

DEC 30 2013

DEPARTMENT OF WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)
WATER TO VARIOUS WATER RIGHTS)
HELD BY OR FOR THE BENEFIT OF)
A&B IRRIGATION DISTRICT,)
AMERICAN FALLS RESERVOIR)
DISTRICT #2, BURLEY IRRIGATION)
DISTRICT, MILNER IRRIGATION)
DISTRICT, MINIDOKA IRRIGATION)
DISTRICT, NORTH SIDE CANAL)
COMPANY, AND TWIN FALLS)
CANAL COMPANY)
_____)

Docket No. CM-DC-2010-001

**SURFACE WATER COALITION'S
PETITION FOR RECONSIDERATION
AND REQUEST FOR HEARING ON
FINAL ORDER ESTABLISHING 2013
REASONABLE CARRYOVER (STEP 10)**

**MOTION TO AUTHORIZE
DISCOVERY**

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively hereafter referred to as the "Surface Water Coalition", "Coalition", or "SWC"), by and through counsel of record, and hereby submit

their *Petition for Reconsideration and Request for Hearing on Final Order Establishing 2013 Reasonable Carryover (Step 10) / Motion to Authorize Discovery* pursuant to Idaho Code § 42-1701A(3) and the Department's Rules of Procedure (IDAPA 37.01.01. *et seq.*).

INITIAL REASONS FOR PETITION

First, the Coalition disputes the Director's continued use of the Methodology Order. The order and "methodology" for conjunctive administration do not comply with the Idaho Supreme Court's recent decision in *A&B Irr. Dist. et al. v. Spackman* (2013 Opinion No. 134, December 17, 2013). Any continued use of the methodology is unlawful and void pursuant to the Court's decision. Consequently, the Director should reconsider and set aside the Methodology Order and all subsequent orders, including the 2013 Step 10 Order.¹

Second, the Coalition disputes the Director's finding that no entity suffered a "shortfall" during the 2013 irrigation season. The Coalition addressed this issue in its petition regarding the Director's August 27, 2013 Order.

Third, the Coalition disputes the Director's use of 10% as the percentage apportioned to junior priority ground water use within the Southwest and Goose Creek Irrigation Districts (collectively "SWID") compared to the rest of the Eastern Snake Plain Aquifer. The Director failed to identify the percentage of water rights within SWID junior to July 1, 1985. Moreover, when modeling curtailment back to a priority date of 1870, the percentage is 9.15%, and when modeling curtailment back to a priority date of 1961, the percentage is 7.64%. *See Attachment A.* The Coalition disputes the Director's adjusted carryover shortfall and requests reconsideration of the percentage apportioned to SWID (10%) in the methodology Steps 9 and 10.

¹ The Coalition reserves all rights with respect to the Director's prior administration and any actions or non-action taken in response to the Supreme Court's decision.

The Coalition also disputes Step 10 and its application. The Director provides no basis to show how curtailment of junior water rights beginning in December 2013 or April 2014 would mitigate the present and continuing injury to carryover storage suffered by AFRD #2 and TFCC. Groundwater users have already pumped their full rights out-of-priority during the 2013 irrigation season, causing injury to carryover storage. The Director cannot go back in time and order curtailment in 2013, therefore he has failed to require appropriate and timely mitigation to AFRD #2's and TFCC's carryover storage.

Next, the Step 10 transient analysis is flawed in that it does not mitigate the total identified injury to carryover storage. In addition, the Director has failed to show how the estimated curtailed quantity (11,924 acre-feet) would show up in a time and place to be diverted by the storage water rights held by AFRD #2 and TFCC in the proportion identified. If junior groundwater rights are curtailed and 11,924 acre-feet accrues to the Blackfoot to Minidoka reach, the Director has failed to establish by any standard that the water would be split and diverted 10,583 acre-feet to AFRD #2 and 1,341 acre-feet to TFCC. In other words, the Director has failed to show how the water would show up at a time and place to mitigate the existing injury to carryover storage. Accordingly, IGWA's mitigation is not certain or timely. Further, IGWA has also failed to show that it has leases for storage extending 20 years to mitigate the modeled shortfall.

Finally, IGWA has failed to supply executed 2014 private leases to mitigate the carryover shortfall (either 51,105 acre-feet, or 11,924 acre-feet). Pursuant to Water District 01's 2013 Rental Pool Procedures (approved by the Idaho Water Resource Board), any water leased by IGWA during the 2013 irrigation season was required to be designated by December 1st "unless an extension is granted by the Rental Pool Subcommittee." Rule 4.3.106. IGWA did not

designate the storage water to the AFRD #2 and TFCC points of diversion prior to December 1st. Moreover, no extension was requested or granted by the Rental Pool subcommittee before December 1st, therefore any unused storage water that IGWA leased in 2013 “automatically” reverted back to the lessors. *See id.*

REQUEST FOR HEARING

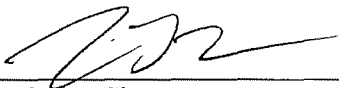
The SWC, pursuant to Idaho Code § 42-1701A(3) and Rule 740.02.b of the Department’s Rules of Procedure, hereby requests a hearing on the Director’s Step 10 Order. No administrative hearing has been held on the Director’s implementation of the CM Rules and the Methodology Order for purposes of the reasonable carryover analysis in 2013. The SWC reserves the right to amend this petition as necessary.

MOTION TO AUTHORIZE DISCOVERY

The SWC hereby moves for order authorizing discovery in this matter pursuant to Rule 521 of the Department’s Rules of Procedure. The SWC requests the opportunity to discover the factual basis and analysis performed by the Director in issuing the Step 10 Order.

DATED this 30th day of December, 2013.

BARKER ROSHOLT & SIMPSON LLP



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District and American Falls
Reservoir District #2*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2013, I served a true and correct copy of the foregoing *Surface Water Coalition's Petition for Reconsideration and Request for Hearing on Final Order Establishing 2013 Reasonable Carryover (Step 10) Motion to Authorize Discovery* on the following by the method indicated:

<p>Director Gary Spackman c/o Deborah Gibson State of Idaho Dept of Water Resources 322 E Front St Boise, ID 83720-0098 *** service by electronic mail</p> <p>facsimile – 208-287-6700 gary.spackman@idwr.idaho.gov deborah.gibson@idwr.idaho.gov</p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234</p> <p>*** service by electronic mail only</p> <p>mhoward@pn.usbr.gov emcgarry@pn.usbr.gov</p>	<p>IDWR – Eastern Region 900 N. Skyline Dr., Suite A Idaho Falls, ID 83402-1718</p> <p>*** service by electronic mail only lyle.swank@idwr.idaho.gov</p>
<p>Randy Budge T.J. Budge Racine Olson P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only</p> <p>rbc@racinelaw.net tjb@racinelaw.net</p>	<p>Sarah A. Klahn Mitra Pemberton White & Jankowski, LLP 511 Sixteenth Street, Suite 500 Denver, CO 80202 *** service by electronic mail only facsimile – 303-825-5632 sarahk@white-jankowski.com mitrap@white-jankowski.com</p>	<p>David Gehlert ENRD – DOJ 999 18th St. South Terrace, Suite 370 Denver, CO 80202 *** service by electronic mail only</p> <p>david.gehlert@usdoj.gov</p>
<p>A. Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only</p> <p>facsimile – 208-234-6297 dtranmer@pocatello.us</p>	<p>William A. Parsons Parsons, Smith & Stone LLP P.O. Box 910 Burley, ID 83318</p> <p>*** service by electronic mail only</p> <p>wparsons@pmt.org</p>	<p>IDWR – Southern Region 1341 Fillmore St., Suite 200 Twin Falls, ID 83301-3380</p> <p>*** service by electronic mail only allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>
<p>Michael C Creamer Jeffrey C. Fereday Givens Pursley 601 W Bannock St Ste 200 P.O. Box 2720 Boise, ID 83701-2720 *** service by electronic mail only</p> <p>mcc@givenspursley.com jcf@givenspursley.com</p>	<p>Kathleen Carr US Dept Interior, Office of Solicitor Pacific Northwest Region, Boise 960 Broadway Ste 400 Boise, ID 83706 *** service by electronic mail only facsimile – 208-334-1918</p> <p>kathleenmarion.carr@sol.doi.gov</p>	

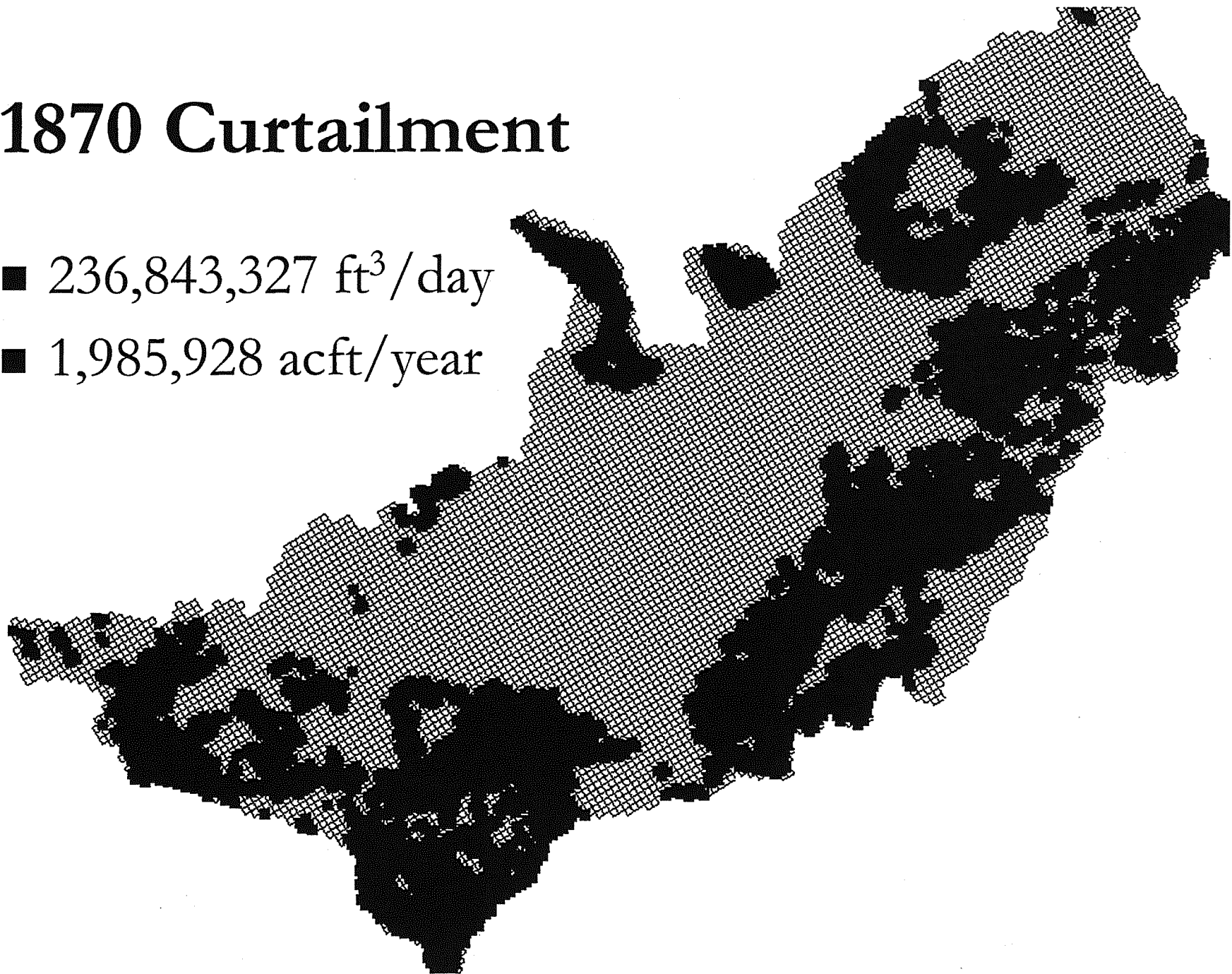

 Travis L. Thompson

Attachment

A

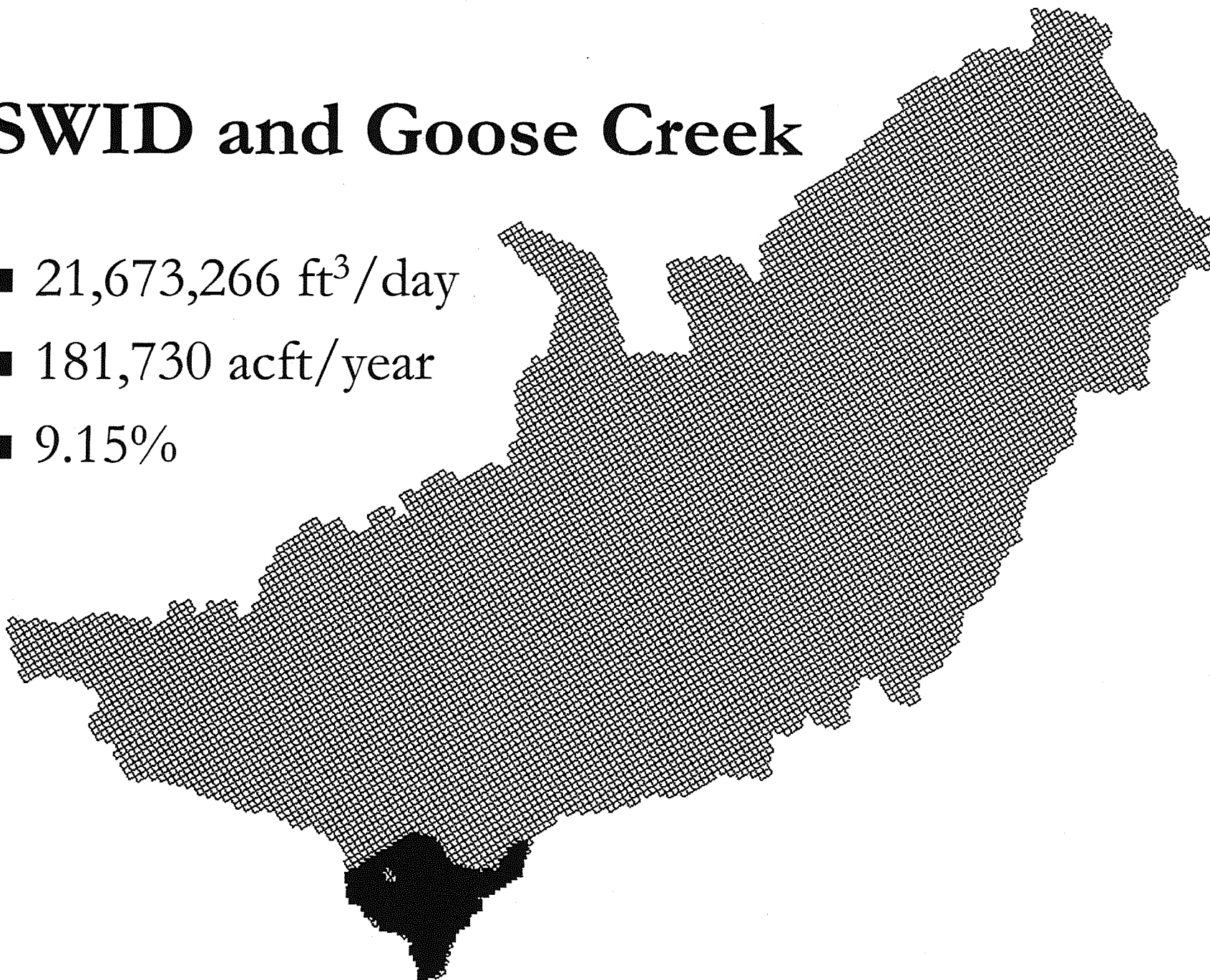
1870 Curtailment

- 236,843,327 ft³/day
- 1,985,928 acft/year



SWID and Goose Creek

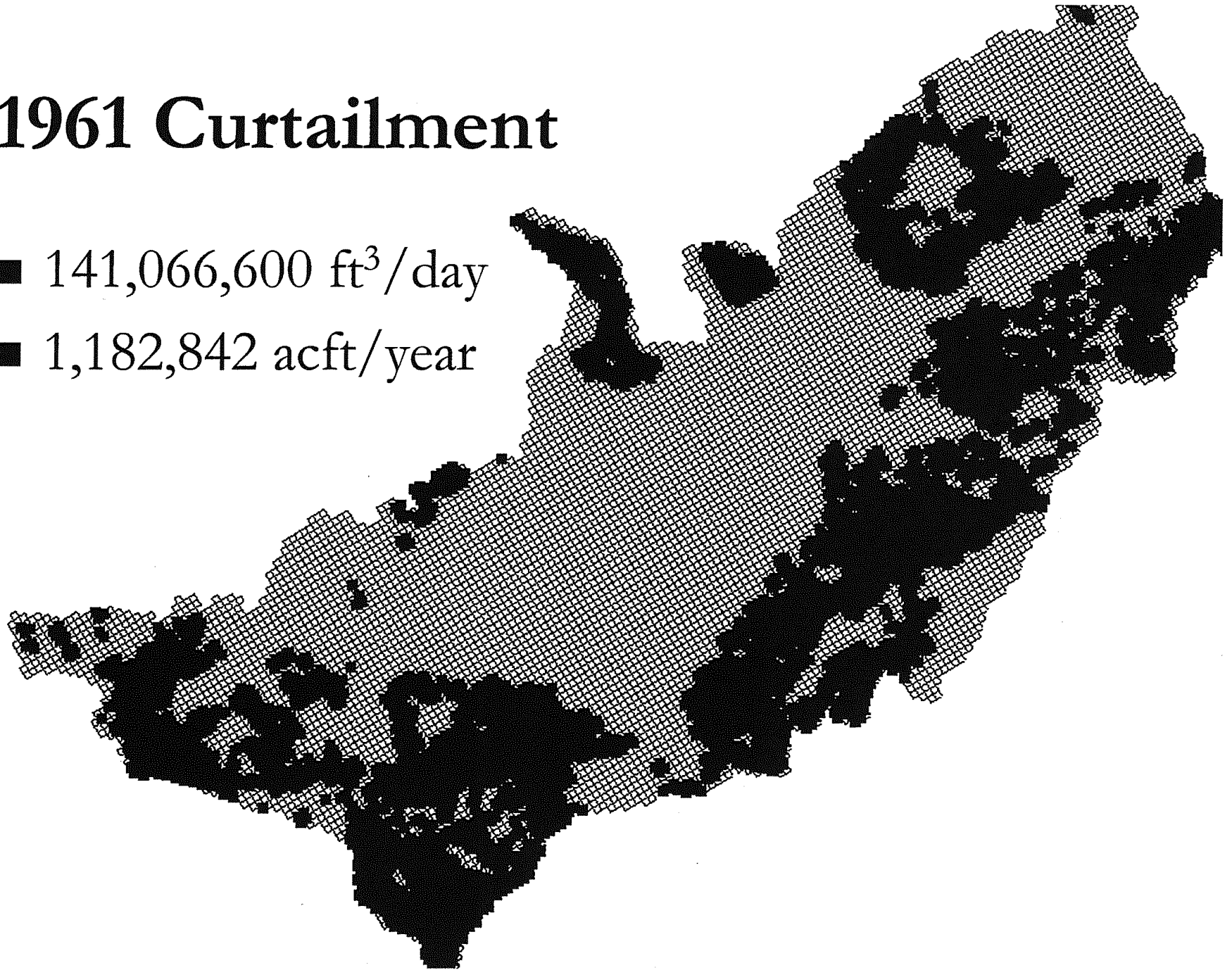
- 21,673,266 ft³/day
- 181,730 acft/year
- 9.15%



1961 Curtailment

■ 141,066,600 ft³/day

■ 1,182,842 acft/year



SWID and Goose Creek

- 10,776,184 ft³/day
- 90,358 acft/year
- 7.64%

