

TITLE 42
IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 34
RATIFICATION OF INTERSTATE COMPACTS

42-3401. SNAKE RIVER COMPACT RATIFIED. Ratification and approval is hereby given to the Snake River Compact as signed at the city of Cheyenne in the state of Wyoming on the 10th day of October, 1949, by the commissioners of the state of Idaho, acting pursuant to authority granted by sections 42-3313--42-3318, [Idaho Code,] and the commissioners representing the state of Wyoming and approved by the representative of the United States, which compact is in full as follows:

SNAKE RIVER COMPACT

The states of Idaho and Wyoming, parties signatory to this compact, have resolved to conclude a compact as authorized by the Act of June 3, 1948 (62 Stat. 294), and after negotiations participated in by the following named state commissioners:

FOR IDAHO

Mark R. Kulp, Boise
N. V. Sharp, Filer
Charles H. Welteroth, Jerome
Roy Marquess, Paul
Ival V. Goslin, Aberdeen
R. Willis Walker, Rexburg
Alex O. Coleman, St. Anthony
Leonard E. Graham, Rigby
Charles E. Anderson, Idaho Falls
A. K. Van Orden, Blackfoot

FOR WYOMING

L. C. Bishop, Cheyenne
E. B. Hitchcock, Rock Springs
J. G. Imeson, Jackson
David P. Miller, Rock Springs
Carl Robinson, Afton
Ciril D. Cranney, Afton
Clifford P. Hansen, Jackson
Clifford S. Wilson, Driggs, Idaho
Lloyd Van Deburg, Jackson

and by R. J. Newell, representative of the United States of America, have agreed upon the following articles, to wit:

ARTICLE I

A. The major purposes of this compact are to provide for the most efficient use of the waters of the Snake River for multiple purposes; to provide for equitable division of such waters; to remove causes of present and fu-

ture controversies; to promote interstate comity; to recognize that the most efficient utilization of such waters is required for the development of the drainage area of the Snake River and its tributaries in Wyoming and Idaho; and to promote joint action by the states and the United States in the development and use of such waters and the control of floods.

B. Either state using, claiming or in any manner asserting any right to the use of the waters of the Snake River under the authority of either state shall be subject to the terms of this compact.

ARTICLE II

As used in this compact:

A. The term "Snake River" as distinguished from terms such as "Snake River and its tributaries" shall mean the Snake River from its headwaters to the Wyoming-Idaho boundary and all tributaries flowing into it within the boundaries of Wyoming, and the Salt River and all its tributaries.

B. The terms "Idaho" and "Wyoming" shall mean, respectively, the state of Idaho and the state of Wyoming, and, except as otherwise expressly provided, either of those terms or the term "state" or "states" used in relation to any right or obligation created or recognized by this compact shall include any person or entity of any nature whatsoever, including the United States.

C. The term "domestic use" shall mean the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

D. The term "stock water use" shall mean the use of water for livestock and poultry.

E. The term "established Wyoming rights" shall mean Snake River water rights that have been validly established of record in Wyoming prior to July 1, 1949, for use in Wyoming.

ARTICLE III

A. The waters of the Snake River, exclusive of established Wyoming rights and other uses coming within the provisions of C of this article III, are hereby allocated to each state for storage or direct diversion as follows:

To Idaho..... 96 per cent

To Wyoming..... 4 per cent

subject to the following stipulations and conditions as to the four per cent allocated to Wyoming:

1. One[-]half may be used in Wyoming by direct diversion or by storage and subsequent diversion without provision being made for replacement storage space.
2. The other one[-]half may be diverted for direct use or stored for later diversion and use on the condition that there shall have been provided for reimbursement of Idaho users replacement storage space to the extent of one[-]third of the maximum annual diversion in acre-feet but not in excess, however, of one[-]third of half the total hereby allocated to Wyoming. Until this total replacement storage space has been made available, provision for meeting its proportionate part of this total shall be a prerequisite to the

right to use water in Wyoming for any irrigation project authorized after June 30, 1949, for construction by any Federal agency.

B. The amount of water subject to allocation as provided in A of this article III shall be determined on an annual water-year basis measured from October 1 of any year through September 30 of the succeeding year. The quantity of water to which the percentage factors in A of this article III shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. The quantity of water, in acre-feet, that has passed the Wyoming state line in the Snake River to the given date, determined on the basis of gaging stations to be established at such points as are agreed on under the provisions of B of article VI.
2. The change during that water year to the given date in quantity of water, in acre-feet, in any existing or future reservoirs in Wyoming which water is for use in Idaho.
3. The quantity of water, in acre-feet, stored in that water year and in storage on the given date for later diversion and use in Wyoming, under rights having a priority later than June 30, 1949.
4. One-third of the quantity of water, in acre-feet, excluding any storage water held over from prior years, diverted, under rights having a priority later than June 30, 1949, in that water year to the given date:
 - (a) from the Snake River for use that year on lands in Wyoming, and
 - (b) from tributaries of the Salt River for use that year on lands in Idaho.

C. There are hereby excluded from the allocation made by this compact:

1. existing and future domestic and stock-water uses of water; provided, that the capacity of any reservoir for stock-water shall not exceed 20 acre-feet;
2. established Wyoming rights; and
3. all water rights for use in Idaho on any tributary of the Salt River heading in Idaho which were validly established under the laws of Idaho prior to July 1, 1949;

and all such uses and rights are hereby recognized.

ARTICLE IV

No water of the Snake River shall be diverted in Wyoming for use outside the drainage area of the Snake River except with the approval of Idaho; and no water of any tributary of the Salt River heading in Idaho shall be diverted in Idaho for use outside the drainage area of said tributary except with the approval of Wyoming.

ARTICLE V

Subject to the provisions of this compact, waters of the Snake River may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use of such waters for domestic, stock and irrigation purposes, and shall not interfere with or prevent their use for such preferred purposes. Water impounded or diverted in Wyoming exclusively for the generation of electrical power shall not be charged to the allocation set forth in article III of this compact.

ARTICLE VI

A. It shall be the duty of the two states to administer this compact through the official in each state who is now or may hereafter be charged with the administration of the public water supplies, and to collect and correlate through such officials the data necessary for the proper administration of the provisions of this compact. Such officials may, by unanimous action, adopt rules and regulations consistent with the provisions of this compact.

B. The states shall in conjunction with other responsible agencies cause to be established, maintained and operated such suitable water gaging stations as they find necessary to administer this compact. The United States Geological Survey, or whatever Federal agency may succeed to the functions and duties of that agency, so far as this compact is concerned, shall collaborate with officials of the states charged with the administration of this compact in the execution of the duty of such officials in the collection, correlation and publication of information necessary for its proper administration.

C. In the case of failure of the administrative officials of the two states to agree on any matter necessary to the administration of this compact, the director of the United States Geological Survey, or whatever official succeeds to his duties, shall be asked to appoint a Federal representative to participate as to the matters in disagreement, and points of disagreement shall be decided by majority vote.

ARTICLE VII

A. Either state shall have the right to file applications for and receive permits to construct or participate in the construction and use of any dam, storage reservoir or diversion works in the other state for the purpose of conserving and regulating its allocated water and to perfect rights thereto. Either state exercising this right shall comply with the laws of the other state except as to any general requirement for legislative approval that may be applicable to the granting of rights by one state for the diversion or storage of water for use outside of that state.

B. Each claim or right hereafter initiated for storage or diversion of water in one state for use in the other state shall be filed in the office of the proper official of the state in which the water is to be stored or diverted, and a duplicate copy of the application, including a map showing the character and location of the proposed facilities and the lands to be irrigated, shall be filed in the office of the proper official of the state in which the water is to be used. If a portion or all the lands proposed to be reclaimed are located in a state other than the one in which the water is to be stored or diverted, then, before approval, said application shall be checked against the records of the office of the state in which the water is to be used, and a notation shall be placed thereon by the officer in charge of such records as to whether or not he approves the application. All indorsements shall be placed on both the original and duplicate copies of all such applications and maps filed to the end that the records in both states may be complete and identical.

ARTICLE VIII

A. Neither state shall deny the right of the United States, and subject to the conditions hereinafter contained, neither state shall deny the right of the other state to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one state for the purpose of diverting, conveying, storing or regulating water in one state for use in the other state, when such use is within the allocation to such state made by this compact.

B. Either state shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in the other state by donation, purchase or through the exercise of the power of eminent domain. Either state, upon the written request of the governor of the other 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 satisfactory to the requesting state, 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 such entity as may be designated by the requesting state; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting state at the time and in the manner prescribed by the state requested to acquire the property.

C. Should any facility be constructed in either state by and for the benefit of the other state, 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, except that, in the case of a reservoir constructed in either state for the benefit of the other state, the proper officials of the state in which the facility is located shall permit the storage and release of any water to which the other state is entitled under this compact.

D. Either state having property rights in the other state acquired as provided in B of this article VIII shall pay to the political subdivision of the state in which such property rights are located, each and every year during which such rights are held, a sum of money equivalent to the average annual amount of taxes assessed against those rights during the ten years preceding the acquisition of such rights in reimbursement for the loss of taxes to said political subdivision of the state, except that this provision shall not be applicable to interests in property rights the legal title to which is in the United States. Payments so made to a political subdivision shall be in lieu of any and all taxes by that subdivision on the property rights for which the payments are made.

ARTICLE IX

The provisions of this compact shall not apply to or interfere with the right or power of either state to regulate within its boundaries the appropriation, use and control of waters allocated to such state by this compact.

ARTICLE X

The failure of either state to use the waters, or any part thereof, the use of which is allocated to it under the terms of this compact, shall not

constitute a relinquishment of the right to such use to the other state, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XI

In case any reservoir is constructed in one state where the water is to be used principally in the other state, sufficient water not to exceed five cubic feet per second shall be released at all times, if necessary for stock-water use and conservation of fish and wildlife.

ARTICLE XII

The provisions of this compact shall remain in full force and effect unless amended or terminated by action of the legislatures of both states and consented to and approved by the Congress of the United States in the same manner as this compact is required to be ratified and approved to become effective; provided, that in the event of such amendment or termination all rights theretofore established hereunder or recognized hereby shall continue to be recognized as valid by both states notwithstanding such amendment or termination.

ARTICLE XIII

Nothing in this compact shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE XIV

- A. Nothing in this compact shall be deemed:
1. To affect adversely any rights to the use of the waters of the Snake River, including its tributaries entering downstream from the Wyoming-Idaho state line, owned by or for Indians, Indian tribes and their reservations. The water required to satisfy these rights shall be charged against the allocation made to the state in which the Indians and their lands are located.
 2. To impair or affect any rights or powers of the United States, its agencies or instrumentalities, in and to the use of the waters of the Snake River nor its capacity to acquire rights in and to the use of said waters.
 3. To apply to any waters within the Yellowstone National Park or Grand Teton National Park.
 4. To subject any property of the United States, its agencies or instrumentalities to taxation by either state or subdivisions thereof, nor to create an obligation on the part of the United States, its agents or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivisions thereof, state agency, municipality or entity whatsoever in reimbursement for the loss of taxes.
 5. To subject any works of the United States used in connection with the control or use of waters which are the subject of this compact to

the laws of any state to an extent other than the extent to which these laws would apply without regard to this compact.

B. Notwithstanding the provisions of A of this article, any beneficial uses hereafter made by the United States, or those acting by or under its authority, within either state, of the waters allocated by this compact shall be within the allocations hereinabove made for use in that state and shall be taken into account in determining the extent of use within that state.

ARTICLE XV

This compact shall become operative when approved by legislative enactment by each of the states, and when consented to by the Congress of the United States.

ARTICLE XVI

Wyoming hereby relinquishes the right to the allocation of stored water in Grassy Lake Reservoir, as set forth in Wyoming's reservoir permit No. 4631 Res. and evidenced by certificate No. R-1, page 318, and all claims predicated thereon.

In witness whereof the commissioners have signed this compact in quadruplicate, one of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each of the states.

Done at the city of Cheyenne, in the state of Wyoming, this 10th day of October, in the Year of Our Lord, One Thousand Nine Hundred and Forty-nine.

COMMISSIONERS FOR IDAHO	COMMISSIONERS FOR WYOMING
/s/ Mark R. Kulp Mark R. Kulp	/s/ L. C. Bishop L. C. Bishop
/s/ N. V. Sharp N. V. Sharp	/s/ E. B. Hitchcock E. B. Hitchcock
/s/ Charles H. Welteroth Charles H. Welteroth	/s/ J. G. Imeson J. G. Imeson
/s/ Roy Marquess Roy Marquess	/s/ David P. Miller David P. Miller
/s/ Ival V. Goslin Ival V. Goslin	/s/ Carl Robinson Carl Robinson
/s/ R. Willis Walker R. Willis Walker	/s/ Ciril D. Cranney Ciril D. Cranney
/s/ Alex O. Coleman Alex O. Coleman	/s/ Clifford P. Hansen Clifford P. Hansen
/s/ Leonard E. Graham Leonard E. Graham	/s/ Clifford S. Wilson Clifford S. Wilson
/s/ Chas. E. Anderson Charles E. Anderson	/s/ Lloyd Van Deburg Lloyd Van Deburg

COMMISSIONERS FOR IDAHO

COMMISSIONERS FOR WYOMING

/s/ A. K. Van Orden

A. K. Van Orden

I have participated in the negotiation of this compact and intend to report favorably thereon to the Congress of the United States.

REPLACE BL TAG HERE/s/ R. J. Newell

REPLACE BL TAG HERER. J. Newell

REPLACE BL TAG HEREREpresentative of

REPLACE BL TAG HEREThe United States of America

[42-3401, added 1950 (E.S.), ch. 2, sec. 1, p. 4.]

42-3402. BEAR RIVER COMPACT RATIFIED. Ratification and approval is hereby given to the Bear River Compact as signed at the city of Salt Lake City, in the state of Utah on the twenty-second day of December, 1978, by Clifford J. Skinner, J. Daniel Roberts and Don W. Gilbert, commissioners of the state of Idaho, acting pursuant to authority granted by article XIV of the ratified Bear River Compact appearing at section 42-3402, Idaho Code, and the commissioners representing the state of Utah, the state of Wyoming and approved by Wallace N. Jibson, Representative of the United States, which compact is in full as follows:

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 the 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 in its nat-

ural 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 by-laws, 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. Cooperate 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 per cent,

Upper Wyoming Section Diversions--49.3 per cent,

Lower Utah Section Diversions--40.5 per cent,

Lower Wyoming Section Diversions--9.6 per cent.

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 allocations 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 Hobble Creek including Hobble 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 exceeding forty-three (43) per cent of the divertible flow. The remaining fifty-seven (57) per cent 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 Hobble Creek including Hobble 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

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 findings 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; thirty (30) percent to Idaho and seventy (70) percent 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), (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 REPLACE DOL TAG HERE 324 acre-feet

Utah REPLACE DOL TAG HERE 11,850 acre-feet

Wyoming REPLACE DOL TAG HERE 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: six (6) percent thereof to Idaho; forty-seven (47) percent thereof to Utah; and forty-seven (47) percent thereof to Wyoming.

D. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power & 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 solely 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 ground water, 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
Francis Lee	8-28-05	134.00		
	1879	2.20	154	Wyoming
	1879	7.41	519	Utah

Under 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 submit 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 advisors 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/ Don W. Gilbert

/s/ Clifford J. Skinner

/s/ J. Daniel Roberts

For the state of Utah:

/s/ David F. Lawrence

/s/ S. Paul Holmgren

/s/ Simeon Weston

For the state of Wyoming:

/s/ John A. Teichert

/s/ George L. Christopoulos

/s/ J. W. Myers

Approved:REPLACE BL TAG HEREAttest:

/s/ Wallace N. JibsonREPLACE BL TAG HERE/s/ Daniel F. Lawrence

Representative of the UnitedREPLACE BL TAG HERESecretary of the Bear River

States of AmericaREPLACE BL TAG HERECompact Commission

[42-3402, added 1955, ch. 218, sec. 1, p. 450; am. 1979, ch. 322, sec. 1, p. 862.]

42-3404. ANADROMOUS FISH -- COMPACT WITH WASHINGTON AND OREGON -- REGULATORY POWERS OF FISH AND GAME REPRESENTATIVES OF STATES. Should congress by virtue of the authority vested in it under article 1, section 10, of the Constitution of the United States, providing for compacts and agreements between states, ratify the following as a definite compact and agreement between the states of Washington, Oregon and Idaho, then, and in that event, there shall exist between the states of Washington, Oregon and Idaho a compact and agreement, the purport of which shall be substantially as follows:

The compact states acknowledge that they have a common interest in the conservation and management of anadromous fish stocks in the Columbia River drainage and they mutually agree to assume joint responsibility in develop-

ing sports and commercial fishery programs and regulations which will maintain and preserve the resource for the interest and benefit of all users.

Membership from the compact states shall be the Idaho department of fish and game, the fish commission of the state of Oregon, Oregon wildlife commission, Washington department of fisheries and the Washington department of game or the successor agency to any of the above. The compact members may appoint advisors to serve as needed.

All rules and regulations now existing or which may be necessary for the conservation and management of anadromous fish in the waters of the main stem of the Columbia River from its mouth to the mouth of the Snake River and the waters of the main stem of the Snake River from its mouth to the mouth of the Salmon River, shall be made, changed, altered and amended in whole or in part by a majority vote. In voting on rules and regulations, each state shall be entitled to one (1) vote. Idaho will vote only on those regulations which might have a substantial impact on fish destined for Idaho waters.

The individual states shall be responsible for the management of anadromous fish stocks in pertinent tributary streams and shall be guided in such management by the intent and purpose of this compact.

[42-3404, added 1967, ch. 37, sec. 1, p. 59; am. 1969, ch. 6, sec. 1, p. 9; am. 1975, ch. 233, sec. 1, p. 637.]