

# BEAR RIVER COMMISSION

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## MINUTES

### BEAR RIVER COMMISSION REGULAR MEETING

Utah Department of Natural Resources  
Salt Lake City, Utah  
November 18, 1997

#### 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 November 18, 1997 at the Utah Department of Natural Resources Building in Salt Lake City, Utah. Chair Wheeler welcomed everyone to the Commission meeting and asked that those in the audience introduce themselves. A copy of the attendance roster is attached as Appendix A. Chair Wheeler then asked Jeff Fassett to introduce the new Alternate Commissioners from Wyoming. Fassett indicated that the following individuals have been appointed Alternate Commissioners: Gordon Thornock, a rancher and farmer from the Cokeville area; Jade Henderson, the Wyoming Western Water Division Superintendent; and Sue Lowry, the Director of Policy and Administration in the State Engineer's office. Chair Wheeler then called for a motion to approve the meeting agenda. The motion was made, seconded and carried. A copy of the meeting agenda is attached as Appendix B.

Wheeler moved to agenda item II, the approval of the minutes of the April 29, 1997 Commission meeting. It was moved that the minutes be approved without amendment. The motion was seconded and carried. The time was turned to Larry Anderson for the Secretary/Treasurer report. Anderson introduced Randy Staker, who replaced Bert Page upon Bert's retirement, and asked Randy to report on the Commission's financial statement. Copies of two statements were distributed to those present and copies of both statements are included in Appendix C. Page one reflects the financial status as of the end of fiscal year 1997. The budget total was \$93,090 and the Commission expenditures exceeded the budget by \$518.18, bringing the total expenditures to \$93,608.18. The interest on savings totaled \$7,154.82. Page two reflects the itemized expenditures for FY 97. Page three reflects the Commission's income and expenditures to date in FY 98. The expenses total, to date, \$15,973.47, and each of the three states has remitted \$30,000 for their state assessment. The Commission has received \$4,000 from the U.S. Fish & Wildlife Service (USF&WS) for the Corinne gage.

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Evanston City is listed on the sheet but Staker indicated that that contract has been canceled and will not be shown on the next financial statement. The earnings from savings total \$1,955.78 to date. Anderson indicated that the Commission was slightly over budget in FY 97 but still had a carry-over of about \$90,000 into FY 98. It is estimated that the carry-over for FY 98 will be around \$93,000 to \$94,000. A great deal of work has been requested of Engineer-Manager Barnett, and it is estimated that the Commission will be over budget on Barnett's time. There will be a better indication by the April Commission meeting and Barnett could be requested to spend less time on Commission matters. Karl Dreher asked for a clarification on the USF&WS contribution and Anderson reminded Commission members that the USF&WS is funding the Corinne gage through the Commission. The Commission at one time funded the gage. There were no further questions for Anderson or Staker. It was moved that the Commission accept the Secretary/Treasurer report. The motion was seconded and carried.

Chair Wheeler moved to agenda item IV and asked Norm Stauffer for a report on Utah depletions. Mr. Stauffer indicated that the Commission had requested that Utah and Idaho estimate their ground water use in the Lower Division. The Utah report focuses on Cache Valley, where the majority of Utah's ground-water is used. The Bear Lake area was not included in Utah's study. Utah has had a program with the USGS since the 1960's where the USGS annually publishes the amount of ground-water withdrawn. Stauffer explained several overheads and indicated that he used the years of 1986 through 1995 to get the most recent use, covering both the wet periods in the 80's and the dry period in the 90's. On an average, 28,000 acre-feet per year is pumped, and it is calculated that about 38.7 cfs is diverted. A depletion factor was determined for each use. In 1975, the Soil Conservation Service came up with conveyance losses and irrigation total loss for the Cache Valley canals. At that time, 0.4 was the estimated depletion factor. Utah feels that the present depletion factors would be as follows: irrigation 0.5; industry 0.10; public supply (municipal) 0.33; and domestic 0.33. The depletion to surface streams in Cache Valley works out to be 9,950 acre-feet (13.7 cfs). Stauffer indicated that it was assumed that depletion happens year-round, when actually the pumpage occurs mostly during the summer. The Utah Division of Water Rights has taken the USGS model and converted it from an annual model to a monthly model. The effect on the surface streams is nearly constant. Stauffer asked for questions and Jeff Fassett asked what kind of industries are part of the Cache Valley use numbers. Stauffer indicated that there are cheese plants, Pepperidge Farms, etc. Those industries use a lot of water but do not deplete a lot of water. There were no further questions for Mr. Stauffer.

Chair Wheeler then turned the time to Hal Anderson for the report on Idaho depletions. Anderson indicated that the State of Idaho has struggled to come up with numbers of ground-water depletions. Idaho does not have the same type of reports with the USGS as Utah does. Idaho is looking at methods whereby some understanding of the amount of ground-water used can be developed. Idaho has one information source as to ground water use and that source is water right information. Idaho is attempting to determine which of the water rights are full supply and which are for supplemental supply. The problem is that the records are not very good and there is not a lot of confidence as to whether they can be put in the appropriate categories of full supply vs. supplemental. It is not the withdrawal that Idaho is trying to get a handle on but the depletion to the river. Some preliminary work has been done using the water right information. Idaho is using the procedures adopted by the Commission previously in determining the depletions. The water right information is used for acreage on the primary water use, the supplemental use, and then Idaho uses a depletion

factor from the Commission-approved procedures. Idaho has enough questions regarding the water right files that it has been determined that there is more work that needs to be done and is moving forward with that work. There were no questions for Hal Anderson.

Chair Wheeler then turned the time to Bob Morgan for his report. Mr. Morgan reported that the Utah State Engineer has begun ground-water management efforts, particularly in Cache Valley. In 1990, administratively Utah shut down the ground-water resource to new large appropriations. A number of applications had been received, many from municipalities. They total about 150 second-feet. There is a worry that there were a number of downstream users and significant demands on the Bear River below Cache Valley. The administrative hold is still in effect. Some isolated domestic wells have been approved and the ground-water study has been completed, in cooperation with the USGS and the Utah Division of Water Resources. The model, because Utah was able to look at the monthly depletion to the system, gave more information. Utah has held at least four public meetings and have solicited reports on what might be the local opinion as to how Utah should manage ground-water. To date, no significant positive comments have been received. There is a significant difference between what is currently diverted and what potentially could be diverted by the approved and perfected water rights. Utah is within 60 to 90 days of issuing a decision on the policy. Paramount in that policy will be the protection of the existing water rights downstream while facilitating the uses of ground-water and keeping track of depletions. Mr. Morgan then asked for questions. Jeff Fassett asked if the administrative hold was just on Cache Valley and Morgan indicated that it was. Morgan further indicated that no significant development of ground water in Box Elder County has been allowed.

Chair Wheeler turned the time to Karl Dreher for the Idaho report. Dreher indicated that Idaho had a moratorium on ground-water development and was not sure when that moratorium expired. Idaho has maintained an administrative hold on new irrigation rights. There have been some applications for municipal rights, which were advertised and protested by the Bear River Water Users Association and PacifiCorp. The question in the minds of applicants is what can be done so that water rights can be applied for without protracted proceedings. The question in the minds of protestants is what can be done so that they don't have to protest each application. Dreher indicated that the State of Idaho had several options. It could reimpose another moratorium in the Bear River Basin, but data does not support the finding that the resource is over-appropriated. The resource is under-managed. Idaho suggested to the Bear River Water Users Association and PacifiCorp that they consider filing a petition asking the Department to designate all or part of the Bear River Basin as a ground-water management area under Idaho law. Those petitions have been filed. Dreher stated that in Idaho a ground-water management area is one level below what is called a critical ground-water area. A critical ground-water area is defined as an area that does not have a sufficient quantity of ground water to provide reasonably safe yields for currently issued water rights. A ground-water management area may be designated potentially because it is approaching conditions of a critical ground-water area. Dreher stated that upon designation of the Bear River Basin as a ground-water management area, the Department is required to publish notice in two consecutive weeks of newspapers of general circulation. Public hearings are not required by law, but Dreher indicated that there would be public hearings before the Department takes any action in regard to the Bear River Basin.

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Dreher continued by indicating that in a ground-water management area, applications for new permits can be approved on a case-by-case basis, provided prior water rights will not be injured. This does give the Department flexibility, either on its own volition, on the volition of those that might be seeking to have a ground-water management area established, or in some type of a joint effort to develop a ground-water management plan. This plan would be a defined procedure for either managed recharge to offset any potential injury caused by depletions before the injury occurs, or to mitigate for the injury when the injury occurs. The dilemma in trying to administer ground-water is due to the fact that when ground-water withdrawals are made, the effects are not physically noticeable, in terms of the flow of surface streams to which the ground-water sources are tributary, for a number of years. That number of years varies upon the location of the well. At the time that the water manager has some say in whether or not a ground-water diversion is allowed, the effects won't have occurred and may not occur for some time in the future. When the injury does, if it does, occur, it is not a simple matter to turn off the ground-water diversion. Curtailing the diversion does not result in water back in the stream for a period of years. With a ground-water management plan, the Department would look for a definition of what steps will be taken to: a) prevent the injury; or b) to mitigate the injury at the time the injury actually does occur. Assuming that the ground-water management plan is adequate in its protection of existing rights, presumably there would not be a need for existing right holders to protest new applications.

Idaho also has provisions in the state laws that allow for "banking" of water, either stored water or direct flow water. It operates very much the same way a financial account does. A holder of a water right can choose not to exercise the full extent of his right and place that water in a bank. That water is then available to be leased by those needing to divert water directly out of the river or from storage, or to lease water to make up for depletions that have potentially caused injury. There are a number of water banks throughout Idaho. Idaho is in discussions with PacifiCorp and the Bear River Water Users Association as to whether or not there is interest in setting up a water bank involving Bear Lake and how it would be done. The operation of the Idaho water banks are governed by the Idaho Water Resource Board, a different entity than the Department of Water Resources. Dreher indicated that the only connection is that he is appointed by the governor and the Idaho Water Resource Board is appointed by the governor. The Department of Water Resources does provide staff for the Water Resource Board. The Board has published rules that govern how a water bank is set up, and a part of the rules calls for the creation of an advisory committee that is established to operate the rental pool on behalf of the Board. One question to be resolved concerning Bear Lake and a water bank is under what conditions would or would not Utah water users be able to put water in or take water out. Dreher concluded by saying that if a water bank is established and it involves Bear Lake, the exchange that takes place is the person that holds the right to the water doesn't exercise his right and instead the right to use the water is exercised by someone else. It does not result in a net increase in the use of water from Bear Lake or from Bear River. There were no questions for Commissioner Dreher.

Chair Wheeler turned to agenda item V, the Lower Division Procedures. Karl Dreher reported that the Commission has struggled for years to deal with the provisions in the Compact that would regulate how the Commission responds to a request to declare a water emergency in the Lower Division. Part of the reason for the struggle is that the procedures that are already created in the Compact for a water emergency in the Lower Division do not have the amount of detail or definition that exists for the Upper and Central Divisions. The Commission wants to establish

procedures that protect all rights on the river. In the process of adopting procedures for the Lower Division, the Commission must be fully aware of what the water use is out of Bear Lake. More recently, the ground-water issue has added another degree of complication. The Commission decided to try and reach agreement on an overall framework for the procedures. This framework is what the Commission has focused on for the past few years. Public hearings have been held, and public input has been received and fairly considered by the Commission. Dreher reviewed some of the comments received. Several comments focused on the Bear Lake Settlement Agreement and Dreher pointed out that the Commission has referenced and acknowledged the agreement. The agreement was a significant achievement. One complicating factor with the Bear Lake Settlement Agreement is that it does not include all parties to Bear Lake.

Dreher stated that some of the Commission members are willing to consider adopting the overall framework as interim procedures. The advantage of adopting interim procedures is to capture and recognize the significant progress that the Commission has made, while at the same time reserving adequate flexibility to address issues that have not been fully resolved. One example of an issue that has not been resolved is ground-water. There is near unanimous agreement within the Commission that ground-water will be accounted for in some way. Dreher continued by highlighting some of the issues with which the Commission is currently struggling. In Idaho, the approach used to estimate depletions is all inclusive, except for small uses. All inclusive means that Idaho took all of the water rights that were on record and a depletion was assigned to each right, not knowing whether the right was fully used or not. Utah's approach includes small uses but it only includes known withdrawals. The difference is between what is currently diverted compared to what could be diverted under perfected water rights. Idaho estimated depletions using Commission approved procedures. Utah used procedures that were developed cooperatively with the U.S. Geological Survey. When the results of the estimates are looked at, at least on the surface, it looks like there is incompatibility between Utah and Idaho. It is worth additional effort to get to a common basis that is appropriate, fair, and consistent with approved Commission procedures. Article V of the Compact indicates the provision for depletion calculation. Dreher again reiterated that there is some benefit to the Commission adopting interim procedures and retaining flexibility to make modifications as the Commission continues to work on the remaining issues. In a meeting held on Monday, November 17, a number of revisions were made to the procedures but there has not been a chance to review the revised procedures to make sure that the changes were what was agreed to in the meeting. Thus, the Commission needs to retain the right to make changes to more correctly reflect the changes which were discussed. In the interim procedures, the Commission would not have fully identified how the accounting methods are going to be used, what water rights are going to be included, how ground-water depletions are going to be handled, and what methodology is going to be used for distribution.

The Commission has looked at some draft documents beyond the procedures themselves. Appendix A is a form for petitioning the Commission to declare a water emergency; Appendix B is a proposed description of a model methodology to be used to account for direct flow rights and storage water use; and Appendix C, which had a preface, states a methodology for accounting and distribution, and provides a water right list proposed to be what the Commission would use as a water delivery schedule. Dreher felt that Appendices B & C were too fragmented and that the Commission needs to make an effort to bring the descriptions in draft Appendices B & C together so that there is less risk of ambiguity. The TAC should rewrite Appendices B & C so that all the methodology is in Appendix B and Appendix C would be just the water delivery schedule. Appendix C would be of

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interest to everyone who holds a water right. Thus, there are two needs for the Commission, once it reaches agreement on what the water delivery schedule should be, to act on: 1) to provide notice to everyone on the water right list (Dreher reminded those in attendance that developing a list of water rights is not an adjudication of those rights); and 2) there may be a need to have one or two public hearings so that there is an opportunity for dialogue between the Commission and water right holders. The Commission's goal is to have a delivery schedule ready for adoption at the Commission's April meeting, but because of the need for public hearings and notice that may not be possible. It may be that at the April meeting the water delivery schedule may be adopted on a interim basis pending completion of the public hearing process.

Commissioner Dreher then moved that the Commission adopt the Lower Division Procedures as revised and adopt them as interim procedures subject to revision to ensure that the agreements that were reached on Monday, November 17 are accurately reflected and to provide sufficient flexibility so that they can be revised to be compatible with Appendices B & C, when those documents are finally developed. After some discussion and comments by Larry Anderson, the motion was moved, seconded and carried with one negative vote being cast by Commissioner Rodney Wallentine. The interim adopted procedures are attached to these minutes as Appendix D. Dreher indicated that there were 25 copies available of the proposed Lower Division Procedures. Those who gave the Commission written comments on the procedures will be receiving a letter from the Commission describing generally and specifically, where the Commission can, how particular comments were included.

Chair Wheeler turned to agenda item VI, the 20-year review report, and asked Jack Barnett to comment. Barnett briefly reviewed the history of the Compact. The Compact requires that there be a review by the created Commission at least once every 20 years to determine whether revisions are necessary. The first review occurred without a 20-year period expiring, as the states saw a need for modifying the Compact. That amended Compact, referred to as the Amended Compact or the 1976 Amendments, gave the Commission the Compact as it is now known. The amendment procedures were not well established. Eighteen months ago, under the provisions of Article XIV of the Compact, the Commission entered into a Compact review process to determine if amendments to the Compact were needed. There were four public hearings held and a special committee of the Commission was created. This committee reported back to the Commission a year ago its findings. The Commission then resolved that the comments received needed to be further analyzed and that a report needed to be prepared. With the assistance of the TAC, Jack Barnett was assigned to bring the public comments and the findings of the Commission together. Barnett indicated that he has circulated to the Commission a draft report which was written as his draft report to the Commission.

The Commission now needs to determine: 1) if the report does state the Commission's findings; and 2) whether the report should remain as a report from the Engineer-Manager to the Commission or whether the Commission should take the contents of the report and have it reformulated so that it becomes the Commission's report. Some of the tables in the report also need to be cleaned up. Barnett indicated that he felt it would be helpful to have a little more in the introduction to discuss the hydrology and the management of the river. There are about eight pages in the front of the report that help explain the river as we now know it. This information might be helpful, for those that follow, in understanding the responses to the comments that were made, and it will also help those who commented on the Compact review understand the responses of the

Commission to their comments. The second part of the report addresses a number of subjects: 1) comments concerning amendments to the Compact; 2) comments concerning Bear Lake levels and alternate storage; 3) comments concerning water quality, with a sub-issue on Bear Lake causeway failure; 4) comments concerning the Commission make-up; 5) comments concerning multiple purpose use of water; 6) comments received concerning public involvement; 7) comments concerning FERC relicensing; and 8) comments concerning the responsibility of the Compact and the Commission to protect apportioned waters.

Barnett indicated that after going through the writing of the report, he provided, on page three, two short paragraphs entitled "Findings and Recommendations." In keeping with the suggested findings and recommendations, Barnett had prepared a draft resolution for the Commission to consider that would implement the three findings from the report and would bring to a close the 20-year review as required by the Compact. Specifically, the three findings are that there is no present need to amend the Compact, that the Commission should create a Water Quality Committee, and the Commission shall become more involved in seeking public involvement. Chair Wheeler asked if all Commissioners had received a copy of Barnett's report and had a chance to review it. Wheeler then asked the Commissioners if they felt comfortable with accepting the 20-year review proposal that there is no present need to amend the Compact, that the Commission should create a Water Quality Committee (which does not necessitate amending the Compact), and that the Commission shall become more active in seeking public involvement.

The second issue was whether the Commission wants this report to be a report of the Engineer-Manager to the Bear River Commission or whether the Commission takes the leadership role that this is the action of the Bear River Commission. Wheeler asked for a motion. Karl Dreher indicated that before the Commission entertained the motion, the Commission should hear a report from the Engineer-Manager on water quality issues. Dreher indicated that he had reviewed the report and given his comments to Jack. He felt that the Commission should ask Barnett to refine the report, shorten it where he could, and rewrite it as a report from the Commission and that Commissioners who have not reviewed the report should provide comments to Barnett by December 10. After some discussion, Jeff Fassett moved that the Commission adopt the resolution that was prepared by Barnett which concludes the 20-year review and accept the findings that there is no need to amend the Compact. The motion was seconded and carried. Karl Dreher then moved that the Commission direct the Engineer-Manager and staff to refine the report and edit it as necessary to shorten it and make it a report of the Commission, and that Commissioners be given until December 10 to submit comments on the draft report. The motion was seconded and carried. A copy of the resolution to close the 20-year review period is attached as Appendix E.

Chair Wheeler turned to agenda item VII, the report on water quality initiatives. Jack Barnett explained that in anticipation of the Commission creating a Water Quality Committee, and with concurrence from the three state Departments of Environmental Quality, there was held on Monday, November 17 an informal water quality meeting. Gary Beach (WY), Mark Lowe (ID), and Don Ostler (UT) have been designated as leads for the three states. Don Ostler was elected as the ad hoc chairman of the group. Barnett turned the time to Don Ostler to report on the meeting. Mr. Ostler indicated that the meeting was held to discuss the proposal of creating a Water Quality Committee to advise the Commission on water quality activities. Attending the meeting were the three DEQ leads, three Commissioners representing the Commission, and the Engineer-Manager. The water

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quality topic was discussed thoroughly and the general conclusion of the group was one of support. There is value in the three states getting together and coordinating water quality issues.

The functions of the Water Quality Committee would be: 1) to coordinate priorities, activities, funding and standards; 2) to provide water quality input to the Commission; 3) to provide a forum for local water quality groups to interact with the Commission through the committee as an easy place to come and talk to all three states in one spot; and 4) to support coordinated local watershed management planning. The membership of the committee would include the three state DEQ leads. The committee would liberally invite other interested groups to participate on a routine basis with the committee. The Bear River Water Quality Task Force and other local watershed management groups are examples of groups to be invited on a routine basis. The chairmanship for the committee would be rotated. The committee would meet at least twice a year in conjunction with the Commission meetings but would meet at other times as necessary. Chair Wheeler asked who would be paying for the expenses of the committee. Ostler indicated that the committee would like a member of the Commission staff to attend the Water Quality Committee meetings and help with agendas and summaries of the meetings. Other expenses would be covered by the three individual states. Larry Anderson expressed the appreciation of the Commission for the willingness of the three state DEQ leads to serve on this committee.

Chair Wheeler turned to agenda VIII, the report of the Records Committee. Don Gilbert reported that the Records Committee has a few changes to the bylaws. One change is to add public involvement to the function of the Records Committee, and the other change is to create the Water Quality Committee. Chair Wheeler read the amendment to the bylaws. Don Gilbert moved that the Commission adopt the bylaw amendment. Karl Dreher indicated that he had received a copy of a resolution that was passed by the Bear River Water Quality Task Force specifically proposing to be the technical advisors to the Commission on water quality matters. Dreher did not want the action that the Commission was considering to be misconstrued by the Task Force as not even considering what the Task Force was recommending. The Commission did consider the proposal and the Commission did determine that there is a role for the Task Force to be advisors on water quality issues, but rather than advising the Commission members directly, they should advise the individuals responsible from each of the three states for water quality matters. The Commission would then work directly with the Water Quality Committee. All the Commissioners are appointed by the governor of each state, or their appointment is provided by laws passed by the legislatures in each state. The Commissioners are directly accountable back to the governors and the state legislatures. The three DEQ representatives that comprise the Water Quality Committee are accountable directly back to the governors of the three states and the state legislatures. The Task Force is not directly accountable to the governors or state legislatures. To make this fit, without changing the value of the ad hoc nature of the Task Force, it was appropriate for the Commission to establish a Water Quality Committee. Following this discussion, the motion proposed by Don Gilbert was seconded and carried. A copy of the bylaw amendment is attached as Appendix F. The Engineer-Manager was directed to respond to the Task Force indicating that the Commission had received and appreciated the resolution of the Task Force and to extend the Commission's expectations of how the Commission hopes to work with the Task Force.

Don Gilbert then read a second proposed amendment to the bylaws concerning the timing of the Bear River Commission meeting. Gilbert moved that the amendment be adopted by the



Commission. The motion was seconded and carried. A copy of the bylaw amendment is attached as Appendix G. Gilbert then asked Jack Barnett to discuss the reprinting of the bylaws. Barnett indicated that the Records Committee, in the past, has talked about the need for reprinting the bylaws and the Compact and it was anticipated that there might be some bylaw changes. Barnett recommended that the staff get back to the Records Committee some proposed formatting of a new printing and some estimated costs. The Records Committee would then determine whether they will recommend to the Commission that the Commission reprint the Compact and bylaws. This will be an action at the April Commission meeting. Gilbert then reported that the Biennial Report is about 6 to 8 weeks behind schedule. There was a major issue with regards to stream gaging and that was the Pescadero Gage, but Idaho wants to keep that gage. There were no questions for the Records and Public Involvement Committee.

Chair Wheeler turned to agenda item IX, the report from the Operations Committee. The time was turned to Blair Francis. Francis indicated that there was no regulation this past water year. He then asked Carly Burton to report on Bear Lake. Burton reported that this past water year was one of the best water years on record. Burton distributed handouts and a copy of those handouts is attached as Appendix H. The bar graph shows that the net runoff to Bear Lake, a calculated yearly number, was 700,037 acre-feet. This represents about 235% of the medium value. The elevation graph shows that Bear Lake made a substantial recovery. In terms of lake elevation, the past two years represents the highest lake level increase in history. Burton summarized what happened on Bear River and at Bear Lake this past water year. The high elevation at Bear Lake was reached on July 9, 1997 at 5922.54 feet. The low elevation was on October 1, 1996 at 5915.22 feet, which represents an increase of over 7 feet. Currently, the lake is at an elevation of 5920. The current active storage volume is about 1.1 million acre-feet. In terms of irrigation use, irrigation interests received a full allocation. PacifiCorp basically operated in a flood control mode the entire year.

Burton further indicated that one of the measures that PacifiCorp uses as an indicator of water supply in the Basin for irrigation is the flow below Cutler Dam. Ordinarily, during the summer, there is no flow below Cutler Dam because all of the flow is being regulated for irrigation. During this past water year, the flow below Cutler Dam amounted to over 1.6 million acre-feet, and during the irrigation season (April 1 through September 30) the flow below Cutler Dam was over a million acre-feet. Meeting the irrigation demands this year was no issue. Burton reiterated that the current Bear Lake elevation is 5920 and PacifiCorp's intent is to lower Bear Lake to 5918 by next spring before the runoff starts. PacifiCorp has been releasing about 1250 second-feet in the Outlet Canal. That was reduced today to 900 second-feet. Larry Anderson asked when the pumps had to be turned on to get water from Bear Lake. Burton indicated that PacifiCorp just started pumping last week. They have found that since the new structure was put in at the Outlet Canal, PacifiCorp can lower the elevation of Bear Lake an additional foot without having to pump.

With regards to current issues, Burton reported on the request to cancel the dredging permit. On May 12, 1997, when it became apparent that Bear Lake was going to approach full capacity, the decision was made to send a letter to the Army Corps of Engineers to request cancellation of the dredging permit application that they had received from PacifiCorp. A letter was sent back that the Corps agreed to the cancellation. PacifiCorp is in the process of relicensing their hydro projects on the Bear River. The field work will be completed this week with the agencies and the consultants, and some consensus will be reached on the major issues such as minimum flows, fishery flows,

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ramping rates, white water rafting, etc. Once consensus is reached on those issues, PacifiCorp will put together a draft application for all the projects. There will be a public comment and review period. Burton turned the time back to Commissioner Francis. Francis summarized by saying that as the Lower Division Procedures are completed, it will become the Operations Committee's responsibility to become very knowledgeable about the procedures.

Chair Wheeler turned to agenda item X, the Engineer-Manager report. Jack Barnett reported that the USGS is involved in NAWQA studies in the Great Basin that actually involves the Provo River, the Weber River, and the Bear River. A significant portion of those NAWQA study efforts to collect water quality data will be in the Bear River system. This current fiscal year is a ramping up year. The USGS is currently under a continuing resolution and does not have an appropriation for the remainder of the year, but it is anticipated that that will come shortly. The Appropriation Conference of the House and Senate has agreed on the appropriations for the USGS. Their report is back to the House and the Senate. In the Conference Committee report, there is language that instructs that with respect to the appropriation of dollars for use by the USGS in the Bear River drainage, there will be consultation with the Bear River Commission. The Water Quality Committee will be valuable as the Commission has dialogue with the USGS about the need for and the Commission's concurrence in the collection of water quality data. Barnett asked Kim Goddard for any comments and Goddard read the language in the Conference Committee report. Goddard further noted that all should be aware that this is a national program and so there is competition for funds with other NAWQA units that meet the national goals of the NAWQA. There is a liaison committee meeting on this issue.

Barnett continued with his report by indicating that Senator Craig of Idaho has shown a significant amount of interest in the Bear River. Senator Craig has expressed an interest in potentially coming into the Basin and holding oversight hearings. He is looking to the Commission to determine whether the Commission feels those oversight hearings would be helpful. The oversight hearings would nominally be to review the activities of the Bear River Commission. Senator Craig does not serve on the right committee for that oversight. The Judiciary Committee, chaired by Senator Hatch, has responsibility and there are preliminary indications that if the Commission and Senator Craig desired the oversight hearings, Senator Hatch would appoint Senator Craig with those responsibilities. Barnett then advised the Commission of an organization called the Interstate Conference on Water Problems that is undertaking an effort to bring together a listing of all the water compacts in which the various states are involved.

As a final item, Barnett reported that the Western Water Policy Review Advisory Commission (WWPRAC), an organization created by the federal government, issued a draft report in October 1997. The report comments on a wide range of state and federal activities with respect to water resources. The WWPRAC has some controversy among its members as to whether or not the report correctly identifies the feelings of the WWPRAC and whether or not this report should be advanced to the Secretary of the Interior. The Act requires that the President report to the Congress findings concerning Western Water Policy. The general thrust of the report is that there is a need for more coordination of all activities within basins and the federal government is the entity in the best position to create that coordination, and so there should be created river basin bodies, governances. The report recommends that a few test basins be selected to have a coordinating body from the federal role down brought to bear for activities of at least the federal agencies, if not the state and quasi

governmental and private organizations active in a river basin. The report further indicates that it would be advisable for the President to appoint a Budget Officer for each river basin so that appropriations for federal agencies could not be approved by OMB in the budgeting process unless the Budget Officer, appointed by the President for that river basin, is in concurrence with the request for federal funds. The coordination job would be massive. Barnett indicated that he felt that the Commission might feel that within the Bear River drainage a federally created, top down type of organization would not be welcome. Thus, he prepared a letter from the Bear River Commission to the WWPRAC urging that that recommendation be deleted from the findings of the WWPRAC. Barnett asked that the Commission authorize him to sign and send the letter. Blair Francis moved that the Commission authorize Jack Barnett to sign and send the proposed letter to the WWPRAC. The motion was seconded and carried. A copy of the signed letter is attached as Appendix I.

Chair Wheeler then turned to agenda item XI, the report of the Management Committee. The time was turned to Jeff Fassett. Fassett indicated that the Management Committee has worked most of this past year on issues that have been fully discussed, but Fassett pointed out that the Management Committee has a strong commitment to meet and aggressively advance the Lower Division Procedures. One important piece of information that is needed as the Management Committee works on unresolved issues with the procedures is information from PacifiCorp. The Management Committee requested PacifiCorp to provide a complete and comprehensive list of all the water storage contracts that they have entered into with water users. Jack Barnett was instructed to formally request this list via a letter to Carly Burton. Burton indicated that he will have the information to the Commission by January 1, 1998.

Chair Wheeler turned to agenda item XII, the state reports. The time was turned to Jeff Fassett for the Wyoming report. Fassett indicated that Wyoming is engaged in a state water planning process. There is currently a study involving the public and state agencies in deciding what would be a good water planning process. It is anticipated that the study will take most of the next year. One aspect of the study is to look at a particular river basin in Wyoming as a pilot project. The Bear River Basin has been chosen as an appropriate basin. Fassett further discussed the movement of Wyoming's storage allocation. The issue was taken to the Technical Advisory Committee and discussed and the TAC recommended back to Wyoming that a more detailed study was needed. Wyoming is working on that detailed study.

The time was then turned to Larry Anderson for the Utah report. Anderson indicated that Utah continues to gather water quality data on the Bear River. There is a great deal of interest in the Honeyville Dam site and the Barrens Dam site. Anderson pointed out that Utah recently completed the 13<sup>th</sup> Annual Water Education Program, and a part of that program is an art contest. The winners' pictures are displayed near the entrance to the building. Anderson concluded by reporting that Utah has a program called "Partnership for Quality Growth". This is a private/public partnership. The committee is made up of 80 high-ranking, Who's Who in Utah, citizens along with Wasatch Front between Nephi on the south and Brigham City on the north. Eighty percent of the state's population resides in this area. The partnership is looking at ways to impact future growth in this part of Utah. Substantial money has been donated by private companies. The partnership has developed a baseline scenario of what they expect the area to look like in 2020. There are currently 1.6 million people living in this area. It is projected that by 2020 the population will be 2.7 million, and by 2050 the

**Bear River Commission Meeting**

**November 18, 1997**

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population will be 5 million. The group meets quarterly with many subcommittees looking at air quality, water supply, transportation, housing, and business.

The time was turned to Karl Dreher for the Idaho report. Dreher had no further items to report. There were no additional items brought before the Commission. It was concluded that the next Commission meeting will be held on Tuesday, April 21, 1998 in Salt Lake City, Utah. The meeting was adjourned at 3:40 p.m.

## ATTENDANCE ROSTER

### BEAR RIVER COMMISSION REGULAR MEETING

Utah Department of Natural Resources Building  
Salt Lake City, Utah  
November 18, 1997

#### IDAHO COMMISSIONERS

Karl J. Dreher  
Don W. Gilbert  
Rodney Wallentine

#### WYOMING COMMISSIONERS

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

#### FEDERAL CHAIR

Denice Wheeler

#### UTAH COMMISSIONERS

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

#### ENGINEER-MANAGER & STAFF

Jack A. Barnett  
Don A. Barnett  
Nola Peterson

#### OTHERS IN ATTENDANCE

##### IDAHO

Hal Anderson, Division of Water Resources  
Mark Lowe, Department of Environmental Quality  
Pete Peterson, River Commissioner

##### UTAH

Jim Christensen, Division of Water Quality  
Robert M. Fotheringham, Division of Water Rights  
Bob Morgan, Division of Water Rights  
Bryce Nielson, Division of Wildlife Resources  
Don Ostler, Department of Environmental Quality  
Randy Staker, Division of Water Resources  
Norman Stauffer, Division of Water Resources  
Dennis Strong, Division of Water Resources

##### WYOMING

Gary Beach, Department of Environmental Quality  
Randall Taylor, Department of Environmental Quality  
Kevin Wilde, State Engineer's Office

**APPENDIX A**  
**PAGE TWO**

**OTHERS**

John E. Allen, Bear River Water Users Association  
Randy Budge, Bear River Water Users Association  
Carly Burton, PacifiCorp (Utah Power)  
Marcus Gibbs, Last Chance Canal Co.  
Kim Goddard, U.S. Geological Survey  
Allen Harrison, Bear Lake Regional Commission  
Craig Holmgren, Bear River Canal Company  
Golden Keetch, Rancher  
Jim Kimbal, Bear Lake Preservation Advisory Committee  
Lance Kingston, West Cache Canal Company  
Vince Lamarra, ERI  
Eulalie Langford, Love Bear Lake, Inc.  
Dean M. Matthews, Last Chance Canal Company  
Wilford Meek, Riverdale/Preston Irrigation  
Gale C. Moser, Bear River Water Users Association  
Merlin Olsen, Bear Lake Watch  
Craig Pettigrew, Utah Forestry, Fire & State Lands  
Mark L. Rigby, Small Irrigation Association  
Ellis Roberts, Cub River Irrigation  
D. Brent Rose, Bear River Water Users Association  
Mike Rudd, Bear River Canal Company  
Jerry C. Simmonds, Bear River Water Users Association  
Dick Strong, Bear Lake Watch  
David Styer, Bear River Canal Co.  
Lee Summers, Bear River Water Users Association  
Craig Thomas, Bear Lake Regional Commission  
Jim Watterson, Utah/Idaho Small Irrigators Inc.  
Randy Weiner, ELPI  
Regan Wheeler, Cub River Irrigation  
Jerry Wilde, Bear River Canal Co.  
Jody Williams, PacifiCorp (Utah Power)

PROPOSED  
AGENDA

Bear River Commission Regular Meeting  
November 18, 1997

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

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COMMISSION AND ASSOCIATED MEETINGS

November 17

2:00 p.m. Informal Water Quality Work Group, Room 314

November 18

9:00 a.m.	Records Committee Meeting, Room 314	Gilbert
10:00 a.m.	Operations Committee Meeting, Room 314	Francis
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
4:00 p.m.	Potential adjournment time followed by the Bear Lake Preservation Advisory Committee meeting	

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REGULAR COMMISSION MEETING

November 18, 1997

**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<br>(April 29, 1997) | Wheeler                 |
| III. | Report of Secretary/Treasurer                                      | Anderson                |
| IV.  | Ground-water depletion and management                              |                         |
|      | A. Utah's depletions   | Stauffer                |
|      | B. Idaho's depletions  | Anderson                |
|      | C. Ground Water Management in Utah                                 | Morgan                  |
|      | D. Ground Water Management in Idaho                                | Dreher                  |
| V.   | Lower Division Procedures  | Anderson/Fassett/Dreher |
|      | A. Main body of the report   |                         |
|      | B. Appendices A & B  |                         |
|      | C. Appendix C  |                         |
|      | D. Unresolved issues   |                         |
|      | 1. Public notice and hearings on Delivery Schedule                 |                         |

**APPENDIX B**  
**PAGE TWO**

- D. Unresolved issues (cont.)
  - 2. Ground-water depletions
  - 3. Others
- E. Potential Actions
  - 1. Approval of main body of Procedures
  - 2. Approval of Appendices A & B
  - 3. Action on ground-water issue
  - 4. Action on Appendix C
  - 5. Other
- VI. 20-Year Review
  - A. Presentation of draft report
  - B. Action on the draft report
  - C. Implementation of recommendations from the report
    - 1. Are bylaw changes needed
    - 2. Other efforts
- VII. Report on Water Quality Initiatives
- VIII. Report of the Records Committee
  - A. Changes to the Bylaws
  - B. Printing of the Compact and Bylaws
  - C. Biennial report
  - D. Stream gaging records
  - E. Other
- IX. Report of the Operations Committee
  - A. 1997 Water deliveries and water supply
  - B. Bear Lake storage deliveries - allocations to users
  - C. Bear Lake levels and water supply outlook
  - D. Other
- X. Engineer-Manager Report
  - A. NAWQA appropriation
  - B. Oversight hearings by the Senate
  - C. Other Compact organizations
  - D. Items from the TAC
  - E. Other
- XI. Items from the Management Committee
- XII. State Reports
  - A. Utah
  - B. Wyoming
  - C. Idaho
- XIII. Other Items
- XIV. Commission Meetings
  - A. Potential Bylaw change
  - B. Next meeting

**Anticipated adjournment: 4:00 p.m.**

\* Immediately following the Commission meeting, there will be a meeting of the Bear Lake Preservation Advisory Committee



## BEAR RIVER COMMISSION

## STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD OF JULY 1, 1996 TO JUNE 30, 1997

INCOME	CASH ON HAND	OTHER INCOME	FROM STATES	TOTAL REVENUE
Cash Balance 07-1-96	\$84,526.86			\$84,526.86
State of Idaho			\$30,000.00	30,000.00
State of Utah			30,000.00	30,000.00
State of Wyoming			30,000.00	30,000.00
City of Evanston		\$2,000.00		2,000.00
Interest on Savings		\$7,154.82		7,154.82
 TOTAL INCOME TO JUNE 30, 1997	 \$84,526.86	 \$9,154.82	 \$90,000.00	 \$183,681.68

## DEDUCT OPERATING EXPENSES

## EXPENDED THROUGH U. S. G. S.

	APPROVED BUDGET	UNEXPENDED BALANCE	EXPENDITURES TO DATE
Stream Gaging	\$45,400.00	\$0.00	\$45,400.00
SUBTOTAL	\$45,400.00	\$0.00	\$45,400.00

## EXPENDED THROUGH COMMISSION

Personal Services	Jack	\$35,650.00	(\$7,329.78)	\$42,979.78
Travel (Eng-Mgr)		700.00	(191.92)	891.92
Office Expenses		1,100.00	(205.92)	1,305.92
Printing Biennial Report		2,100.00	2,100.00	0.00
Treasurer Bond & Audit		1,190.00	0.00	1,190.00
Printing		1,950.00	109.44	1,840.56
Contingency		5,000.00	5,000.00	0.00
SUBTOTAL		\$47,690.00	(\$518.18)	\$48,208.18

TOTAL	\$93,090.00	(\$518.18)	\$93,608.18
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CASH BALANCE AS OF 06-30-97	\$90,073.50
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APPENDIX C  
PAGE TWO

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING JUNE 30, 1997

420	KEMMERER GAZETTE	\$12.25
421	IDAHO STATE JOURNAL	18.38
422	VOID	0.00
423	THE CITIZEN PUBLISHING CO	23.52
424	JACK BARNETT	5,941.66
425	STAR VALLEY PUBLISHING	20.00
426	JACK BARNETT	25.15
427	BOX ELDER NEWS JOURNAL	18.60
428	UINTA COUNTY HERALD	38.90
429	IDAHO ENTERPRISES	25.80
430	CARIBOU COUNTY SUN	54.00
431	JACK BARNETT	3,934.67
SC	MONTHLY BANK CHARGE	12.00
432	STATE TREASURER	29,000.00
433	JACK BARNETT	3,298.75
434	JACK BARNETT	3,170.00
435	JACK BARNETT	6,943.43
436	GILCHRIST, ETC AUDITORS	1,090.00
437	JACK BARNETT	3,349.01
438	VOID	0.00
439	USGS	45,400.00
440	JACK BARNETT	3,370.10
441	JACK BARNETT	3,088.56
442	JACK BARNETT	2,970.83
443	FIRST SECURITY BANK	100.00
SC	BANKCHARGE	37.00
444	JACK BARNETT	361.53
445	JACK BARNETT	3,285.07
446	JACK BARNETT	7,018.97
	TOTAL OUTLAY	\$122,608.18
	LESS: INVESTED	(29,000.00)
	NET EXPENSES	\$93,608.18

BANK RECONCILIATION

Cash in Bank per Statement 06-30-97	(\$1,557.18)
Plus: Intransit Deposits	0.00
Less: Outstanding Checks	0.00
Total Cash in Bank	(\$1,557.18)
Plus: Savings Account-Utah State Treasurer	91,630.68
TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT	\$90,073.50

BEAR RIVER COMMISSION

STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD OF JULY 1, 1997 TO June 30, 1998

INCOME	CASH ON HAND	OTHER INCOME	FROM STATES	TOTAL REVENUE
Cash Balance 07-1-97	\$90,073.50			\$90,073.50
State of Idaho			\$30,000.00	30,000.00
State of Utah			30,000.00	30,000.00
State of Wyoming			30,000.00	30,000.00
US F&W		\$4,000.00		4,000.00
City of Evanston		\$0.00		0.00
Interest on Savings		\$1,955.78		1,955.78
 TOTAL INCOME TO JUNE 30, 1998	 \$90,073.50	 \$5,955.78	 \$90,000.00	 \$186,029.28

DEDUCT OPERATING EXPENSES

EXPENDED THROUGH U. S. G. S.

	APPROVED BUDGET	UNEXPENDED BALANCE	EXPENDITURES TO DATE
Stream Gaging	\$46,900.00	\$46,900.00	\$0.00
 SUBTOTAL	 \$46,900.00	 \$46,900.00	 \$0.00

EXPENDED THROUGH COMMISSION

Personal Services	Jack	\$36,720.00	\$21,419.70	\$15,300.30
Travel (Eng-Mgr)		1,000.00	802.32	197.68
Office Expenses		1,200.00	867.71	332.29
Printing Biennial Report		500.00	500.00	0.00
Treasurer Bond & Audit		1,200.00	1,200.00	0.00
Printing		1,300.00	1,156.80	143.20
Contingency		5,000.00	5,000.00	0.00
 SUBTOTAL		 \$46,920.00	 \$30,946.53	 \$15,973.47

TOTAL		\$93,820.00	\$77,846.53	\$15,973.47
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CASH BALANCE AS OF 06-30-98				\$170,055.81
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**APPENDIX C**  
**PAGE FOUR**

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING JUNE 30, 1998

447	JACK BARNETT	6,120.12
448	JACK BARNETT	3,399.74
449	JACK BARNETT	3,211.19
451	JACK BARNETT	3,242.42
TOTAL EXPENSES		\$15,973.47

BANK RECONCILIATION

Cash in Bank per Statement 11-03-97	\$15,711.77
Plus: Intransit Deposits	0.00
Less: Outstanding Checks	3,242.42
Total Cash in Bank	\$12,469.35
Plus: Savings Account-Utah State Treasurer	157,586.46
TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT	\$170,055.81

# BEAR RIVER COMMISSION

## INTERIM PROCEDURES FOR LOWER DIVISION WATER DELIVERY

Adopted November 18, 1997

### I. INTRODUCTION

The Amended Bear River Compact makes provision in Article IV for the administration of the waters in the Lower Division of the Bear River at times when the Commission finds that a water emergency exists. More specifically, the Compact provides in Article IV.A.3. as follows:

*When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah, covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division, and during such emergency, water shall be delivered in accordance with such schedules by the State official charged with the administration of public waters.*

These Procedures for Lower Division Water Delivery govern Commission action upon petitions filed pursuant to Article IV.A.3 of the Compact; provide the process to be followed in the declaration of a water emergency in the Lower Division; and describe how the waters in the Lower Division will be administered once a water emergency has been declared. The Procedures also provide direction necessary for the Commission to be prepared to declare a water emergency in dry years, and direction on how water delivery schedules are proposed, adopted and modified.

Prior to adopting these Procedures, the Commission received comment from representatives of the signatory States, and provided public notice and held public hearings in the affected areas within Idaho and Utah.

### II. AUTHORITY

These Procedures are adopted pursuant to Article III.C.1 and Article IV.A.3 of the Amended Bear River Compact approved December 22, 1978, by the Commissioners from Idaho, Utah and Wyoming, and subsequently ratified by the legislatures of the three States and consented to by the U.S. Congress.

### III. DEFINITIONS

The following definitions apply only to the application of these Procedures and are not to be interpreted as definitions for other administration of the Bear River Compact or other procedures adopted by the Bear River Commission.

A. "Commission" means the Bear River Commission organized pursuant to Article III of the Amended Bear River Compact.

B. "Compact" means the Bear River Compact, as amended on December 22, 1978.

C. The term "accounting method" means an interstate river diversion accounting procedure together with appropriate criteria, both approved by the Commission, which when used by either Idaho or Utah will yield similar results for each diversion on the Bear River below Bear Lake.

D. "Direct flow" means all water flowing in a natural water course except water released from storage or imported from a source other than the Bear River watershed.

E. "Engineer-Manager" means an employee or contract employee of the Commission designated to act in accordance with these Procedures.

F. "Groundwater" means any water withdrawn from wells at a rate in excess of 0.10 cfs within the Lower Division.

G. "Lower Division" means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage.

H. "River Commissioner" (not to be confused with members of the Bear River Commission itself) means the duly appointed State official authorized to distribute both direct flow and storage water in accordance with valid rights and storage allocations from Bear River or its tributaries. The term "river commissioner" includes the officials called "watermasters" in the State of Idaho.

I. "State official" means the director of the Idaho Department of Water Resources or a designee, the Utah State Engineer or a designee, and the Wyoming State Engineer or a designee.

J. "Stored water" means water stored in a reservoir in the Lower Division for release for beneficial use at a later time or water that has been released from storage into a natural channel for conveyance to a point of rediversion under the supervision of a river commissioner.

K. "Water delivery schedule" means a list adopted by the Commission of water rights, ordered by priority, and established in accordance with the laws of the respective States without regard to state boundaries and deliverable against junior priority rights.

L. "Water emergency" means any period of time that the Commission has determined in accordance with these Procedures that a water user in Utah, by reason of diversions in Idaho, is being deprived of water to which the water user is justly entitled.

M. "Water user" means a person, corporation or other entity having a right to divert water from the Bear River in the Lower Division for beneficial use.

#### IV. PREPARATION

##### A. General Preparation

The Commission recognizes that if adequate preparation is not made prior to receiving a petition requesting the declaration of a water emergency, then the Commission may not be prepared to respond to the petition in a timely and appropriate manner. In particular, water availability data are required to determine if the declaration of a water emergency is justified. Because storage water is an important component to the river flows in the Lower Division, the proper allocation and accounting of storage water usage is vital to Lower Division water administration.

An accounting method pursuant to approved delivery schedule(s) will be used to account for the delivery of direct flow and stored water in Idaho and Utah. This method will also account for depletions resulting from the diversion of groundwater. The method has been approved by the Commission (see *Appendix B*).

The accounting method must be operational in advance of the declaration of a water emergency for the potential administration by the Commission to be effective. Therefore, Idaho and Utah State officials will maintain computer models in each state consistent with the accounting method so that the method can be utilized by either state and the results submitted to the Commission or its Engineer-Manager within three calendar days after receiving the necessary water availability data in any year that the Commission has determined that a declaration of a water emergency could occur.

##### B. Preparation Procedures

Preparation for potential Lower Division administration requires cooperation by State water resource personnel, river commissioners, PacifiCorp (dba Utah Power) and the water users in gathering necessary water availability data. In any year that the Commission determines that water supply conditions are such that a declaration of a water emergency could occur, the Commission, through its Engineer-Manager, will do the following:

1. The Engineer-Manager will notify the State officials that an emergency declaration could occur. The State officials will in turn immediately notify appropriate river commissioners or other persons or entities responsible for water distribution of the possibility that such a declaration could occur, and such

commissioners or persons or entities shall collect and assemble and distribute to the State officials and the Engineer-Manager the water availability data necessary for the accounting method.

2. The Engineer-Manager will request the Idaho and Utah State officials to confirm to the Engineer-Manager that deliveries from the Bear River will be administered and all tributaries will be administered to the extent appropriate in Idaho and Utah during the upcoming irrigation season. Data on the impact of groundwater depletions on direct flow will be requested by the Engineer-Manager from each state. Any changes to the Procedures or to the delivery schedules based on these data will be made according to Section IX.

3. The Engineer-Manager will request Utah Power to notify the State officials of stored water allocations for the water users holding contracts with Utah Power for use of stored water.

4. The Engineer-Manager will monitor river flow and diversion data to ensure the water availability data necessary for the accounting method is readily accessible in the event a petition requesting the declaration of a water emergency is properly filed with the Commission.

## V. RECEIPT OF PETITIONS

### A. General Filing Provisions

The Commission recognizes that the filing of a petition and any subsequent administration will require considerable effort and have significant impact upon water users. In order to safeguard against the taking of action upon petitions that lack merit, the Commission shall employ the following process for reviewing and acting upon filed petitions. The Commission recognizes its responsibility to act expeditiously on meritorious petitions in order to provide timely administration. The following criteria for filing and reviewing a petition are established to meet these varied objectives.



**B. Minimum Filing Requirements**

In order for a petition to be accepted by the Commission the petition must:

1. be filed on a form provided by the Commission (see *Appendix A* appended to these Procedures);
2. be filed with the Commission at the Commission's office by mail, electronic facsimile or in person, during regular office hours;
3. provide evidence that the water user filing the petition is entitled to the use of water from the Bear River main stem in the State of Utah and stating that he is not receiving water to which he is justly entitled; and
4. provide evidence the petitioner has contacted the State official in Utah, the State official in Utah has contacted the State official in Idaho, and the petitioner has been advised of the administration that is occurring.

**C. Engineer-Manager's Initial Review**

1. Upon receipt of a proper petition, the Engineer-Manager shall review the petition to determine that the criteria and information required by the Commission has been set forth satisfactorily in the petition, and the Engineer-Manager will attempt to verify the information contained therein.
2. Upon determination by the Engineer-Manager that the petition satisfies all of the criteria set forth in this Section V, he shall immediately notify the members of the Commission that the criteria for filing a petition requesting the declaration of a water emergency have been met. If the Engineer-Manager determines that the petition does not satisfy all of the required criteria, the petitioner shall be immediately notified so that corrections or additional information can be supplied. The Engineer-Manager shall make a written recommendation to the Commission regarding Commission action for any properly-filed petition. Within three calendar days of the receipt of a petition, the Engineer-Manager will notify the members of the Commission, State officials and the petitioner of the receipt of the petition and the recommendations made upon the petition.
3. Nothing herein shall be deemed to prevent the Commission, upon its own motion, from declaring a water emergency pursuant to Article IV.B of the Compact. Nevertheless, the Commission shall not declare such an emergency without first notifying State officials and receiving appropriate input from them.
4. Multiple petitions will, to the extent possible, be consolidated and considered together by the Commission.

**VI. COMMISSION ACTION ON PETITIONS**

**A. Convening of Special Commission Meeting**

Upon notice from the Engineer-Manager that a proper petition has been filed with the Commission requesting that a water emergency in the Lower Division be declared, the following procedures shall apply:

1. Within seven calendar days of the initial receipt of the petition from the Engineer-Manager, the Chairman of the Commission will convene a special meeting of the Commission to consider the petition.
2. In the event that the Chairman is unavailable, the Vice-Chairman will have full authority to convene and chair the meeting.
3. The ordinary ten-day notice requirement for Commission meetings provided for in the Commission bylaws is hereby deemed waived by the Commission members, in accordance with the bylaw provisions, for the purpose of acting upon petitions regarding water emergency declarations.
4. The required quorum to take action on a petition will be as set forth in Article III.A of the Compact. In order to expedite the consideration of a petition, the Commission meeting may be conducted via telephone conference.
5. At least a two-thirds majority vote by Commission members present is required for the Commission to take action on a petition.
6. If feasible under the circumstances, the petitioner and State officials may be invited to be at the meeting on the petition and present any additional appropriate information.

**B. Actions of the Commission on Petitions to Declare a Water Emergency**

The following actions may be taken by the Commission, once convened, to review a petition requesting the declaration of a water emergency:

1. The Commission may declare the existence of a water emergency in the Lower Division pursuant to Article IV.A.3 of the Compact upon a determination that the petitioner is being deprived of water to which the water user is justly entitled because of diversions in Idaho. If a water emergency is declared, the Commission will direct the Engineer-Manager to monitor water administration by the State officials in the Lower Division under the adopted delivery schedules, as well as provide any appropriate instructions to the Engineer-Manager specific to the administration under the declared water emergency.

2. The Commission may determine the petitioner has provided insufficient evidence to support the request for declaration of a water emergency and, therefore, notify the petitioner that the Commission will not take action without further documentation.

3. The Commission may determine that, through no fault of the petitioner, insufficient information is available to the Commission to make a full determination on the petition. The Commission may direct the Commission staff, or request State officials, to gather the additional information required. The Commission shall set a time to reconvene its consideration of the petition.

4. The Commission may deny the petition upon a determination a water emergency in the Lower Division, as provided for in the Compact, does not exist because it has not been established to the satisfaction of the Commission that the petitioner is being deprived of water to which the petitioner is justly entitled because of diversions in Idaho.

5. The petitioner will be notified in writing of action relating to the petition within three calendar days of the Commission's action. Notification will be by certified mail to the address of record on the petition. The Commission will also provide public notice of the Commission's action.

6. Action of the Commission on a petition for declaration of a water emergency may be subject to a request for reconsideration by the Commission from a State official or an aggrieved water user. Requests for reconsideration must be received in the Commission office within seven calendar days of the Commission's actions. Following the receipt of a request for reconsideration, the Engineer-Manager will advise the Chairman and the Chairman will schedule a meeting within seven calendar days of the date of the request for reconsideration. At the meeting, the Commission may hear from the petitioner, State officials, or affected water users present and then will expeditiously render its opinion with respect to the request for reconsideration. Within three calendar days, all participating parties will be notified in writing of the Commission's decision.

**C. Termination or Modification of Water Emergency Declaration**

An affected water user or State official may provide information to the Commission to support termination or modification of the water emergency declaration. Based on such information, an affected water user may file a written request with the Commission to terminate or modify the water emergency declaration and the Commission will act in substantial accordance with the time lines and procedures set forth under Section A and B above. The Commission can also terminate or modify the declaration of a water emergency on its own volition. Unless terminated sooner or extended by the Commission, water emergencies shall terminate on September 30<sup>th</sup> of each year.

## VII. RIVER ADMINISTRATION

Upon the declaration of a water emergency, the Idaho and Utah State officials through the river commissioners will share, on at least a weekly basis, all available stream flow and diversion measurements necessary for administration of river flows by the Commission pursuant to approved delivery schedule(s). The accounting and administration will be performed as often as reasonably feasible and necessary throughout the irrigation season given the availability of the necessary stream flow and diversion measurement data, as well as information about impacts from diverted groundwater. The river commissioners will, under the supervision of the responsible State officials, adjust diversions in their respective States to deliver all direct flow rights on the Commission adopted delivery schedule according to priority of right, without regard to state line, and also deliver all stored water in accordance with the allocations certified by Utah Power, with accounting made for depletions in the flow of the Bear River resulting from groundwater use. A report showing water delivery without regard to state line in accordance with approved water delivery schedule(s) shall be sent each week by State officials from both Idaho and Utah to the Engineer-Manager for review. If the review suggests that delivery is not occurring correctly, the Engineer-Manager shall promptly notify the appropriate State official who shall direct the river commissioner to deliver in accordance with the adopted water delivery schedule.

## VIII. WATER DELIVERY SCHEDULES

### A. General Provisions

The Commission will adopt one or more water delivery schedules as provided in Article IV.D of the Compact. Water delivery schedule(s) are appended to these Procedures as included in *Appendix C*.

### B. Modifications to Accounting Method or Water Delivery Schedules

Modifications to the accounting method, the existing water delivery schedules, or the adoption of additional new water delivery schedules, will occur as follows:

1. The addition of water delivery schedules or the modification of adopted schedules or of the accounting method will be in accordance with the provisions of Section IX of these Procedures.
2. The accounting method and adopted delivery schedules will remain valid and in force until formally amended by the Commission.
3. An exception shall exist for minor modifications to the accounting method or a water delivery schedule which will not materially affect the accounting method or the water delivery schedule and may occur as follows:

- a. all minor modifications to the accounting method or a water delivery schedule must be reviewed by the Operations Committee at a special or regular meeting;
- b. the notice and hearing requirements for amending the accounting method or a water delivery schedule as provided under Section IX of these Procedures shall not apply;
- c. if the Operations Committee finds the proposed modifications are minor and will not alter the intent of the accounting method or delivery schedule, and will not materially affect water users, then by unanimous vote of the Operations Committee the accounting method or delivery schedule will be modified; and
- d. if there is not a unanimous vote of the Operations Committee, then the modifications shall not be approved until they have been formally adopted by the Commission as provided for in Section IX of these Procedures.

## **IX. AMENDMENTS TO THESE PROCEDURES OR TO THE DELIVERY SCHEDULES**

### **A. General**

Upon adoption, these Procedures will remain in force until modified or rescinded by the Commission. Copies of the Procedures, then in effect, will be kept on file with the Commission, and with the signatory States, for public inspection.

### **B. Amendment Procedure**

It is anticipated that amendments and additions to these Procedures, and to the delivery schedules, will be required as experience is gained in administering the Lower Division diversions. The following procedures apply when making such amendments:

1. The Commission will cause one of its standing committees to review proposed changes to these Procedures, or the delivery schedules, and to present recommendations thereon to the Commission. The Commission may, after any necessary review, discussion, investigation and notice, vote to adopt the changes as "proposed amendments" in accordance with the Commission's Bylaws.
2. Once "proposed amendments" have been accepted by the Commission, the Commission will provide public notice as follows:
  - a. Notice of the "proposed amendments" will be posted in the courthouses for each county in Idaho (Franklin, Caribou, Oneida and Bear

Lake), Utah (Box Elder, Rich, and Cache), and Wyoming (Lincoln and Uinta).

b. The Commission will advertise in papers of general circulation, for two consecutive weeks, its intention to hold public hearings on the proposed amendments.

c. The Commission will notify the State officials, and the river commissioners in Idaho, Utah, and Wyoming, of the Commission's intent to amend these Procedures or the water delivery schedules.

d. Additional public notice may be given as the Commission deems appropriate.

e. The public notice, in general, will describe the "proposed amendments," the time and place for public hearing, and invite public input.

3. At least two public hearings in the Lower Division, one in Idaho and one in Utah, will be conducted as follows:

a. The hearings will be held by the Commission and conducted by the Chairman, Vice Chairman or designee as directed by the Commission.

b. The hearings will allow an opportunity for all present to comment on the "proposed amendments."

c. The record will remain open for fourteen calendar days following the last hearing to provide additional time for written comment.

d. A summary of the written comments and testimony received will be made under the direction of the Commission.

4. Subsequent to the hearings and receipt of public comment and after a ten-day notice to its members, as provided for under the Bylaws, the Commission will reconvene to act in whole or in part upon the "proposed amendments." Action of the Commission will be in accordance with the Commission's Bylaws.

\*\*\*\*\*

APPENDIX A

BEFORE THE BEAR RIVER COMMISSION

PETITION REQUESTING  
DECLARATION OF A WATER EMERGENCY  
IN THE LOWER DIVISION

Adopted November 18, 1997

1. Name of Petitioner\_\_\_\_\_Date\_\_\_\_\_  
Address\_\_\_\_\_  
Home Phone\_\_\_\_\_ Work Phone\_\_\_\_\_
2. Water Right Information:  
By Owner\_\_\_\_\_  
By State Water Right Number\_\_\_\_\_
3. If owner of the claimed water right is different than in the Water Delivery Schedule(s), describe your interest in the water right; and, if necessary, provide documentation attached to this petition confirming your interest.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Describe the amount of water you believe you are entitled to and are now being deprived of its use.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. State the beneficial use(s) to which you would place the water.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Describe the amount of water you are currently receiving and the beneficial use(s) to which you are currently using the water.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. If you can, indicate what portion of your current water supply is natural flow and what portion is storage water.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
8. If you are a contract holder for storage water in Bear Lake, identify the contract and its status including amount of water received this year and last year.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
9. If your use or supply has been restricted, describe what you have done to determine that such restriction has not been due to junior diversions in Utah.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
10. State the reasons which bring you to the conclusion that you are being deprived of water to which you are entitled because of diversion in Idaho.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
11. Identify, if you can, the diversions in Idaho you believe are depriving you of water.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
12. Give any additional information you have that you believe will assist the Commission in evaluating this petition and your allegations.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

I represent that the above information is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Signature and Title of Petitioner

**IF SIGNED BY PERSON OTHER THAN PETITIONER, THIS PETITION MUST  
BE ACCOMPANIED BY A SIGNED AND NOTARIZED POWER OF ATTORNEY**

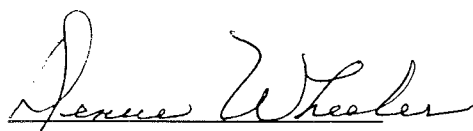


## RESOLUTION OF THE BEAR RIVER COMMISSION

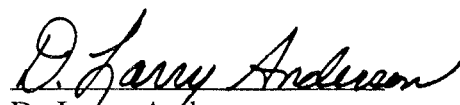
The Bear River Commission, on this 18th day of November, 1997, enters into this resolution concerning the required Compact twenty-year review as to the need for revision of the Bear River Compact as Amended. A year and a half ago, the Commission directed the review process, as required under Article XIV of the Compact, be commenced. Public hearings (4) were held, a special Commission committee reported its findings, the Management Committee reviewed comments received and the authorities identified within the Compact. The Management Committee gave guidance to the Engineer-Manager asking him to seek advice from the Technical Advisory Committee (TAC) and to prepare a draft report. The report findings are accepted by the Commission and the report is being finalized. The Commission hereby finds:

- 1) that there is no present need to amend the Compact
- 2) that the Commission shall create a Water Quality Committee, and
- 3) that the Commission shall add public involvement to the function of the Records Committee.

The Commission finds that it has appropriately conducted and completed the required Compact review.

  
Denise Wheeler  
Federal Chair

12-3-97  
Date

  
D. Larry Anderson  
BRC Secretary/Treasurer

12-15-97  
Date

Amendment to the:

## BYLAWS OF THE BEAR RIVER COMMISSION

At its regularly scheduled meeting on November 18, 1997, the Bear River Commission, upon proper notice of its intention to modify a portion of Article V of its Bylaws, and upon unanimous vote of a quorum of Commissioners present, amended Article V, paragraphs 1 and 3, of its Bylaws as follows:

1. There shall be the following standing committees:

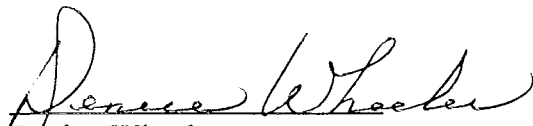
Management Committee  
Operations Committee  
Records & Public Involvement Committee  
Water Quality Committee

2. No change

3. Members of the Management, Operations, and Records & Public Involvement Committees shall be Commission members. The number of members on each committee shall be determined by the Commission. Each State shall designate the members and/or advisers on each committee representing such State. In all committee action the votes shall be taken by States, with each State having one vote.

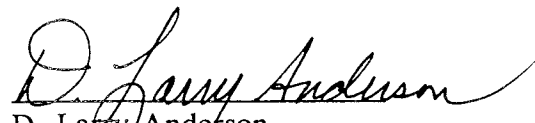
4. The Water Quality Committee will be composed of at least three members who have been designated by each of the three states' Director of Environmental Quality, or its equivalent, as being the lead water quality administrator from that agency to represent the state and serve on the committee. These designated members of the Water Quality Committee need not be members of the Commission. Other members or advisors to the Water Quality Committee may be determined by the Commission and designated by each state. In all committee action the votes shall be taken by States, with each State having one vote.

(paragraphs 4, 5, 6 and 7 of the original bylaws shall be renumbered to be 5, 6, 7 and 8)

  
Denise Wheeler  
Federal Chair

11-18-97

Date

  
D. Larry Anderson  
BRC Secretary/Treasurer

11-18-97

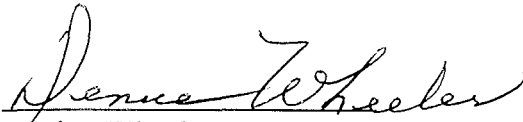
Date

Amendment to the:

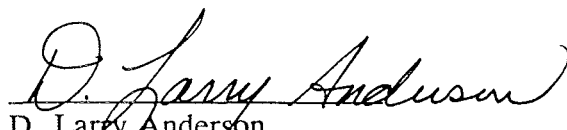
## BYLAWS OF THE BEAR RIVER COMMISSION

At its regularly scheduled meeting on November 18, 1997, the Bear River Commission, upon proper notice of its intention to modify portions of Article IV of its Bylaws, and upon unanimous vote of a quorum of Commissioners present, amended Article IV, paragraphs 1 and 2, of its Bylaws as follows:

1. The annual meeting of the Commission shall be held on the third Tuesday of April of each year unless otherwise designated by the Commission.
2. The Commission shall hold a regular meeting during the month of November on the Tuesday of the week preceeding the week of Thanksgiving each year unless otherwise designated by the Commission.

  
Denice Wheeler  
Federal Chair

11-18-97  
Date

  
D. Larry Anderson  
BRC Secretary/Treasurer

11-18-97  
Date

## SUMMARY OF BEAR LAKE/BEAR RIVER OPERATION 1997 WATER YEAR

### BEAR LAKE

HIGH ELEVATION 1997	5922.54	(July 9)
LOW ELEVATION 1996	5915.22	(Oct. 1)
CURRENT ELEVATION 1997	5920.0	(Nov. 15)
CURRENT STORAGE VOLUME (ACTIVE)	1,165,000	AF
REMAINING STORAGE SPACE	249,000	AF

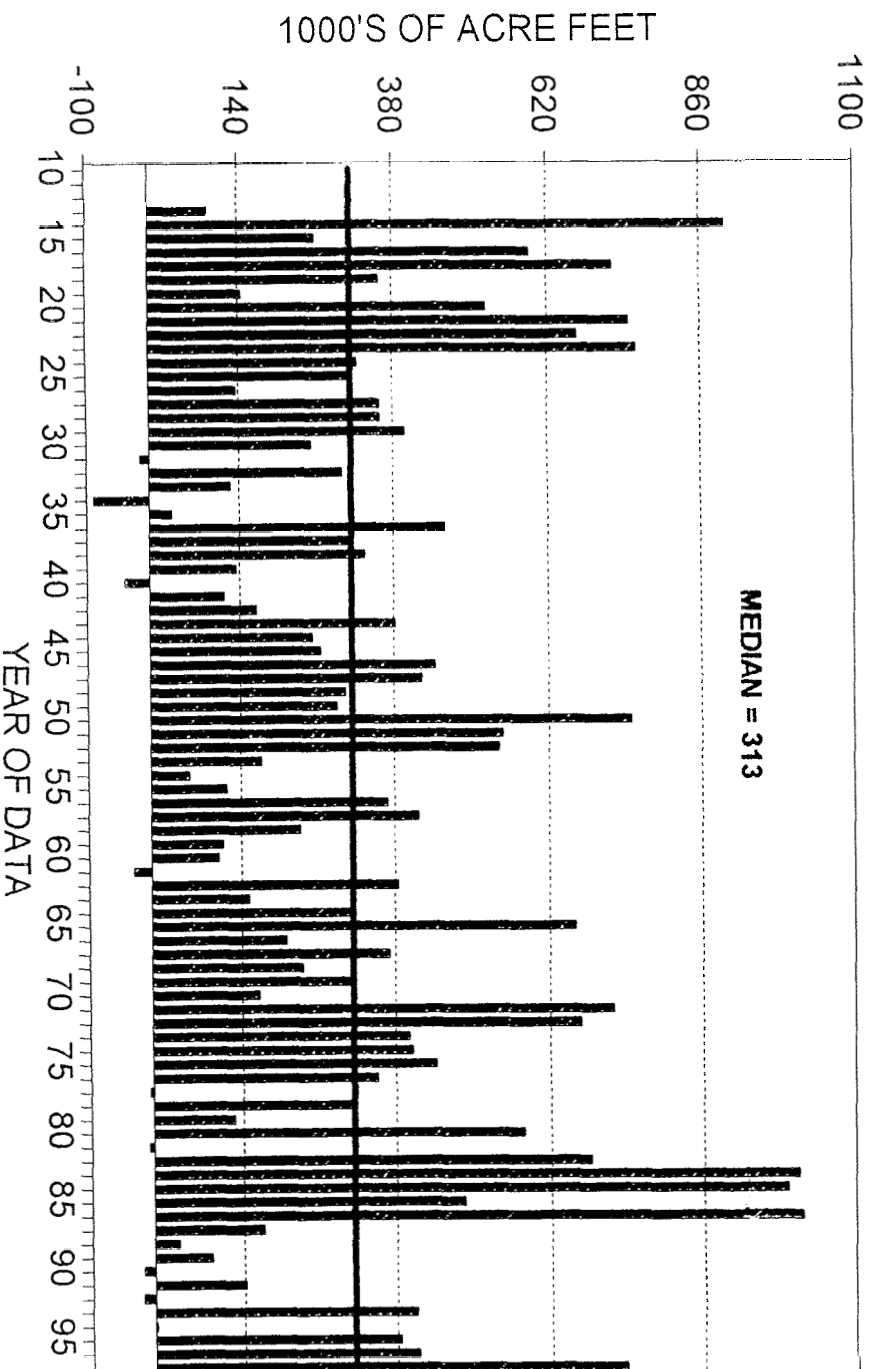
### BEAR RIVER (WATER YEAR 1997)

RAINBOW INLET CANAL	527,000	AF	(200%)
OUTLET CANAL	318,000	AF	(109%)
BELOW CUTLER	1,641,000	AF	(149%)

### CURRENT ISSUES

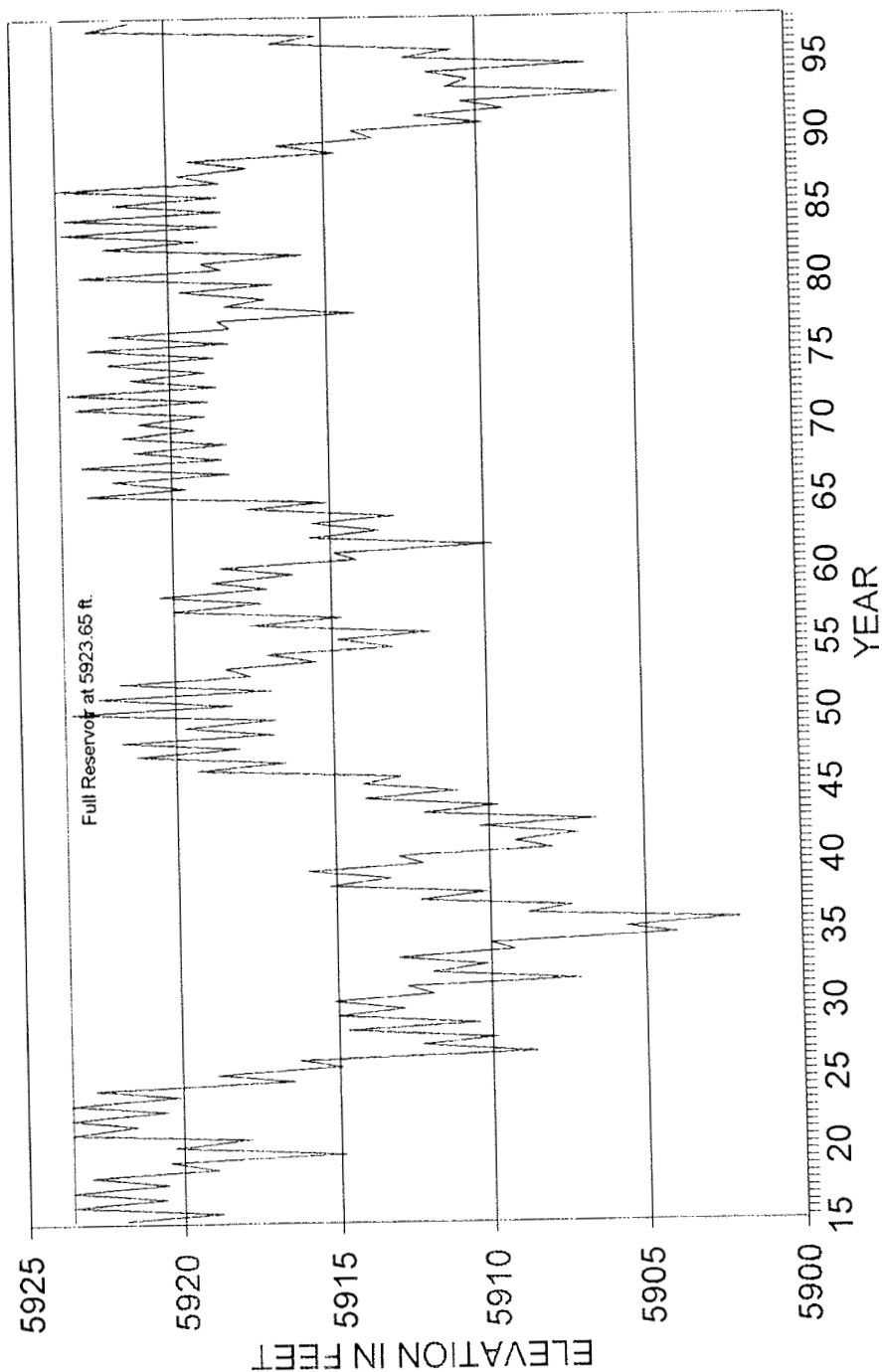
1. REQUEST TO CANCEL DREDGING PERMIT
2. FLOOD CONTROL OPERATION
3. FERC RELICENSING EFFORTS

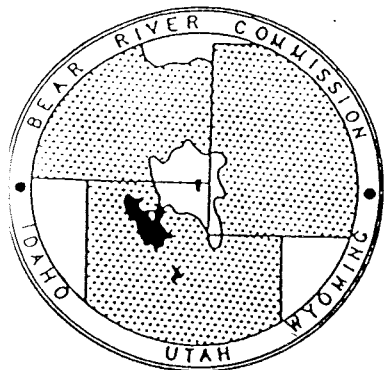
# BEAR LAKE NET RUNOFF FROM 1913 - 1997



# BEAR LAKE ELEVATION

FROM 1916 TO 1997





# BEAR RIVER COMMISSION

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

November 18, 1997

Western Water Policy Review Advisory Commission  
P.O. Box 25007  
Building 56, Room 1017  
Denver Federal Center  
Denver, CO 80225

Re: Bear River Commission Response to WWPRAC Report

To Whom It May Concern:

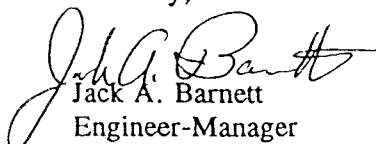
The Bear River Commission thanks the Western Water Policy Review Advisory Commission (WWPRAC) for the opportunity to comment on the draft report. The Bear River Commission was created by the Bear River Compact in 1958. The compacting process, as allowed by the Constitution, provides for the formal approval of a compact by the three states, Idaho, Wyoming and Utah and by the federal government. This process was successfully completed about 40 years ago after years of negotiations. The Commission is composed of nine state appointed officials and is chaired by a Federal Chair appointed by the President. The Commission is the only basin-wide water resource organization in the Bear River Basin. The Commission instructed that this letter be sent to advise the WWPRAC that the creation of a federally created new governance in the Bear River Basin is not needed, would not be welcomed, and would be redundant as suggested in the draft report.

The Bear River Basin could be used as an outstanding example of an interstate stream where many local entities and three states have been able to manage a river and work out accords with minimal federal involvement. Today the Commission is creating a Water Quality Committee to provide for the tri-state coordination of water quality programs. Steps are also being taken to foster appropriate new basin-wide dialogue and to reach out to the citizens and provide a forum for the stakeholders in the Basin to discuss water issues.

The Commission strongly suggests that the recommendation of a basin-wide, federally-initiated governance be dropped from the report.

Again, the Commission thanks the WWPRAC for this opportunity to comment.

Sincerely,

  
Jack A. Barnett  
Engineer-Manager

## COMMISSION MEMBERS

### Chair

Denise 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