is driving Logan City is the financial aspect.

The question was raised as to why trading has not been working in the past. Allred stated that under the traditional permitting methods the facility is responsible and knows that if a certain amount of money is spent there will be a certain amount of result so there is complete control. Under a trading option, one is looking for greater improvements through nonpoint source reductions that are not as scientifically sound as treatment production, yet the facility operators will still be required to meet the reductions in the long-term. If they opt for a water quality trade and that approach does not work, they have only bought some time. In this instance, the reason why it is believed this is a better than most option is that the source of much of the nutrient is very close to Cutler Reservoir and there are good measurements on the concentrations. There is a higher degree of certainty.

Charles Holmgren asked how receptive the landowners are to this process. Allred indicated things have worked well in Cache Valley because a lot of money has been spent in the agricultural community through management practices. This is still a modeling effort and some validation and the outreach effort still needs to occur. This will be a voluntary approach. As the sign-up process occurs, the landowners are asked to talk with personnel at the office and often someone will go out and talk with landowners. In terms of water rights, there would need to be an agreement as to how the water rights exchange would work because you would be going from a flood system to a sprinkler system. It was noted that Logan City services seven communities. There are other plants up the river not associated with the Logan plant that might opt to do trading. The question was asked if Logan City would pay the operation and maintenance on the sprinklers in perpetuity and would the city maintain ownership of the

sprinkler. Logan City would do a cooperative effort to put the sprinkler system in where Logan would build the pipeline and then would solicit Environmental Quality Incentives Program (EQIP) dollars to put individual farm practices into place. The landowner would manage the sprinklers under contract. There is a cost share to the land owner.

Dennis Strong noted that years ago they looked at what is in the constituent part of what is in the river. So that we don't go away thinking that it is only the irrigators and the municipalities that pollute the river, we need to remember the data, which is old, shows 50/50 from just runoff. So the natural processes are contributing at about half what is in the river. We need to do everything we can to improve water quality. The goal would be to reduce below the natural limits. This would require practices other than agriculture. It would require public land involvement. Mike Allred noted that the TMDL in the basin assessment and the source identification addresses all the identified sources, even an internal loading source. The reason it keeps coming back to point source is because that is where the biggest economic impact is going to be found. Overall we are looking at a 65% reduction in the loading going to Cutler Reservoir. Jack Barnett noted that with respect to salinity in the Colorado River, the biggest decision that is made in studying a watershed is to determine how much is natural salt loading and how much is man-induced. This is part of the problem one faces when trying to go in with a TMDL in an area. As you learn more, you change your parameters.

Chairman Hansen then moved to a report from the Water Quality Committee under agenda item VI. Jack Barnett indicated he would give the report from the committee as Walt Baker was not able to attend due to a conflict with a meeting with the Western States Water Council. Barnett noted it was a good decision of the Commission to create the Water Quality Committee. There has been much cooperation and there has been an exchange of information. There are no conflicts among the states. The main focus of the committee meeting held on November 17, 2008 was the EPA grant and pollution trading.

The Commission then moved to agenda item VII, the report of the Operations Committee. Commissioner Sam Lowham reported that the committee met earlier in the day, adopted an agenda and reviewed the notes from the last meeting. The committee discussed the distribution of water in 2008. The distribution of water went as expected. The predictions were high and the runoffs were slow. There was no direct Commission involvement in all three divisions, which is very unusual. The Natural Resources Conservation Service (NRCS) predication seemed low for the annual precipitation and runoff but that prediction was very close to what occurred. Due to the cooperation of the divisions and the three states, everything went smoothly. All divisions benefitted from the slow runoff. The committee discussed the new proposals from Proctor and Gamble, Cache County, Twin Lakes, Black Bear and North Eden. It was noted in the committee meeting that all reservoirs are expected to fill, if there is enough precipitation.

Connely Baldwin then distributed and reviewed a handout showing PacifiCorp's summary of the Bear Lake and Bear River operations for 2008 and the possible irrigation allocations for 2009. A copy of this handout is attached to these minutes as Appendix D. Baldwin summarized that we are almost to the same point as we were last year in terms of the Bear Lake elevation. Last year the minimum elevation was 5907.63 and the low this year in early November was 5907.68. The allocation this year was 216,000 acre-feet for the irrigation releases from Bear Lake for the Lower Division for Utah and Idaho. In looking at next year, the irrigation allocation still looks to be fairly adequate, 80% of a full allocation up to 97% full allocation depending on the winter. Bear Lake is still only about 25% full in terms of percentage of full capacity. Cutler Reservoir was recently drawn down to make repairs on one of the canal gates for the Bear River Canal Company. The reservoir is now back up into operational range. Baldwin noted that PacifiCorp may need to draw down Alexander Reservoir to replace a bypass valve embedded in the dam. Last year there were three periods of high route water releases through Black Canyon, which is the bypass around the Grace plant through the Bear River for white water recreational rafting. That will continue again this year. There

are three scheduled releases and there will be other releases as water is available. No additional water is released from Bear Lake but water that is already in the system is used.

Jack Barnett indicated to Baldwin that at some point the Commission should get a report on how the funds are being used to enhance the environment as required by PacifiCorp's FERC license. Barnett asked Baldwin to report further on the uses of Black Canyon. Baldwin reported that the scheduled releases were taken advantage of and there were between 40 and 100 people which came for the one-day events. There was an opportunity for an opportunistic release which was not a planned event. As a by-product of a fish stranding release study to help determine the ramping rates, the three days were scheduled. As far as the money that has been expended, there is not an official report. Land has been purchased to protect key riparian corridors. There have been a few repairs to irrigation structures to keep fish out of canals, such as on Cottonwood Creek just above Oneida Reservoir and on the Cub River. Baldwin indicated he would prepare a more detailed report for the April 2009 Commission meeting. Baldwin then noted the bridge that is the most easily accessible vantage point of the Black Canyon is the Turner Bridge. There was a significant effort this fall to clean this area up and much of the debris has been removed. Marc Gibbs noted there was an effort by members of the community to work on the cleanup. At one point in time the Grace City dump was literally to back up and dump things over the edge into the river. Gibbs briefly reported that the recreational releases are not without conflict. Some nesting birds were wiped out with one release. There was significant damage to some of the diversion structures of the Gentile Valley Canal Company. Baldwin was thanked for his great work.

The Commission then took a short break. Following the break, Chairman Hansen moved to agenda item VIII, the efforts of the Bear River Water Users Association. Charles Holmgren distributed and reviewed a handout that had been prepared by Carly Burton, who was not able to attend the meeting. A copy of the handout is attached to these minutes as Appendix E.

Chairman Hansen then moved to agenda item IX, a report from the Records & Public Involvement Committee. Charles Holmgren reported that the committee met earlier in the day. The members of the Records & Public Involvement Committee are Charles Holmgren, Gordon Thornock and Marc Gibbs. The committee discussed the EPA grant and the extension. There was a discussion of pollution trading and the outreach effort. Claudia Cottle informed the committee that there will be an event planned for the Bear Lake Valley to review water rights and water quality issues and their effect on the Bear Lake Valley. This event will be held in late March of 2009. The Bear River Water Quality Task Force meets quarterly and Mitch Poulsen coordinates these meetings. There are no other public events planned for the near future. The committee discussed in the meeting the river gages. Cory Angeroth from the U.S. Geological Survey (USGS) gave the committee information on the Border gage and the Corrine gage. Those gages are now hourly. The effort is moving forward in order to disseminate more information from the individual gages so that people can have access to the information.

Holmgren further indicated that the Records & Public Involvement Committee discussed the national streamflow program referred to as the National Streamflow Information Program (NSIP). The USGS is fully funding the NSIP gages. The committee wondered if because of the NSIP gages we are losing money on the co-op gages which the Commission helps to fund. Angeroth discussed with the committee the possibility of moving the Upper Woodruff gage farther up the river to a bridge crossing that would protect the gage from damage that occurs occasionally. There was a discussion regarding the Corrine gage and how the financing is being handled. The gage is paid for by the USF&WS and Randy Staker has taken care of the issues that came up when the USF&WS changed its payment process. The committee discussed the Stonefly internet posting site, bearriverbasin.org. Stonefly is maintaining the real time data site and the Commission is paying \$6,000 annually to Stonefly. Scott Clark, who works with Jack & Don Barnett, presented a map which shows all the gaging stations and the automated pumpers, basically all data that are available. The committee discussed PacifiCorp and the automation of more gages in the

Idaho area below Bear Lake to the Utah state line. Baldwin is applying for funds under Reclamation's Water 2025 grant program and is hoping to cost-share with cooperative individuals on a 50/50 cost share grant on real time water use monitoring on the Bear River. The committee discussed the WIS tool developed by USU through the EPA grant process. The WIS will be maintained by using some of the grant money.

Holmgren then reported that the Thirteenth Biennial Report will soon be completed. The cover includes photos provided by Kevin Payne. There was a discussion about the upcoming Fourteenth Biennial Report. The Commission needs to work toward formatting the information in the state reports so that it appears that they come from the Commission and not the individual states.

Chairman Hansen then moved to agenda item X, the Engineer-Manager report. Jack Barnett indicated that all the subjects he had hoped to cover had been covered in the discussions.

There was then a report from the Management Committee under agenda item XI. Dave Tuthill reported that the Management Committee covered four items in its meeting held earlier in the day. The first item was the billing to the states for the assessments. The states were each billed \$35,000 and the amount should have been \$40,000 so a second invoice will be sent to each state for the remaining \$5,000. The second item discussed was the need to look at the gaging costs relating to the Commission. The Commission spends a lot of money on gaging and the costs are going up. The Management Committee instructs the TAC to review the costs of gaging, in conjunction with the USGS, over the next few months. This should be an agenda item for the next Commission meeting. The third issue discussed was the EPA grant that resulted in the motion made earlier in the Commission meeting and the Commission did vote to move in the direction the Management Committee discussed. The fourth and final item is relative to new significant filings and that was discussed earlier in the Commission meeting.

Chairman Hansen then asked for other items that should be discussed. Pat Tyrrell indicated Kevin Wilde passed away about the same time as the April 2008 Commission meeting. His contributions and presence are missed at the Commission meetings. Wyoming has drafted a resolution honoring Kevin's service to the State of Wyoming and his assistance in the Bear River. It is not in a final form so this resolution should be on the agenda for the April meeting so that the resolution can be approved. Dave Tuthill requested that climate change be an agenda item for the April meeting. A discussion as to how the expected flows of the future might affect the Bear River under the Compact would be timely. Jack Barnett indicated he will work with the TAC and Dave Tuthill on how this subject should be addressed. Dennis Strong indicated this could cause a water emergency and for some it might be helpful to explain who gets hurt, how the Commission operates under a water emergency, whether a certain division is hurt more than another during a water emergency, whether the people at the top of the system would be better off than the people lower in the system. Jack Barnett indicated there are provisions in the Compact for a water emergency to be declared in each of the divisions. The water emergency would be declared in the Lower Division if a Utah water user petitioned and successfully demonstrated that a use by Idaho water users were depriving him of his water right by order of priority.

In the Lower Division, the Commission and its delivery schedule would be the players in how waters were distributed and so in this case priority is paramount in the Lower Division. In the Upper and Central Divisions, the Commission allocates waters by state in a water emergency and so the state decides who takes the cut. The states most likely will always allocate according to priority but it is priority within the state. Don Barnett stated that even though the Commission has not operated formally in a water emergency with the development of the two state models it is as if there was a water emergency and so there are certain things in the Interim Procedures that would kick in that would show the two states that they have turned off anybody on the tributaries that are out of priority. As far as the actual operation of the river in the Lower Division, even though the Commission has never been involved in a formal water emergency, the operations would not change significantly because the two state models

would be in operation. The state models would be the guideposts. The Commission is already treating the Lower Division as if there really isn't a state line as far as the distribution. The key to making this work were the negotiations held years ago and the modeling that was done. Adjustments were made to the PacifiCorp contracts. The two state models basically have the same elements.

Jack Barnett noted that creating the interstate models and the procedures in the Lower Division was a very significant step toward dealing with shortages. It was noted that the Bear Lake Settlement Agreement made implementing the two state models on a level playing field. The Lower Division is dominated by huge storage and so that helps one average out the years.

The Commission then noted that Jerry Olds, the Utah State Engineer, is retiring. At the April Commission meeting Olds should be recognized for his service.

Chairman Hansen then asked Pat Tyrrell to give the Wyoming report. Tyrrell indicated that Wyoming is heading into a general legislative session and there are three bills he will be watching. One of the bills deals with the management of coal bed methane discharge produced water. Another deals with temporary instream flow that would allow landowners to temporarily reassign their rights in-channel. There is some rule-making authority coming forward that will confirm that electronic signatures can be accepted as electronic permitting moves forward. There are a few lawsuits that are being dealt with now. Wyoming was sued a year and a half ago by someone who said Wyoming's processes did not bring in the public interest enough. Wyoming's permitting process is different from others because there is not a required public notice step at the permitting stage. The law suit centers around the fact that because Wyoming does not have public notices and because neighbors ought to know when there are wells or reservoirs proposed on their neighbor's land they should be noticed on those types of applications. Wyoming won the case at the District Court level and it was dismissed. The dismissal was appealed and will be heard in the Wyoming Supreme Court in a month. There is another lawsuit going on that deals with how Wyoming regulates ground water that is connected to surface water. It is not so much going after the fact that ground water and surface water are connected and could be regulated but it is how we go about it, which is a statutory question. This has not yet come out of district court.

Dave Tuthill then reported that the Northern Idaho adjudication has commenced. Idaho went through some statutory revisions on the adjudication and the hearing for the commencement was held on August 28. On November 12 the court did commence the adjudication. It is in three phases. The first phase has commenced and phases 2 and 3 will continue if funding is available. There are two basins that have not been adjudicated in Idaho, one is Basin 98 - tributary to Canada and the other is the Bear River Basin. Tuthill indicated it is his expectation that within 10 years an adjudication in the Bear River Basin will commence. There are funding challenges in Idaho. Currently there is 1.5% hold back and the expectation is that this will get worse. Statewide there is a lot of work on conjunctive administration and recognizing the impact of wells on streams. This is being implemented on the Snake Plain in a variety of ways. This is being tested through what is ultimately going to be Supreme Court decision on calls from river to ground water, springs to ground water and ground water to ground water. There will be increasing awareness of impacts of ground water pumping on the Bear River so that in the long-term this will be implemented more and more.

Dennis Strong reported that Utah is also facing budget problems. There has been a 3% cut and preparations are being made for an additional 5% cut in this fiscal year. There are two studies in the Bear River. One study looks at right-of-way issues in moving water from the Bear River south to the Wasatch Front area, at least to Willard Bay. The study on Washakie Reservoir was received and it has been returned for some editing. It is hoped to have the final report by the first of the year. The study basically identifies the cost of constructing the Washakie Reservoir, a reservoir near Plymouth on the Malad River. The Malad River would be moved around and outside of the reservoir

basin and the Bear River would be, by canal and pump, moved into that 160,000 acre-foot reservoir. Strong was asked whether the move to a 4-day work week had saved money and how it has affected the productivity of the employees. Strong indicated the employees feel 10 hours is a long time. It is difficult for people with children. The savings is in energy as the building is shut down. There is less commuting. The productivity in his office is as it was before the change. This first year is a test. There will be a discussion regarding the 4-day work week at the legislature.

Dave Tuthill gave the Idaho report noting that Commissioner Marc Gibbs was elected as a House Representative. His district runs from the Utah border up most of the Wyoming border and encompasses the counties of Franklin, Bear Lake, Caribou, eastern half of Bonneville and all of Teton.

Following the state reports, there was a discussion regarding the next Commission meeting. It was determined that the next Commission meeting will be held on Thursday, April 16 and the Water Quality Committee will meet on Wednesday, April 15. The meeting will be held in Salt Lake City. There was a motion to adjourn the meeting. The motion was seconded and carried. The meeting was adjourned at 3:25 p.m.

ATTENDANCE ROSTER

BEAR RIVER COMMISSION REGULAR MEETING

Utah Department of Natural Resources Building
Salt Lake City, Utah
November 18, 2008

IDAHO COMMISSIONERS

Rod Wallentine
Dave Tuthill
Marc Gibbs

UTAH COMMISSIONERS

Dennis Strong
Charles Holmgren
Norm Weston (Alternate)

WYOMING COMMISSIONERS

Patrick Tyrrell
Sam Lowham
Gordon Thornock
Jade Henderson (Alternate)
Sue Lowry (Alternate)

ENGINEER-MANAGER & STAFF

Jack Barnett
Don Barnett
Nola Peterson

FEDERAL CHAIR

Dee Hansen

OTHERS IN ATTENDANCE

IDAHO

Hal Anderson, Department of Water Resources

UTAH

Todd Adams, Division of Water Resources
Mike Allred, Department of Environmental Quality
Will Atkin, Division of Water Rights
Ron Hoffman, Water Commissioner
Randy Staker, Division of Water Resources

WYOMING

Mike Johnson, State Engineer's Office
Don Newton, Department of Environmental Quality
Kevin Payne, State Engineer's Office
Don Shoemaker, Water Commissioner

OTHERS

Cory Angerth, U.S. Geological Survey
Connely Baldwin, PacifiCorp Energy
Scott Clark, Barnett Intermountain Water Consulting
Claudia Conder, PacifiCorp
Claudia Cottle, Bear Lake Watch
Dan Davidson, Bear River Canal Company

APPENDIX A
PAGE TWO

Bob Fotheringham, Cache County
David Hansen, Hansen, Allen & Luce
Mark Mathews, Last Chance Canal Company

**PROPOSED
AGENDA**

Bear River Commission Regular Meeting
November 18, 2008

Utah Department of Natural Resources Building
Auditorium
Salt Lake City, Utah

COMMISSION AND ASSOCIATED MEETINGS

November 17

10:00 a.m. Water Quality Committee Meeting, Room 314

November 18

9:00 a.m.	Operations Committee Mtg, Room 314	Lowham
10:15 a.m.	Records & Public Involvement Committee Meeting, Room 314	Holmgren
11:30 a.m.	Informal Meeting of Commission, Room 314	Barnett
11:45 a.m.	State Caucuses and Lunch	Tuthill/Tyrrell/Strong
1:00 p.m.	Commission Meeting, Auditorium	Hansen

REGULAR COMMISSION MEETING

November 18, 2008

Convene Meeting: 1:00 p.m., Chair Dee Hansen

- | | | |
|------|---|---------------|
| I. | Call to order | Hansen |
| | A. Welcome of guests and overview of meeting | |
| | B. Approval of agenda | |
| II. | Approval of minutes of last Commission meeting (April 22, 2008) | Hansen |
| III. | Report of Secretary/Treasurer | Strong/Staker |
| IV. | Consideration of Commission position on new filings | J. Barnett |
| V. | Final report to the EPA | J. Barnett |
| | A. Accomplishments of project | |
| | B. Financial report | |
| | C. Adoption of final report | |
| VI. | Report of the Water Quality Committee | Baker |

BREAK

APPENDIX B
PAGE TWO

- | | | |
|-------|--|------------|
| VII. | Report of the Operations Committee | Lowham |
| | A. PacifiCorp | Baldwin |
| | B. Committee meeting and issues | Lowham |
| VIII. | Efforts of the Bear River Water Users Association | Holmgren |
| IX. | Report from the Records & Public Involvement Committee | Holmgren |
| X. | Engineer-Manager Report | J. Barnett |
| XI. | Report from the Management Committee | Tuthill |
| XII. | Other issues | Hansen |
| XIII. | Next Commission meeting
(April 21, 2009) | Hansen |

Anticipated adjournment: 3:30 p.m.

APPENDIX C
PAGE TWO

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING JUNE 30, 2008

656	JACK BARNETT	4,718.33
657	VOID	
658	VOID	
659	VOID	
660	JACK BARNETT	4,847.33
661	USGS	56,550.00
662	JACK BARNETT	5,066.86
663	JACK BARNETT	4,806.15
664	JACK BARNETT CANCELED 01/10/2008	-
	WELLS FARGO FEE	68.00
665	JACK BARNETT	5,113.00
666 REISSUE OF 664	JACK BARNETT	5,625.45
667	JACK BARNETT	5,243.64
668	JACK BARNETT	4,830.12
669	JACK BARNETT	4,732.66
670	CAN SURETY	100.00
671	STONEFLY TECHNOLOGY	45.00
672	JACK BARNETT	4,824.66
673	JACK BARNETT	5,165.24
674	INCSPOT PRODUCTIONS	571.62
675	SHERI'S KOUNTRY BOW-K	63.00
676	JACK BARNETT	5,214.67
677	JACK BARNETT	79.79
678	STONEFLY TECHNOLOGY	3,000.00
	RETURNED BY JACK BARNETT	(1,418.31)
	TOTAL EXPENSE	119,247.21

BANK RECONCILIATION

Cash in Bank per Statement 06-30-08	3,897.32
Plus: Intransit Deposits	
Less: Outstanding Checks	
Total Cash in Bank	3,897.32
Plus: Savings Account-Utah State Treasurer	94,737.02
TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT	98,634.34

BEAR RIVER COMMISSION

STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD OF JULY 1, 2008 THRU NOVEMBER 5, 2008

INCOME	CASH ON HAND	OTHER INCOME	FROM STATES	TOTAL REVENUE
Cash Balance 07-01-08	98,634.34			98,634.34
State of Idaho		5,000.00	35,000.00	40,000.00
State of Utah		5,000.00	35,000.00	40,000.00
State of Wyoming		5,000.00	35,000.00	40,000.00
US Fish & Wildlife		7,055.02		7,055.02
Interest on Savings		957.76		957.76
TOTAL INCOME TO NOVEMBER 5, 2008	98,634.34	23,012.78	105,000.00	226,647.12

DEDUCT OPERATING EXPENSES

	APPROVED BUDGET	UNEXPENDED BALANCE	EXPENDITURES TO DATE
Stream Gaging/USGS Contract	52,300.00	-	52,300.00
SUBTOTAL	52,300.00	-	52,300.00
EXPENDED THROUGH COMMISSION			
Personal Services Jack	59,450.00	34,679.15	24,770.85
Travel (Eng-Mgr)	1,200.00	1,159.90	40.10
Office Expenses	1,600.00	1,467.37	132.63
Printing Biennial Report	1,000.00	1,000.00	-
Treasurer Bond & Audit	1,400.00	1,400.00	-
Printing	1,600.00	1,387.70	212.30
Web Page/Data	6,000.00	3,000.00	3,000.00
Contingency	5,000.00	5,000.00	-
SUBTOTAL	77,250.00	11,722.79	28,155.88
TOTAL EXPENSES	129,550.00	77,250.00	60,455.88
CASH BALANCE AS OF 11-05-08			146,191.24

APPENDIX C
PAGE FOUR

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING NOVEMBER 5, 2008

679	USGS	52,300.00
680	JACK BARNETT	9,935.38
681	STONEFLY TECHNOLOGY	1,500.00
682	JACK BARNETT	5,189.56
683	JACK BARNETT	5,070.11
684	STONEFLY TECHNOLOGY	1,500.00
685	JACK BARNETT	4,960.83

TOTAL EXPENSE 80,455.88

BANK RECONCILIATION

Cash in Bank per Statement 11-05-08	20,496.46
Plus: Intransit Deposits	
Less: Outstanding Checks	-
Total Cash in Bank	20,496.46
Plus: Savings Account-Utah State Treasurer	125,694.78
TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT	146,191.24

**SUMMARY OF BEAR LAKE/BEAR RIVER OPERATION FOR 2008
AND POSSIBLE IRRIGATION ALLOCATIONS FOR 2009**

<u>Date</u>	<u>Hydrologic Information/Event</u>	<u>Contents (% of Full) Discharge (% of Normal)</u>
10-01-07	Bear Lake Beginning Elevation – 5907.84	355,201 (25 %)
11-10-07	Bear Lake Minimum Elevation – 5907.63	342,041 (24 %)
	Apr. 1 runoff forecast – April through July	135,000 Ac. Ft. (58%)
	Rainbow Inlet Canal (April-July)	119,000 Ac. Ft. (51%)
04-10-08	Bear Lake Irrigation Storage Allocation (based on estimated spring maximum elevation of 5912.2')	216,000 (94 %)
07-01-08	Bear Lake High Elevation – 5910.55	527,590 (37 %)
	Outlet Canal Releases: 06/17-10/5 (111 days)	164,00 af
07-12-08	Outlet Canal Maximum Release – 1476 cfs	
	Bear Lake Storage Release	110,000 af
	Allocation for Lake Recovery	106,000 af
09-30-08	Bear Lake Ending Elevation – 5907.77	350,812 (25 %)
	Bear Lake Settlement Agreement "System Loss" Volume^	14,000 af
	Rainbow Inlet Canal Discharge	163,00 af
	Bear River Discharge Below Stewart Dam	5,100 af
	Bear Lake Net Runoff (Computed Total Inflow less Lake Evaporation)	164,000 af

^ Due to uncontrolled flow from (welcome) rain events. Whenever water flows below Cutler during the irrigation season any storage water in the system at Cutler is the first water out. Natural flow goes to irrigators.

Current Status

Recent Bear Lake minimum elevation of 5907.68 was observed on November 2, 2008.

Bear Lake elevation as of November 16, 2008 was 5907.78' (25% of total reservoir capacity)

Rainbow Inlet canal 140 cfs and filling Bear Lake

Irrigation Allocation Scenarios for 2009

We are still in the 'fat' part of the allocation curve and the range of possible irrigation allocations is relatively small. This is the same outlook we had last year.

- If Bear Lake rises only 1.5' to about 5909 in the spring, the irrigation allocation would be 184,000 Ac. Ft. (80%).
- If Bear Lake rises 6', as it did in 2005, then the irrigation allocation would be 223,000 Ac. Ft. (97%).

**BEAR RIVER WATER USERS ASSOCIATION
REPORT TO THE BEAR RIVER COMMISSION
NOVEMBER 18, 2008**

2008 Irrigation Season

Every fall water users on the Bear River talk about the unique water year that they just experienced. 2008 was no exception and, in fact, turned out to be one of the most peculiar years in recent memory. Based on the winter snowpack accumulations, everyone had high expectations for a good runoff and, especially, a good recovery at Bear Lake. Based on all the scientific information, historical comparisons, runoff forecasts and every other tool available, Bear Lake still ended up substantially below the projected level. In fact, the lake rose to a dismal 5910.55 feet, or over 13 feet below the full elevation. The big surprise, however, was that in spite of a less than impressive recovery at the lake, the natural runoff was excellent and resulted in delayed storage releases from Bear Lake until early July. The resulting storage water use for the season was equal to 111,000 acre feet or only 51% of the 2008 allocation. The significance of this season's storage use is that the other 105,000 acre feet were preserved for lake recovery. The comparison of storage allocation to actual use over the past 5 years is shown in the following table. Values are in thousands of acre feet. Information was supplied by PacifiCorp Energy.

<u>Year</u>	<u>Allocation</u>	<u>Use</u>	<u>% Used</u>	<u>Amount Saved</u>
2008	216	111	51	105
2007	218	184	84	34
2006	225	54	24	171
2005	141	54	38	87
2004	<u>85</u>	<u>77</u>	<u>91</u>	<u>8</u>
TOTAL	885	369		405
Ave	177	74	58	81

The table demonstrates that over the past 5 years storage use averaged only 58% of the allocation and over 400 thousand acre feet were preserved for lake recovery. This is due, in part, to abundant runoff during some years but conservation awareness by the irrigators every year has contributed to at least part of the water saved for lake recovery.

Water Right Application Review

Over the past year there were 3 significant applications that the Association spent considerable time in review and negotiation with the applicants. These applicants included Procter & Gamble, Black Bear Resort and Cache County filings. The Association coordinated its activities and concerns with PacifiCorp and Bear Lake Watch. Several meetings were held with Procter & Gamble but, to date, issues pertaining to change in Bear Lake storage water use have not been resolved. Black Bear Resort has revised its application and mitigation plan several times and the applicant and Association are close to resolving any remaining issues. Idaho Water Resources has scheduled a pre-hearing conference in January with the applicant and numerous protestants to discuss remaining issues. The Cache County filing has not been scheduled for hearing yet but an informal meeting was held on November 13 between Cache County, PacifiCorp and the Association. Additional meetings will likely occur in the near future.