

# **Bear Lake Comprehensive Management Plan**

## **Introduction Document on Sovereign Land Management**

### **Introduction**

Bear Lake covers more than 112 square miles and straddles the Idaho-Utah border. Approximately 20 miles long and 8 miles wide, it sits at an elevation of about 5920 feet on the northeast side of the Wasatch Range and on the east side of the Bear River Mountains. The bed of Bear Lake became state (sovereign) land on the date of Utah's statehood, January 4, 1896. The Division of Forestry, Fire and State Lands manages the sovereign land in accordance with the Public Trust Doctrine, state law and administrative rule. The purpose of this document is to summarize the management framework for the bed of Bear Lake.

### **The Origin of Sovereign Lands**

Under English common law, the Crown held title to all lands underlying navigable waterways, subject to the Public Trust Doctrine. Following the American Revolution, title to such lands in the U.S. vested in the 13 original colonies. Under the Equal Footing Doctrine, fee title to those lands also vested in each state subsequently admitted to the Union, upon admission. Utah's public trust lands, known as "sovereign lands," lie below the ordinary high water mark of navigable bodies of water. Utah's sovereign land includes Utah Lake, Great Salt Lake, Bear Lake (Utah's half), Jordan River, Bear River and portions of the Green, Colorado and Bear rivers.

### **Constitution, Statute and Rule**

The framework for sovereign land management is found in the Utah Constitution (Article XX), state statute (primarily Chapter 65A-10), and administrative rule (R652). Article XX of the Utah Constitution accepts sovereign lands to be held in trust for the people and managed for the purposes for which the lands were acquired. Section 65A-2-1 of the Utah Code provides: "The division [of Forestry, Fire and State Lands, FFSL] shall administer state lands under comprehensive land management programs using multiple-use, sustained-yield principles." Briefly stated, the overarching management objectives of FFSL are to protect and sustain the trust resources of, and to provide for reasonable beneficial uses of those resources, consistent with their long-term protection and conservation. This means that FFSL will manage Bear Lake's sovereign land resources under multiple-use sustained yield principles, implementing legislative policies and accommodating public and private uses to the extent that those policies and uses do not compromise public trust obligations (Section 65A-10-1) and sustainability is maintained. Any beneficial use of public trust resources is subsidiary to long-term conservation of resources. Administrative rules address planning (R652-90) and land use authorizations including minerals (R652-20), special use lease agreements (R652-30), easements (R652-40), rights of entry (R652-41), grazing (R652-50), cultural resources (R652-60), exchanges (R652-80) and off-highway vehicles (R652-1 10).

Although sovereign land planning and management responsibilities lie with FFSL, other divisions of the Department of Natural Resources (DNR) also have management responsibilities for resources on and around Bear Lake. The Division of Wildlife Resources, for example, has

plenary authority for managing wildlife in, on and around the lake. The Division of Parks and Recreation manages Bear Lake State Park and coordinates search and rescue and boating enforcement on the lake. The Division of Water Rights regulates the diversion and use of lake and tributary waters. The Division of Water Resources conducts studies, investigations and plans for water use. DNR divisions also regulate mineral extraction activities, conduct hydrologic research and identify and map geologic hazards around the lake.

## **The Public Trust over Sovereign Lands**

Under A.D. 6th Century Roman law, and perhaps earlier, the air, sea and running waters were common to all citizens and the separate property of none. All rivers and ports were public and the right of fishing was common to all. Any person was at liberty to use the seashore to the highest tide, to build a retreat on it, or to dry nets on it, so long as they did not interfere with the use of the sea or beach by others. Although the banks of a river could be privately owned, all persons had the right to bring vessels to the banks, to fasten them by ropes and to place any of their cargo there. The influence of Roman civil law carries forward through English common law to today's Public Trust Doctrine, which recognizes the special public interest in rivers, lakes, tidelands and waters.

The Public Trust Doctrine "is founded upon the necessity of preserving to the public the use of navigable waters free from private interruption and encroachment" (Illinois Central R.R. Co. V. Illinois, 1892). Sovereign lands are held in trust by the state for the benefit of the public. The "trust" is a real trust in the legal sense of the word. There is a clear and definite trust corpus (the lands, waters and living resources therein), clear beneficiaries (the public), elected and appointed state officials with fiduciary responsibilities in managing the trust corpus and a clear purpose for the trust. The Public Trust Doctrine establishes the right of the public to use and enjoy these trust waters, lands and resources for a wide variety of recognized public uses. The original purpose of the doctrine was to assure public access to navigable waters for commerce, navigation and fishing. Protection of these resources remains paramount. The Public Trust Doctrine has evolved, in some states, to include modern uses such as recreation, environmental protection and preservation of scenic beauty. Implementation of multiple-use and other legislative policies for sovereign land is subject to consistency with public trust obligations. The Public Trust Doctrine has been, and will continue to be, flexible to accommodate changing demands for public trust resources.

There is no hierarchy of uses protected under the doctrine, but when there are competing public benefits, the public trust requires that those benefits that best preserve the purpose of the public trust under the circumstances should be given a higher priority. The Utah Legislature has assigned responsibility for management of sovereign lands, including Bear Lake, to FFSL. As trustee, FFSL must strive for an appropriate balance among compatible and competing uses while ensuring that uses protected under the Public Trust Doctrine, commerce, navigation and fishing, have primacy. It is desirable to maintain the option to adjust the allocation of public trust resources in response to changes in demand and changes in administrative and legislative policy. There are circumstances under which a lessee or grantee must be able to restrict public access to fully enjoy the rights granted under a lease, permit or sale. Examples include restrictions during mining operations, construction of improvements, harbor operations, military operations and

access to personal property. The test of any disposition of an interest in sovereign land is that it must be done without affecting the public interest in what remains. This involves a judgment call on the degree of affect on the trust resources.

Sale of sovereign lands is generally precluded by the constitutionally-imposed duty of the state to manage sovereign lands for the public. The general exception to this prohibition is if the disposition itself is in the furtherance of the public interest. Prior to 1988, state law limited the sale of sovereign lands to purposes that "promote a material public or quasi-public use or service, and then only in such quantity as may be reasonably necessary to promote such public or quasi public use or service; and provided further, that such use shall not unreasonably interfere with navigation" (Section 65-1-14). In 1988, state law was changed to allow the sale of sovereign land "only in the quantities and for purposes as serve the public trust and do not interfere with the public trust" [Subsection 65A- 10-1(1)]. This change reinforced application of the Public Trust Doctrine and further restricted the purposes for which sovereign land may be sold. The legislature has chosen to protect the public interest when sovereign land is sold or leased by requiring that "...the lease, contract of sale, or deed shall contain a provision that: (a) the lands shall be open to the public for the purpose of hunting, trapping, or fishing during the lawful season, except as provided by Section 65A-2-5; and (b) no charge may be made by the lessee, contractee, or grantee to any person who desires to go upon the land for the purpose of hunting, trapping, or fishing" (Section 23-21-4). Section 65A-2-5 reads: "The director of the Division of Forestry, Fire, and State Lands, in conjunction with the Wildlife Board, may restrict or limit public use of leased parcels of sovereign lands for hunting, trapping, or fishing: A. upon the petition of the affected lessee; B. after a public hearing; and C. upon a determination that unrestricted public use for hunting, trapping, or fishing substantially interferes with the primary activities authorized by the lease."

### **The Bear Lake Boundary**

The Bear River Compact (Appendix D) was drafted and signed in 1957 by the states of Utah and Idaho which provided for the present and future allocation and use of the water resources in the Bear River Basin including Bear Lake as well as how the water is allocated in times of water emergency. This document along with the operating agreements and subsequent amended Bear River Compact in 1978 stipulates how Pacificorp, who owns water rights to divert and store water in the Bear River Basin (including Bear Lake) , will divert, store and release water from Bear Lake between the elevations of 5902.00 feet and 5923.65 feet above mean sea level. By agreement the primary purpose of the storage waters of Bear Lake is to provide irrigation water and flood control to downstream users of the water. Providing hydroelectric power by the six downstream Pacificorp plants is secondary to the irrigation and flood control use. Incidental to Bear Lake's primary uses are the intense recreational use of Bear Lake in the form of boating, fishing, swimming and other dispersed recreational activities.

The elevational limit of 5923.65 feet above mean sea level has been the artificially set "high water mark" for the purposes of managing the lake resources and also establishing the boundary between sovereign lands and upland landowners. The Division of Forestry, Fire and State Lands is embarking to complete boundary settlements for the upland landowners. Because the high water mark has been agreed to and managed at 5923.65 feet for decades, and a court approved

settlement boundary has been established at that elevation, it is anticipated that few disputes will occur on boundary settlements with the four hundred plus landowners, and should be completed by 2008.

### **The Planning Unit**

Lands subject to the Bear Lake Comprehensive Management Plan (CMP) are limited to sovereign lands. For the purposes of the planning process, the planning unit will include sovereign lands up to the elevation of 5923.65 feet above mean sea level. All land and resources within and underneath this elevation constitutes the planning unit. This elevation is designated by the Bear River Compact and subsequent documents which deal with the purposes and management of water in the Bear River Basin including the diversion, storage and release of water from Bear Lake.

On December 28, 2005, sovereign lands were withdrawn from leasing and permitting for 18 months or the date of completion of the Comprehensive Management Plan, whichever occurs first. The withdrawal does not apply to uses associated with boundary settlements, improvement of access and trails, or activities associated with the protection of endangered species. The intent of the withdrawal is to ensure that development and use of the lake occur within the context of the plan instead of driven by nominations and applications.

### **Sovereign Land Classifications**

Division rule (Section R652-70-200) allows for classification of sovereign land based upon current and planned uses:

Class 1 - Manage to protect existing resource development uses.

Class 2 - Manage to protect potential resource development options.

Class 3 - Manage as open for consideration of any use.

Class 4 - Manage for resource inventory and analysis (a temporary classification).

Class 5 - Manage to protect potential resource preservation options.

Class 6 - Manage to protect existing resource preservation uses.

To date, none of these classifications have been applied to Bear Lake.

### **Existing Leases and Permits**

Existing leases and permits include forty-eight easements, two rights of entry, five general permits, and five special use lease agreements. See Appendix A for detailed on existing leases and permittees.

### **Public Access to Bear Lake**

There are a number of access points to the lake both public and private. The public access points include campgrounds, marinas and numerous "walk-in" and day use areas along U.S. Route 89 and the east shore road. See Appendix B for named public access points.

## Appendix A – Existing Leases and Permits

### **Easements and Rights of Way**

<b>Lease #</b>	<b>Lessee/Permittee</b>	<b>Type</b>	<b>Purpose</b>
40000028	Alta S. Nye Family Trust	Recreational	floating dock
40000021	Andreason, Norman	Recreational	sea wall/boat ramp
40000079	Ballif, Neil	Recreational	floating/portable dock
40000032	Bear Lake Limited	Recreational	floating dock
40000045	Bowcutt, Vaughn	Recreational	floating/portable dock
ROW 3095	Boy Scouts of America	Recreational	campground
40000026	Bridgerland Village	Recreational	floating dock
40000052	Brower, Dale	Recreational	floating/portable dock
40000056	Call'S Investment Co	Recreational	sea wall/boat ramp
40000068	Carver, William	Recreational	floating/portable dock
40000043	Casa Blanca Limited	Recreational	floating dock
40000070	Cisco Road Enterprises, Llc	Recreational	sea wall/boat ramp
40000042	Crandall, John & Leslie	Recreational	floating/portable dock
40000039	Diederich, Wilford	Recreational	floating dock
40000040	Downs Bear Lake, Lc.	Recreational	sea wall/boat ramp
ESMT 82	Falula Farm, Inc	Right of Way	pipeline
40000058	Frandsen, Kent	Recreational	floating/portable dock
40000030	Free, David & Deanna	Recreational	floating dock
40000060	Green, Helen	Recreational	sea wall/boat ramp
40000005	Gunnell, Lance	Wildlife Habitat	Shoreline Riprap
40000057	Hales, Max	Recreational	floating/portable dock
40000075	Hanzelka, Cyril	Recreational	floating/portable dock
40000037	Haycock, Bernice & Gary	Recreational	sea wall/boat ramp
40000061	Horsley, Jack	Recreational	sea wall/boat ramp
40000053	Jager, Steven	Recreational	floating/portable dock

<b>Lease #</b>	<b>Lessee/Permittee</b>	<b>Type</b>	<b>Purpose</b>
40000077	Kemker, Ralph & Corlene	Recreational	floating/portable dock
40000055	Killpack, Robert	Recreational	floating/portable dock
40000087	Krug, Paul	Recreational	floating/portable dock
40000023	L. Ray Hansen Family Trust	Recreational	floating dock
40000072	Lancy, David	Recreational	sea wall/boat ramp
40000046	Larsen, Karen	Recreational	sea wall/boat ramp
ESMT 70	Nebeker, Sidney	Right of Way	Pipeline
40000031	Parrish, Richard	Recreational	floating dock
40000054	Patterson Et Al, Robert	Recreational	floating/portable dock
40000022	Peterson, John & Eleanor	Recreational	sea wall/boat ramp
40000038	Phelps, Jerry	Recreational	sea wall/boat ramp
40000047	Quinn, Mildred	Recreational	sea wall/boat ramp
40000071	Robinson Properties	Recreational	floating/portable dock
40000027	Sealy, M. Devro	Recreational	sea wall/boat ramp
40000025	Slater, Thomas	Recreational	sea wall/boat ramp
40000036	Smart, Jay	Recreational	sea wall/boat ramp
40000033	Spinnaker Pt Homeowners Assoc	Recreational	floating dock
40000044	Stirk, Mary	Recreational	sea wall/boat ramp
40000050	Susaeta, John	Recreational	sea wall/boat ramp
40000035	Taylor, Gene	Recreational	sea wall/boat ramp
40000048	Watts, Michael	Recreational	floating/portable dock
40000078	Wheelright, Hal, & Hans Borschel	Recreational	floating/portable dock
40000017	Williams, Don	Wildlife Habitat	bank stabilization
40000069	Williams, Lucille	Recreational	sea wall/boat ramp

### **Rights of Entry**

<b>Lease #</b>	<b>Lessee/Permittee</b>	<b>Type</b>	<b>Purpose</b>
40000005	BLH Enterprises, LLC	Recreational	right of entry
40000017	BLH Enterprises, LLC	Recreational	right of entry

### **General Permits**

<b>Lease #</b>	<b>Lessee/Permittee</b>	<b>Type</b>	<b>Purpose</b>
73000011	Hansen, Dell		
SLGP 0005	Hodges Beach Home Owners	Recreational	boat ramp
73000008	Jager, Steven	Recreational	boat ramp
SLGP 0021	Utah Parks & Recreation	Recreational	boat ramp
SLGP 0018	Utah Wildlife Resources	Agriculture	fishery habitat

### **Special Use Lease Agreements**

<b>Lease #</b>	<b>Lessee/Permittee</b>	<b>Type</b>	<b>Purpose</b>
SULA 333	Azure Cove, Inc	Commercial	marina
SULA 312	Beck's Bear Lake Property	Commercial	boat ramp
SULA 531	Hodges, Mark	Recreational	boat ramp
SULA 648	Ideal Beach Master Assoc	Commercial	marina
SULA 647	Ideal Beach Master Assoc	Commercial	marina

## **Appendix B - Bear Lake Access Points**

### **Campgrounds**

Rainbow Cove

Cisco Beach

South Eden

First Point

Rendezvous Beach State Park

KOA

Bear Lake State Marina

### **Marinas**

Idaho North Beach (Idaho)

Idaho Eastshore State Park (Idaho)

Rainbow Cove

First Point

Rendezvous Beach

Spinnaker Marina

Bear Lake State Marina

### **Fishing Access**

Numerous access along US 89 and East shore road

# Appendix C - Bear River Compact

## AMENDED BEAR RIVER COMPACT

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

### ARTICLE I

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

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

### ARTICLE II

As used in this Compact the term

1. "Bear River" means the Bear River and its tributaries from its source in the Uinta Mountains to its mouth in Great Salt Lake;
2. "Bear Lake" means Bear Lake and Mud Lake;
3. "Upper Division" means the portion of Bear River from its source in the Uinta Mountains to and including Pixley Dam, a diversion dam in the Southeast Quarter of Section 25, Township 23 North, Range 120 West, Sixth Principal Meridian, Wyoming;
4. "Central Division" means the portion of Bear River from Pixley Dam to and including Stewart Dam, a diversion dam in Section 34, Township 13 South, Range 44 East, Boise Base and Meridian, Idaho;
5. "Lower Division" means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage;
6. "Upper Utah Section Diversions" means the sum of all diversions in second-feet from the Bear River and the tributaries of the Bear River joining the Bear River upstream from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming; excluding the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;
7. "Upper Wyoming Section Diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming, to the point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, and including the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;
8. "Lower Utah Section Diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, to the point where the Bear River crosses the Utah-Wyoming State line northeast of Randolph, Utah;

9. "Lower Wyoming Section Diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line northeast of Randolph to and including the diversion at Pixley Dam;

10. "Commission" means the Bear River Commission, organized pursuant to Article III of this Compact;

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

12. "Second-foot" means a flow of one cubic foot of water per second of time passing a given point;

13. "Acre-foot" means the quantity of water required to cover one acre to a depth of one foot, equivalent to 43,560 cubic feet;

14. "Biennium" means the 2-year period commencing on October 1 of the first odd-numbered year after the effective date of this Compact and each 2-year period thereafter;

15. "Water year" means the period beginning October 1 and ending September 30 of the following year;

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

17. "Border Gaging Station" means the stream flow gaging station in Idaho on the Bear River above Thomas Fork near the Wyoming-Idaho boundary line in the Northeast Quarter of the Northeast Quarter of Section 15, Township 14 South, Range 46 East, Boise Base and Meridian, Idaho;

18. "Smiths Fork" means a Bear River tributary which rises in Lincoln County, Wyoming, and flows in a general southwesterly direction to its confluence with Bear River near Cokeville, Wyoming;

19. "Grade Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, and flows in a westerly direction and in its natural channel is tributary to Smiths Fork in Section 17, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming;

20. "Pine Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, emerging from its mountain canyon in Section 34, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming, and its natural channel is tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

21. "Bruner Creek" and "Pine Creek Springs" means Smiths Fork tributaries which rise in Lincoln County, Wyoming, in Sections 31 and 32, Township 25 North, Range 118 West, Sixth Principal Meridian, and in their natural channels are tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

22. "Spring Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, in Sections 1 and 2, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming, and flows in a general westerly direction to its confluence with Smiths Fork in Section 4, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

23. "Sublette Creek" means the Bear River tributary which rises in Lincoln County, Wyoming, and flows in a general westerly direction to its confluence with Bear River in Section 20, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

24. "Hobble Creek" means the Smiths Fork tributary which rises in Lincoln County, Wyoming, and flows in a general southwesterly direction to its confluence with Smiths Fork in Section 35, Township 28 North, Range 118 West, Sixth Principal Meridian, Wyoming;

25. "Hilliard East Fork Canal" means that irrigation canal which diverts water from the right bank of the East Fork of Bear River in Summit County, Utah, at a point West 1,310 feet and North 330 feet from the Southeast corner of Section 16, Township 2 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the Southwest Quarter of Section 21, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

26. "Lannon Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, East 1,480 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

27. "Lone Mountain Ditch" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, North 1,535 feet and East 1,120 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

28. "Hilliard West Side Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, at a point North 2,190 feet and East 1,450 feet from the South Quarter corner of Section 13, Township 3 North, Range 9 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

29. "Francis Lee Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter of Section 30, Township 18 North, Range 120 West, Sixth Principal Meridian, Wyoming, and runs in a westerly direction across the Wyoming-Utah State line into Section 16, Township 9 North, Range 8 East, Salt Lake Base and Meridian, Utah;

30. "Chapman Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter of Section 36, Township 16 North, Range 121 West, Sixth Principal Meridian, Wyoming, and runs in a northerly direction crossing over the low divide into the Saleratus drainage basin near the Southeast corner of Section 36, Township 17 North, Range 121 West, Sixth Principal Meridian, Wyoming, and then in a general westerly direction crossing the Wyoming-Utah State line;

31. "Neponset Reservoir" means that reservoir located principally in Sections 34 and 35, Township 8 North, Range 7 East, Salt Lake Base and Meridian, Utah, having a capacity of 6,900 acre-feet.

### ARTICLE III

A. There is hereby created an interstate administrative agency to be known as the "Bear River Commission" which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The Commission shall be composed of nine Commissioners, three Commissioners representing each signatory State, and if appointed by the President, one additional Commissioner representing the United States of America who shall serve as chairman, without vote. Each Commissioner, except the chairman, shall have one vote. The State Commissioners shall be selected in accordance with State law. Six Commissioners who shall

include two Commissioners from each State shall constitute a quorum. The vote of at least two-thirds of the Commissioners when a quorum is present shall be necessary for the action of the Commission.

B. The compensation and expenses of each Commissioner and each adviser shall be paid by the government which he represents. All expenses incurred by the Commission in the administration of this Compact, except those paid by the United States of America, shall be paid by the signatory States on an equal basis.

C. The Commission shall have power to:

1. Adopt bylaws, rules, and regulations not inconsistent with this Compact;
2. Acquire, hold, convey or otherwise dispose of property;
3. Employ such persons and contract for such services as may be necessary to carry out its duties under this Compact;
4. Sue and be sued as a legal entity in any court of record of a signatory State, and in any court of the United States having jurisdiction of such action;
5. Co-operate with State and Federal agencies in matters relating to water pollution of interstate significance;
6. Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with others, including State and Federal agencies.

D. The Commission shall:

1. Enforce this Compact and its orders made hereunder by suit or other appropriate action;
2. Compile a report covering the work of the Commission and expenditures during the current biennium, and an estimate of expenditures for the following biennium and transmit it to the President of the United States and to the Governors of the signatory States on or before July 1 following each biennium.

#### ARTICLE IV

Rights to direct flow water shall be administered in each signatory State under state law, with the following limitations:

A. When there is a water emergency, as hereinafter defined for each division, water shall be distributed therein as provided below.

1. Upper Division.

a. When the divertible flow as defined below for the upper division is less than 1,250 second-feet, a water emergency shall be deemed to exist therein and such divertible flow is allocated for diversion in the river sections of the Division as follows:

- Upper Utah Section Diversions - 0.6%,
- Upper Wyoming Section Diversions - 49.3%,
- Lower Utah Section Diversions - 40.5%,
- Lower Wyoming Section Diversions - 9.6%.

Such divertible flow shall be the total of the following five items:

- (1) Upper Utah Section Diversions in second-feet,
- (2) Upper Wyoming Section Diversions in second-feet,
- (3) Lower Utah Section Diversions in second-feet,
- (4) Lower Wyoming Section Diversions in second-feet,
- (5) The flow in second-feet passing Pixley Dam.

b. The Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal, which divert water in Utah to irrigate lands in Wyoming, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

c. The Chapman, Bear River, and Francis Lee Canals, which divert water from the main stem of Bear River in Wyoming to irrigate lands in both Wyoming and Utah, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

d. The Beckwith Quinn West Side Canal, which diverts water from the main stem of Bear River in Utah to irrigate lands in both Utah and Wyoming, shall be supplied from the divertible flow allocated to the Lower Utah Section Diversions.

e. If for any reason the aggregate of all diversions in a river section of the Upper Division does not equal the allocation of water thereto, the unused portion of such allocation shall be available for use in the other river sections in the Upper Division in the following order: (1) In the other river section of the same State in which the unused allocation occurs; and (2) In the river sections of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e.

f. Water allocated to the several sections shall be distributed in each section in accordance with State law.

## 2. Central Division.

a. When either the divertible flow as hereinafter defined for the Central Division is less than 870 second-feet, or the flow of the Bear River at Border Gaging Station is less than 350 second-feet, whichever shall first occur, a water emergency shall be deemed to exist in the Central Division and the total of all diversions in Wyoming from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, Smiths Fork, and all the tributaries of Smiths Fork above the mouth of Hobbler Creek including Hobbler Creek, and from the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border shall be limited for the benefit of the State of Idaho, to not exceed 43% of the divertible flow. The remaining 57% of the divertible flow shall be available for use in Idaho in the Central Division, but if any portion of such allocation is not used therein it shall be available for use in Idaho in the Lower Division.

The divertible flow for the Central Division shall be the total of the following three items:

(1) Diversions in second-feet in Wyoming consisting of the sum of all diversions from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, and Smiths Fork and all the tributaries of Smiths Fork above the mouth of Hobbler Creek including Hobbler Creek, and the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border, Wyoming.

(2) Diversions in second-feet in Idaho from the Bear River main stem from the point where the river crosses the Wyoming-Idaho State line near Border to Stewart Dam including West Fork Canal which diverts at Stewart Dam.

(3) Flow in second-feet of the Rainbow Inlet Canal and of the Bear River passing downstream from Stewart Dam.

b. The Cook Canal, which diverts water from the main stem of the Bear River in Wyoming to irrigate lands in both Wyoming and Idaho, shall be considered a Wyoming diversion and shall be supplied from the divertible flow allocated to Wyoming.

c. Water allocated to each State shall be distributed in accordance with State law.

3. Lower Division.

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

B. The Commission shall have authority upon its own motion (1) to declare a water emergency in any or all river divisions based upon its determination that there are diversions which violate this Compact and which encroach upon water rights in a lower State, (2) to make appropriate orders to prevent such encroachments, and (3) to enforce such orders by action before State administrative officials or by court proceedings.

C. When the flow of water in an interstate tributary across a State boundary line is insufficient to satisfy water rights on such tributary in a lower State, any water user may file a petition with the Commission alleging that by reason of diversions in an upstream State he is being deprived of water to which he is justly entitled and that by reason thereof a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds that a water emergency exists and that interstate control of water of such tributary is necessary, it shall put into effect water delivery schedules based on priority of rights and prepared without regard to the State boundary line. The State officials in charge of water distribution on interstate tributaries may appoint and fix the compensation and expenses of a joint water commissioner for each tributary. The proportion of the compensation and expenses to be paid by each State shall be determined by the ratio between the number of acres therein which are irrigated by diversions from such tributary, and the total number of acres irrigated from such tributary.

D. In preparing interstate water delivery schedules the Commission, upon notice and after public hearings, shall make finding of fact as to the nature, priority and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops, time of use, and related matters; provided that such schedules shall recognize and incorporate therein priority of water rights as adjudicated in each of the signatory States. Such findings of fact shall, in any court or before any tribunal, constitute prima facie evidence of the facts found.

E. Water emergencies provided for herein shall terminate on September 30 of each year unless terminated sooner or extended by the Commission.

ARTICLE V

A. Water rights in the Lower Division acquired under the laws of Idaho and Utah covering water applied to beneficial use prior to January 1, 1976, are hereby recognized and shall be administered in accordance with State law based on priority of rights as provided in Article IV, paragraph A3. Rights to water first applied to beneficial use on or after January 1, 1976, shall be satisfied from the respective allocations made to Idaho and Utah in this paragraph and the water allocated to each State shall be administered in accordance with State law. Subject to the

foregoing provisions, the remaining water in the Lower Division, including ground water tributary to the Bear River, is hereby apportioned for use in Idaho and Utah as follows:

(1) Idaho shall have the first right to the use of such remaining water resulting in an annual depletion of not more than 125,000 acre-feet.

(2) Utah shall have the second right to the use of such remaining water resulting in an annual depletion of not more than 275,000 acre-feet.

(3) Idaho and Utah shall each have an additional right to deplete annually on an equal basis, 75,000 acre-feet of the remaining water after the rights provided by subparagraphs (1), and (2) above have been satisfied.

(4) Any remaining water in the Lower Division after the allocations provided for in subparagraphs (1), (2), and (3) above have been satisfied shall be divided; 30% to Idaho and 70% to Utah.

B. Water allocated under the above subparagraphs shall be charged against the State in which it is used regardless of the location of the point of diversion.

C. Water depletions permitted under provisions of subparagraphs (1), (2), and (3), and (4) above, shall be calculated and administered by a Commission-approved procedure.

#### ARTICLE VI

A. Existing storage rights in reservoirs constructed above Stewart Dam prior to February 4, 1955, are as follows:

Idaho	324 acre-feet
Utah	11,850 acre-feet
Wyoming	2,150 acre-feet

Additional rights are hereby granted to store in any water year above Stewart Dam, 35,500 acre-feet of Bear River water and no more under this paragraph for use in Utah and Wyoming; and to store in any water year in Idaho or Wyoming on Thomas Fork 1,000 acre-feet of water for use in Idaho. Such additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. One-half of the 35,500 acre-feet of additional storage right above Stewart Dam so granted to Utah and Wyoming is hereby allocated to Utah, and the remaining one-half thereof is allocated to Wyoming.

B. In addition to the rights defined in Paragraph A of this Article, further storage entitlements above Stewart Dam are hereby granted. Wyoming and Utah are granted an additional right to store in any year 70,000 acre-feet of Bear River water for use in Utah and Wyoming to be divided equally; and Idaho is granted an additional right to store 4,500 acre-feet of Bear River water in Wyoming or Idaho for use in Idaho. Water rights granted under this paragraph and water appropriated, including ground water tributary to Bear River, which is applied to beneficial use on or after January 1, 1976, shall not result in an annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet in excess of the depletion as of January 1, 1976. Thirteen thousand (13,000)

acre-feet of the additional depletion above Stewart Dam is allocated to each of Utah and Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho.

The additional storage rights provided for in this Paragraph shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam; provided, however, there shall be no diversion of water to storage above Stewart Dam under this Paragraph B when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power & Light Company datum (the equivalent of elevation 5,913.75 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947). Water depletions permitted under this Paragraph B shall be calculated and administered by a Commission-approved procedure.

C. In addition to the rights defined in Article VI, Paragraphs A and B, Idaho, Utah and Wyoming are granted the right to store and use water above Stewart Dam that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied. The availability of such water and the operation of reservoir space to store water above Bear Lake under this paragraph shall be determined by a Commission-approved procedure. The storage provided for in this Paragraph shall be subordinate to all other storage and direct flow rights in the Bear River. Storage rights under this Paragraph shall be exercised with equal priority on the following basis: 6% thereof to Idaho; 47% thereof to Utah; and 47% thereof to Wyoming.

D. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power and Light Company Bear Lake datum (the equivalent of elevation 5,915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) 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 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 for the generation of power or for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to Paragraph A of this Article, the Commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:

Additional Storage Acre-feet	Lake surface elevation Utah Power & Light Company Bear Lake datum
5,000	5,913.24
10,000	5,913.56
15,000	5,913.87
20,000	5,914.15
25,000	5,914.41
30,000	5,914.61
35,500	5,914.69
36,500	5,914.70

E. Subject to existing rights, each State shall have the use of water, including groundwater, for ordinary domestic, and stock watering purposes, as determined by State law and shall have the right to impound water for such purposes in reservoirs having storage capacities not in excess, in any case, of 20 acre-feet, without deduction from the allocation made by paragraphs A, B, and C of this Article.

F. The storage rights in Bear Lake are hereby recognized and confirmed subject only to the restrictions hereinbefore recited.

#### ARTICLE VII

It is the policy of the signatory States to encourage additional projects for the development of the water resources of the Bear River to obtain the maximum beneficial use of water with a minimum of waste, and in furtherance of such policy, authority is granted within the limitations provided by this Compact, to investigate, plan, construct, and operate such projects without regard to State boundaries, provided that water rights for each such project shall, except as provided in Article VI, Paragraphs A and B, thereof, be subject to rights theretofore initiated and in good standing.

#### ARTICLE VIII

A. No State shall deny the right of the United States of America, and subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person or entity of another signatory State, to acquire rights to the use of water or to construct or to participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one State for use of water in another State, either directly or by exchange. Water rights acquired for out-of-state use shall be appropriated in the State where the point of diversion is located in the manner provided by law for appropriation of water for use within such State.

B. Any signatory State, any person or any entity of any signatory State, shall have the right to acquire in any other signatory State such property rights as are necessary to the use of water in conformity with this Compact by donation, purchase, or, as hereinafter provided through the exercise of the power of eminent domain in accordance with the law of the State in which such property is located. Any signatory State, upon the written request of the Governor of any other signatory State for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price acceptable to the requesting Governor, or if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or to the person, or entity designated by its Governor provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining such property shall be paid by the requesting State or the person or entity designated by its Governor.

C. Should any facility be constructed in a signatory State by and for the benefit of another signatory State or persons or entities therein, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located.

D. In the event lands or other taxable facilities are acquired by a signatory State in another signatory State for the use and benefit of the former, the users of the water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such facilities are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average of the

amount of taxes annually levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivision of the State.

E. Rights to the use of water acquired under this Article shall in all respects be subject to this Compact.

#### ARTICLE IX

Stored water, or water from another watershed may be turned into the channel of the Bear River in one State and a like quantity, with allowance for loss by evaporation, transpiration, and seepage, may be taken out of the Bear River in another State either above or below the point where the water is turned into the channel, but in making such exchange the replacement water shall not be inferior in quality for the purpose used or diminished in quantity. Exchanges shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid. Water from another watershed or source which enters the Bear River by actions within a State may be claimed exclusively by that State and use thereof by that State shall not be subject to the depletion limitations of Articles IV, V and VI. Proof of any claimed increase in flow shall be the burden of the State making such claim, and it shall be approved only by the unanimous vote of the Commission.

#### ARTICLE X

A. The following rights to the use of Bear River water carried in interstate canals are recognized and confirmed.

Name of Canal	Date of priority	Primary right second-feet	Lands irrigated	
			Acres	State
Hilliard East Fork	1914	28.00	2,644	Wyoming
Chapman	8-13-86	16.46	1,155	Wyoming
	8-13-86	98.46	6,892	Utah
	4-12-12	.57	40	Wyoming
	5-3-12	4.07	285	Utah
	5-21-12	10.17	712	Utah
	2-6-13	.79	55	Wyoming
	8-28-05	134.001		
Francis Lee	1879	2.20	154	Wyoming
	1879	7.41	519	Utah

1Under the right as herein confirmed not to exceed 134 second-feet may be carried across the Wyoming-Utah State line in the Chapman Canal at any time for filling the Neponset Reservoir, for irrigation of land in Utah and for other purposes. The storage right in Neponset Reservoir is for 6,900 acre-feet, which is a component part of the irrigation right for the Utah lands listed above.

All other rights to the use of water carried in interstate canals and ditches, as adjudicated in the State in which the point of diversion is located, are recognized and confirmed.

B. All interstate rights shall be administered by the State in which the point of diversion is located and during times of water emergency, such rights shall be filled from the allocations specified in Article IV hereof for the Section in which the point of diversion is located, with the exception that the diversion of water into the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal shall be under the administration of

Wyoming. During times of water emergency these canals and the Lone Mountain Ditch shall be supplied from the allocation specified in Article IV for the Upper Wyoming Section Diversions.

#### ARTICLE XI

Applications for appropriation, for change of point of diversion, place and nature of use, and for exchange of Bear River water shall be considered and acted upon in accordance with the law of the state in which the point of diversion is located, but no such application shall be approved if the effect thereof will be to deprive any water user in another state of water to which he is entitled, nor shall any such application be approved if the effect thereof will be an increase in the depletion of the flow of the Bear River and its tributaries beyond the limits authorized in each State in Articles IV, V and VI of this Compact. The official of each State in charge of water administration shall, at intervals and in the format established by the Commission, report on the status of use of the respective allocations.

#### ARTICLE XII

Nothing in this Compact shall be construed to prevent the United States, a signatory State or political subdivision thereof, person, corporation, or association, from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under State or Federal law or under this Compact.

#### ARTICLE XIII

Nothing contained in this Compact shall be deemed

1. To affect the obligations of the United States of America to the Indian tribes;
2. To impair, extend or otherwise affect any right or power of the United States, its agencies or instrumentalities involved herein; nor the capacity of the United States to hold or acquire additional rights to the use of the water of the Bear River;
3. To subject any property or rights of the United States to the laws of the States which were not subject thereto prior to the date of this Compact;
4. To subject any property of the United States to taxation by the States or any subdivision thereof, nor to obligate the United States to pay any State or subdivision thereof for loss of taxes.

#### ARTICLE XIV

At intervals not exceeding twenty years, the Commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such proposed amendments have been ratified by the legislatures of the signatory States and consented to by Congress.

#### ARTICLE XV

This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

#### ARTICLE XVI

Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any signatory State or to the Constitution of the United States, all other severable provisions of this Compact shall continue in full force and effect.

#### ARTICLE XVII

This Compact shall be in effect when it shall have been ratified by the Legislature of each signatory State and consented to by the Congress of the United States of America. Notice of

ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, The Commissioners and their advisers have executed this Compact in five originals, one of which shall be deposited with the General Services Administration of the United States of America, one of which shall be forwarded to the Governor of each of the signatory States, and one of which shall be made a part of the permanent records of the Bear River Commission.

Done at Salt Lake City, Utah, this 22nd day of December, 1978.

For the State of Idaho:

(s) Clifford J. Skinner                      (s) Don W. Gilbert  
(s) J. Daniel Roberts

For the State of Utah:

(s) S. Paul Holmgren                      (s) Daniel F. Lawrence  
(s) Simeon Weston

For the State of Wyoming:

(s) George L. Christopulos              (s) John A. Teichert  
(s) J. W. Myers

Approved:

Wallace N. Jibson  
Representative of the  
United States of America

Attest:

Daniel F. Lawrence  
Secretary of the Bear River  
Commission