

LAW OFFICES OF  
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\*ALSO MEMBER IL & WY BARS  
\*\*ALSO MEMBER MO BAR

TELEPHONE  
AREA CODE 208  
232-6101

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April 6, 1995

**RECEIVED**

APR - 7 1995

Department of Water Resources  
Eastern District Office

Harold "Skip" Jones  
Idaho Department of Water Resources  
900 N. Skyline Drive  
Pocatello, Idaho 83402

Re: Bear Lake

Dear Skip:

Enclosed for your information are copies of the letter and enclosures I sent to Norm Young recently which includes the Bear Lake Storage Allocation and Recovery Proposal we visited about. You might share it with Ron as well.

If we put together a settlement of the issues and arrive at a final proposal that is approved and/or implemented by PacifiCorp, I'll send you a copy. Of course, if you have any comments or questions, don't hesitate to call me.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

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March 30, 1995

Norman C. Young, Administrator  
Water Management Division  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098

Re: Bear River Commission

Dear Norm:

Thanks for copying me with your March 9 letter to Jack Barnett. I share your concerns and support the position the Department is taking on this matter.

I expect to be attending the Commission's Technical Advisory meeting scheduled in Logan April 17 representing the interests of Last Chance Canal Company and the Bear River Water Users Association.

The Association has intervened in the contested case hearing between PacifiCorp and the Bear Lake Watch/Merlin Olson group before the Idaho Department of Lands pertaining to the dredging permit on Bear Lake. That hearing is now scheduled to begin April 12. The lake is presently at 5908', runoff projections now are at about 100 percent, which should result in high elevation, around 5912. Accordingly, yesterday PacifiCorp decided it would not be necessary to dredge this year, although they are proceeding to obtain the necessary permits anyway. A decision is expected on the Army Corps' permit any day and we are optimistic it will be issued.

There have been extensive negotiations between the Association and PacifiCorp to establish a Storage Water Allocation Proposal and Recovery Plan for Bear Lake. I sent you an initial draft of this proposal previously. The proposal has been revised numerous times and has now received the endorsement of all BRWUA members, excepting for Bear River Canal Company. A copy of the proposal as it now stands is enclosed. It has been well received by PacifiCorp, is presently under review by their management, and we expect it will be adopted as policy shortly, substantially in the present form.

Norman C. Young

Page 2

March 30, 1995

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We are also utilizing the proposal as a framework to negotiate settlement of the pending lawsuit and also the contested case dredging permit hearing with the Bear Lake Watch/Merlin Olson group. The basic concepts have been very positively received by them, although they question some of the numbers on the schedule which are under review. For your information, I am enclosing a copy of my letter transmitting the most recent copy to their attorneys, Laird Lucas and Randy Weiner.

I thought you would find all of this of interest and significant relative to the present Compact Commission proceedings, particularly as they relate to Bear Lake storage and establishing a single model for measurement of the Bear in both states.

Finally I understand that Governor Batt is about to act on filling the vacant commission seat, with Don Gilbert and Marc Gibbs believed to be the leading contenders.

Sincerely,

RANDALL C. BUDGE

RCB:rr

Enclosures



State of Idaho

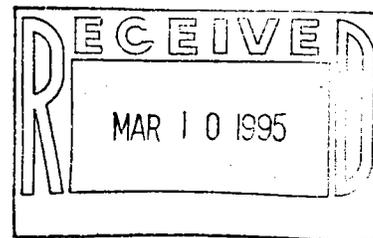
**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098  
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

March 9, 1995



Jack Barnett, Engineer-Manager  
Bear River Commission  
106 West 500 South, Suite 101  
Bountiful, Utah 84010-6232

Re: Commission Approved Procedures - Second Draft

Dear Jack:

Idaho Department of Water Resources has reviewed the second draft of the procedures and identified two principle concerns:

1. The draft procedures expand the role of the Commission beyond that provided in the compact. The Commission has three duties with respect to distribution of water under established rights in the lower division. These are:
  - a. Adopt a water delivery schedule that has been established in accordance with the laws of the respective states.
  - b. Determine what constitutes emergency conditions and declare a water emergency when a main stem user in Utah is unable to obtain water he is entitled to because of diversions by a junior user in Idaho.
  - c. Determine that the appropriate state officials are managing water during a declared emergency in accordance with the adopted water right schedule.

The states retain all other authority and responsibility to manage the distribution of water in the lower division. The procedures must not encroach upon the state's authority. In this regard, I am particularly concerned by provisions in the draft requiring Commission oversight of stored water delivery. During an emergency, the Commission has a role in insuring that water is delivered in accordance with priority without regard to the stateline. Stored water does not have an associated priority for delivery and is not within the scope of the Commission's authority. Idaho law provides that stored water will be delivered by the watermaster in accordance with written instructions given by the

holder of the storage right. The only information that the Commission needs about the delivery of stored water is the amount available prior to the determination of whether an emergency exists. If the petitioner has a combination of stored water and natural flow adequate for authorized uses, the emergency should not be declared.

2. The role of the engineer-manager would be expanded by the draft procedures. Under Idaho law, the waterusers assess themselves to pay the cost of administering water delivery. If the engineer-manager assumes the responsibility, the cost will be shifted to the general funds of the state. I am not willing to support funding of additional charges by the engineer-manager. The procedures must be drafted to continue the traditional role of the responsible state officials during an emergency with no more involvement by the engineer-manager than is necessary to insure that the delivery schedule is being followed.

The following general approach is suggested as providing an appropriate involvement by the Commission in assuring delivery of water in the lower division:

**I. DRY YEAR PREPARATION.** - Actions that are to be taken by April 15 to prepare for a possible petition for declaration of an emergency.

A. Engineering-Manager notifies the state officials that an emergency declaration could occur. An April 1 runoff forecast of 70% of normal or less or a Bear Lake forecasted seasonal high level of 5911 feet or less would trigger notification and a request to prepare for a possible delivery call requiring interstate distribution in the lower diversion.

B. State officials will confirm that deliveries on main stem Bear River and all tributaries will be managed. State officials will also provide updated estimated ground water depletion and upstream water storage impacts on natural flow rates occurring within their own state and any needed changes to the commission approved list of rights.

C. Pacific Corp will notify the state officials of stored water allocations in accordance with the schedule of storage allocations agreed to by the water users holding contracts.

D. The Utah State Engineer and the Director of the Idaho Department Water Resources will agree upon a single model to account for water delivery in both states. If agreement cannot be reached, the Commission will be asked to arbitrate the issue.

## II. ACTIONS UPON RECEIPT OF A PETITION.

A. Engineering-Manager reviews the petition to determine that the following certifications are included:

1. A certification from Utah's state engineer, or his designee, that the petitioner has contacted the responsible officials in Utah and has been advised that deliveries from Bear River and tributaries in Utah, including ground water uses in Utah are being administered in accordance with prior rights. The certification will also include the state official's assurance that the water diverted in Utah is being reasonably used for the purpose authorized by the right, and that the petitioner reasonably requires the flow requested for purposes authorized under the right. If the Bear River Canal Company is the petitioner, the state official shall determine that the total water supply available, including stored water allocations is necessary for the reasonable uses authorized. The state official shall also take into consideration the impact which storage of water upstream of Bear Lake has had on Bear Lake water supply available to meet water supply demands below the lake.

2. A certification from the Utah state engineer, or his designee, that the responsible officials in Idaho have been contacted, and have confirmed that diversion under rights from the main stem Bear River and surface tributaries in Idaho, junior to the petitioner's right, are then diverting water. This determination will be made taking into account the estimated ground water depletions in Idaho and Utah using the agreed upon accounting model.

3. A certification from the Director of the Idaho Department of Water Resources, or his designee, that without an emergency declaration by the Commission, Idaho refuses to curtail diversion under rights from the main stem Bear River and tributaries to provide water for the petitioner's right.

B. Upon determination that the petition includes all three required certifications, the Engineering-Manager will determine that a water emergency exists in the lower division. If the engineer-manager determines that the petition does not include the required certifications, he will reject the petition. The petitioner, any directly affected water user, or the responsible official from either Utah or Idaho may appeal the engineer-manager's determination to the Commission.

Jack Barnett  
Page 4  
March 9, 1995

### III. DELIVERY DURING A DECLARED EMERGENCY.

The appointed watermaster in Idaho and the river commissioner in Utah shall share daily all flow measurements taken (both stream flow and diversions) to allow the agreed upon model to be operated. They will, under the supervision of the responsible state officials, adjust headgates in their respective states to accomplish delivery of all natural flow rights on the Commission adopted list in accordance with priority of right without regard to state line and delivery of stored water in accordance with the allocations certified by Pacific Corp. A report shall be sent each week to the engineer-manager for review. If the review suggests that delivery is not occurring correctly, the engineer-manager shall notify the appropriate state official in writing.

Jack, IDWR staff has reviewed the Idaho rights on the draft schedule of rights and found that the list is in accordance with IDWR's records except that right No. 13-00960D in the name of Wawn S. Hogan appears to be missing. Information about this right is attached. You also should be aware that several diversions from the main stem in Idaho take water under an exchange. The original right was from a tributary, but the diversion has been moved to the main stem with an understanding that water that could have been diverted at the original point of diversion is bypassed and measured into the main stem. These rights are listed on the tributary list and not included on the main stem list.

I encourage you to carefully consider the procedures suggested in this letter which will allow and encourage the states to accomplish their duties, rather than shifting the program to the Commission. If you have questions, please give me a call.

Sincerely,



NORMAN C. YOUNG  
Administrator  
Water Management Division

Enclosure

**IRRIGATION WATER ALLOCATION AND  
LAKE RECOVERY PROPOSAL FOR BEAR LAKE**

<u>Calculated Elevation<sup>1</sup></u>	<u>Storage Content(A.F.)</u>	<u>Calculated Evaporation</u>	<u>Calculated Net Storage Avail.</u>	<u>Annual Allocation<sup>2</sup></u>	<u>Balance Preserved For Lake Recovery</u>
Full 5923.85	1,414,000				
5914.7 (Irr. Reserve)	801,000	(125,000)	676,000	230,000 (100%)	446,000
5914	754,000	(125,000)	629,000	225,000 (98%)	464,000
5913	688,000	(125,000)	563,000	220,000 (96%)	343,000
5912	621,000	(125,000)	490,000	215,000 (93%)	275,000
5911	557,000	(125,000)	432,000	210,000 (91%)	222,000
5910	497,000	(125,000)	372,000	205,000 (89%)	167,000
5909	428,000	(125,000)	303,000	181,000 (79%)	122,000
5908	365,000	(125,000)	240,000	168,000 (73%)	72,000
5907	302,000	(125,000)	177,000	141,000 (61%)	36,000
5906	240,000	(125,000)	115,000	104,000 (45%)	11,000
5905	180,000	(125,000)	55,000	55,000 (24%)	0
5904	119,000	(125,000)	0	0 (0%)	119,000
5903	59,000	(125,000)	0	0 (0%)	59,000
5902	0		0	0 (0%)	0

\* Footnotes are found on the following page.

<sup>1</sup> The "Calculated Elevation" represents the estimated, maximum lake level, in any given year, calculated by adding the forecasted amount of storable spring runoff to the actual quantity of water in storage on March 1 of said year. Full lake is 5923.65'. The "irrigation reserve" under the Bear River Compact is 5914.7' to 5902'.

<sup>2</sup> The "Annual Allocation" represents the total, estimated quantity of water available to be delivered to the contract holders shown on page 3. The maximum historic delivery of 245,000 acre feet (1961) shall be available at all elevations above the "irrigation reserve". The reduced allocations available at each elevation below the "irrigation reserve" of 5914.7 shall be subject to the following conditions:

- (a) The stated allocation available at each elevation is subject to the maximum flow rates deliverable by PacifiCorp facilities and other operating and legal constraints.
- (b) The total Annual Allocation shall be allocated among the contract holders, subject to contract limitations, on a per-acre basis, based upon 151,000 total irrigated acres as set forth in the attached schedule entitled Contract Holders - Bear Lake Storage.
- (c) Unused water under the allocation may not be accrued or carried over by any contract holder to any future year and will remain in the lake for additional recovery.
- (d) PacifiCorp will not deliver storage water from Bear Lake to new contracts or otherwise, over and above the existing contracts.
- (e) No allocation of water will be made to the contract holders on March 1 if the Calculated Elevation of the lake is 5904' or below. If, however, on March 1 of any year the Calculated Elevation is higher than 5904', Pacificorp will pump, if necessary, and subject to legal and operating constraints, to deliver the Annual Allocation until such time as its operation, together with anticipated evaporation, is expected to result in a calculated lake elevation of 5902' after evaporation and deliveries.

**CONTRACT HOLDERS - BEAR LAKE STORAGE**

**ACRES IRRIGATED**

Company	Utah	Idaho	Total	% By Acreage <sup>3</sup>	Contract Limitation <sup>4</sup>
Last Chance Canal Co.		32,000	32,000	21.3%	40,000 A.F. (Up to 120,000 max. over 10 yrs.)
Idaho Pumpers <sup>2</sup>		4,000	4,000	2.7%	
Cub River Irrigation <sup>1</sup>	15,000	12,000	27,000	18.0%	20,000 A.F.
West Cache Canal Co. <sup>1</sup>	11,000	4,000	15,000	10.0%	12,000 A.F.
Utah Pumpers <sup>2</sup>	8,000		8,000	5.3%	
Bear River Canal Co.	65,000		65,000	43.3%	900 cfs
<b>Total:</b>	<b>99,000</b>	<b>52,000</b>	<b>151,000</b> (rounded to 150,000)		

<sup>1</sup> Point of diversion in Idaho with stockholders and irrigated lands in both Utah and Idaho.

<sup>2</sup> Canal Company's supplied their actual irrigated acres. Pumpers' irrigated acres are estimated, and will be updated when actual acres are determined.

<sup>3</sup> By virtue of the fact that Bear River Canal Co. has the earliest contract with PacifiCorp and has no acre-footage limitation under its contract, any water allocated and available for use, which is in excess of the water to which the above-named contract holders are entitled under their respective contracts with PacifiCorp, shall be available for use first by Bear River Canal Co., up to 48.6% of the total allocation, and then to other contract holders as may be agreed upon between the contract holders.

<sup>4</sup> The BRWUA and PacifiCorp support the concept of a single allocation model for administration of water on the Bear River. Such a model may necessitate contract adjustments to reflect new accounting procedures.

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\*ALSO MEMBER IL & WY BARS  
\*\*ALSO MEMBER MO BAR

March 29, 1995

Randall M. Weiner  
Land & Water Fund of the Rockies  
2260 Baseline Road, Suite 200  
Boulder, Colorado 80302

Laird J. Lucas  
Land & Water Fund of the Rockies  
P.O. Box 1612  
Boise, Idaho 83701

Re: BRWUA - Bear Lake Allocation/Recovery Proposal

Dear Randy and Laird:

First let me express thanks to Randy and also Merlin Olson and Jim Kimball for meeting with BRWUA, as well as Carly Burton and Jody Williams, last Monday, March 20. I believe all involved felt the meeting was productive and that the dialogue we have begun should continue in an effort to work together to solve disagreements directly rather than through costly and divisive litigation.

While all involved have their own concerns about the specifics of the allocation proposal, I believe everyone believes that the concepts it embraces are sound. At the conclusion, I believe we had a consensus that the allocation proposal provided a framework upon which a complete settlement might be forged.

I am enclosing for each of you a revised "Irrigation Water Allocation and Lake Recovery Proposal for Bear Lake". This revised proposal contains several changes. First, at our meeting your group expressed some concerns that the quantities of water allocated above elevation 5910 were too high and that greater allocation reductions should occur even at those higher levels. You will note the allocation amounts at each level above 5910 have been reduced. We have also reflected the allocations at each level as a percent of the maximum use of 245,000 acre feet, which occurred in 1961.

Additionally, you will note there have been several changes in the footnotes. Some of these were required by Utah Power. The proposal in its present form has been approved by all

Randall M. Weiner  
Laird J. Lucas  
Page 2  
March 29, 1995

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BRWUA members, except for Bear River Canal Company. My understanding is that it is under consideration by Utah Power management.

It is my view that this proposal represents a marked change from historic lake allocation and use practices which, over time, will have a substantial and beneficial impact towards the recovery of Bear Lake and maintaining the lake at higher levels in the future for several reasons:

1. The proposal provides for a diminishing allocation of storage water on an annual basis as the peak elevation of the lake decreases below the irrigation reserve of 5914.7. As a result, significant quantities of available storage water that otherwise might be used for irrigation purposes will be preserved for lake recovery.
2. The proposal provides that the annual allocation of storage water would be allocated on a per-acre basis among all contract holders rather than on an unrestricted "as needed" basis. This is a significant departure from previous allocations which were based upon a percentage of historic use, and should promote conservation and eliminate past incentives to use additional water during periods of drought.
3. Annual evaporation which is approximately 125,000 acre feet per year (2 feet on the lake), is considered and factored in the allocations.
4. Unused water under the allocation may not be accrued or carried over to future years and will remain in the lake for additional recovery.
5. The delivery of storage water from Bear Lake will be limited to the existing contract holders. There will be no new contracts or depletions.
6. At elevations 5904 and below, no water would be withdrawn by irrigators, even though they have the right to use Bear Lake storage water for irrigation down to elevation 5902. It is anticipated this would prevent the lake from ever dropping to or below the 5902 level due to evaporation.

This proposal represents substantial concessions by irrigation interests in an effort to alleviate the present conflicts, promote conservation and restore Bear Lake for the benefit of all users. Irrigators will recognize that conservation of water and preservation of high lake levels, both in wet and drought periods, protects their interests and provides a corresponding benefit to homeowners, recreationalists, and other non-consumptive uses at Bear Lake. Notwithstanding, these other interests must also continue to recognize that the

Randall M. Weiner  
Laird J. Lucas  
Page 3  
March 29, 1995

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lake always has and will continue to fluctuate seasonally and based upon common weather variations. Furthermore, the long-established and prior rights of Utah Power and the irrigators to store and release water in Bear Lake between 5902' and 5923.65' simply cannot and will not be compromised or impaired absent compensation.

Additionally, at the meeting your group made a request for information pertaining to additional conservation efforts being undertaken by irrigators. I am enclosing a draft outline of a tentative Bear Lake Recovery Plan which was prepared previously and is being worked upon by Bear River Canal Company. This is a working draft of Bear River Canal Company and has not been reviewed or adopted by BRWUA or its other members. Each of the members, however, are pursuing their own conservation programs and have and will continue to budget and expend considerable sums to reduce consumption.

As I was unable to reach either of you by phone and was advised you would be out of your offices until sometime next week, to expedite communications and the evaluation of this proposal by your clients, I am taking the liberty to copy this letter and the enclosures to Merlin Olson, assuming you would have no objections.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Merlin Olson (w/encls.)  
Brent Rose  
Jody Williams  
Carly Burton  
Bear River Water Users Association Board