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ATTORNEY GENERAL OPINION NO. 89-1

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Per Request for Attorney General's Opinion

QUESTIONS PRESENTED:

1. Do Idaho counties have the authority to enter into an agreement with counties of Utah and Wyoming to develop a joint water project on the Bear River?
2. Does the Idaho Water Resource Board have authority to issue revenue bonds, either separately or jointly with the other compacting states, to fund Idaho's share of a joint water project on the Bear River within Idaho, or within Utah or Wyoming?
3. If a joint project is developed in Idaho, is project water allocated to Utah and Wyoming chargeable to their shares of Bear River water under the compact?
4. May any portion of Idaho's share of the waters of Bear River under the Bear River Compact be allocated for use in another state?
5. If there is an interbasin transfer of Bear River water from a joint project in Idaho, would this create a legal precedent affecting other river basins in the state?

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CONCLUSIONS:

1. Idaho counties have authority to join in an agreement with counties of Utah and Wyoming to develop a joint water project on the Bear River. Under Idaho law, however, the purposes of the water project must be limited to the irrigation or drainage of lands in the respective counties.

2. The Idaho Water Resource Board has authority to issue revenue bonds, either separately or jointly with the other compacting states, to fund Idaho's share of a joint water project on the Bear River within Idaho, Utah, or Wyoming. However, the Idaho Legislature must authorize construction of the project before the Idaho Water Resource Board may issue the revenue bonds.

3. If a joint water project on the Bear River is developed in Idaho, water allocated for beneficial use in Utah and Wyoming will be charged against Utah's or Wyoming's share of water under the Amended Bear River Compact.

4. Idaho's share of Bear River water under the Bear River Compact cannot be allocated for use in another state.

5. An interbasin transfer of Bear River water from a joint project in Idaho to Utah or Wyoming will not create a legal precedent affecting other river basins in the state.

ANALYSIS:

Question No. 1

Your first question asks whether counties in Idaho have authority to enter into agreements with counties in Utah and Wyoming to develop a joint water project on the Bear River. The Joint Exercise of Powers Act, Idaho Code §§ 67-2326 to 67-2333 (1980 and Supp. 1988), authorizes public agencies in Idaho to enter into cooperative agreements with other public agencies in Idaho and other states. Idaho Code § 67-2327 defines "public agency" to mean any city or political subdivision of this state, including counties.

Idaho Code § 67-2326 states the purpose of the act:

It is the purpose of this act to permit the state and public agencies to make the most efficient use of their powers by enabling them to cooperate to their mutual advantage and

thereby provide services and facilities and perform functions in a manner that will best accord with geographic, economic, population, and other factors influencing the needs and development of the respective entities.

Idaho Code § 67-2328(a) spells out the circumstances under which a public agency may participate in a joint exercise of powers:

(a) Any power, privilege or authority, authorized by the Idaho Constitution, statute or charter, held by the state of Idaho or a public agency of said state, may be exercised and enjoyed jointly with the state of Idaho or any public agency of this state having the same powers, privilege or authority; but never beyond the limitation of such powers, privileges or authority; and the state or public agency of the state, may exercise such powers, privileges and authority jointly with the United States, any other state, or public agency of any of them, to the extent that the laws of the United States or sister state, grant similar powers, privileges or authority, to the United States and its public agencies, or to the sister state and its public agencies; and provided the laws of the United States or a sister state allow such exercise of joint power, privilege or authority. The state or any public agency thereof when acting jointly with another public agency of this state may exercise and enjoy the power, privilege and authority conferred by this act; but nothing in this act shall be construed to extend the jurisdiction, power, privilege or authority of the state or public agency thereof, beyond the power, privilege or authority said state or public agency might have if acting alone.  
(Emphasis added.)

Idaho counties desiring to exercise their powers jointly with counties of Utah and Wyoming to develop a joint water project on the Bear River are subject to the above restrictions. The Idaho counties must first possess the independent authority to develop a water project before they are authorized to exercise those powers jointly with counties in Utah and Wyoming. Id. The counties of

Utah and Wyoming are required to possess similar authority to develop a water project and to exercise those powers jointly with Idaho counties. Id. Whether or not the counties of Utah and Wyoming possess such authority is a question best answered by their respective states and is not addressed in this opinion.

Any joint or cooperative exercise of powers under the act requires a formal agreement between the cooperating public agencies. Idaho Code § 67-2328. That section also prescribes the form of the agreement and various substantive provisions which must be included such as the duration of the agreement, financing provisions, and various administrative provisions.

Any agreement under the act involving a sister state must be filed with the Idaho Secretary of State. Idaho Code § 67-2329. The agreement shall not become effective until an opinion from the Attorney General, requested by the Secretary of State, states the agreement does not violate the U.S. or Idaho constitution or any Idaho statute. Id. Failure of the Attorney General to render an opinion within thirty days of receipt from the Secretary of State constitutes approval of the agreement.

As noted above, to enter into a joint exercise of powers agreement, Idaho counties must have independent authority to engage in the type of activity contemplated. Thus, it is necessary to consider the independent authority of counties in Idaho to develop water projects.

Idaho Code § 31-827 pertains to the construction of water projects. It authorizes the boards of county commissioners to expend up to "\$1000 in procuring data, surveys, estimates, measurements, maps, plats, and all other matter which may be necessary to the promotion of any irrigation scheme or system," provided a petition is filed with the board signed by at least one hundred (100) taxpayers of the county requesting such expenditure.

The provisions of title 42, ch. 28, Idaho Code, give broader authority to counties for the construction of water projects. For example, Idaho Code § 42-2801 authorizes Idaho counties to act independently or jointly to promote the irrigation and drainage of lands lying within their respective borders, provided that county bonds issued or sold for such purposes shall be approved by a two-thirds vote of the electors of the counties. A county acting independently under Idaho Code § 42-2801 is authorized to develop a water project only for the irrigation or drainage of lands within that county. If a county develops a project jointly with other Idaho counties, lands within each participating county may be

served by the project. Likewise, if one or more Idaho counties develop a water project jointly with one or more authorized Utah or Wyoming counties having similar powers, lands within the cooperating counties of each state may be served by the project.

Idaho Code §§ 31-827 and 42-2801 make it clear that counties have broad authority to engage in water projects if the purpose of the project is irrigation or drainage of lands within the respective counties; however, there are no statutes conferring on counties the authority to produce and sell hydroelectric power. The legislature, by way of contrast, has expressly granted to irrigation districts the power to construct and operate electric power plants pursuant to Idaho Code § 42-313. Likewise, the legislature has expressly conferred on cities the authority to own and operate electric power plants pursuant to Idaho Code § 50-325. This implies that the legislature did not intend to confer such powers on counties.

The absence of statutory authority for counties to engage in power projects is important since counties have only such powers as are specifically delegated by law or reasonably implied from powers delegated. Idaho Constitution, art. XVIII, § 11; Shillingford v. Benewah County, 48 Idaho 447, 452, 282 P. 864, 866 (1929).

Since the legislature has not given Idaho counties authority to produce and sell electric power as separate entities, Idaho counties cannot exercise such powers jointly with counties in Utah or Wyoming. Idaho counties lack authority to enter into an agreement with counties of other states to develop a joint water project for the production and sale of hydroelectric power.

In conclusion, Idaho counties have authority to join in an agreement with counties of Utah and Wyoming to develop a joint water project on the Bear River, assuming the counties in the sister states possess like authority. Under Idaho law, however, the purposes of such a water project must be limited to the irrigation or drainage of lands within the respective counties. In order to participate in a joint hydroelectric project, interested counties should seek legislation authorizing them to enter into such agreements.

#### Question No. 2

The second question asks whether the Idaho Water Resource Board has authority to issue revenue bonds, either separately or jointly with the other compacting states, to fund Idaho's share of a joint water project on the Bear River within Idaho, or within

Utah or Wyoming. Before addressing this question, it is necessary to review Idaho's role in the management of the waters of the Bear River.

Since 1958, the waters of the Bear River have been governed by a compact among the states of Idaho, Utah and Wyoming. Congress consented to the original compact in the Act of March 17, 1958, Pub. L. No. 85-348, 72 Stat. 38. The compacting states negotiated an Amended Bear River Compact in 1978. Congress consented to these amendments in the Act of February 8, 1980, Pub. L. No. 96-189, 94 Stat. 4. The legislatures of Idaho, Utah and Wyoming had ratified the compact earlier. Idaho Code § 42-3402 (Supp. 1988); Utah Code Ann. § 73-16-2 (1980); Wyo. Stat. § 41-12-101 (Supp. 1988).

Article VII of the amended compact recites the policy of the compacting states to encourage additional water projects on the Bear River:

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.

Idaho Code § 42-3402 (Amended Bear River Compact, art. VII).

With this introduction we now turn to the question of the authority of the Idaho Water Resource Board to issue revenue bonds for a water project on the Bear River. The board is a constitutional entity established in 1965 pursuant to Idaho Const. art. XV, § 7. The constitutional provision, as amended in 1984, reads:

§ 7. State Water Resource Agency.-- There shall be constituted a Water Resource Agency, composed as the Legislature may now or hereafter prescribe, which shall have power to construct and operate water projects; to issue

bonds, without state obligation, to be repaid from revenues of projects; to generate and wholesale hydroelectric power at the site of production; to appropriate public waters as trustee for Agency projects; to acquire, transfer and encumber title to real property for water projects and to have control and administrative authority over state lands required for water projects; all under such laws as may be prescribed by the Legislature. Additionally, the State Water Resource Agency shall have power to formulate and implement a state water plan for optimum development of water resources in the public interest. The Legislature of the State of Idaho shall have the authority to amend or reject the state water plan in a manner provided by law. Thereafter any change in the state water plan shall be submitted to the Legislature of the State of Idaho upon the first day of a regular session following the change and the change shall become effective unless amended or rejected by law within sixty days of its admission to the Legislature.

Idaho Const., art. XV, § 7 (emphasis added).

The legislature established the Idaho Water Resource Board as the constitutional water agency called for by the constitutional provision. Idaho Code § 42-1732 (Supp. 1988). Idaho Code § 42-1734 lists the following pertinent powers and duties of the board:

(1) To have and exercise all of the rights, powers, duties and privileges vested by article XV, section 7, of the constitution of this state in the water resource agency ....

....

(5) To generate and wholesale hydroelectric power at the site of production if such power production is connected with another purpose for such project.

(6) To file applications and obtain permits in the name of the board, to appropriate, store,

or use the unappropriated waters of any body, stream, or other surface or underground source of water for specific water projects. Such filings and appropriations by the board, or any water rights owned or claimed by the board, shall be made in the same manner and subject to all of the state laws relating to appropriation of water, with the exception that the board will not be required to pay any fees required by the laws of this state for its appropriations. The filings and appropriations by the board shall be subject to contest or legal action the same as any other filing and appropriation and such filings and appropriations shall not have priority over or affect existing prior water rights of any kind or nature; provided that the board shall have the right to file for water rights with appropriate officials of other states as trustee for project users, and to do all things necessary in connection therewith;

(7) To finance said projects with revenue bonds or such moneys as may be available;

....

(11). To present to the governor for presentation to the legislature not later than the 30th of November prior to the convening of a regular legislative session the final report containing the complete plans, costs and feasibility estimates for any water project which the board recommends that the state construct in accordance with the comprehensive state water plan; and to construct any water project specifically authorized by the legislature;

Idaho Code § 42-1734(1),(5),(6),(7),(11) (Supp. 1988) (emphasis added).

The only pertinent constitutional and statutory limitation placed on the board's power regarding either financing or construction of water projects is the requirement of legislative

authorization to construct a project. Idaho Code § 42-1734(11).<sup>1</sup> There appear to be no limitations on the board's financing authority.<sup>2</sup> This difference is not easily explained because the policy reasons are substantially the same for requiring legislative approval either of financing or of construction of water projects. However, this difference in statutory authority has few practical consequences because it is unlikely that any bonding authority would accept the risk of financing a water project without legislative approval.

Since the Idaho Water Resource Board is a "public agency," it may exercise its powers, privileges and authority jointly with the states of Utah and Wyoming. Idaho Code § 67-2328(a). Thus, the board has authority to issue revenue bonds to fund Idaho's share of a joint water project on the Bear River within Idaho, Utah or Wyoming. This joint exercise of power is subject to the requirements that the other states have the power to issue similar bonds in their respective states and the authority to jointly exercise that power with the Idaho Water Resource Board.

In conclusion, if specific authorization is given by the Idaho legislature, the Idaho Water Resource Board may construct water

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<sup>1</sup>This opinion does not address whether this limitation on the board's authority to construct water projects is valid. Idaho Const. art. XV, § 7 specifically authorizes the board to construct and operate water projects "all under such laws as may be prescribed by the Legislature." In Idaho Power Co. v. State, 104 Idaho 570, 661 P.2d 736 (1983), the Idaho Supreme Court voided as unconstitutional a statutory provision authorizing legislative oversight regarding the board's water planning functions. The court interpreted the quoted phrase as applying "primarily to procedural matters, and not to the specific, substantive grants of power enumerated in art. 15, § 7." Id. 104 Idaho at 573, 661 P.2d at 739. In 1984, the electorate approved an amendment to Idaho Const. art. XV, § 7, that specifically authorized legislative oversight of the board's water planning functions. The amendment in 1984 did not address the board's power to construct and operate water projects.

<sup>2</sup>The board's authority to issue revenue bonds for water projects has been held not to create an "impermissible state debt or liability." Idaho Water Resource Board v. Kramer, 97 Idaho 535, 556, 548 P.2d 35, 56 (1976).

projects on the Bear River in Idaho, Utah, or Wyoming. The board could issue revenue bonds to fund Idaho's share of a joint water project constructed by another entity without legislative approval.

Question No. 3

If a joint Bear River water project is developed in Idaho, question number three asks whether project water allocated to Utah and Wyoming is chargeable to their shares of Bear River water under the compact?

The compact divides the Bear River and its tributaries into three divisions. The three divisions are designated the Upper, Central and Lower Divisions:

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;

Idaho Code § 42-3402 (Amended Bear River Compact, art. II).

Article V of the amended compact allocates water depletions in the Lower Division, which are not based on beneficial use prior to January 1, 1976, for use in Idaho and Utah. Article V specifically provides that:

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.  
(Emphasis added.)

Similarly, the compact language implies that additional storage rights developed by the compacting states in the Central and Upper Divisions of the Bear River above Stewart Dam be charged against the state responsible for the storage and use of the water. For example, art. VI, para. A, grants 35,500 acre-feet of storage

per year "for use in Utah and Wyoming" on an equal basis, and 1,000 acre-feet of storage per year on Thomas Fork "for use in Idaho." Above these amounts, art. VI, para. B, grants an additional 70,000 acre-feet of annual storage "for use in Utah and Wyoming to be divided equally" and 4,500 acre feet of Bear River annual storage "for use in Idaho."

If water surplus to that allocated under paragraphs A and B of art. VI occurs in the Central and Upper Divisions, para. C of art. VI provides how the three states may utilize this surplus water. Paragraph C defines surplus water as water "that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied." Storage rights under paragraph C shall be exercised with equal priority among the three states 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."

It is concluded that, as is the case with the Lower Division under art. V of the compact, any water allocated in the Central and Upper Divisions under art. VI shall be charged against the state or states in which the water is used regardless of the location of the point of diversion.

#### Question No. 4

Question four asks whether any portion of Idaho's share of Bear River water under the compact legally can be allocated for use in another state. We analyze this question first with regard to the other two signatory states, then with regard to non-signatory states.

The compact clause of the U.S. Constitution requires that congressional consent be given before any state may "enter into any agreement or compact with another state." U.S. Const. art. I, § 10, cl. 3. Once congressional consent has been given, the interstate compact is transformed "into a law of the United States." Cuyler v. Adams, 449 U.S. 433, 438, 101 S. Ct. 703, 707, 66 L. Ed.2d 641, 648 (1981). "One consequence of this metamorphosis is that, unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." Texas v. New Mexico, 462 U.S. 554, 564, 103 S. Ct. 2558, 2565, 77 L. Ed.2d 1, 12 (1983). Since Congress has given consent to the Amended Bear River Compact, Act of Feb. 8, 1980, Pub. L. No. 96-189, 94 Stat. 4, the compact has the force and effect of federal law.

The supremacy clause of the Constitution requires that laws of the United States be treated as "the supreme law of the land." U.S. Const. art. VI, cl. 2. All state laws in direct conflict with federal laws are preempted by the federal laws.

Article VIII of the Bear River Compact mandates the following with respect to water diverted for use in another state:

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.

....

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

Idaho Code § 42-3402 (Amended Bear River Compact, art. VIII).

The conclusion to be drawn with regard to the other two signatory states is that Bear River water may be appropriated and diverted in Idaho for use in Utah or Wyoming. However, water put to beneficial use in Utah or Wyoming is, by definition, not part of Idaho's share of Bear River water and such water will be charged against Utah's or Wyoming's share of Bear River water under the compact. Any state law to the contrary will be preempted, since the compact has the force and effect of federal law.

The compact is silent on the second part of this question, i.e., does not say whether any of Idaho's share of Bear River water may be acquired for use by a non-signatory state. The Amended Bear River Compact neither expressly grants nor denies non-signatory states the right to use Bear River water.

Restrictions preventing the transport of water across state boundaries arguably raise an issue involving the commerce clause of the U.S. Constitution. See Sporhase v. Nebraska, 458 U.S. 941, 102 S. Ct. 3456, 73 L. Ed.2d 1254 (1982). The Sporhase decision, however, is not controlling if the restriction preventing the transport of water across state boundaries is a result of federal rather than state law.

In a case decided subsequent to Sporhase, the Ninth Circuit Court of Appeals held: "[T]he Yellowstone River Compact was approved by Congress; because it was approved by Congress, it is federal, not state, law for purposes of Commerce Clause objections; therefore, the compact cannot, by definition, be a state law impermissibly interfering with commerce but is instead a federal law, immune from attack." Intake Water Co. v. Yellowstone River Compact Comm'n, 769 F.2d 568, 569-570 (9th Cir. 1985), cert. denied, 476 U.S. 1163, 106 S. Ct. 2288, 90 L. Ed.2d 729 (1986). The same characterization is applicable to the Amended Bear River Compact.

When Congress consents to an interstate compact, the construction of that compact "presents a federal question." Cuyler v. Adams, supra. For that reason, when interpreting interstate compacts the Supreme Court has turned "to federal not state law." Petty v. Tennessee-Missouri Bridge Comm'n, 359 U.S. 275, 280, 79 S. Ct. 785, 789, 3 L. Ed.2d 804, 809 (1959). In Cuyler, the Court construed the interstate compact in light of the purpose of the compact, as reflected in the structure of the compact, "its language, and its legislative history." Cuyler, 449 U.S. at 450, 101 S. Ct. at 712, 66 L. Ed.2d at 655.

The major purposes of the Amended Bear River Compact enunciated in art. I, para. A, 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." Idaho Code § 42-3402. Although none of these purposes by themselves mandates the exclusion of non-signatory states from acquiring Bear River water, the purposes, structure, language and legislative history of the compact weigh in favor of exclusion.

For example, art. VIII, para. A, of the compact mandates that "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 ... in one state for use of water in another state, ..." If the compact was not intended to restrict the use of water to the compacting states, the term "signatory state" would not have been used. In addition, when a joint water commissioner is required for an interstate tributary in any of the divisions, the proportion of the compensation and expenses paid to such a commissioner "by each [signatory] 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." Amended Bear River Compact art. IV, para. C (emphasis added). This compensation plan does not provide for any diversions of water outside of the signatory states. If Congress had intended to allow diversions of water outside of the signatory states, it would have provided for the non-signatory states' participation in the paying of expenses.

The legislative history for the compact also supports the conclusion that Bear River water was intended to remain in the signatory states. For example, Senator Watkins, one of the sponsors of the bill to give congressional consent to the Bear River Compact, requested action on the bill be expedited "so that the available water can be utilized in the communities and farming areas of the three-State Bear River Basin." 103 Cong. Rec. 1628 (1957).

Also, the House report on the original Bear River Compact states that the compact "[g]rants additional rights to store upstream from Stewart Dam certain specified quantities of water for further development and use in Idaho, Utah, and Wyoming." H.R. Report No. 1375, 85th Cong., 2d Sess. 2 (1958). There is no hint that Bear River water could be used outside the signatory states.

In conclusion, Bear River water may be diverted in Idaho for use in Utah or Wyoming. However, Bear River water put to beneficial use in Utah or Wyoming is, by definition, part of Utah's or Wyoming's share. Otherwise, there would be no "apportionment of the waters of the Bear River among the compacting states." Amended Bear River Compact art. I, para. A. Further, the compact restricts the use of Bear River water within the boundaries of the compacting states. This conclusion is supported by the purposes, structure, language and legislative history of the compact.

#### Question No. 5

If there is an interbasin transfer of Bear River water from a joint project in Idaho, question number five asks whether this

would create a legal precedent affecting other river basins in the state.

As previously stated, the Amended Bear River Compact has the effect of federal law. The compact requires that Idaho allow other signatory states, and any person or entity of another signatory state, to acquire rights to the use of water in Idaho for use in Utah or Wyoming. Thus, any interbasin transfer of Bear River water from Idaho to Utah or Wyoming is effectively controlled by the compact rather than by Idaho law. Article I of the compact states that, "No general principle or precedent with respect to any other interstate stream is intended to be established."

Because the compact, rather than state law, will control the occurrence of interbasin transfers of Bear River water from Idaho to Utah or Wyoming, such transfers will not create a legal precedent affecting other river basins in Idaho. Based upon the conclusion that the compact restricts the use of Bear River water to the signatory states, it is not necessary to consider the possible precedent created by a transfer of Bear River water to a non-signatory state.

Authorities Considered:

Constitutions

Idaho Constitution art. XV, § 7.  
Idaho Constitution art. XVIII, § 11.  
U.S. Constitution art. I, § 10, cl. 3.  
U.S. Constitution art. VI, cl. 2.

Idaho Statutes

Idaho Code § 31-827.  
Idaho Code § 42-313.  
Idaho Code § 42-1732.  
Idaho Code § 42-1734.  
Idaho Code § 42-2801.  
Idaho Code § 42-3402.  
Idaho Code § 50-325.  
Idaho Code §§ 67-2326 to 67-2333.  
Idaho Code § 67-2326.  
Idaho Code § 67-2327.  
Idaho Code § 67-2328.  
Idaho Code § 67-2329.

Idaho Cases

Idaho Power Co. v. State, 104 Idaho 570, 661 P.2d 736 (1983).

Idaho Water Resource Board v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).

Shillingford v. Benewah County, 48 Idaho 447, 282 P. 864 (1929).

Other Statutes

Act of March 17, 1958, Pub. L. No. 85-348, 72 Stat. 38.

Act of February 8, 1980, Pub. L. No. 96-189, 94 Stat. 4.

Utah Code Ann. § 73-16-2 (1980).

Wyo. Stat. § 41-12-101 (Supp. 1988).

Other Cases

Cuyler v. Adams, 449 U.S. 433, 101 S. Ct. 703, 66 L. Ed.2d 641 (1981).

Intake Water Co. v. Yellowstone River Compact Comm'n, 769 F.2d 568 (9th Cir. 1985), cert. denied 476 U.S. 1163, 106 S. Ct. 2288, 90 L. Ed.2d 729 (1986).

Petty v. Tennessee-Missouri Bridge Comm'n, 359 U.S. 275, 79 S. Ct. 785, 3 L. Ed.2d 804 (1959).

Sporhase v. Nebraska, 458 U.S. 941, 102 S. Ct. 3456, 73 L. Ed.2d 1254 (1982).

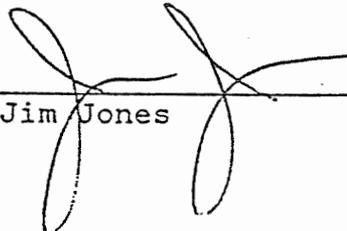
Texas v. New Mexico, 462 U.S. 554, 103 S. Ct. 2558, 77 L. Ed.2d 1 (1983).

Other Authorities

H.R. Rep. No. 1375, 85 Cong., 2d Sess. (1958).  
103 Cong. Rec. 1628 (1957).

DATED this 19th day of January, 1989.

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Analysis by:

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