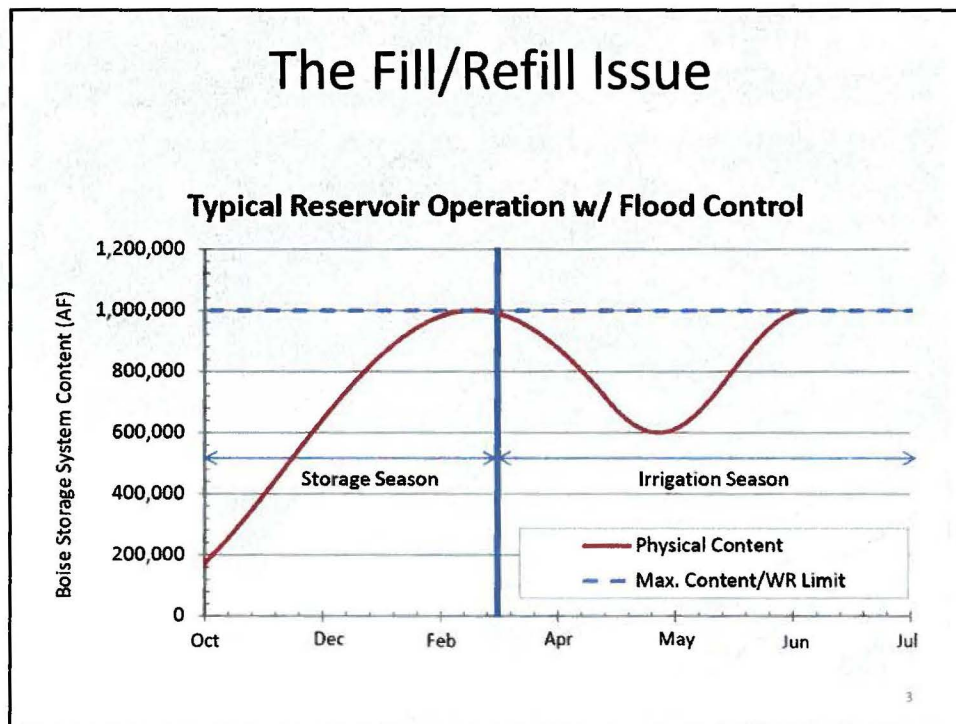


The Fill/Refill Issue

- ◆ The Federal on-stream reservoir storage fill/refill issue is an issue of how to define the nature and extent of water rights. It is not an issue of takings.
- ◆ At issue is what happens when the U.S. Bureau of Reclamation releases water stored to the satisfaction of an irrigation water right, for reasons unrelated to irrigation.
- ◆ In years of plenty, is the Bureau entitled to a second fill of water before other water users get a first fill?
- ◆ In Idaho and other western states the answer has been “no”.
- ◆ In a recent settlement of this issue in Basin 01 (the Upper Snake River), the answer was “no”.

The Fill/Refill Issue



Historic Administrative Practices

- ◆ Accrual equals all natural flow that is in priority and available at the point of diversion (i.e. reservoir dam outlet).
- ◆ Accrual does not equal:
 - The amount of water physically flowing into reservoir;
 - The amount of water physically being release from the reservoir; or
 - The change in physical reservoir content.
- ◆ From 1986 to present, this has been the administrative practice.
- ◆ Prior to 1986 there was no administration during the storage season (i.e. non-irrigation season).
- ◆ The Department is not seeking, or implementing, a change in historic administrative practices.

B-W Issue 17 and the Supreme Court

- ◆ A storage water right is not necessary for refill “...because a storage water right that is filled cannot refill under priority before affected junior appropriators satisfy their water right once.”
- ◆ “Idaho Code section 42-602 gives the Director broad powers to direct and control distribution of water from all natural water sources within water districts. That statute gives the Director a clear legal duty to distribute water. However, the details of the performance of the duty are left to the Director’s discretion. Therefore, from the statute’s plain language, as long as the Director distributes water in accordance with prior appropriation, he meets his clear legal duty. Details are left to the Director.”
- ◆ “Somewhere between the absolute right to use a decreed water right and an obligation not to waste it and to protect the public’s interest in this valuable commodity, lies an area for the exercise of discretion by the Director. Thus, the Director’s clear duty to act means that the Director uses his information and discretion to provide each user the water it is decreed. And implicit in providing each user its decreed water would be determining when the decree is filled or satisfied.”

Excerpts from Idaho Supreme Court Docket No. 40974/40975 – Basin-Wide Issue 17 (Does Idaho Law Require a Remark authorizing storage rights to “Refill”, under priority, space vacated for flood control.)

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Snake River Basin Adjudication

- ◆ Refill late claims for beneficial use are currently pending in the SRBA.
- ◆ These water rights should be defined and decreed like the 150,000 water rights that have been previously adjudicated.
- ◆ Late claim settlement discussions are currently underway with all affected parties, not just senior space holders.
- ◆ Current settlement proposes six “refill” water rights.
- ◆ Current settlement proposes 665,100 acre-feet of “refill” volume with a priority date of 2014.
- ◆ Current settlement provides legal water rights with a combined volume of 3,693,000 acre-feet of “refill”.
- ◆ Technical analysis shows diversions under junior water rights of water during times of refill that otherwise would be available for refill is approximately 13,000 acre-feet, or less than 1.4% total system storage.
- ◆ When the reservoir fails to fill because of flood control releases, space holder contracts dictate that the first 60,000 acre-feet of shortfall is covered by the USBR.

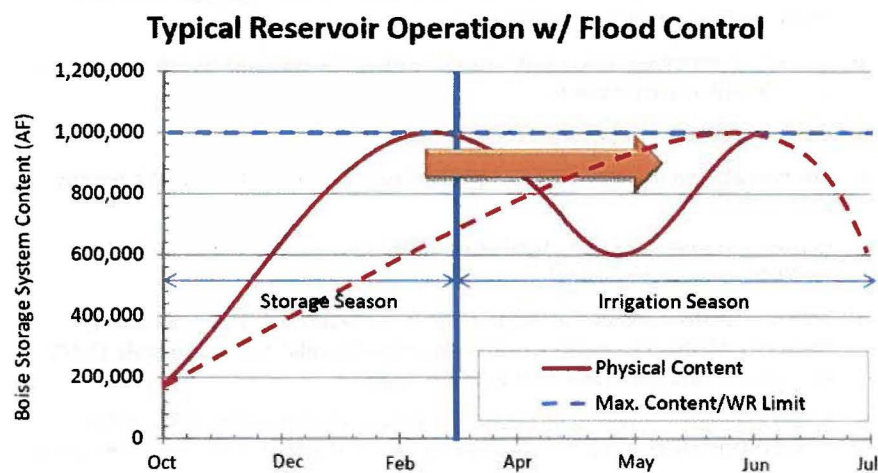
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Basin 63 Contested Case

- ◆ Contested case initiated by the Department on October 22, 2013.
- ◆ Case initiated to address “refill” issue in response to general confusion and unhappiness demonstrated by the water users.
- ◆ The purpose of the contested case is *“To address and resolve concerns with and/or objections to how water is counted or credited toward the fill of water rights for the federal on-stream reservoirs pursuant to existing procedures or accounting in Water District 63”*
- ◆ *The contested case allows for the participation of all affected parties, not just senior space holders.*
- ◆ *Historic administrative practices, dating back to 1986, will only change if the contested case is successfully concluded with an order changing the historic administrative practices.*

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Who should administer the resource, the State of Idaho or the Federal Government?



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END

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