

IDAHO Department of Water Resources



Snake River Adjudication Basin Wide Issue no. 17

*“Does Idaho Law Require a
Remark Authorizing Storage
Rights to ‘Refill’, Under Priority,
Space Vacated for Flood
Control”?*

Snake River Adjudication Basin Wide Issue no. 17

Federal On-Stream Reservoirs Are Required
Under Federal Law To Be Operated For Flood
Control Purposes.



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- Dworshak Reservoir was constructed for flood control.
- The federal government refuses to obtain a water right for storage and releases from storage from Dworshak Reservoir asserting that storage and release of storage for flood control is not subject to state regulation.
- The state of Idaho does not determine the timing of federal flood control releases or the timing of physical fill in the reservoir after a flood control release except as it may affect other water rights.

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- When is *“space vacated for flood control”*?
 - On stream reservoir
 - Lots of snow in the mountains – empty reservoir space will not hold the spring runoff
 - Reservoir content is usually high at the beginning of the storage season.
 - **Remember – lots of water!**

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- When is storage water **not** “*vacated for flood control*”?
 - Off-stream reservoir
 - Low or average snow pack years
 - Low storage in reservoir at beginning of storage season

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- Most sizable on-stream reservoirs storing water for irrigation are owned or managed by the federal government – a few are owned by private entities.
- US Bureau of Reclamation holds water rights to store and deliver water for irrigation –required by federal law.
- Irrigation companies and irrigation districts contracted with Bureau for storage water in the reservoirs to be beneficially used for irrigation.

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- Some reservoirs were built for flood control.
- There is no state water right for storage or release of storage for flood control – this is a federally dictated operation.
- Bureau must attempt to (1) store enough water to deliver to the contract spaceholders their storage allocations, but also (2) empty the reservoirs to make room for the predicted runoff resulting from a high snowpack or significant precipitation.

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Contracts of spaceholders who are entitled to stored water in reservoirs operated for flood control can have their storage allotments reduced during years of releases from reservoirs to empty space for flood control. This is requirement of the spaceholder's contracts and an inherent risk the spaceholders assume in relying on storage water from an on-stream reservoir that must be operated for flood control. Flood control comes first!

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- Regardless of whether there is a right to “refill” the reservoir space emptied to capture future flood water, the empty space may not refill.
- Why?
- Because the reservoir space is often emptied months ahead of the runoff. As a result, flood control operation is somewhere between a predictive and a best-guess science. Using various data models, the Bureau tries to predict what the water flows to the reservoir will be in the future. The predictions are inaccurate.

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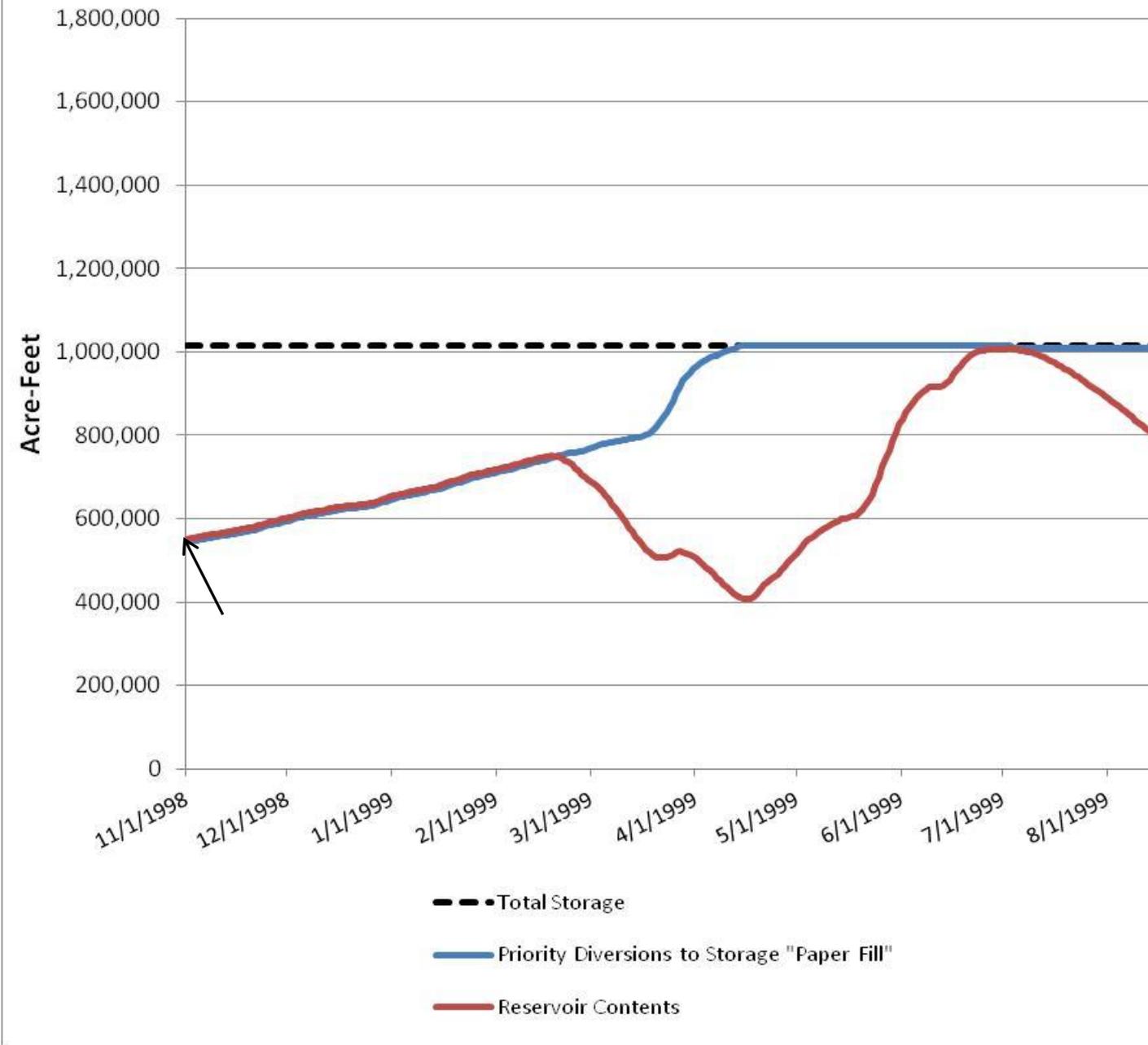
- Factors that contribute to the predictive uncertainty:
 - How much snow is there?
 - How full are the reservoirs?
 - What is the long term precipitation forecast?
 - What is the long term temperature forecast?
 - What is the soil moisture?
 - Are there comparable years?
 - What will the water demand be?
 - What are the risks of flooding vs. risks of not supplying sufficient irrigation water?

Snake River Adjudication

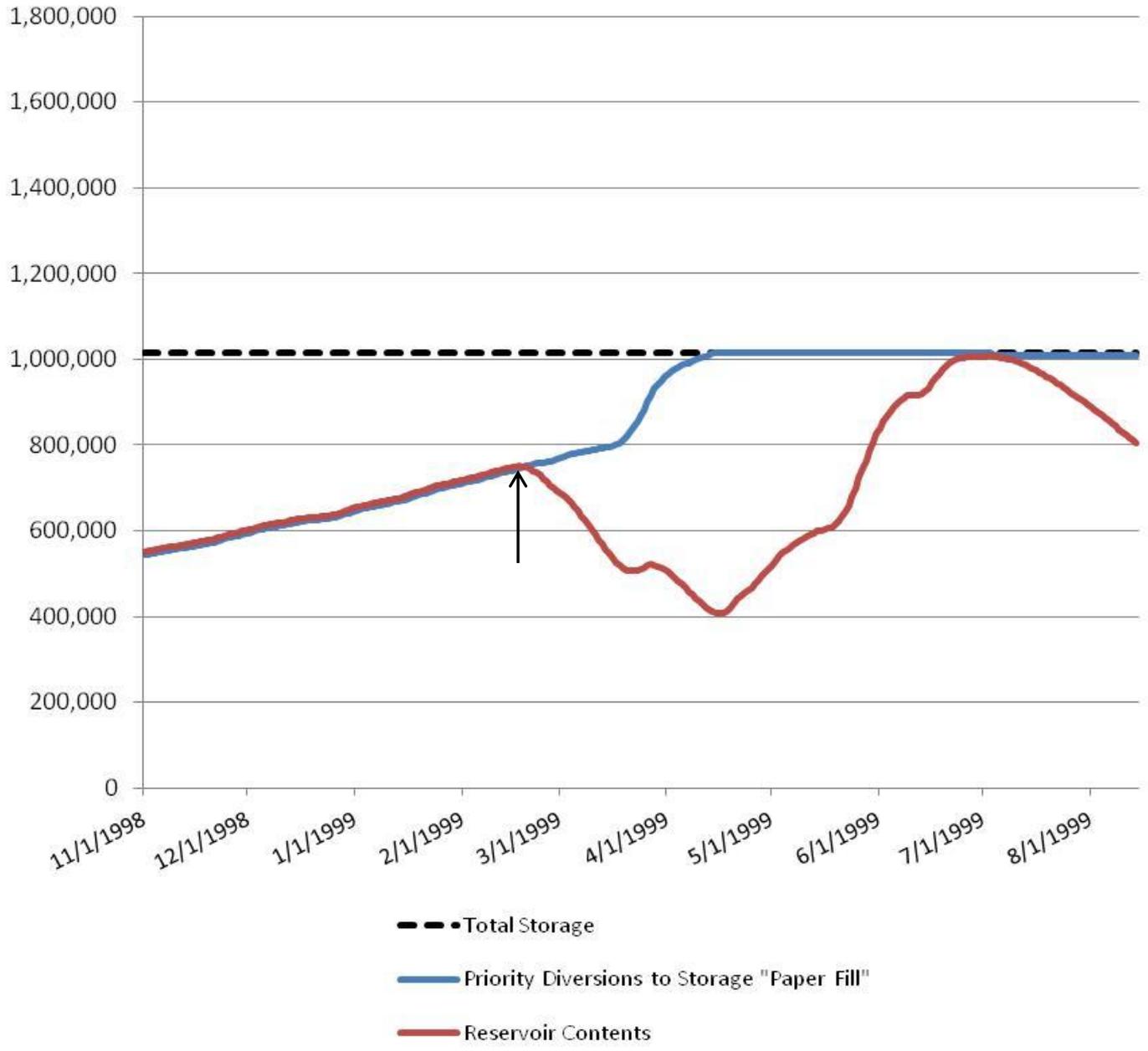
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- How does the Director account for a water right that authorizes storage for irrigation, but does not authorize use for flood control?
- **There is abundant water in the system!**

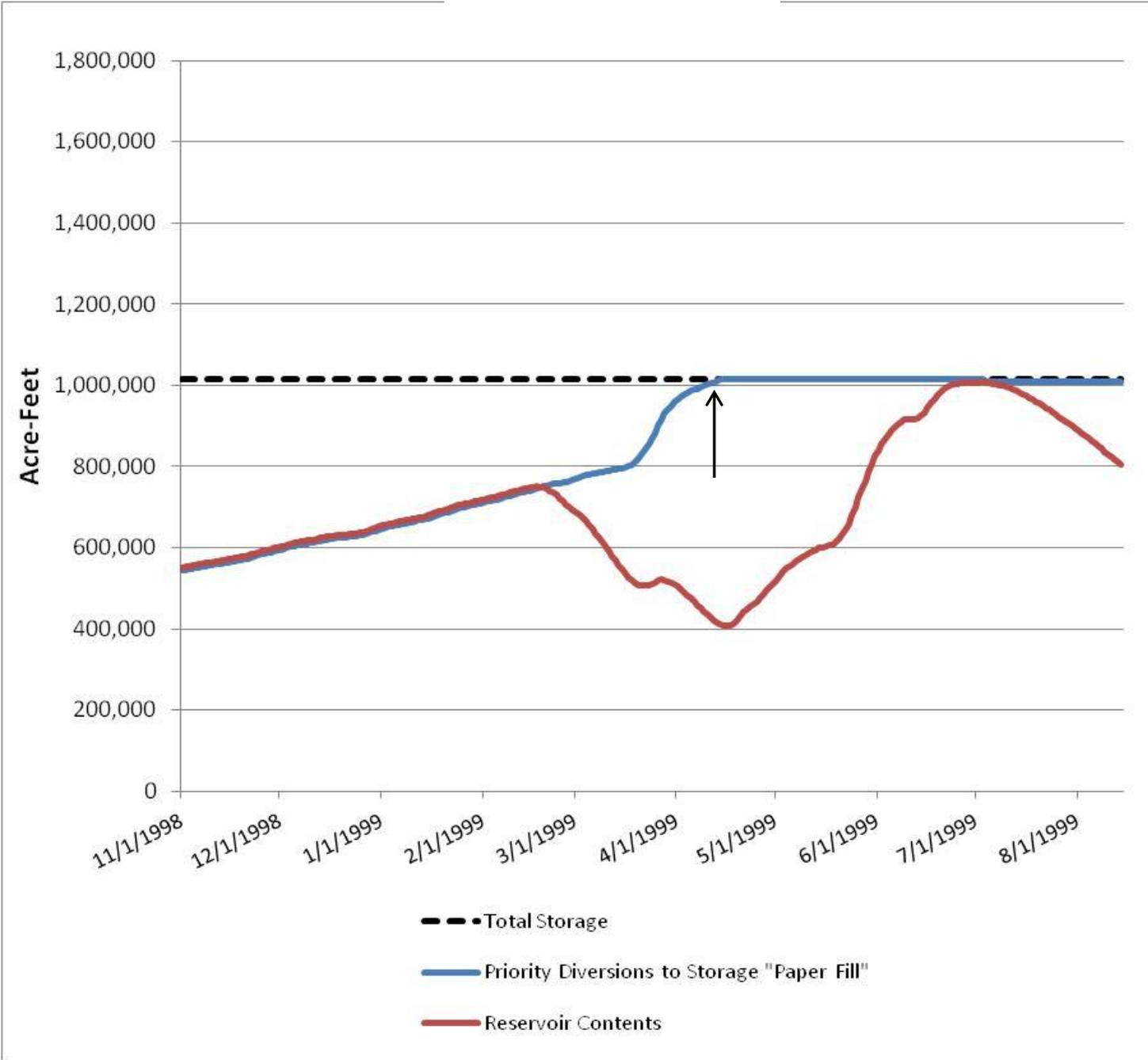
- **Nov. 1**
Accounting
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physical
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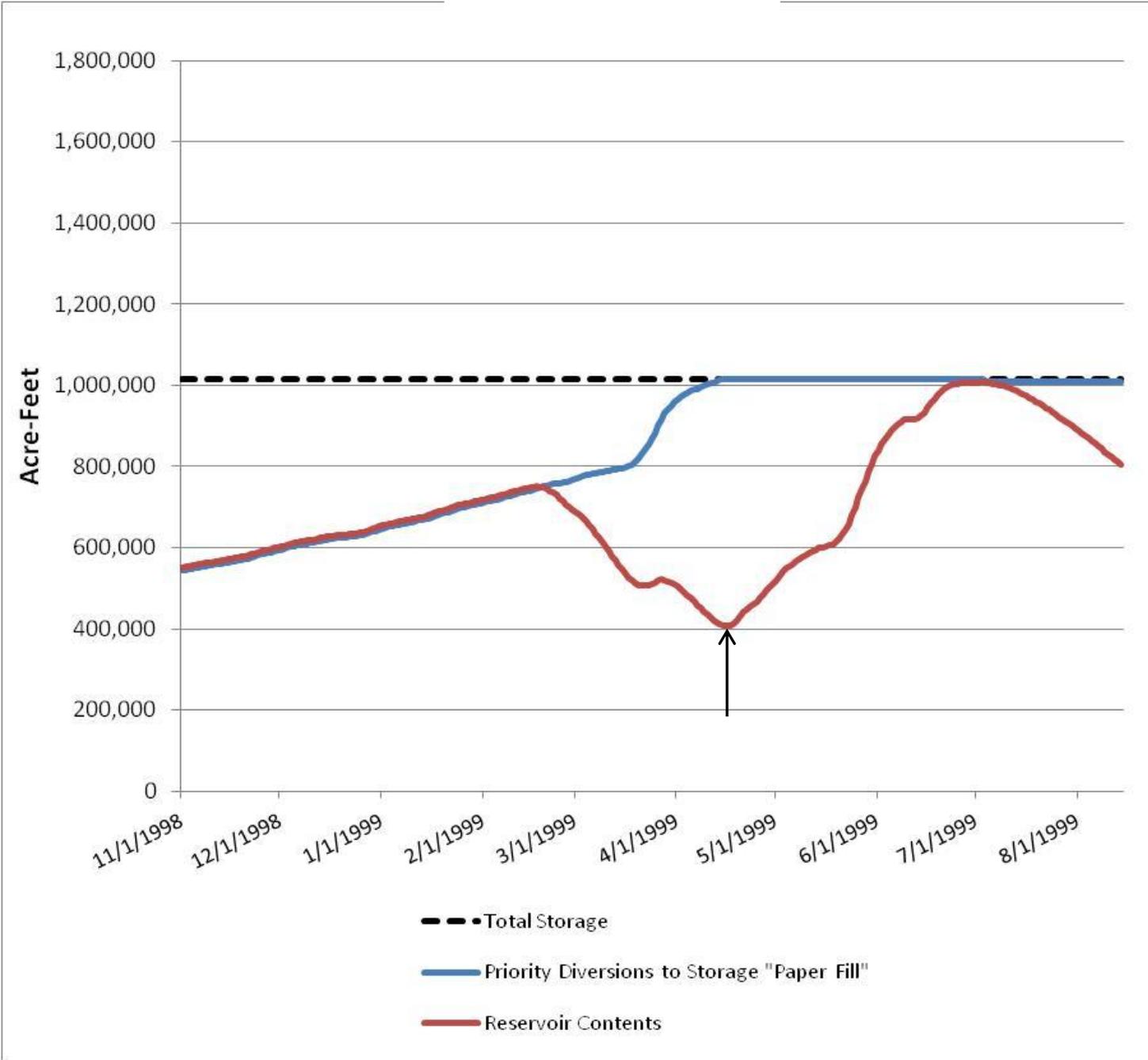
Acre-Feet



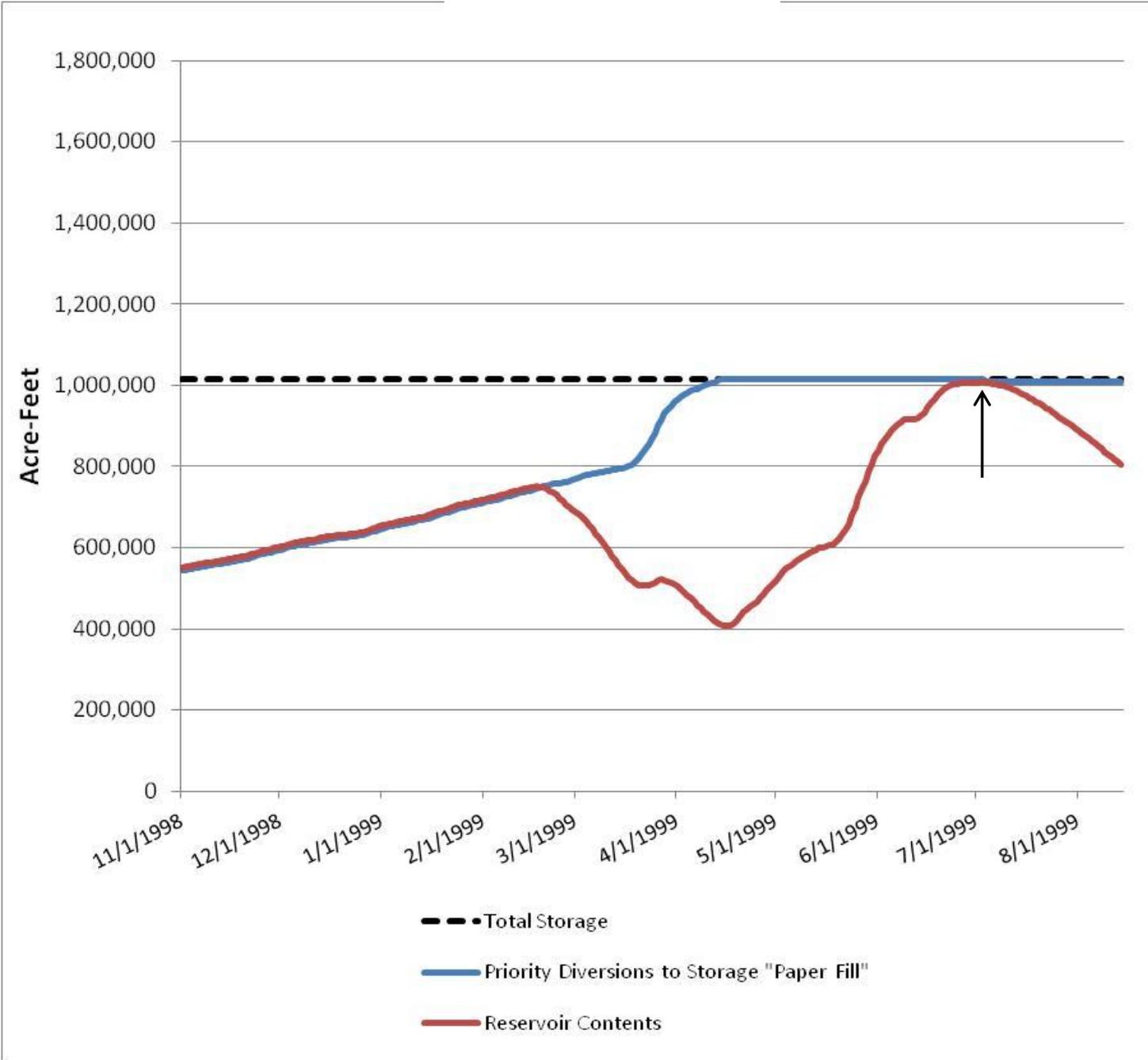
- **Nov. 1**
Accounting fill equals physical contents.
- **Feb 17**
Flood control begins.



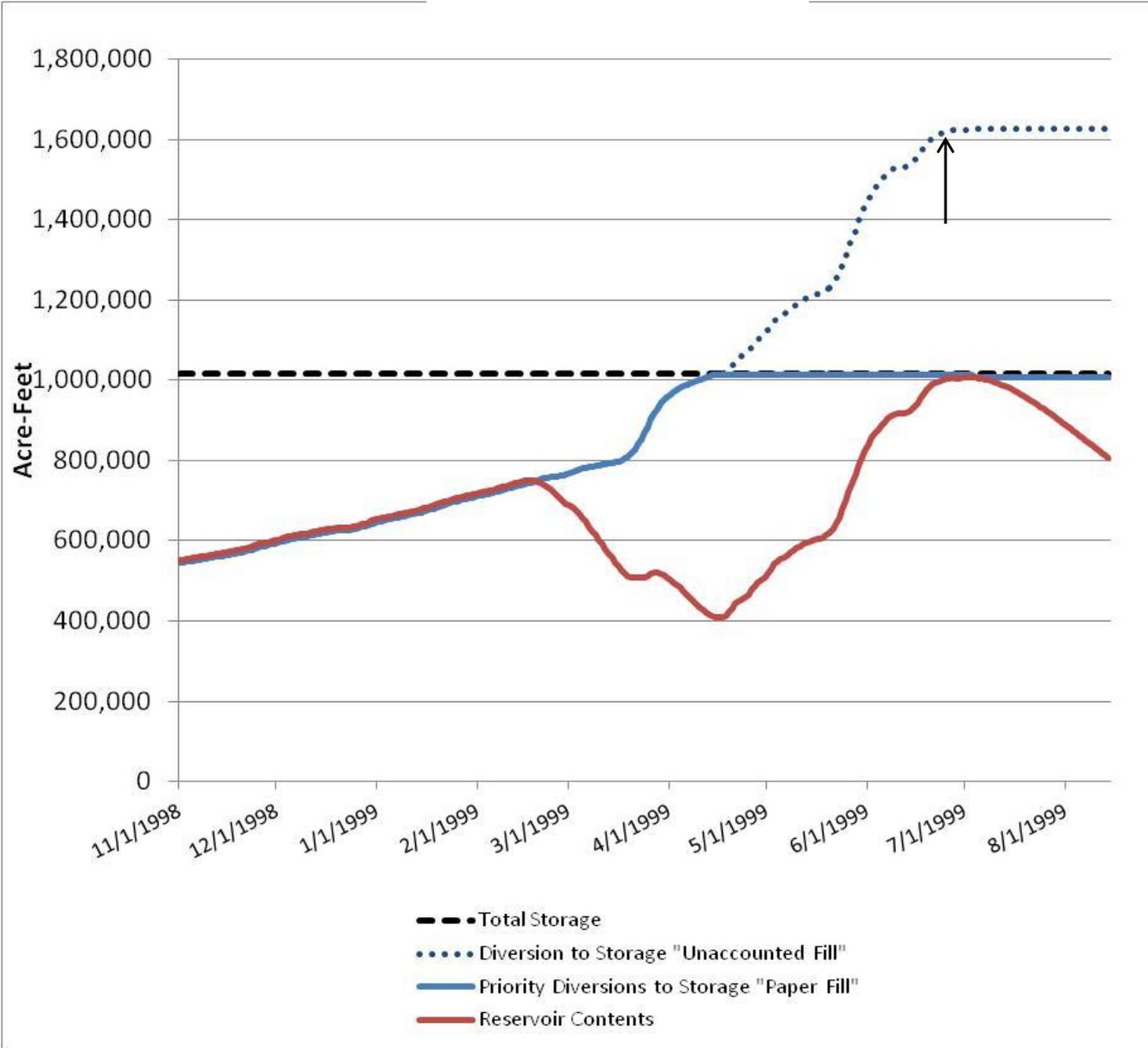
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Accounting fill equals physical contents.
- **Feb 17** Flood control begins.
- **April 14**
Reservoirs filled based on accounting.



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- **April 14** Reservoirs filled based on accounting
- **April 16** Minimum reservoir physical contents.
- **April 17** Begin physical fill.



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- **July 3** Day of maximum physical fill.
- **July 4** Day of allocation.



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- **July 4** Day of allocation.

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Any empty space in the reservoir at the time of maximum physical fill is the result of the inaccurate prediction of how much storage water must be dumped out of the reservoir to create empty reservoirs for flood control.

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Supreme Court Decision

“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.”

Snake River Adjudication Basin Wide Issue no. 17 Supreme Court Decision

“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.”

Snake River Adjudication Basin Wide Issue no. 17 Director's Actions

Because of the above decision of the Supreme Court, the Director reactivated administrative contested cases to determine when a water right to store and use water for irrigation is satisfied. The Director anticipates gathering evidence and deciding this issue basin by basin.

Complaints About Present Accounting

- It forces the storage space holders to take a drink when they are not thirsty
 - When water is being stored in the early winter, the Bureau and the spaceholders predict thirst – water is being physically stored to the satisfaction of the water right and to satisfy the thirst of the user.

Complaints About Present Accounting

- Thirst?
 - When water is stored in a reservoir there is a perceived need to store the water.
 - When abundant snows dictate that water previously stored because of a perceived need be dumped down the river, some argue that need (or thirst) be determined in hindsight after the initial determination of need, even though the storage component of the water right has been exercised.
 - Should the passage of water downstream for a purpose not defined by a state water right but by federal pre-emption be excused and the satisfaction of the state water right reset to a lesser number?

Complaints About Present Accounting

- Thirst?
 - The determination of need cannot wait until the end of the storage season or the end of the upcoming irrigation season – there is a right for storage and for use from storage – the storage portion of the right must be accounted for based on the state based water right.

Complaints about Present Accounting

- We want to be treated like any other water user
 - When any other water user demands water, it is counted against the water right until the water user has diverted the quantity of water authorized by the water right. Under this standard, any time water is being stored, it would be counted against the storage water right. If the right holder decides to dump water from storage, the amount of the right that has been exercised would not be reset. Once the right were satisfied, no more water could be stored. Being treated like any other water user is not the appropriate standard – it would result in reservoirs not physically filling and water flowing downstream and lost to downstream states and the ocean.

Complaints About Present Accounting

- We want to be treated like any other water user
 - Under the present method of accounting, one could argue the storage right holder receives more than any other water right holder because the storage space refills even after the right has been satisfied.

Other Fill/Refill Considerations

- Resetting the satisfaction of the right downward to equal physical storage will have the following possible consequences:
 - Will increase the water reliability for some space holders while diminishing the rights of other spaceholders and those holding junior priority water rights. It would upset the historical deliveries of water – Varies from river basin to river basin.

Other Fill/Refill Considerations

- Resetting the satisfaction of the right downward to equal physical storage will have the following possible consequences:
 - Will allow the Bureau and the larger federal government to have greater control over flood control releases without consequences – including flood control for downstream interests or to satisfy treaties.

Other Fill/Refill Considerations

- Resetting the satisfaction of the right to equal physical storage will have the following possible consequences:
 - May change the way private and tribal reservoirs are operated to the detriment of natural flow right holders. Some examples are the Chesterfield Reservoir or the Blackfoot Reservoir.

Other Fill/Refill Considerations

- Resetting the satisfaction of the right to equal physical storage will have the following possible consequences:
 - May change the respective strengths and weaknesses of legal arguments of ground water and surface water users in the ongoing conjunctive management calls. This currently appears to be a major impediment to settlement of the fill/refill issue.

Other Fill/Refill Considerations

- Resetting the satisfaction of the right to equal physical storage will have the following possible consequences:
 - The determination of how rights are satisfied in each river basin is unique and dependent upon where reservoirs are located, where water is diverted, priorities of the various water rights, whether river reaches gain or lose water, and local customs and practices. This is why the expertise of technical staff and an analysis of each river basin's needs is important to determine water delivery issues on a case-by-case basis.

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- There is proposed draft settlement agreement language to establish decreed water rights that would protect the historical practice of filling empty space in reservoirs vacated for flood control while protecting those who have relied on the present method of accounting. This draft language would also ensure that the federal government will be limited in its ability to use its flood control operations to control the river and take water from existing junior priority uses and from future uses.

Questions?

