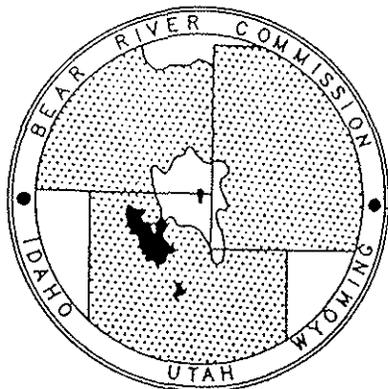


BEAR RIVER COMMISSION

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



MINUTES

BEAR RIVER COMMISSION REGULAR MEETING NINETY-EIGHTH COMMISSION MEETING

Utah Department of Natural Resources
Salt Lake City, Utah
November 13, 2001

COMMISSION MEMBERS

Chair

Dee C. Hansen

Idaho Members

Karl J. Dreher
Rodney Wallentine
Dean M. Mathews

Utah Members

D. Larry Anderson
Blair Francis
Charles W. Holmgren

Wyoming Members

Patrick T. Tyrrell
James Crompton
John A. Teichert

ENGINEER-MANAGER

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

The Regular Meeting of the Bear River Commission was called to order by Chair Denice Wheeler at 1:30 p.m. on Tuesday, November 13, 2001 at the Utah Department of Natural Resources Building in Salt Lake City, Utah. This was the ninety-eighth meeting of the Commission. Chair Wheeler welcomed everyone to the Commission meeting. A list of those in attendance at the meeting is attached as Appendix A. Chair Wheeler reported that a former Commissioner, Reed Dayton, passed away on October 3, 2001.

Chair Wheeler presented the agenda for the meeting. It was moved that the agenda be approved. The motion was seconded and carried. A copy of the approved agenda is attached as Appendix B. The Commission then considered the proposed minutes from the Annual Meeting of the Commission held on April 17, 2001 in Salt Lake City and the minutes of a special Commission meeting held on August 13, 2001 in Evanston, Wyoming. There were no changes to the minutes. There was a motion to accept both minutes and the motion was seconded and carried.

The Commission moved to agenda item IV, the report of the Secretary-Treasurer. Larry Anderson asked Randy Staker to summarize the Commission's financial status. Staker distributed copies of two Statements of Income and Expenditures and reviewed the sheets with the Commission. Copies of Staker's handouts are included as Appendix C. There were no questions for Staker. Anderson pointed out that some items had been added to the Statement of Income and Expenditures sheet following the morning Management Committee meeting. An income item has been added for the EPA grant. This income will cover some of the costs associated with the grant. Anderson then discussed the Commission's budget and reviewed the information found on page five of Appendix C. He indicated that the state assessments have been \$30,000 for at least fourteen years. Some surplus funds were acquired during this time and by careful use of those funds and by modifying the stream gaging program, the Commission has not had to increase the state assessment. Anderson recommended that the Commission approve a dues increase to the amount of \$35,000 per state beginning in FY 2003. The motion was seconded and carried.

Commissioner Tyrrell asked Anderson how long he feels the \$35,000 dues will be sufficient. Anderson indicated that he projected the dues would be sufficient to the year 2007 and possibly by that time the Commission will have unexpended funds in the amount of about \$50,000. Last year the Commission ended the year with \$85,000 in unexpended funds. Tyrrell asked if the interest on savings comes from the floating unexpended cash balance or if there were other accounts and Randy Staker indicated that the Commission only has the one account. There were no further questions regarding the Secretary-Treasurer report. There was a motion to accept this report and the motion was seconded and carried.

The Commission's attention was then turned to agenda item IV, a presentation by the Bear Lake Regional Commission (BLRC). Craig Thomas indicated that the BLRC was very appreciative of their partnership with the Bear River Commission. Good progress has been made in informing the public of water quantity and water quality issues concerning Bear Lake. The BLRC has discussed for several months the issue of the drought conditions and the BLRC is officially supporting additional storage on the Bear River system. They see it as beneficial both to water quality and water management in relationship to Bear Lake. The BLRC requests that the Bear River Commission continue to support and be involved with the issue of additional storage on the Bear River system. Thomas then indicated that cloud seeding is becoming more prevalent in the Bear Lake area. The BLRC feels that it would be much more effective and appropriate if there was some basinwide coordination of cloud seeding efforts. Commissioners then discussed the cloud seeding efforts in the three states and the issue of additional storage.

Chair Wheeler then asked Kelly Holt to give the PacifiCorp report under agenda item V. Holt distributed a summary sheet and reviewed the information. A copy of the summary sheet is attached as Appendix D. Blair Francis asked what the lake elevation will be if there is a repeat of last year's irrigation allocation. Holt indicated that he assumes that the lake elevation will drop another 4'. Commissioner Holmgren indicated that some have a concern that PacifiCorp has a hidden formula for making the allocations. Holt stated that PacifiCorp has 30 years' worth of experience and looks at historic numbers. PacifiCorp has the spring runoff fill target elevation of 5918 and they feel somewhat comfortable with this level to protect downstream property owners from flooding.

The time was turned to Jack Kolkman to report on the dredging permit status. Kolkman indicated that the Corps of Engineers is processing PacifiCorp's application for a 10-year permit. PacifiCorp is currently conducting an assessment of the issues and concerns developed from the Corps of Engineers, the State of Idaho's public meeting and also upon the written comments received. The issues and concerns are in three broad areas; 1) dredging, 2) lake level impacts and 3) alternatives. The issues and concerns are being considered under a baseline analysis of 5908-5904 baseline that looks at the impacts associated with the 4' and the change in the lake and the cumulative effects. They have discovered there is a one-year impact. A 4' change in elevation would create an additional 2764 acres of beach and a reduction of about 3.9% of the surface area of the lake. The 4' vertical drop yields about 228,000 acre-feet or 16% of the active storage capacity of the lake, or 3.5% of the total capacity of the lake. PacifiCorp will furnish its assessment of these impacts by January 5, 2002 to the Corps of Engineers. The Corps indicated that they would need 30-45 days to review PacifiCorp's assessment and to make a decision. The State of Idaho Department of Lands will coordinate their 3-year permit with the Corps of Engineers' permit.

Larry Anderson asked Kolkman about PacifiCorp's soundings of the sandbar during the summer. Kolkman stated that the elevation was 5908 at the shallowest point (about 450' out from the plant and running about 350'). It dropped off to 5907 for about 1000'. The dredging permit is not for the full width of the sandbar. The channel needs to have a width of about 50' to 60'. Anderson asked, assuming that PacifiCorp has to deliver water next year at the rate of 1400 cfs, how much water is needed over the sandbar to deliver 1400 cfs. Kolkman indicated that 2' is needed. With a shorter constructed channel in place, they wouldn't

need as much as 2' over the entire bar. PacifiCorp feels that if they have to go down to 5908 without the dredging permit they will end up drawing water and pumping it. Then they will have to let more water flow over the sandbar and then start the pump again. Somewhere around the elevation of 5910 the sandbar also is going to have an impact on the quantity of water that can be delivered downstream.

Jody Williams then was asked to report on the FERC relicensing. Williams reported that PacifiCorp is in Stage Three (the final stage) and has been in that stage for a few years. The license application was submitted a few years ago for the Soda, Grace Cove and Oneida Projects. Cutler has already been relicensed. Stage Three means that there are requests for additional information from FERC. PacifiCorp has been responding to those requests and a draft EIS is prepared. FERC has a consultant working on the draft EIS now. PacifiCorp has set forth on a new initiative to try and resolve the unresolved issues so that the new licenses can be issued in a timely manner. PacifiCorp met last week with state and federal agencies to begin discussions on resolution of the issues. Specifically, they are talking about flows in the Bear River at these hydroplants and they are proposing a Bonneville Cutthroat Trout restoration plan and a water quality mitigation plan. If the talks with the agencies are successful, it could result in an amended license application or agreements which will be reflected in the draft EIS. There will be ample opportunity for the public and interested groups to comment.

Chair Wheeler asked Williams to clarify the difference between jurisdiction over and relicensing, particularly as it refers to Bear Lake. Williams stated that FERC has jurisdiction over the hydroelectric projects because of the Federal Power Act of 1920. These projects must be licensed by the Federal Energy Regulatory Commission (FERC). PacifiCorp has contended that Bear Lake is not a part of the hydroelectric projects and should not be licensed. Other entities and groups have contended that Bear Lake is beneficial to hydroelectric plant operation and, therefore, should either be included in the relicense applications or should have its own jurisdictional license. PacifiCorp has contended that the operation of Bear Lake is a separate issue and that this contention is consistent with the October 5, 1999 agreement and the April 18, 2000 agreement which PacifiCorp entered into affirming historical practices with the three Bear River Commission states.

Williams then reported that FERC commenced a review to determine whether it should exercise jurisdiction over Bear Lake in October of 1996. In February of 1998, FERC issued an order finding that licensing of Bear Lake was not required because Bear Lake was not part of a unit of the hydropower development and that the lake does not provide generation benefits on the hydroelectric projects. A determination to this effect was made on the basis of a FERC staff analysis of generation for the years 1992-1996. After this determination was made, there were many requests for reconsideration and rehearing and there were many interventions and requests for additional information from FERC. Many environmental groups intervened and the three Bear River Commission states, through their Attorneys General, intervened and requested that FERC not exercise jurisdiction over Bear Lake because it would violate the Bear River Compact and would violate the two agreements. Last summer FERC requested additional information from Utah and Idaho and from PacifiCorp specifically relating to flows and irrigation diversions. On November 8, 2001, FERC issued an order affirming its previous finding that there was no jurisdiction over Bear Lake. This time it looked at a longer period. The supplemental review period was 13 years from 1986 to 1998. It looked at the regulated operations of Bear Lake as opposed to what would happen if Bear Lake was not regulated. It determined that annually there was about a 10% decrease in generation from the way Bear Lake is operated, i.e., under regulation than if it were not regulated. Williams then quoted from the order the following: "The record does not support a conclusion that Bear Lake has a significant beneficial impact on generation; quite the opposite. Bear Lake is therefore not part of a complete unit of development, and is not required to be licensed." A copy of the FERC order is attached as Appendix E.

Commissioner Anderson asked PacifiCorp when the pumps start to be affected by the level of Bear Lake and pointed out that PacifiCorp is projecting the lake level to reach 5914.5 this winter if there is 125% of average precipitation. If the pumps start to be affected at 5910 (2' above the sandbar) and if the elevation going into next year's irrigation season reaches 5914, then PacifiCorp would be providing an irrigation supply of 229,000 af which would draw the lake down 4'. This would bring the lake down to a level where flows would be affected. Burton indicated that if 2002 is an average runoff year, the likelihood of 230,000 or 220,000 af being requested by water users is pretty remote. In an average year, historically, the demand on storage is more like 100,000 af of actual storage release for irrigation. Last year, 245,000 af was delivered. Holt stated that if the precipitation is the same as this past year, PacifiCorp will definitely have to dredge. If it is an average year, it will be really close. Burton commented that PacifiCorp will not take any chances. It will try to get the dredging permit ahead of the time when irrigation begins. If there is any doubt in the numbers, the dredging will occur.

Chair Wheeler then moved to agenda item VI, the report of the Operations Committee. Commissioner Francis reported that the committee discussed several items in the committee meeting. They discussed the ground water consumption study in the four sub-basins in Idaho and in the Cache Valley in Utah to quantify the ground water consumption. The summary shows that the loss is a little more than 8 second-feet. The Technical Advisory Committee (TAC) presented the situation to the Operations Committee that perhaps the two states should combine their totals and put it into one report. The TAC is seeking guidance from the Commission as to whether to take the technical information generated as to depletions from the two states, analyze that and then come forward to the Commission with a report of its findings. The report would be in Commissioners' hands well in advance of the April Commission meeting. Secondly, the TAC would like some guidance as to whether the Commission wants the TAC to start making an analysis of how the Commission might modify the Interim Procedures for the Lower Division to implement the offset required of the ground water in a water emergency. Following a preliminary motion, a second and a discussion, a revised motion was made that the TAC be instructed to look at the findings of the two states relating to ground water depletion, validate those findings and write a TAC report to the Commission stating that the findings are scientifically sound. Jack Barnett stated that the TAC might append the state reports to a short TAC report. The motion was carried.

Francis indicated that at some point this report will be implemented in the Lower Division Procedures. Karl Dreher asked who was going to develop the alternatives. Is this an appropriate role for the TAC, should the Management Committee do it or should the Operations Committee do it? Barnett stated that he felt it would be helpful if the TAC, in the interim, explored options that would generate discussion and exploration of ideas by the Commission. The TAC wouldn't come to the April Commission meeting with recommendations but simply alternatives to be considered to move the discussion ahead. Barnett reviewed what the TAC has found. The depletions in Utah and Idaho are about equal and the Cache Valley has been investigated by both Utah and Idaho. The Idaho investigation above Cache Valley broke the Basin into three areas and determined depletions in those three areas. The accounting model can accommodate input from those four geographic areas. The TAC knows as much as it needs to know to begin brainstorming alternatives. Dreher pointed out that if the depletions are only 3 cfs, no one can measure that in the river. It would be a waste of time to come up with an elaborate procedure as to how the Commission will administer 3 cfs that can't be found. This is a policy issue for each of the states. Dreher stated he prefers to see the consolidated report before the April meeting and perhaps have the Management Committee have a conference call. It was determined that the TAC will not suggest alternatives until the Management Committee has a conference call.

Francis concluded the report of the Operations Committee by indicating that the committee had discussed water emergencies and water deliveries. There were no requests for a water emergency in the

Upper Division. There was an early water emergency in the Central Division due to the small amount of water that was passing Pixley. Woodruff Narrows did not perform like it usually does. In the Lower Division, there was no emergency during the season. Two mock emergencies were called and in the process one canal was questioned as to its deliveries. The mock emergencies were a good exercise to go through. With regard to distribution issues, at the April 2001 meeting of the Operations Committee there was a discrepancy in Idaho reports on some gages in a prior year. Hal Anderson indicated to the committee that a report will be sent shortly on this issue. There were no questions for Commissioner Francis.

The time was then turned to Don Ostler for the Water Quality Committee report. Ostler reported that the committee met on October 30 and the coordination of developing plans to reduce pollution loading in the Bear River Basin was discussed. The discussion focused largely on the EPA grant fund that was received by the Commission in the amount of \$30,000. The scope of work was discussed with regard to the grant money. The contents of a Request for Proposals (RFP) was developed and the three states reached a verbal agreement on the basic scope of work and the content of an RFP. The committee requests that the Commission authorize the committee to release the RFP, to conduct the work and to select a contractor. The basic nature of the grant money is to help facilitate the coordination and implementation of water quality management plans on the Bear River. It includes tracking the progress of TMDL's (pollution reduction plans), identifying all the pollutants, standards and sources and the management practices that will be implemented. The contractor would spend time tracking implementation and sharing information. Barnett indicated that he needed to check with the EPA as to the requirements on how the Commission should go about this process. The Water Quality Committee has given him six suggested potential contractors to invite to submit proposals. It is hoped that the contractor would begin the first part of 2002. There was a motion that the Water Quality Committee be authorized to issue an RFP, select a contractor to help develop consistent TMDL's in the three states, measure implementation success and disseminate the results. The motion was seconded and carried.

Chair Wheeler moved to agenda item VIII, the report of the Records & Public Involvement Committee. Commissioner Teichert reported that the committee met during the morning and discussed the ability of the Commission to increase the material on the website and whether at least portions of the Kimball and Dietrich Decrees could be available on the website. Last summer's tour was discussed and it was felt that the tour was successful and educational. A possible 2002 tour/symposium was discussed. The Bear Lake study was discussed, as well as the portion of the river that hasn't been visited, from the Border gage station to the Rainbow Inlet Canal. There could also be a trip around the lake. The LACS group could be contacted. Nothing specific was decided on by the committee. They discussed the possibility of doing a tour/symposium biennially instead of every year. A final decision on whether to hold a tour/symposium in 2002 was left until the April committee meeting but Jack Barnett and Craig Thomas will tentatively work on this and report back to the committee in April. Teichert further reported that the committee discussed the biennial report. All of the material needed has not yet been received but it is expected by early January. A draft report of the 2001 chapter should be ready by April 2002. The committee talked about the preservation of land use data of the irrigated acres in the Basin and expect a report from Hal Anderson in the spring. The committee discussed the Pescadero gaging station and it was decided that it would be a Commission co-op station throughout the coming year, after which it will be a USGS co-op gage. There were no questions for Commissioner Teichert.

The time was turned to Jack Barnett for the Engineer-Manager and TAC reports. Barnett reported that as a follow-up to Commissioner Teichert's report on the desire to see if the Commission can reassemble the computer information on the depletions that were occurring in the past, the TAC will meet and discuss this after Utah and Wyoming have had a chance to investigate the issue. There are evolving computer capabilities and we can't ever think that what is in a computer, on a disk or a tape is good forever. The TAC

will also work on the ground water report as assigned. Barnett reported that the 2001 tour was a cooperative effort and Chair Wheeler was very helpful. The sponsors of the tour were, in addition to the Bear River Commission, the Bear Lake Regional Commission, the Bear River Water Users Association, the Evanston Lodging Tax Board, Forsgren & Associates, PacifiCorp, Wheeler Enterprises and the Wyoming Water Association. As a last item, Barnett reported on the request to have listed as threatened or endangered the Bonneville Cutthroat Trout. The Fish & Wildlife Service has gone through its prescribed investigative efforts and it has most recently concluded that the Cutthroat Trout should not be listed as either threatened or endangered. This was due, in part, to the good efforts of the states to look at ways to promote the Cutthroat Trout. There is a website where an individual can learn more about the Cutthroat Trout issue and that website is: <http://www.rb.fws.gov/endspp/fish/bct>. There were no questions for Barnett.

The Commission moved to agenda item X, items from the Management Committee. Commissioner Tyrrell indicated that the Management Committee reviewed the issues delaying the biennial report. The committee will be working with the Engineer-Manager to remove the log jam in some of the state report language. It is expected that the biennial report will be sent out sometime in January. All other items that the Management Committee discussed in their meeting have already been reported in other discussions during the Commission meeting. There were no questions for Tyrrell

Commissioner Dreher then gave the Idaho state report. Dreher reported that Wyoming and Idaho have been having discussions concerning the water measurement and accounting that occurred in the Central Division in 2000. Idaho has invested considerable effort to reconstruct what happened and Idaho will be sending Commissioner Tyrrell a letter shortly, with a copy to Jack Barnett and the other Commissioners. The root of the discrepancy can be boiled down to several items. First, because of the low water year this year, the USGS was able to do stream gaging below the Thomas Fork and was able to demonstrate that the river gains below Thomas Fork. One cannot look at the Border Gage and use it as a sole means for determining how much water is divertible in Idaho because there are river gains downstream. Secondly, the head of the Idaho water measurement section has spent considerable time with Pete Peterson, the watermaster, and has been able to independently confirm that the diversions recorded by the watermaster in 2000 were accurate. There were no errors in what he was reporting. However, at the end of the year the watermaster enters data from his field books into a program that he does not use very often. He made some inadvertent data entry errors. The report that was generated was scanned by employees in the Idaho Department of Water Resources and they did not notice any obvious errors. It was forwarded to the Commission and that is when the discrepancies were discovered. The data has been re-entered and Idaho has cleared up the discrepancies so that now the difference between called-in diversion amounts and year-end diversion amounts are on the order of 6 to 8 cfs. Dreher noted that Wyoming will want to review these findings.

Dreher further reported on revenues in Idaho. Idaho's economy was already slowing before the events of September 11 took place. As a consequence of those events and the already slowing economy, Idaho's general fund revenues are off significantly. The Governor directed agencies to enter into a 2% hold back to general funds, which Water Resources has done. As of today, the Governor is going to add another 1% hold back. Positions have to be vacated and programs have to be reduced. The target numbers for 2003 are significantly lower yet and so Idaho Water Resources is looking at significant reductions in staff.

Commissioner Anderson then gave the Utah state report. Because of significant drought conditions in Northern Utah, an aggressive water conservation program is being implemented. The kick-off in September was a media campaign sponsored and funded by five large water conservancy districts and the Water Resources Division. The focus was on the use of water for lawns and gardens. Through studies, Utah has found that residents over-water lawns and gardens between 25% and 50%. Most of the water is lost during late August through mid October. This water conservation campaign will continue indefinitely.

Anderson reviewed the past water year usage indicating that usage was down about 10%. He then discussed the budget issues in Utah and reported that they received notice of a 2% hold back on general fund budget requests. They then increased the cut by another 3%. Because of budget cuts, the Commission will need to be concerned about the issues of increases in the Engineer-Manager's time and how soon the Commission will need to increase the dues.

Commissioner Tyrrell then gave the Wyoming state report indicating that it was a tough year to be in agriculture because of the drought. In the state caucus, Wyoming discussed whether or not to ask the TAC to continue to look into the Wright Ditch situation. There is not a huge amount of water but there may be an issue of equity, going back to the original signing of the Compact and whether this ditch and its associated uses were suppose to be in a certain part of the Compact or not. Some field work has been done and Wyoming is wondering if the TAC could prepare a technical memorandum to help guide the Commission on whether to fix the interpretation Jack currently operates under. While the Commission contemplated this request, Tyrrell reported that the Bear River Water Plan should be published soon and available on the website. He further reported that the North Platte Settlement report was turned into the Special Master last summer, the Special Master edited it and turned the report in to the Supreme Court. There is no decision yet from the Supreme Court. It is hoped that by the first part of 2002 they can find out if the court will buy off on Wyoming, Colorado, Nebraska and the Bureau's settlement agreement. If it does, there will be a North Platte Decree Committee established. With regards to coal bed methane, the price of gas is very low. A year ago Wyoming was making \$3 to \$4 an MCF and it is down to \$1.50. Some with drilling permits are not drilling. The rig count has slowed. Surplus funds in Wyoming are drifting to zero.

Tyrrell then asked if the Commission would entertain the possibility of having the TAC work on the Wright Ditch issue. After some discussion, it was moved that the Engineer-Manager gather the information already known and prepare a technical paper on the Wright Ditch for the next Commission meeting. The motion was seconded and carried. It was suggested that the Engineer-Manager also contact Ed Skeen's son, Richard, to see if Ed should be contacted.

There were no other items brought before the Commission. It was moved that the next Commission meeting be held on Tuesday, April 16 at 1:00 p.m. The motion was seconded and carried. The meeting was adjourned at 3:45 p.m.

ATTENDANCE ROSTER

BEAR RIVER COMMISSION REGULAR MEETING

Utah Department of Natural Resources Building
Salt Lake City, Utah
November 13, 2001

IDAHO COMMISSIONERS

Karl J. Dreher
Rodney Wallentine
Dean M. Mathews

WYOMING COMMISSIONERS

Patrick T. Tyrrell
James L. Crompton
John A. Teichert
Sue Lowry (Alternate)
Gordon Thornock (Alternate)
Jade Henderson (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, Department of Water Resources
Pete Peterson, Watermaster

UTAH

Todd Adams, Division of Water Resources
Will Atkin, Division of Water Rights
Bob Fotheringham, Division of Water Rights
Bob Morgan, Division of Water Rights
Don Ostler, Division of Water Quality
Randy Staker, Division of Water Resources

WYOMING

Kevin Payne, State Engineer's Office
Kevin Wilde, State Engineer's Office

OTHERS

Carly Burton, PacifiCorp
Jim Christensen, Bear River Water Cons. District
Claudia Conder, PacifiCorp
David Cottle, Bear Lake Watch
Kimball Goddard, U.S. Geological Survey
Steve Hicks, Bear River Refuge

APPENDIX A
PAGE TWO

Kelly Holt, PacifiCorp
Dave Humphreys, PacifiCorp
Jack Kolkman, PacifiCorp
Eulalie Langford, Idaho Legislature
Don C. Riches, Bear Lake Watch
Brent Rose, Bear River Water Users Association
Craig Thomas, Bear Lake Regional Commission
Jody Williams, PacifiCorp

**PROPOSED
AGENDA**

Bear River Commission Regular Meeting
November 13, 2001

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

COMMISSION AND ASSOCIATED MEETINGS

November 12

1:00 p.m. Technical Advisory Committee, Room 314 Barnett

November 13

9:00 a.m. Operations Committee Meeting, Room 314 Francis

10:15 a.m. Records & Public Involvement Committee Mtg, Room 314 Teichert

11:30 a.m. Informal Meeting of Commission, Room 314 Barnett

11:45 a.m. State Caucuses and Lunch Dreher/Tyrrell/Anderson

1:30 p.m. Commission Meeting, Auditorium Wheeler

REGULAR COMMISSION MEETING

November 13, 2001

Convene Meeting: 1:30 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 two Commission Meetings (April 17, 2001 and August 13, 2001) Wheeler
- III. Report of Secretary/Treasurer Anderson
- IV. Bear Lake Regional Commission Harrison
- V. PacifiCorp issues Holt
 - A. Relicensing with FERC Monte Garrett
 - B. Dredging Jack Kolkman
 - C. Water delivery in 2001

**APPENDIX B
PAGE TWO**

| | | |
|-------|--|----------|
| VI. | Report of the Operations Committee | Francis |
| VII. | Report of the Water Quality Committee | Ostler |
| VIII. | Report of the Records & Public Involvement Committee | Teichert |
| IX. | Engineer-Manager and TAC report | Barnett |
| X. | Items from the Management Committee | Tyrrell |
| XI. | State Reports | |
| | A. Idaho | Dreher |
| | B. Utah | Anderson |
| | C. Wyoming | Tyrrell |
| XII. | Other Items | Wheeler |
| XIII. | Next Commission Meeting | Wheeler |

Anticipated adjournment: 3:30 p.m.

BEAR RIVER COMMISSION
STATEMENT OF INCOME AND EXPENDITURES

FOR THE PERIOD OF JULY 1, 2000 TO June 30, 2001

| INCOME | CASH ON HAND | OTHER INCOME | FROM STATES | TOTAL REVENUE |
|--------------------------------------|-----------------|-----------------|-----------------|------------------|
| Cash Balance 07-01-00 | \$90,183.82 | | | \$90,183.82 |
| 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 Fish & Wildlife | | \$5,750.00 | | 5,750.00 |
| BR Tour Income | | \$4,178.55 | | 4,178.55 |
| Interest on Savings | | \$6,532.64 | | 6,532.64 |
| TOTAL INCOME TO JUNE 30, 2001 | \$90,183.82 | \$16,461.19 | \$90,000.00 | \$196,645.01 |

DEDUCT OPERATING EXPENSES

| | APPROVED BUDGET | UNEXPENDED BALANCE | EXPENDITURES TO DATE |
|-----------------------------|--------------------|-----------------------|-------------------------|
| Stream Gaging/USGS Contract | \$48,685.00 | 0.00 | \$48,685.00 |
| SUBTOTAL | \$48,685.00 | 0.00 | \$48,685.00 |
| EXPENDED THROUGH COMMISSION | | | |
| Personal Services Jack | \$48,141.00 | (4,949.01) | \$53,090.01 |
| Travel (Eng-Mgr) | 1,200.00 | 148.24 | 1,051.76 |
| Office Expenses | 1,600.00 | (418.50) | 2,018.50 |
| Printing Biennial Report | 2,000.00 | 1,597.99 | 402.01 |
| Treasurer Bond & Audit | 1,300.00 | (105.00) | 1,405.00 |
| Printing | 1,600.00 | 437.23 | 1,162.77 |
| Contingency | 5,000.00 | 5,000.00 | 0.00 |
| SUBTOTAL | \$60,841.00 | \$1,710.95 | \$59,130.05 |
| BR TOUR EXPENSES | \$4,178.55 | 461.56 | 3,716.99 |
| TOTAL EXPENSES | \$113,704.55 | \$2,172.52 | \$111,532.04 |
| CASH BALANCE AS OF 06-30-01 | | | \$85,112.97 |

APPENDIX C
PAGE TWO

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING June 30, 2001

| | | | |
|-----|---------------------------|-----------------|--------------|
| 511 | JACK BARNETT | | 4,011.75 |
| 513 | JACK BARNETT | | 4,011.75 |
| | FSB SERVICE CHARGE | | 114.00 |
| 514 | BUTCH CASSIDY'S | BEAR RIVER TOUR | 357.50 |
| 515 | VOID | | |
| 516 | LAKE SHORE LINES | BEAR RIVER TOUR | 1,112.00 |
| 517 | JACK BARNETT | | 4,643.73 |
| | FSB SERVICE CHARGE | | 22.00 |
| 518 | BEAR RIVER CANAL CO | BEAR RIVER TOUR | 197.00 |
| 519 | USGS | | 48,685.00 |
| 520 | JACK BARNETT | | 4,011.75 |
| 521 | JACK BARNETT | BEAR RIVER TOUR | 1,471.95 |
| 522 | USU | BEAR RIVER TOUR | 660.00 |
| 523 | JACK BARNETT | | 4,554.60 |
| 524 | JACK BARNETT | | 4,431.68 |
| 525 | JACK BARNETT | | 4,301.30 |
| 526 | JACK BARNETT | | 4,285.50 |
| 527 | CNA SURETY | | 100.00 |
| 528 | JACK BARNETT | | 4,181.72 |
| 529 | JACK BARNETT | | 4,047.28 |
| 530 | JACK BARNETT | | 4,490.50 |
| 531 | JACK BARNETT | | 4,353.55 |
| | WELLS FARGO- NEW CHECKS | | 182.07 |
| 532 | SAL'S PIZZA | | 128.94 |
| 533 | DALTON GILCHRIST & HARDEN | | 1,305.00 |
| 534 | VOID | | |
| 535 | JACK BARNETT | | 5,871.47 |
| | | TOTAL EXPENSE | \$111,532.04 |

BANK RECONCILIATION

| | |
|---|--------------|
| Cash in Bank per Statement 06-30-01 | \$5,220.37 |
| Plus: Intransit Deposits | 0.00 |
| Less: Outstanding Checks | 7,273.42 |
| Total Cash in Bank | (\$2,053.05) |
| Plus: Savings Account-Utah State Treasurer | 87,166.02 |
| TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT | \$85,112.97 |

APPENDIX C
PAGE FOUR

BEAR RIVER COMMISSION

DETAILS OF EXPENDITURES

FOR PERIOD ENDING OCTOBER 31, 2001

| | | |
|-----|------------------------------|----------|
| 536 | Jack Barnett | 8,264.16 |
| 537 | Lake Shore Motor Coach Lines | 1,210.00 |
| 538 | Uintah County 4-H | 640.00 |
| 539 | Cokeville Senior Center | 315.00 |
| 540 | Bear River Lodge | 562.28 |
| 541 | Lake Shore Motor Coach Lines | 150.00 |
| 542 | Jack Barnett | 4,400.92 |
| 543 | Jack Barnett | 5,942.13 |
| 544 | Jack Barnett | 4,700.65 |

TOTAL EXPENSE \$26,185.14

BANK RECONCILIATION

| | |
|---|--------------|
| Cash in Bank per Statement 10-31-01 | \$15,741.08 |
| Plus: Intransit Deposits | 0.00 |
| Less: Outstanding Checks | 4,700.65 |
| Total Cash in Bank | \$11,040.43 |
| Plus: Savings Account-Utah State Treasurer | 153,744.25 |
| TOTAL CASH IN SAVINGS AND IN CHECKING ACCOUNT | \$164,784.68 |

BEAR RIVER COMMISSION

APPROVED BUDGET FOR FY 2002, AND PROPOSED BUDGETS FOR FY2003 AND FY2004

| DESCRIPTION | FY 2002 APPROVED BUDGET | FY 2003 PROPOSED BUDGET | FY 2004 PROPOSED BUDGET |
|----------------------------------|-------------------------------|-------------------------------|-------------------------------|
| INCOME | | | |
| BEGINNING BALANCE | 85,112.97 | 79,449.52 | 80,711.52 |
| IDAHO | 30,000.00 | 35,000.00 | 35,000.00 |
| UTAH | 30,000.00 | 35,000.00 | 35,000.00 |
| WYOMING | 30,000.00 | 35,000.00 | 35,000.00 |
| USF&WS | 6,000.00 | 6,050.00 | 6,100.00 |
| SYMPOSIUM INCOME | 3,695.60 | 0.00 | 0.00 |
| EPA GRANT | 5,000.00 | 0.00 | 0.00 |
| INTEREST ON SAVINGS | 6,300.00 | 6,500.00 | 6,500.00 |
| TOTAL INCOME | <u>196,108.57</u> | <u>196,999.52</u> | <u>198,311.52</u> |
| EXPENDITURES | | | |
| STREAM GAGING-U.S.G.S. | 50,870.00 | 52,415.00 | 49,800.00 |
| PERSONAL SERVICES CONTRACT-BARNI | 49,585.00 | 51,073.00 | 52,613.00 |
| TRAVEL | 1,200.00 | 1,200.00 | 1,200.00 |
| OFFICE EXPENSES | 1,600.00 | 1,600.00 | 1,600.00 |
| PRINTING BIENNIAL REPORT | 2,000.00 | 2,000.00 | 2,000.00 |
| TREASURER'S BOND & AUDIT | 1,350.00 | 1,400.00 | 1,400.00 |
| PRINTING | 1,600.00 | 1,600.00 | 1,600.00 |
| CONTINGENCY | 5,000.00 | 5,000.00 | 5,000.00 |
| SYMPOSIUM EXPENSES | 3,454.05 | 0.00 | 0.00 |
| TOTAL EXPENDITURES | <u>116,659.05</u> | <u>116,288.00</u> | <u>115,213.00</u> |
| UNEXPENDED CASH BALANCE | <u>79,449.52</u> | <u>80,711.52</u> | <u>83,098.52</u> |

NOTE a. THE AMOUNT OF THE STREAM GAGE CONTRACT FOR 2004 IS LOWER BECAUSE OF THE PROPOSAL TO DROP THE PASCADERO GAGE.

b. THE PERSONAL SERVICE CONTRACT FOR BARNETT HAS BEEN INCREASED IN FY2003 AND 2004 BY 3%.

BEAR RIVER COMMISSION MEETING – SLC
NOVEMBER 12-13, 2001

BEAR LAKE OPERATION
WATER SUPPLY SUMMARY FOR 2001
AND PROJECTED ALLOCATIONS FOR 2002

Bear Lake Operation

| | |
|---------------------------------------|--|
| Elevation on Nov. 14, 2000 (fall low) | 5915.40 |
| Maximum elevation (April 21, 2001) | 5916.71 |
| Low elevation (Oct. 31, 2001) | 5911.15 |
| Storage release for irrigation | 245,000 Ac. Ft. |
| Bear Lake net runoff | -11,000 Ac. Ft. (7 th lowest) |

2002 Bear Lake Storage Allocations

| | |
|------------------------------------|-----------------------|
| Assuming repeat of 2001 runoff | |
| Projected high elevation | 5912.3 |
| Irrigation allocation* | 217,000 Ac. Ft. (94%) |
| Assuming average runoff conditions | |
| Projected high elevation | 5914.5 |
| Irrigation allocation | 229,000 Ac. Ft. (99%) |

* Based on Settlement Agreement elevations and storage calculations

BEAR RIVER OPERATION

WATER SUPPLY SUMMARY FOR 2001

| <u>Gauging Station</u> | <u>Volume Flow (Ac. Ft.)</u> | <u>% of Average</u> |
|-------------------------|------------------------------|---------------------|
| Rainbow Inlet Canal | 72,000 | 27 |
| Outlet Canal | 256,000 | 85 |
| Bear River below Soda | 396,000 | 67 |
| Bear River below Oneida | 436,000 | 68 |
| Bear River below Cutler | 292,000 | 27* |

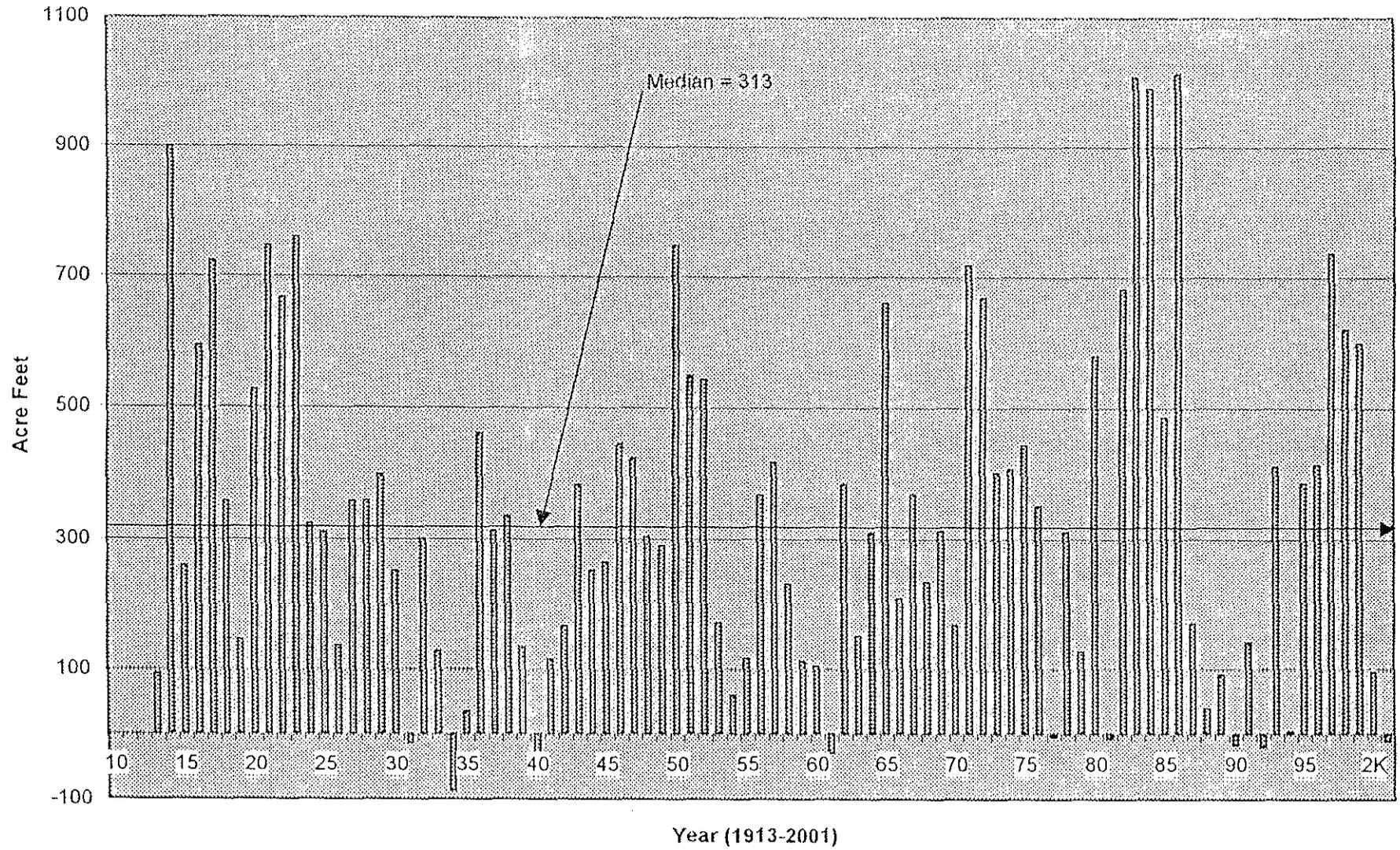
* Preliminary review indicates the lowest recorded flow since record keeping began in 1889
All flows are preliminary and subject to revision

BEAR LAKE OPERATION
SUMMARY OF SIGNIFICANT EVENTS

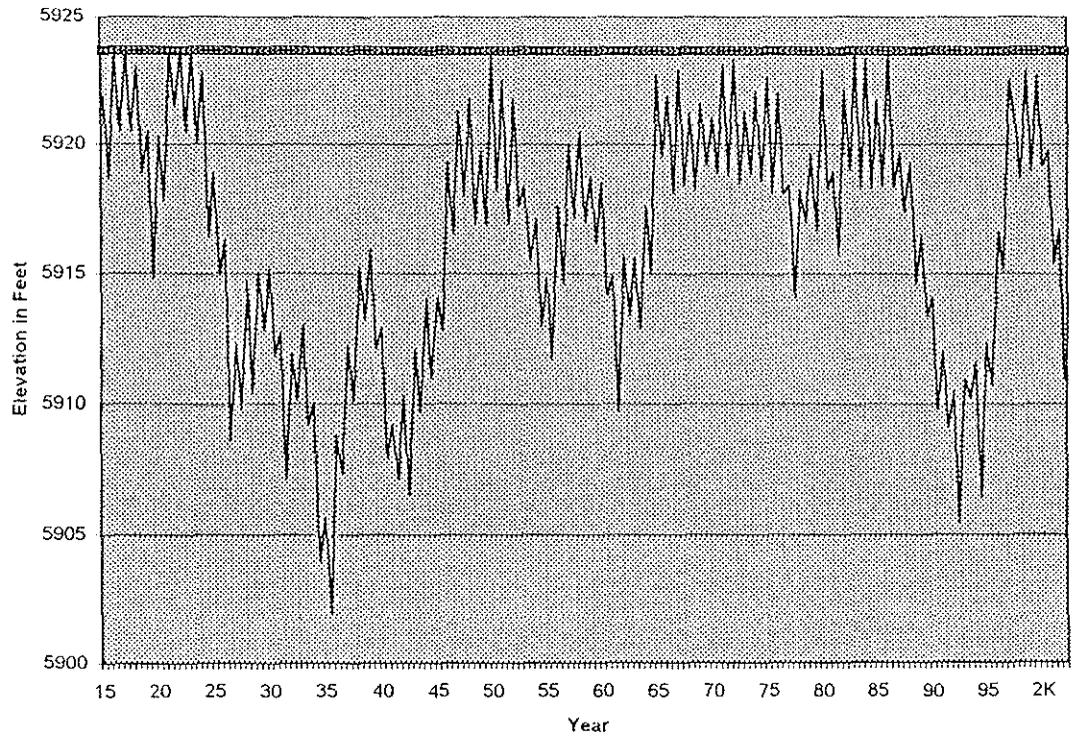
WATER YEAR 2000-2001

| <u>DATE</u> | <u>EVENT</u> | <u>BEAR LAKE EL.</u> |
|--------------------|--|----------------------|
| October 1, 2000 | Outlet Canal shut off | 5915.66 |
| November 14, 2000 | Fall minimum lake elevation | 5915.40 |
| March 20, 2001 | Spring runoff began | 5916.21 |
| April 21, 2001 | Bear Lake high elevation | 5916.71 |
| April 29, 2001 | Spring runoff ended | 5916.71 |
| May 3, 2001 | Outlet Canal irrigation releases began | 5916.69 |
| June 27, 2001 | Max. Outlet Canal release (1435 CFS) | 5915.00 |
| September 9, 2001 | Outlet Canal shut off | 5911.89 |
| September 30, 2001 | End of water year | 5911.60 |
| November 12, 2001 | As of Monday | 5911.15 |

Bear Lake Net Runoff



Bear Lake Elevation From 1916 to 2002



97 FERC ¶ 61, 161
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

PacifiCorp

Docket No. UL97-11-001

ORDER DENYING REHEARING,
GRANTING INTERVENTIONS, AND DENYING
MOTION TO REOPEN THE RECORD

(Issued November 8, 2001)

On February 12, 1998, the Director of the Commission's Office of Hydropower Licensing (now the Office of Energy Projects) issued an order finding that licensing of PacifiCorp's Bear Lake Project, a reservoir located on the Bear River at the Idaho-Utah border, was not required, because the reservoir is not part of a complete unit of hydroelectric generation.¹ This order, which affirms that finding, is in the public interest because it concludes the Commission's deliberations on the jurisdictional status of the facilities at issue.

BACKGROUND

A. History and Project Descriptions

The Bear River has its origin at elevations of around 12,000 feet in the Uinta Mountains of Utah, sixty miles east of Salt Lake City. From there, the river follows a circuitous 500-mile course through Utah, Wyoming, and Idaho, and then back into Utah. It finally empties into the Great Salt Lake. Because the lake has no outlet, any water that enters it is eventually lost through evaporation.

¹82 FERC ¶ 62,100. The project is located in Bear Lake County, Idaho, and Rich County, Utah.

Water is a scarce resource in the part of the country where the Bear Lake Project is located.² Throughout the entire Bear River basin, average annual precipitation is only about 16 inches.³ Typically, much of the year's precipitation is in the form of winter snow, and as a result much of the natural streamflow comes from the spring run-off associated with snow melt.

Whatever streamflow is present at river mile 200⁴ is diverted by PacifiCorp's Stewart Dam. The water passes through Rainbow Canal, a four-and-a-quarter-mile-long intake structure, which carries it to Bear Lake, which has some 1,000,000 acre-feet of long-term storage capacity, and Bear Lake's smaller northern neighbor, Mud Lake. Then, when needed downstream, water is returned to the Bear River through the fifteen-mile-long Outlet Canal. Nearly all water leaving Bear Lake has to be pumped out by means of PacifiCorp's Lifton Pump Station, located between Bear Lake and Mud Lake.

Development of Bear Lake as a reservoir was initiated in 1909 by Telluride Power Company, and rights were obtained in 1911-12 to divert the water from the Bear River into the lake. Those rights specifically covered storage to be used for both power and irrigation. Utah Power & Light Company (UP&L), formed in 1912 through the consolidation of 130 small power companies, including Telluride Power, acquired both the existing interest in Bear Lake and a downstream power project, the Old Grace Plant, that had been built by Telluride Power in 1908-10.

At the time of these developments, irrigators and canal companies already held extensive consumptive water rights on the Bear River, the largest of these being Last Chance Canal Company and Utah-Idaho Sugar Company (Utah-Idaho). Utah-Idaho also owned a water power facility along the Bear River.

In December 1912, UP&L entered into an agreement with Utah-Idaho calling for the latter to transfer to UP&L the water power facility, which included the Wheelon Dam, a powerhouse, related lands and facilities, and associated water rights. Utah-Idaho retained a flow of 900 cubic feet per second (cfs) of Bear River water between May 1 and October 1 for irrigation purposes, and 150 cfs for stock-watering and miscellaneous uses the rest of the year. These deliveries, which UP&L contractually obligated itself to make in perpetuity, were made through irrigation canals located on either side of the Wheelon Dam.

²See generally *Kunz v. Utah Power & Light Co.*, 792 P.2d 926, 929 (Idaho 1990).

³See *PacifiCorp Electric Operations*, 67 FERC ¶ 62,082 at p. 64,133 (1994) (issuing new license for the Cutler Project No. 2420, on the Bear River).

⁴River miles are counted starting at a river's mouth.

UP&L completed the Bear Lake storage facilities in 1918. Between 1912 and 1927, it quadrupled the size of the Grace Plant, and constructed four more hydropower plants along the Bear River, located from 45 to 170 miles downstream of Bear Lake.

Disputes between UP&L and various irrigation interests began to arise over water rights, and UP&L instituted suits in both Idaho and Utah to resolve them. These resulted in what are known as the 1920 Dietrich Decree (Idaho) and the 1922 Kimball Decree (Utah), which quantified and prioritized water rights for all users of the Bear River downstream of the Rainbow Canal.⁵ UP&L's right to store and use the water of the Bear River was recognized, but it could not interfere with the exercise of senior rights.

In the meantime, UP&L entered into contracts with other companies holding consumptive water rights to supply them with water from Bear Lake to supplement that available from natural flows.⁶ In 1919, it contracted with the Last Chance Canal Company, whose diversion is located on the forebay of the Grace Project, about four miles downstream from where the Soda powerhouse was later completed. In 1916, UP&L contracted with the Cub River Irrigation Company, which had recently acquired consumptive rights to flows of 100 cfs, and, in 1919, it contracted with the West Cache Canal Company. Both Cub River and West Cache took their water from the Bear River in the area between the Oneida and Wheelon (later Cutler) projects.⁷ Today, some type of water supply arrangement with each of these companies still exists.

In 1958, the States of Idaho, Utah, and Wyoming entered into the Bear River Compact, which was designed to settle controversies among the three states over the distribution and use of the waters of the Bear River, and to provide for efficient multiple use of water.⁸ Among the features of the compact was establishment of an irrigation reserve in Bear Lake, covering reservoir levels up to 5,914.6 feet. The release of water below that level solely for power generation was prohibited.⁹

⁵These documents appear as Attachment 6 to PacifiCorp's November 15, 1999 filing in this proceeding. See also Gossner v. Utah Power & Light Co., 612 P.2d 337, 339 (Utah 1980); License Application for the Oneida Project No. 472, located on the bear River, at p. E2-30 (filed September 27, 1999).

⁶License Application for the Soda Project No. 20, located on the Bear River, at p. E2-9 (filed September 27, 1999).

⁷Id. at p. E2-3.

⁸See Pub. L. 85-348 (March 17, 1958), and Pub. L. 96-189 (Feb. 8, 1980). See also License Application for the Grace/Cove Project No. 2401, located on the Bear River, at p. B-5 (filed September 27, 1999); Oneida License Application at p. E2-30.

⁹Kunz v. Utah Power & Light Co., 871 F.2d 85, 87 (9th Cir. 1989).

_____ Bear Lake potentially offers 1,420,000 acre-feet of usable storage capacity.¹⁰ This falls between a minimum lake level of 5,902 feet, established by Utah, and a maximum elevation of 5,923.65 feet. Since at least the early 1970s, UP&L (and subsequently PacifiCorp) has targeted a reservoir level of 5,918 as reflecting a balance that will permit it to meet the area's irrigation needs, without being so high that it poses a flooding risk.¹¹ The 5,918-foot elevation translates into usable storage of about 1,000,000 acre-feet. Entail

The licensed hydropower projects located below Bear Lake include the following:

(1) The 14-megawatt (MW) Soda Project No. 20, located 55 miles downstream of Bear Lake, was completed in 1925. The Soda Project was licensed in 1923, see 4th Annual Report of the Federal Power Commission at 52 (1924), and was relicensed in 1980, for a term ending in 2003. 12 FERC ¶ 62,062.

(2) The 33-MW Grace Project No. 2401, discussed above, is located six miles downstream of the Soda Project. The Grace Project was licensed, effective May 1, 1965, for a term expiring in October 2001. 56 FPC 2102 (1973).

(3) The 7.5-MW Cove Project, built in 1917 to take advantage of the tailrace waters of the Grace Powerhouse. The Grace Project is also licensed as Project No. 2401.

(4) The 30-MW Oneida Project No. 472, located 22 miles downstream of the Grace/Cove Project, 20 miles from the Utah-Idaho border, was built in stages between 1912 and 1920. The Oneida Project was first licensed in 1927, see 7th Annual Report of the Federal Power Commission at 121 (1927), and was relicensed in 1981, for a term expiring in 2000. 15 FERC ¶ 62,137. The license term was subsequently extended until October 1, 2001, to allow coordination with the relicensing of the Soda and Grace/Cove Projects. See 71 FERC ¶ 62,068 (1995).¹²

(5) The 30-MW Cutler Project No. 2420, located about 44 miles downstream of the Oneida Project, was begun in 1924 and completed in 1927, replacing the Wheelon

¹⁰Oneida License Application, supra, at p. E2-3.

¹¹See PacifiCorp filing of May 8, 1997 (Burton affidavit); Kunz, 792 P.2d at p. 942 (Appendix A). This appendix is a 1971 memorandum reviewing UP&L's policy of managing the Bear Lake level.

¹²On September 27, 1999, PacifiCorp filed applications for new licenses for the Soda, Grace/Cove, and Oneida Projects. Those proceedings are pending before the Commission.

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facilities. The Cutler Project was licensed in 1968, 40 FPC 1494, and was relicensed in 1994. 67 FERC ¶ 62,082.

The Grace/Cove Project has negligible reservoir capacity, while Soda (16,300 acre-feet), Oneida (11,500 acre-feet), and Cutler (13,200 acre-feet) have modest reservoirs. These impoundments are dwarfed by Bear Lake's 1,000,000 acre-foot capacity, but can accommodate short-term fluctuations in supply of and demand for water along the Bear River system.

In 1989, PacifiCorp acquired UP&L, including the Soda, Grace, Cove, Oneida, and Cutler Projects.

B. Operation of Bear Lake and Downstream Hydropower Projects

_____ Irrigation releases, as well as flood control, are the primary uses of Bear Lake water. Use of water from the lake for hydroelectric generation is a secondary purpose; such releases are permissible at such times as other needs are met.

Article VI(D) of the Bear River Compact, 94 Stat. 11-12, states that

[t]he waters of Bear Lake below elevation 5,912.91 feet . . . shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release solely for irrigation it may be used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used in generating power if not inconsistent with its use for irrigation.

In an October 1999 agreement entered into between PacifiCorp and the States concerning the Bear River System,¹³ the company alluded to its "historic practice of not making a delivery call for hydropower generation," and indicated that Bear Lake is operated "primarily as a storage reservoir to satisfy contracts for existing irrigation uses and flood control needs in the three States, with the use of water for hydropower generation being incidental to the other purposes for which the water is being released."¹⁴ To the same effect, the April 18, 2000 Operating Agreement for PacifiCorp's Bear River System, entered into between PacifiCorp and the States, provides that "[h]ydropower generation at [PacifiCorp's] downstream hydroelectric plants shall continue to be an

¹³The precipitating event for this was a merger between PacifiCorp and Scottish Power. See 97 FERC ¶ 61,288 (1999).

¹⁴Id.

incidental use of Bear Lake Storage Water released primarily for contract deliveries or flood control." Such releases may, in turn, lead to hydropower generation.

There are no major irrigation outflows between Bear Lake and the Soda powerhouse (the closest powerhouse to Bear Lake, located about 55 miles downstream of the reservoir). Therefore, essentially all water released from the lake arrives at Soda and can be used to produce power there. Average July and August local inflows upstream of Soda are limited, which means that Bear Lake is likely the major contributor to summer power production there.¹⁵

Any water attributed to Bear Lake that is delivered into the Last Chance Canal, which is below Soda, will be lost for use at all the downstream power facilities downstream of Soda. On the other hand, water released from Bear Lake to serve the irrigation commitment to Bear River Canal Company at Cutler Dam, and any water released to meet supply commitments at the West Cache Canal and the Cub River Canal (located between the Oneida and Cutler Projects), stays in the river and is available for generation not only at Soda but also at Grace, Cove, and Oneida. The average flows through the Soda, Grace, and Cove powerhouses in fact peak in summer, rather than spring, thanks to releases from Bear Lake.¹⁶

That is not true at Cutler, the furthest project downstream, where all of the water released from Bear Lake for irrigation goes into the irrigation canals before it reaches the Cutler powerhouse. PacifiCorp reports that it produces no power at Cutler from mid-June to mid-September in a normal (mean) or a dry year,¹⁷ presumably referring to those years when the company releases only enough water to enable it to meet the irrigation commitment at Cutler.

In spring, much of the water supply from upstream of Bear Lake is added to storage. However, this is still usually a period of relatively high generation, as the hydroelectric projects can take advantage of the heavy spring run-off entering the system from areas downstream of Bear Lake.¹⁸ For example, at Cutler, this is the only time of year where there is enough flow to operate both generating units near their maximum

¹⁵Soda License Application at Figures 4-1 and 4-3.

¹⁶*Id.* at p. B-9; Grace/Cove License Application at p. B-9. Since the Oneida Project is located downstream, more of its water comes from local inflows below Bear Lake, and the flows through its powerhouse are slightly higher in spring, when natural runoff peaks, than in the summer.

¹⁷Cutler License Application Exhibit B at p.1 and Appendix B-1 at pp. 4-18 and 4-20.

¹⁸*Id.*, Appendix B-1 at p.1 and Appendix B at pp. 5, 9.

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capacity.¹⁹ Even at Soda, local inflows average 550-750 cfs in the spring, barely enough to keep its two generators operating.

Throughout the basin, flows are lower in fall and winter than in spring. During fall and winter, the impact of flows from upstream of Bear Lake on downstream hydroelectric generation depends on the need to meet required reservoir levels. Sometimes, virtually all inflows are added to storage. At other times, water is released from the lake, thereby increasing the downstream flows.

The information provided by PacifiCorp in the Cutler License Application indicates that in 30 of the 63 years reported on, the only flows at the Cutler powerhouse in July and August were those that resulted from leakage from the Cutler Dam (about 27 cfs). Such a flow is far below that which is needed to support any generation. The same data indicates that Bear River flows below Cutler Dam for the years 1927-88 have average about 400 cfs in August and slightly higher in July, and that the 400 cfs figure was reached or exceeded in 21 of the 63 years.²⁰ Thus, although it is not the norm, there has been irrigation-season power production in some years even at Cutler.²¹

In those seasons when water is not being released for irrigation, the picture changes. Since diversion for consumptive use is now low, nearly all the water in Bear River downstream of Bear Lake, whether arising from natural flows or from Bear Lake releases, will reach the downstream powerhouses. Because it has the largest drainage

¹⁹Id., Exhibit B at p.9; Appendix B-1 at pp., 4-9, 4-17, 4-20; Exhibit E at pp. 1-4, 2-21, 2-22.

²⁰Cutler License Application Exhibit E at pp. 2-20/2; 67 FERC at p 64,136.

²¹See Grace/Cove License Application at p. B-4/ This document relates that in high runoff/high lake level years, storage releases in excess of irrigation demand may begin in July and extend through March.

area, the flows will be highest at Cutler.²² Moving upstream, less water reaches Oneida, while Grace/Cove and Soda get progressively lower flows.

Natural flows are lower in fall and winter than in spring throughout the basin. During these seasons, the impact of flows from upstream of Bear Lake on the downstream powerhouses depends on the reservoir levels. Sometimes, as in the five years covered by the Staff Analysis, virtually all water is added to storage. At other times, water may be released from Bear Lake, thereby increasing the downstream flows.²³ Statistics reflect that, on balance, more water is released from storage than is added to storage in fall and winter, but that the difference is not great compared to the influence of Bear Lake in the other seasons.²⁴

The impact of the regulated Bear Lake is that, overall, less water is available for generation than would be the case with and unregulated Bear Lake. When its 112 miles of surface area are exposed to dry summer heat for extensive periods, substantial volumes of water will evaporate. Moreover, of the stored water that does not evaporate and is released, much of it is diverted into the irrigation canals.

C. The Director's Order

This proceeding was initiated in October 1996, when the U.S. Army Corps of Engineers, from whom PacifiCorp was seeking a permit for construction associated with the Lifton Pump Station's intake and outlet channels, asked the Commission whether the pump station was subject to the Commission's regulatory authority.

²²About 25 percent of the total Bear River drainage comes in the area between Oneida and Cutler. See PacifiCorp filing of October 4, 1999, in Docket No. 2420 (the Cutler relicensing). See also Cutler License Application Exhibit E at p. 5-15; Exhibit B at pp. 2 and 5; Figure B-1.

²³For example, looking at winter flows into the Oneida powerhouse, PacifiCorp has reported that if releases are not being made from Bear Lake, winter flows at Oneida are typically 200-400 cfs, whereas when winter releases are being made, they rise to 800-1200 cfs. Oneida License Application at pp. B-3, B-9, and H-16. Oneida has three generating units, each with a minimum hydraulic capacity of 165 cfs. See Attachment 7 to PacifiCorp filing of November 15, 1999. In addition, the company can, and does, employ load factoring. Oneida License Application at p. B-1. Under those conditions, it appears that in those years when there are releases from Bear Lake, those releases result in additional generation.

²⁴See Table 5 of the 1997 Staff Analysis.

On February 12, 1998, the Director issued an order finding that Bear Lake provides no generation benefits to the Soda, Grace/Cove, or Oneida Projects. The order relied in large part upon an analysis prepared by Commission staff.²⁵ On the basis of the Staff Analysis and relevant precedent, the Director concluded that Bear Lake was not necessary or appropriate for the maintenance and operation of the downstream licensed projects, and that the Commission therefore had no jurisdiction over the Bear Lake Project.

The Staff Analysis, which examined water years 1992-96, reported that: (1) an average 43 percent of the water stored each year was being lost to evaporation, and thus was permanently lost for all downstream uses; (2) a substantial amount of water was being added to storage each year, rather than being used for generation; (3) the amounts being released from Bear Lake during the 1992-96 irrigation seasons were 500-1,500 cfs, a figure well below the maximum hydraulic capacity of the Soda and Oneida Projects, so that the releases "may provide marginal generation benefits in dry years"; and (4) the amounts being released from Bear Lake during the non-irrigation season were 100-200 cfs, which staff stated were much less than the minimum hydraulic capacity of the Soda and Oneida Projects, and close to the minimum for the Grace/Cove Project, thus being insufficient to provide any downstream power benefits.

D. Requests for Rehearing and Subsequent Pleadings

On March 16, 1998, American Whitewater Affiliation and Idaho Rivers United jointly (hereinafter, AWA), and Bear Lake Watch, Inc. filed motions to intervene, accompanied by requests for rehearing. Both entities argue that PacifiCorp operates Bear Lake in order to benefit downstream generation, and that the Director accordingly erred in finding that Bear Lake is not required to be licensed.

On May 13, 1998, the Bear River Water Users Association, a non-profit corporation representing irrigation users in Utah and Idaho, filed a motion for late intervention.

On September 13, 1999, Commission staff sent PacifiCorp a letter requesting "additional information regarding the jurisdiction of the Bear Lake Project." On November 10, 1999, PacifiCorp filed a response to that letter, providing information which it maintained supported the Director's conclusion that Bear Lake is not required to be licensed.

²⁵Office of Hydropower Licensing, Engineering Section, Analysis of the Bear Lake Operation, Great Salt Lake Basin, October 1997 (hereinafter cited as "1997 Staff Analysis"). The Staff Analysis did not include the Cutler Project.

On April 14, 2000, AWA submitted supplemental information and argument.

On August 4, 2000, the U.S. Department of the Interior filed a motion to intervene and a supporting memorandum. Interior contends that Bear Lake is "necessary or appropriate" in the operation of PacifiCorp's downstream projects because the company regulates the lake as a storage facility to enhance power generation at the downstream projects.

PacifiCorp filed additional evidence and argument in a pleading filed August 29, 2000. Interior responded by filing of September 21, 2000.

On October 23, 2000, the States of Idaho, Utah, and Wyoming (the States) jointly filed a motion to intervene, accompanied by a supporting memorandum. The States argue that the Director's order was correct and should be upheld. They note that historic practices at Bear Lake, as well as relevant agreements, demonstrate that water releases from the lake are primarily for irrigation purposes, secondarily for flood control, and only incidentally for hydroelectric generation. The States express concern that Commission jurisdiction over Bear Lake would upset the balance of interests on the Bear River and, in particular, would adversely affect irrigation use of Bear Lake water. The States also oppose Interior's motion to intervene.

On March 27, 2001, Interior submitted additional information, including a copy of the Bear River Compact, flow information, and various comments from the relicensing proceedings for the Soda, Grace/Cove, and Oneida Projects. Interior also asks that the Commission require PacifiCorp to submit additional information, including hydrological and generating data.

On March 29, 2001, AWA filed a motion to the reopen the record. AWA states that, following the June 12, 1998 order, a number of entities made filings bearing on the merits of that order. AWA notes that the Commission's regulations, 18 C.F.R. § 713(d), prohibit answers to rehearing requests. In consequence, AWA asks the Commission to: (1) dismiss the pending rehearing requests, (2) issue public notice that the proceeding in Docket No. UL98-11 is being reopened, (3) admit Interior, Idaho, Utah, and Wyoming, and the Bear River Water Users Association as parties, and establish a new deadline for interventions, and (4) establish procedures and a schedule for the reopened proceeding.

Bear Lake Watch's April 9, 2001 response to PacifiCorp's August 28, 2000 filing and to the States' motion to intervene expressed support for AWA's motion to reopen the record.

E. The Supplemental Review

After reviewing the material filed in this proceeding subsequent to the issuance of the Director's order and the gathering of additional available information, Commission staff prepared a Supplemental Review of Bear Lake Operation, Bear River Basin Hydrology, and Hydropower Projects (Supplemental Review).²⁶ In the Supplemental Review, staff examined data from a 13-year period (1986-1998), as well as long-term data, in order to supplement the five-year study in the 1997 Staff Analysis. The Supplemental Analysis utilized data showing flows and energy generation at PacifiCorp's hydropower projects on the Bear River, estimated evaporation rates, releases from Bear Lake, drainage basin inflows, and irrigation withdrawals.

Analysis of the data from the 13-year period shows that average monthly flows at the Soda Project are 83 cfs lower as a result of Bear Lake operations than they would be if the system were unregulated. On an annual average basis, the project generates 2,908 megawatt hours (MWh) less than if the system were unregulated.²⁷ Average monthly flows at the Oneida Project are reduced by 92 cfs, equating to a loss of 6,442 MWh.²⁸ Flows at the Cutler Project are reduced by 146 cfs, resulting in a loss of 5,837 MWh.²⁹ This means that regulated operations of Bear Lake result in average annual decreases in generation of 9.96 percent at Soda, 9.61 percent at Oneida, and 7.73 percent at Cutler compared with generation if the lake were not regulated.

The Supplemental Review also examined the impact during the 13-year period of Bear Lake operations during the irrigation versus non-irrigation seasons. The review showed that, during irrigation season (May-October), Bear Lake operation increase average monthly flows at the Soda Project by 28 cfs (translating to an average annual increase of 496 MWh),³⁰ increase average monthly flows at the Oneida Project by 17 cfs (increasing average annual generation by 575 MWh),³¹ and decrease average monthly

²⁶The Supplemental Review has been made part of the public record of this proceeding.

²⁷Supplemental Review at 8.

²⁸Id.

²⁹Id. Flow data was not available at all projects for all years. Data was available for the Cutler Project for only eight of the 13 years studied. And because the Grace/Cove Project receives water diverted from the Bear River and staff could not obtain satisfactory data showing the percentage of river flow that was diverted to the project, it was not possible to estimate flows and generation for that project under conditions where Bear Lake was unregulated.

³⁰Id. at 9.

³¹Id.

flows at the Cutler Project by 90 cfs (decreasing average annual generation by 1809 MWh).³² Comparing regulated operation of Bear lake with unregulated operation, this translates to average annual increases in generation of 3.01 percent at Soda and 1.58 percent at Oneida, and an average annual decrease of 4.38 percent at Cutler.³³ During non-irrigation season, Bear Lake operations decrease average monthly flows at Soda, Oneida, and Cutler by 195 cfs, 201 cfs, and 799 cfs, respectively, resulting in respective average annual generation losses of 3,403, 7,017, and 4,028 MWh, or 26.78, 22.85, and 11.78 percent.³⁴

The Supplemental Review also examined available long-term flow records, covering irrigation diversions and intervening flows, to determine if they would yield results consistent with the results of the five-year and 13-year studies. They did. This review showed that regulated Bear Lake operations versus unregulated operations result in decreased average monthly flows of 184 cfs at the Soda Project, 182 cfs at the Oneida Project, and 218 cfs at the Cutler Project.³⁵ These reductions in flows translate to average annual generation losses of 7,609 MWh at Soda, 10,391 MWh at Oneida, and 12,625 MWh at Cutler, or 18.67 percent at Soda, 12.96 percent at Oneida, and 10.74 percent at Cutler.³⁶

As with the 13-year data, the Supplemental Review also examined separately the long-term data with respect to the impact of Bear Lake operations on flows and generation during irrigation and non-irrigation seasons. The review showed that, during irrigation season (May-October), regulated Bear Lake operations decrease average monthly flows at the Soda Project by 158 cfs (translating to an average annual decrease in generation of 3,248 MWh or 14.03 percent), decrease average monthly flows at the Oneida Project by 167 cfs (decreasing average annual generation by 5,991 MWh or 13.93 percent), and decrease average monthly flows at the Cutler Project by 249 cfs (decreasing average annual generation by 7,193 MWh or 11.68 percent).³⁷ During non-irrigation season, Bear Lake operations decrease average monthly flows at Soda, Oneida, and Cutler by 212 cfs, 198 cfs, and 188 cfs, respectively, resulting in respective average annual generation losses of 4,361 MWh or 24.78 percent, 4,401 MWh or 11.83 percent, and 5,432 MWh or 9.70 percent.³⁸

³²Id.

³³This amounts to a very small percentage gain in average annual generation for all three projects (0.19 percent). However, there is still an absolute loss of 736 MWh.

³⁴Id. at 10.

³⁵Id. at 11.

³⁶Id. at 12.

³⁷Id.

³⁸Id.

The Supplemental Review concludes that the additional information obtained since the 1997 Staff report supports the finding in that analysis that Bear Lake is operated primarily for irrigation purposes and in doing so perforce reduces net flows downstream. While PacifiCorp's downstream hydropower projects are able to generate electricity from current flows, the data shows that the projects would have higher generation rates in the absence of the diversion facilities that have greatly enlarged Bear Lake.³⁹

DISCUSSION

A. Procedural Matters

We will grant the timely motions to intervene by AWA and Bear Lake Watch. We will also grant the motions of the States, Interior, and the Bear Lakes Water Users Association for late intervention. These parties all have significant interests in this proceeding, and allowing intervention now will not delay the proceeding or prejudice any other party.

Parties on both sides of the jurisdictional issue have filed significant amounts of additional information. We will accept into the record all of the information filed in these proceedings. While AWA correctly points out that our regulations prohibit responses to requests for rehearing, and some of the referenced pleadings could fairly be so characterized, this is a proceeding regarding our jurisdiction. In such matters, the Commission is always entitled to consider new evidence,⁴⁰ and we will accept the proffered material in the interests of a complete record.

B. The Jurisdictional Status of Bear Lake

The Commission's jurisdiction under Part I of the Federal Power Act (FPA) to issue licenses for hydropower projects is set forth in FPA Section 4(e), 16 U.S.C. § 797(e). Section 4(e) provides, in pertinent part, that the Commission is authorized "[t]o issue licenses . . . for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for . . . the development, transmission, and utilization of power. . . ."

³⁹Id. at 12.

⁴⁰See, e.g., *Nantahala Power and Light Co. v. Federal Power Commission*, 384 F.2d 200, 203-04, 208 (4th Cir. 1967).

Section 3(12) of the FPA, 16 U.S.C. § 796 (12), defines "project works" as "the physical structures of a project." FPA Section 3(11), 16 U.S.C. § 796(11), defines "project" as follows:

"project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit[.]

In this case, we must determine whether or not Bear Lake Reservoir is a part of the complete unit or units of development that includes the licensed downstream generating projects. Because Bear Lake is not directly connected to the downstream projects (the closest project, Soda, being 55 miles downstream from the lake), the relevant test is whether Bear Lake is "necessary or appropriate" in the maintenance and operation of any or all of the Soda, Grace/Cove, Oneida, and Cutler Projects.⁴¹

Our recent cases dealing with storage reservoirs in the unit of development context have focused on the extent to which a reservoir provides downstream generation benefits. Where a dam and reservoir substantially benefit downstream operations, for example through the timing of flow releases, we have found those facilities to part of a unit of development.⁴² On the other hand, a dam or reservoir that is not directly connected to generating facilities, and that does not materially increase project generation is not part of a complete unit of development.⁴³ We have stated that whether the facilities at issue question in a given case are part of a unit of development will depend on the facts of each

⁴¹See *Union Water Power Co.*, 73 FERC ¶ 61,296 at p. 61,824, n.13 (1995).

⁴²See, e.g., *Chippewa and Flambeau Improvement Co.*, 94 FERC ¶ 61,017, reh'g denied, 95 FERC ¶ 61,327 (2001); *Georgia-Pacific Corp.*, 91 FERC ¶ 61,047 (2000).

⁴³See, e.g., *Union Water Power*, 73 FERC at p. 61,825 (storage reservoirs with no significant impact on licensed downstream generating facilities not part of unit of development); *El Dorado Irrigation District*, 29 FERC ¶ 61,375 (1984) (reservoir located downstream from jurisdictional facilities not part of complete unit of development).

particular case, and that, because the FPA does not define terms such as "necessary or appropriate," we must apply common sense in construing these terms.⁴⁴

By way of example, in Georgia-Pacific Corp.⁴⁵ we examined the impact of two upstream storage projects on a downstream generating project, all owned and operated by Georgia-Pacific. There, we found that operation of the storage reservoirs increased total annual generation at the downstream project over unregulated flows by an average of 3.4 percent. Moreover, information in the record showed that Georgia-Pacific released flows from its reservoirs (thereby increasing downstream generation) during the winter, when the company has a shortage of steam generation.⁴⁶ Based on those facts, the Commission found that the storage projects were necessary or appropriate in the maintenance and operation of the unit of development that included the downstream generating project. And in Chippewa and Flambeau Improvement Co., we determined that operation of an upstream storage reservoir, compared with unregulated flows, increased generation at downstream generating projects by between 6.4 percent and 8.53 percent. Again, we concluded that the reservoir significantly benefitted generation at the downstream projects, and therefore was required to be licensed.

This case is different than most we have previously examined. Earlier cases generally have involved reservoirs that had been constructed for purposes, such as log-driving, that they no longer serve. We have had to determine whether those reservoirs, now owned and operated by companies that also own and operate downstream hydroelectric projects, provide sufficient generation benefits to be part of a unit of hydroelectric development. Here, we are dealing with a reservoir, the primary purposes of which have always been, and clearly remain, irrigation and flood control. We must decide whether Bear Lake also provides sufficient benefits to downstream generating projects such that it is part of a complete unit of development that includes those projects. If so, it must be licensed.

The parties have submitted a great deal of factual and anecdotal evidence on the question of whether releases from Bear Lake actually provide generation benefits to PacifiCorp's downstream generating projects. For example, Bear Lake Watch, AWA, and Interior argue that, because PacifiCorp owns and operates both Bear Lake and the downstream generating projects, as did its predecessors, Bear Lake must be viewed as part of the hydropower projects. For its part, PacifiCorp cites to documentation showing that its operation of Bear Lake is severely constrained, and is largely, if not exclusively, governed by irrigation and flood control considerations.

⁴⁴See, e.g., City and County of Denver, Colorado, 94 FERC ¶ 61, 313 (2001).

⁴⁵91 FERC ¶ 61,047 (2000).

⁴⁶Id. at pp. 61,171-72.

These arguments all fail to focus on the key question of the actual impact of Bear Lake on downstream generating projects.⁴⁷ In determining whether an upstream storage reservoir is part of a unit of development, neither the purpose for which the reservoir was constructed nor contractual and other operational constraints provide the answer. Rather, we determine whether the reservoir in question, as operated, has a substantial beneficial impact on downstream generation, such that it is part of the unit of development that includes the generating project or projects.⁴⁸

The analysis performed by Commission staff shows that the overall impact of Bear Lake on hydropower generation is negative. While flows from the lake may increase generation for brief periods during some years under some conditions, these appear to be incidental, and are greatly outweighed by the times when lake operations result in negative impacts on generation. For example, the 13-year data shows that Bear Lake operations increase average generation at the Soda and Oneida Projects by 1,071 MWh during irrigation season. Yet average generation at the Cutler Project is decreased by 1,809 MWh during the same period, for a net loss in generation of 738 MWh.⁴⁹

The record does not support a conclusion that Bear Lake has a significant beneficial impact on generation; quite the opposite.⁵⁰ Bear Lake is therefore is not part of a complete unit of development, and is not required to be licensed.

⁴⁷We do agree with the assertions of Bear Lake Watch, AWA, and Interior that the Staff Analysis was flawed in some respects, such as covering only certain atypical water years, not including certain data available in fora such as the ongoing licensing proceedings, and not properly accounting for flows in the basin below Bear Lake. In consequence, staff prepared the Supplemental Review, which examines a substantial amount of additional data, and provides further analysis of the impact of Bear Lake operations on downstream generation.

⁴⁸ See, e.g., Great Northern Paper Co., 88 FERC ¶ 61,042 at p. 61,113 (1999).

⁴⁹ Supplemental Review at 9.

⁵⁰ Interior and other parties suggest that the results of staff's analysis would be different, were staff to examine generation and flow data on a daily or hourly basis. Examination of the Supplemental Review, however, shows that the losses in potential generation caused by Bear Lake operation are so consistent across such a broad range of conditions that any interstitial daily or hourly increases would clearly be dwarfed by corresponding decreases during other daily or hourly periods. Given the foregoing, we will deny AWA's motion to reopen the record. The information now in the record provides a sufficient basis for our conclusions here. Records giving more detail to the pivotal information already in the record will not change those results.

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The Commission orders:

(A) The motions to intervene filed by American Whitewater Affiliation and Idaho Rivers United and by Bear Lake Watch, Inc. on March 16, 1998, by Bear Lake Water Users Association on May 13, 1998, by the U.S. Department of the Interior on August 4, 2000, and by the States of Idaho, Utah, and Wyoming on October 23, 2000, are granted.

(B) The motion to reopen the record filed by American Whitewater Affiliation on March 29, 2001, is denied.

(C) The requests for rehearing filed on March 16, 1998, by American Whitewater Affiliation and Idaho Rivers United, and by Bear Lake Watch are denied.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.