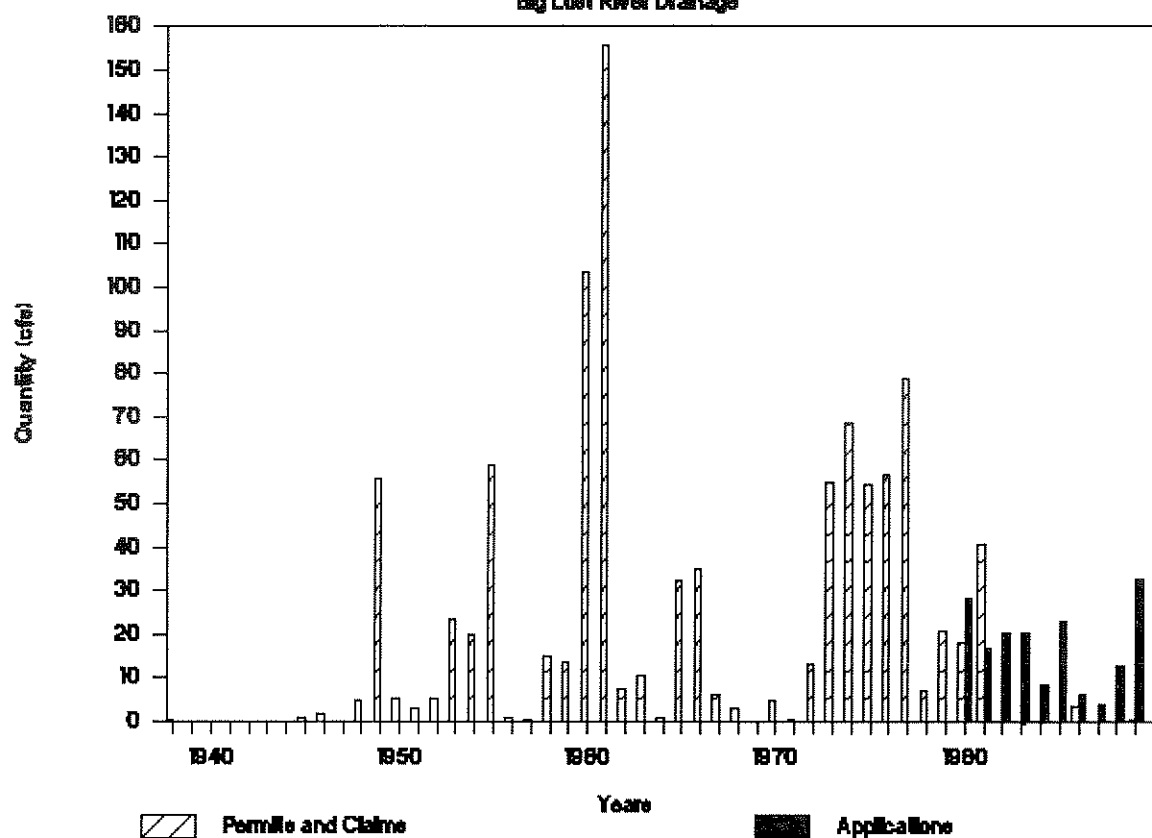


Ground Water Permits and Applications

Big Lost River Drainage



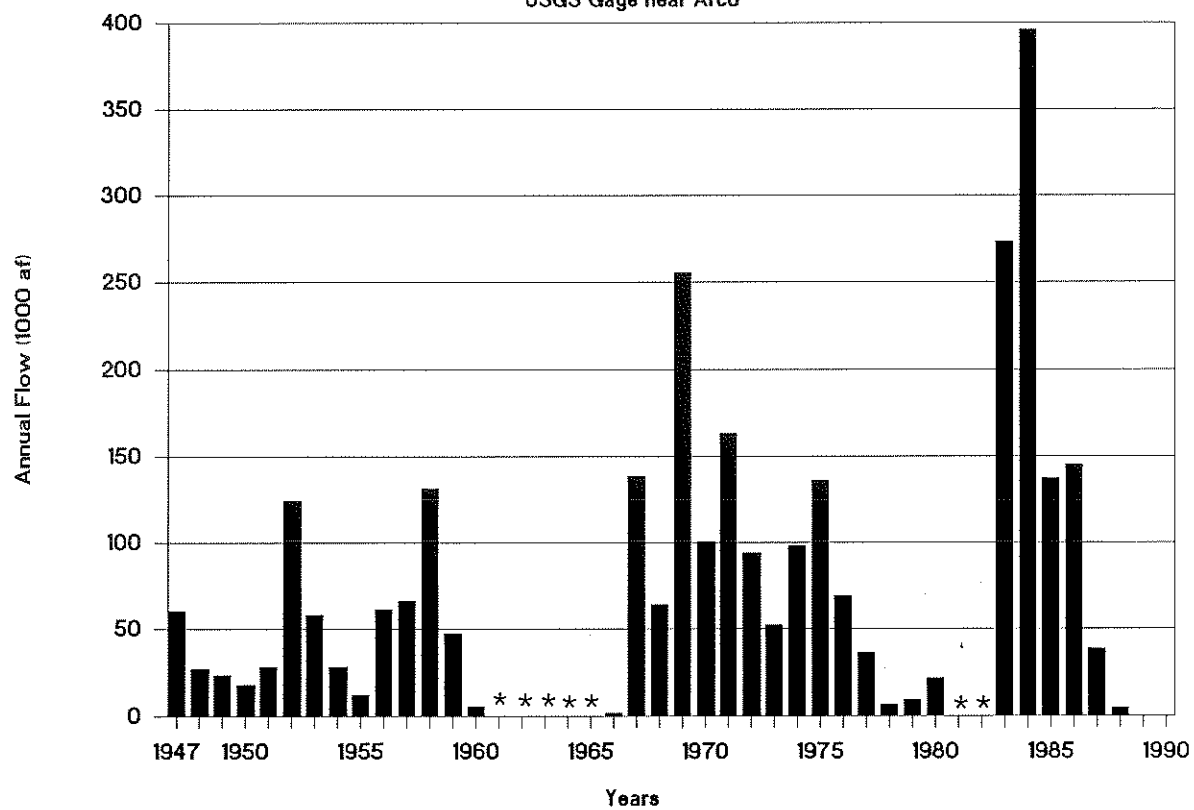
1325.00 HISTORIC DISCHARGE: BIG LOST RIVER NR ARCO

(1000 AC FT)

W-YR	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	ANN
47	4.5	4.4	4.5	3.4	5.5	9.2	6.7	6.7	8.8	2.1	2.2	2.4	60.4
48	2.8	2.5	1.8	1.6	1.6	1.6	1.2	0.6	5.3	2.3	2.2	3.6	27.1
49	3.9	2.1	1.9	1.6	1.5	2.3	1.8	1.6	3.1	1.2	1.5	1.2	23.7
50	1.6	1.9	1.4	1.2	1.0	1.2	2.8	0.8	1.2	1.7	1.9	1.4	18.1
51	1.4	1.3	1.3	0.9	0.7	0.8	1.2	2.9	3.5	1.9	7.3	5.4	28.6
52	6.3	6.5	5.6	5.4	6.0	7.6	13.1	27.5	25.4	11.9	4.1	4.8	124.2
53	3.0	4.9	6.3	7.7	8.9	7.8	5.9	2.1	5.2	3.1	1.8	1.8	58.5
54	2.7	3.1	4.4	4.7	3.2	2.8	1.7	0.8	1.2	1.5	1.0	1.2	28.3
55	1.7	2.0	1.9	1.3	1.1	1.1	0.8	0.5	0.3	0.7	0.4	0.6	12.4
56	0.6	0.8	3.0	1.1	0.8	7.8	5.1	7.1	28.8	2.3	2.1	2.2	61.7
57	2.9	4.0	3.3	2.2	2.1	2.6	2.2	13.0	23.2	5.4	1.8	3.8	66.5
58	4.5	5.2	6.2	5.7	5.8	6.9	7.1	30.7	40.2	7.2	4.3	7.4	131.2
59	13.6	6.5	6.8	6.1	5.2	5.5	1.4	0.8	0.8	0.5	0.2	0.2	47.6
60	0.9	1.1	0.9	0.7	0.7	0.7	0.5	0.1	0.0	0.0	0.0	0.0	5.6
66	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	1.0	0.3	0.2	0.2	2.0
67	0.3	0.6	0.9	0.7	0.6	0.4	0.2	5.4	51.3	56.5	8.8	12.9	138.6
68	15.8	9.3	6.3	3.9	4.6	7.5	5.3	0.8	2.5	1.4	3.2	3.6	64.2
69	6.0	11.1	14.4	11.0	11.5	23.4	38.8	44.7	45.8	28.6	7.3	13.0	255.6
70	8.8	7.2	7.9	7.1	7.1	5.3	3.6	2.8	17.7	21.0	3.3	8.4	100.2
71	7.0	7.6	6.7	7.5	7.1	7.8	20.0	20.0	25.6	26.9	11.3	15.8	163.3
72	17.4	15.8	10.0	6.7	9.2	10.3	7.2	1.7	4.1	2.9	2.2	6.7	94.2
73	6.8	6.1	6.2	5.7	6.3	6.7	7.9	1.6	1.5	1.3	0.9	1.5	52.5
74	1.6	2.7	2.0	3.5	3.6	11.9	8.6	10.5	34.3	12.8	3.3	3.2	98.0
75	6.9	7.8	7.7	7.5	6.3	6.7	7.0	17.3	17.1	35.7	5.9	10.3	136.2
76	10.6	11.8	7.8	6.2	6.4	7.3	4.4	4.3	3.5	1.4	1.8	3.7	69.2
77	10.3	11.2	4.0	2.6	3.0	3.0	0.7	0.7	0.6	0.2	0.1	0.2	36.6
78	0.3	0.4	0.3	0.2	0.2	0.2	0.3	0.1	0.8	1.1	0.8	2.0	6.7
79	0.8	0.5	0.7	0.5	0.6	1.7	1.5	1.2	0.8	0.4	0.6	0.3	9.6
80	0.2	0.3	0.2	0.2	0.2	0.2	0.2	1.9	7.6	5.7	3.5	1.6	21.8
83	12.3	8.2	10.6	11.1	7.0	18.8	20.1	27.5	66.5	56.3	17.5	17.3	273.2
84	20.9	45.2	37.8	21.3	18.0	24.0	34.4	51.7	59.2	29.0	30.9	23.5	395.9
85	22.8	21.6	18.8	15.1	6.4	10.3	18.7	8.1	0.9	0.2	0.5	13.6	137.0
86	12.3	3.2	1.9	1.2	2.9	6.0	13.8	21.6	54.6	4.8	3.5	19.5	145.3
87	9.2	5.4	6.0	4.1	4.2	5.2	2.3	0.5	0.5	0.8	0.4	0.2	38.8
88	0.7	1.3	0.8	0.6	0.6	0.4	0.3	0.2	0.0	0.0	0.0	0.0	4.9
89	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
AVE 1947-89:	6.2	6.2	5.6	4.5	4.2	6.0	6.9	8.8	15.1	9.1	3.8	5.4	81.6

Annual Flow Big Lost River

USGS Gage near Arco



* No Record

Keith

TO: BIG LOST RIVER WATER DISTRICT FILE

FROM: NORM YOUNG *NY*

RE: COORDINATION MEETING HELD DECEMBER 28, 1992

DATE: DECEMBER 28, 1992

Keith Higginson, Wayne Haas, Dave Shaw, Alan Robertson, George Austiguy, and I met to review the actions needed to implement for the 1993 irrigation season the court order authorizing interim administration of surface and ground water rights in an expanded Water District 34. The following tasks were identified as being necessary:

- Expand Water District 34 to include ground water rights. The expansion must be accomplished pursuant to Section 42-604, Idaho Code. Assistance needs to be provided to the watermaster to modify district budgeting, staffing, equipment, and other factors to supervise the expanded district. (Water Rights Permit Section)

- Develop a mitigation plan to allow ground water pumpers to compensate surface water users affected by ground water pumping. (Adjudication Bureau with assistance from Water Rights Permit Section)

- Revise Water District 34 accounting procedures to incorporate ground water, the mitigation plan, and changes dictated by the Director's Report. Shaw will provide a list of water rights by point of diversion to assist in preparation of the revised accounting procedure. (Hydrology Section with assistance from Water Allocation)

- Promulgate on a statewide basis Rules and Regulations for distribution of water in water districts. (Water Allocation Bureau)

Those designated with lead responsibility for a task are requested to develop a project work proposal and schedule for discussion at a follow-up coordination meeting to be scheduled during the first week of January 1993.

D R A F T

BASIN 34 CONCEPT PLAN
for
MITIGATION OF SENIOR SURFACE WATER USERS
by
JUNIOR GROUND WATER USERS

December 17, 1992 - 2:24pm

General Statement of Purpose and Concept

To prevent or mitigate injury to senior surface water users in Basin 34 who would otherwise be injured by ground water withdrawals without curtailing ground water diversions.

Principles

Ground water users, other than small domestic and stock water users, in Basin 34 upgradient from the "A" line will be regulated by priority along with surface water users in the Basin unless the ground water users participate in a mitigation plan approved by the Director.

This plan provides mitigation through water only. Other options for mitigation may be presented to the Director for his consideration.

Mitigation water provided by ground water users will be used solely to augment the natural flow of the Big Lost River downstream from Mackay Dam.

The amount of mitigation water to be provided by the ground water users will be determined on an annual basis. The regression equation developed by Gary Johnson, et al, will be modified to forecast the river depletion during the irrigation season attributable to ground water pumping. This modification will be based upon judgment initially. If the water users elect to expend the funds necessary to collect the data necessary to refine the regression equation that may be done on an ongoing basis. No modification of the regression equation would be made, however, during an irrigation season.

The amount of mitigation water required for a season will also be dependant upon the May 1 water supply forecast for the Basin. "Wet" years will not require mitigation. "Wet" years will be determined by use of the regression equation when no mitigation water is required.

Mitigation requirement for an individual ground water user, or group of ground water users, will be determined based upon estimated annual water requirement, after May 1 runoff forecast, and application of regression equation as described above.

Mitigation water will be placed under the control of the Basin 34 Watermaster.

D R A F T

Basin 34 Mitigation Concept Plan

December 17, 1992 - 2:24pm

Page 2

Augmentation will occur from the time only 1906 or earlier water rights are available for irrigation below Mackay Dam by pro-rating the amount of mitigation water available for uniform distribution for the remainder of the irrigation season.

1992 DEC 18 PM 3:17
 DISTRICT COURT - SRBA
 TWIN FALLS CO., IDAHO
 FILED *[Signature]*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re the General Adjudication of)
 Rights to the Use of Water From)
 the Snake River Basin Water System.)

Case No. 39576

The State of Idaho, ex rel.)
 R. Keith Higginson in his official)
 capacity as Director of the Idaho)
 Department of Water Resources,

MEMORANDUM DECISION AND ORDER
 GRANTING IDAHO DEPARTMENT OF
 WATER RESOURCES' MOTION FOR
 INTERIM ADMINISTRATION WITH
 LIMITATIONS

Petitioner,

vs.

The United States; the State
 of Idaho; and all Claimants to
 the Use of Water From the Snake
 River Basin Water System,

Respondents.

Clive J. Strong, David J. Barber and Peter Anderson,
 Deputy Attorneys General, for Petitioner State of Idaho
 Department of Water Resources.

Peter G. Monson, K. Jack Haugrud and Darla J. Zane,
 United States Department of Justice, for Respondent
 United States.

James C. Tucker, Gary D. Slette and Bruce M. Smith,
 Rosholt, Robertson & Tucker, for Respondents Idaho Power
 Company, Twin Falls Canal Company and North Side Canal
 Company.

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
 DEPARTMENT OF WATER RESOURCES' MOTION FOR
 INTERIM ADMINISTRATION WITH LIMITATIONS

William R. Hollifield, Hollifield, Tolman & Bevan, P.A.,
for Respondents Big Lost Water Users Association.

Kant W. Foster, Holden, Kidwell, Hahn & Crapo, for
Respondents Groundwater Pumpers. Representation
withdrawn.

Mitchell Sorensen, Pro Se.

Idaho Department of Water Resources Motion for Interim
Administration in Reporting Area 34, Granted, in part.

PROCEDURAL BACKGROUND

The Idaho Department of Water Resources ("IDWR") has moved for
an Order For Interim Administration in Reporting Area 34, pursuant
to I.C. § 42-1417. In its motion, IDWR seeks authorization to
administer water rights in accordance with the provisions contained
in the Director's Report, Part 1, Reporting Area 34.

Responses to the motion have been filed by the United States
of America, Idaho Power Company, Twin Falls and North Side Canal
Companies and the Big Lost Water Users Association and Groundwater
Pumpers. Following hearing, the court ordered IDWR to clarify
which of the "general provisions" included in the Director's Report
for Reporting Area 34 would be enforced as part of interim
administration. In a clarifying brief IDWR identified the
following general provisions as necessary for interim
administration: 2, 3, 4, 5, 6, 8, 9, 10, 12.b, 12.c, 13.b, 14 and
17.a. The responding parties filed further responses to the
clarifying brief. Following hearing the parties submitted post-
hearing memoranda and reply briefs.

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
DEPARTMENT OF WATER RESOURCES' MOTION FOR
INTERIM ADMINISTRATION WITH LIMITATIONS

IDWR's Motion For Interim Administration in Reporting Area 34 is granted, subject to the following conditions:

1. The Order For Interim Administration expires December 31, 1993.
2. The Order For Interim Administration in Reporting Area 34 shall include only general provisions 2, 3, 4, 5, 6, 8, 9, 10, 12.b, 12.c, 13.b, 14 and 17.a.

IDWR may also administer water rights in Reporting Area 34 under rules and regulations promulgated pursuant to chapter 52, title 57, Idaho Code, as mandated by I.C. § 42-603. It is anticipated that rules and regulations required by I.C. § 42-603 and which are necessary for administration of water rights in Reporting Area 34 will be in place by the time this order expires, thereby rendering further interim administration unnecessary.

DISCUSSION

IDWR has requested interim administration in Reporting Area 34 because of a number of unique factors which, when taken together, create an emergency. The area is in its sixth year of a drought. Unique geographical and hydrological features including a demonstrated interconnection between surface and groundwater requires conjunctive administration of all water in the reporting area. While there is an established water district, for reasons that are unclear to the court, there has been little administration of water rights in the reporting area and none conjunctively. Additionally, because there are a substantial number of

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
DEPARTMENT OF WATER RESOURCES' MOTION FOR
INTERIM ADMINISTRATION WITH LIMITATIONS

unadjudicated water rights in Reporting Area 34, there is concern over establishing an accurate list of rights by priority. Finally, IDWR states that the 1929 decree in Utah Construction Co. v. Abbott, Case No. 681 (D. Idaho), has not been followed in significant respects and that its administrative provisions are completely unworkable and inappropriate at this time.

As part of the Snake River Basin Adjudication, this court has jurisdiction to order interim administration of water rights after the filing of a Director's Report (I.C. § 42-1417). On a showing that interim administration is "reasonably necessary to protect senior water rights" the court may order interim administration and may "permit the formation of water districts and the delivery of water in all or part of the water system." I.C. § 42-1417(1). While this court has jurisdiction to enter orders of interim administration, such orders should be entered only where an emergency exists and for a period of specific and limited duration. Because I.C. § 42-1417 not only allows this court to order that the director of IDWR take control of administration in a reporting area but also sets forth the specific terms, procedures and rules governing administration, this court is required to exercise great care to avoid becoming the administrator of the resource.

The statutory scheme in Idaho clearly and explicitly vests the director of IDWR with the duty and authority to administer water. The statute allowing interim administration requires that the director administer water under the terms of the Director's Report

as filed or as modified by the court. Since, as here, the Director's Report includes administrative rules and procedures governing distribution and regulation, this court must proceed cautiously to avoid changing the basis upon which water is administered in Idaho.

The fact of drought, lack of administration, need for conjunctive management, disregard of the Utah Construction Decree and questions about the appropriate list of rights priorities constitute an emergency which allows this court to exercise jurisdiction under I.C. 42-1417.

Absent an emergency, this court will not enter orders for interim administration as a part of this case. For this court to involve itself in administration beyond emergencies as exists in Reporting Area 34 would violate the doctrine of separation of powers and the clear statutory schema for water administration set up by the Idaho Legislature.

In this case, the director and various parties have asked this court to administer or supervise the administration of water in Reporting Area 34. The Idaho Constitution and the doctrine of separation of powers do not allow the court to do this. Water administration, the process of regulating and/or supervising the delivery of water, is a duty assigned to the director by the legislature. (See: Title 42, Idaho Code.) The director's authority and duties were further expanded and clarified during the most recent session of the legislature. (I.C. § 42-602.) The

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
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jurisdiction granted to this court by the legislature in the Snake River Basin Adjudication is to determine the elements of water rights in the water system. The Snake River Basin Adjudication statutes do not confer jurisdiction on this court to determine or supervise the regulation or delivery of water rights. The court's jurisdiction only includes the determination of the existence of and elements of the rights to the use of water in the water system. The adoption of statutes calling for the Snake River Basin Adjudication neither changes the director's responsibilities nor the court's role with respect to the director's duty to administer water in this state.

Given the existing emergency in Reporting Area 34, it is found that it is necessary to order interim administration to protect senior rights. Interim administration may include implementation of the general provisions noted above. However, this is not to say that general provisions dealing with administration and which are more akin to procedures and rules which should be adopted under the Administrative Procedures Act can or will be included in a final decree. General provisions which are regulatory or administrative in nature are beyond this court's jurisdiction in any context other than interim emergency administration. Those administrative and regulatory provisions which are necessary for the administration of water in this or any other basin can and should be promulgated by IDWR under the Administrative Procedures Act. It is, therefore, expected that after one year of emergency interim administration in

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
DEPARTMENT OF WATER RESOURCES' MOTION FOR
INTERIM ADMINISTRATION WITH LIMITATIONS

Reporting Area 34, the director will be able to continue with administration pursuant to rules and regulations adopted under the terms of the Administrative Procedures Act. At that time, interim administration under the general provisions included as part of the Director's Report will be unnecessary.

For this court to involve itself in water administration beyond interim emergency situations like this would be to continue to create one of the very emergencies upon which the director has requested this relief. The Utah Construction Decree which the director claims contains unworkable and inappropriate administrative provisions demonstrates the impropriety of including such provisions in a decree. The director claims he is, in some measure, prevented from administering water rights in Reporting Area 34 because of the existence of these unworkable administrative provisions in the prior decree.

By placing administrative provisions in a decree in the Snake River Basin Adjudication, the director would be hamstrung in his ability to administer water when, as in the case of the Utah Construction Decree, the provisions become "unworkable." The director would thereafter find himself continually returning to court seeking relief from the Snake River Basin Adjudication decrees in order to administer water in Idaho based on then-current information and technology and to meet existing needs and circumstances.

For this court to order anything other than emergency interim administrative provisions would simply compound the difficulties currently facing the director and ensure continued court involvement in administration wherever those decreed administrative provisions contained in any decree or order need to be changed as current circumstances and necessity require. This is the very reason why courts are not appropriate bodies to conduct the administration of water.

The director has also expressed great concern about his ability to administer water rights absent an "accurate list of water rights on which to base distribution of water" (Brief in Support of Motion for Interim Administration, p. 6, n. 4). The director advocates that this "list" must exist in the form of a Director's Report before he can administer water rights. In support of this proposition, he cites the case of Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977). Legislation adopted after the Nettleton decision gives the director the ability to compile a comprehensive list of the elements of all water rights in any area which requires administration. The Nettleton decision is not a limitation on the director's present obligation and ability to regulate water distribution in this or any other reporting area. I.C. § 42-243 requiring mandatory filing of historic use claims; I.C. § 42-244 requiring IDWR to file and maintain a record of the claims filed as part of the mandatory filing process; and the claims filing and investigation procedures in the Snake River Basin

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
DEPARTMENT OF WATER RESOURCES' MOTION FOR
INTERIM ADMINISTRATION WITH LIMITATIONS

Adjudication give the director both the ability and the information to put together an adequate and appropriate list for water administration. This court is confident that having executed his responsibilities under these statutes, the list compiled and reflected in the Director's Report in Reporting Area 34 is the best available list for the administration of water and, given the existing emergency, it shall be used under this court's order for interim administration. Notwithstanding this finding, the rights reported in the Director's Report are subject to objection and response, hearing by the court or special masters and final determination in this court's decree. The court is, therefore, not bound or in anyway constrained by the conclusions drawn in the Director's Report when entering decrees on those rights.

CONCLUSION

This court finds that an emergency exists in Reporting Area 34 requiring interim administration for a period expiring December 31, 1993. The order only includes general provisions 2, 3, 4, 5, 6, 8, 9, 10, 12.b, 12.c, 13.b, 14 and 17.a, as requested by IDWR. IDWR may also administer water rights in Reporting Area 34 under lawfully adopted administrative rules and regulations.


Administration of water rights in Reporting Area 34 beyond the one-year time limit of this order or the specific terms of this order must and shall be in accordance with rules and regulations adopted under the Administrative Procedures Act. This court declines to compound the problem presented by the Utah Construction

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
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Decree's antiquated and unworkable provisions for water administration. This court now and in the future will decline the invitation to involve itself in aspects of water administration which would be required by placing regulatory and administrative provisions in orders and/or decrees in the Snake River Basin Adjudication.

IT IS SO ORDERED.

Signed this 18th day of December, 1992.


DANIEL C. HURLBUTT, JR.
DISTRICT JUDGE

DEC-18-92 FRI 15:27

SRBA DISTRICT COURT

FAX NO. 12087362121

P.12

CERTIFICATE OF MAILING

I, Diana R. Delaney, hereby certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER GRANTING IDAHO DEPARTMENT OF WATER RESOURCES' MOTION FOR INTERIM ADMINISTRATION WITH LIMITATIONS was mailed this 18th day of December, 1992, in an envelope with sufficient first-class postage prepaid thereon to the following:

Clive J. Strong
Office of the Attorney General -- BY FACSIMILE
State of Idaho 334-2690
Room 210, Statehouse
Boise, ID 83720

Peter G. Monson
U.S. Department of Justice -- BY FACSIMILE
Land & Natural Resources 202/786-4010
Division
Indian Resources Section
P.O. Box 44378
Washington, DC 20026-4378

James C. Tucker
Gary D. Slette
Bruce M. Smith
Rosholt, Robertson & Tucker -- BY FACSIMILE
P.O. Box 1906 736-0040
Twin Falls, ID 83303-1906 334-6034

William R. Hollifield
Hollifield, Tolman & Bevan, P.A. -- BY FACSIMILE
P.O. Box 66 734-8077
Twin Falls, ID 83303-0066

David B. Shaw, Chief
Adjudication Bureau
Idaho Department of Water
Resources
1301 North Orchard
Boise, ID 83706
(six copies)

Court Certificate of Mailing

Robert S. Fort
Clerk of the 5th District Court

By 
Diana R. Delaney
Deputy Clerk



MEMORANDUM DECISION AND ORDER GRANTING IDAHO
DEPARTMENT OF WATER RESOURCES' MOTION FOR
INTERIM ADMINISTRATION WITH LIMITATIONS

Judge grants interim administration order in Big Lost River, Basin 34

FRIDAY, DEC. 18—Judge Daniel Hurlbutt granted the Idaho Department of Water Resources' motion seeking interim administration of water rights for the Big Lost River, Basin 34 for 1993, according to David B. Shaw, IDWR Adjudication Bureau Chief.

IDWR Director R. Keith Higginson filed the motion with the court June 18, 1992, seeking authority to expand the Basin 34 Water District to include ground water users in the district.

"Judge Hurlbutt's decision will allow IDWR to enlarge the water district thus placing wells under the control of the watermaster," Shaw said. "Wells

will be regulated by priority, along with surface water rights, which means more recent ground water rights may be shut off to protect older surface water rights."

IDWR is committed to working with local ground water users to develop acceptable mitigation plans to allow for continued ground water use in the expanded water district, Shaw added.

IDWR will hold public information meetings in the basin if requested by local water users and a public hearing will be held as part of the water district expansion.

Pumpers Assn. organized for changes in water management

In 1987, the State of Idaho commenced a comprehensive court adjudication of all claimed water rights within the Snake River Basin and all of its surface and groundwater tributaries, including the Big Lost River Drainage. During the taking and processing of SRBA claims in Basin 34, a controversy over the impacts of groundwater pumping under junior priorities upon river flows with senior priorities developed. This controversy has been exacerbated by six years of continual drought conditions. In recent years it has become apparent that the surface and ground water resource are not totally separate, but at many locations are closely connected and may even be different manifestations of a common water supply.

It has become apparent from various meetings conducted by Director Higginson and other Idaho Department of Water Resource officials, and most recently from a "Final Order" issued in August of 1990 and "Directors Report" filed in the SRBA Court on June 18, 1992 that IDWR intends to have the surface and groundwater supplies within the basin administered conjunctively in the future. The Director filed a motion for interim administration on June 18, 1992, that asks the Court to enter an order allowing IDWR to administer water rights in Basin 34 in accordance with the recommendations in the Director's Report. The Motion for Interim Administration was granted by Judge Daniel C. Hurlbutt, Jr. on December 18, 1992. The report recommends that most wells located within the basin cannot be pumped under junior groundwater rights when such withdrawals reduce surface flows and injure senior surface rights, unless an appropriate plan for mitigation had been approved by IDWR.

In response to these changes in the management of the water resource of the Big Lost River Basin, owners and operators of many of the wells that will be affected by this conjunctive administration have associated together and created a corporation through which they will cooperate to address the impacts of this new administration of their water rights and irrigation practices. This corporation will be used as the means to gather data, perform studies, obtain available water supplies, and submit proposed plans of mitigation to IDWR so as to enable its stockholders to continue the operation of their wells for the irrigation of their farms. Membership in this corporation is available to any groundwater user in Basin 34 who may be affected by this new conjunctive use and management.

On November 11, 1992 charter members of the Big Lost River Pumpers Association ratified Articles of Incorporation and adopted by-laws governing the operation of the corporation. Directors and officers of the board were elected as described by those by-laws and the association is currently in the process of developing details to a comprehensive "plan of mitigation" with IDWR officials. Water users who would like to investigate and/or subscribe to this plan may do so by complying with membership criteria.

Several public and informational meetings related to these administrative changes will be held in the immediate future by IDWR and BLRPA. Watch for the notice of these meetings. Contact any of the following directors for more information: Mitchell D. Sorensen, President; Leon Folkman, Vice President; Don Aikele, Secretary-Treasurer, with other directors listed as Dexter R. Douglas and Steven Aikele.

ARCO ADVERTISER

12-24-92

1992 DEC 18 PM 3:17
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED *[Signature]*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re the General Adjudication of)
Rights to the Use of Water From)
the Snake River Basin Water System.)

Case No. 39576

The State of Idaho, ex rel.)
R. Keith Higginson in his official)
capacity as Director of the Idaho)
Department of Water Resources,

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GRANTING IDAHO DEPARTMENT OF
WATER RESOURCES' MOTION FOR
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LIMITATIONS

Petitioner,

Vs.

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Deputy Attorneys General, for Petitioner State of Idaho
Department of Water Resources.

Peter G. Monson, K. Jack Haugrud and Daria J. Zane,
United States Department of Justice, for Respondent
United States.

James C. Tucker, Gary D. Slette and Bruce M. Smith,
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MEMORANDUM DECISION AND ORDER GRANTING IDAHO
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William R. Hollifield, Hollifield, Tolman & Bevan, P.A.,
for Respondents Big Lost Water Users Association.

Kent W. Foster, Holden, Kidwell, Hahn & Crapo, for
Respondents Groundwater Pumpers. Representation
withdrawn.

Mitchell Sorensen, Pro Se.

Idaho Department of Water Resources Motion for Interim
Administration in Reporting Area 34, Granted, in part.

PROCEDURAL BACKGROUND

The Idaho Department of Water Resources ("IDWR") has moved for
an Order For Interim Administration in Reporting Area 34, pursuant
to I.C. § 42-1417. In its motion, IDWR seeks authorization to
administer water rights in accordance with the provisions contained
in the Director's Report, Part 1, Reporting Area 34.

Responses to the motion have been filed by the United States
of America, Idaho Power Company, Twin Falls and North Side Canal
Companies and the Big Lost Water Users Association and Groundwater
Pumpers. Following hearing, the court ordered IDWR to clarify
which of the "general provisions" included in the Director's Report
for Reporting Area 34 would be enforced as part of interim
administration. In a clarifying brief IDWR identified the
following general provisions as necessary for interim
administration: 2, 3, 4, 5, 6, 8, 9, 10, 12.b, 12.c, 13.b, 14 and
17.a. The responding parties filed further responses to the
clarifying brief. Following hearing the parties submitted post-
hearing memoranda and reply briefs.

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
DEPARTMENT OF WATER RESOURCES' MOTION FOR
INTERIM ADMINISTRATION WITH LIMITATIONS

IDWR's Motion For Interim Administration in Reporting Area 34
is granted, subject to the following conditions:

1. The Order For Interim Administration expires December 31,
1993.

2. The Order For Interim Administration in Reporting Area 34
shall include only general provisions 2, 3, 4, 5, 6, 8, 9, 10,
12.b, 12.c, 13.b, 14 and 17.a.

IDWR may also administer water rights in Reporting Area 34
under rules and regulations promulgated pursuant to chapter 52,
title 57, Idaho Code, as mandated by I.C. § 42-603. It is
anticipated that rules and regulations required by I.C. § 42-603
and which are necessary for administration of water rights in
Reporting Area 34 will be in place by the time this order expires,
thereby rendering further interim administration unnecessary.

DISCUSSION

IDWR has requested interim administration in Reporting Area 34
because of a number of unique factors which, when taken together,
create an emergency. The area is in its sixth year of a drought.
Unique geographical and hydrological features including a
demonstrated interconnection between surface and groundwater
requires conjunctive administration of all water in the reporting
area. While there is an established water district, for reasons
that are unclear to the court, there has been little administration
of water rights in the reporting area and none conjunctively.
Additionally, because there are a substantial number of

unadjudicated water rights in Reporting Area 34, there is concern over establishing an accurate list of rights by priority. Finally, IDWR states that the 1929 decree in Utah Construction Co. v. Abbott, Case No. 681 (D. Idaho), has not been followed in significant respects and that its administrative provisions are completely unworkable and inappropriate at this time.

Correct

As part of the Snake River Basin Adjudication, this court has jurisdiction to order interim administration of water rights after the filing of a Director's Report (I.C. § 42-1417). On a showing that interim administration is "reasonably necessary to protect senior water rights" the court may order interim administration and may "permit the formation of water districts and the delivery of water in all or part of the water system." I.C. § 42-1417(1). While this court has jurisdiction to enter orders of interim administration, such orders should be entered only where an emergency exists and for a period of specific and limited duration.

Because I.C. § 42-1417 not only allows this court to order that the director of IDWR take control of administration in a reporting area but also sets forth the specific terms, procedures and rules governing administration, this court is required to exercise great care to avoid becoming the administrator of the resource.

The statutory scheme in Idaho clearly and explicitly vests the director of IDWR with the duty and authority to administer water. The statute allowing interim administration requires that the director administer water under the terms of the Director's Report

NEED
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UNTIL THE
COURT DECIDES
THE RIGHTS

Why?
COURT DOES
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TO ORDER
DIRECTOR TO
TAKE CONTROL
BUT NEEDS TO
APPROVE THE
INTERIM ADMINISTRATION
OF WATER RIGHTS

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
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as filed or as modified by the court. Since, as here, the Director's Report includes administrative rules and procedures governing distribution and regulation, this court must proceed cautiously to avoid changing the basis upon which water is administered in Idaho.

The fact of drought, lack of administration, need for conjunctive management, disregard of the Utah Construction Decree and questions about the appropriate list of rights priorities constitute an emergency which allows this court to exercise jurisdiction under I.C. 42-1417.

WHERE IS
THERE A
NEED FOR
AN EMERGENCY?

Absent an emergency, this court will not enter orders for interim administration as a part of this case. For this court to involve itself in administration beyond emergencies as exists in Reporting Area 34 would violate the doctrine of separation of powers and the clear statutory scheme for water administration set up by the Idaho Legislature.

In this case, the director and various parties have asked this court to administer or supervise the administration of water in Reporting Area 34. The Idaho Constitution and the doctrine of separation of powers do not allow the court to do this. Water administration, the process of regulating and/or supervising the delivery of water, is a duty assigned to the director by the legislature. (See: Title 42, Idaho Code.) The director's authority and duties were further expanded and clarified during the most recent session of the legislature. (I.C. § 42-602.) The

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jurisdiction granted to this court by the legislature in the Snake River Basin Adjudication is to determine the elements of water rights in the water system. The Snake River Basin Adjudication statutes do not confer jurisdiction on this court to determine or supervise the regulation or delivery of water rights. The court's jurisdiction only includes the determination of the existence of and elements of the rights to the use of water in the water system. The adoption of statutes calling for the Snake River Basin Adjudication neither changes the director's responsibilities nor the court's role with respect to the director's duty to administer water in this state.

Given the existing emergency in Reporting Area 34, it is found that it is necessary to order interim administration to protect senior rights. Interim administration may include implementation of the general provisions noted above. However, this is not to say that general provisions dealing with administration and which are more akin to procedures and rules which should be adopted under the Administrative Procedures Act can or will be included in a final decree. General provisions which are regulatory or administrative in nature are beyond this court's jurisdiction in any context other than interim emergency administration. Those administrative and regulatory provisions which are necessary for the administration of water in this or any other basin can and should be promulgated by IDWR under the Administrative Procedures Act. It is, therefore, expected that after one year of emergency interim administration in

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THAT'S ALL
WE ARE
ASKING

Reporting Area 34, the director will be able to continue with administration pursuant to rules and regulations adopted under the terms of the Administrative Procedures Act. At that time, interim administration under the general provisions included as part of the Director's Report will be unnecessary.

For this court to involve itself in water administration beyond interim emergency situations like this would be to continue to create one of the very emergencies upon which the director has requested this relief. The Utah Construction Decree which the director claims contains unworkable and inappropriate administrative provisions demonstrates the impropriety of including such provisions in a decree. The director claims he is, in some measure, prevented from administering water rights in Reporting Area 34 because of the existence of these unworkable administrative provisions in the prior decree.

By placing administrative provisions in a decree in the Snake River Basin Adjudication, the director would be hamstrung in his ability to administer water when, as in the case of the Utah Construction Decree, the provisions become "unworkable." The director would thereafter find himself continually returning to court seeking relief from the Snake River Basin Adjudication decrees in order to administer water in Idaho based on then-current information and technology and to meet existing needs and circumstances.

For this court to order anything other than emergency interim administrative provisions would simply compound the difficulties currently facing the director and ensure continued court involvement in administration wherever those decreed administrative provisions contained in any decree or order need to be changed as current circumstances and necessity require. This is the very reason why courts are not appropriate bodies to conduct the administration of water.

The director has also expressed great concern about his ability to administer water rights absent an "accurate list of water rights on which to base distribution of water" (Brief in Support of Motion for Interim Administration, p. 5, n. 4). The director advocates that this "list" must exist in the form of a Director's Report before he can administer water rights. In support of this proposition, he cites the case of Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977). Legislation adopted after the Nettleton decision gives the director the ability to compile a comprehensive list of the elements of all water rights in any area which requires administration. The Nettleton decision is not a limitation on the director's present obligation and ability to regulate water distribution in this or any other reporting area. I.C. § 42-243 requiring mandatory filing of historic use claims; I.C. § 42-244 requiring IDWR to file and maintain a record of the claims filed as part of the mandatory filing process; and the claims filing and investigation procedures in the Snake River Basin

Adjudication give the director both the ability and the information to put together an adequate and appropriate list for water administration. This court is confident that having executed his responsibilities under these statutes, the list compiled and reflected in the Director's Report in Reporting Area 34 is the best available list for the administration of water and, given the existing emergency, it shall be used under this court's order for interim administration. Notwithstanding this finding, the rights reported in the Director's Report are subject to objection and response, hearing by the court or special masters and final determination in this court's decree. The court is, therefore, not bound or in anyway constrained by the conclusions drawn in the Director's Report when entering decrees on those rights.

LIST OF
UNADJUDICATED
CLAIMS

HOO RAY

CONCLUSION


This court finds that an emergency exists in Reporting Area 34 requiring interim administration for a period expiring December 31, 1993. The order only includes general provisions 2, 3, 4, 5, 6, 8, 9, 10, 12.b, 12.c, 13.b, 14 and 17.a, as requested by IDWR. IDWR may also administer water rights in Reporting Area 34 under lawfully adopted administrative rules and regulations.

Administration of water rights in Reporting Area 34 beyond the one-year time limit of this order or the specific terms of this order must and shall be in accordance with rules and regulations adopted under the Administrative Procedures Act. This court declines to compound the problem presented by the Utah Construction

Decree's antiquated and unworkable provisions for water administration. This court now and in the future will decline the invitation to involve itself in aspects of water administration which would be required by placing regulatory and administrative provisions in orders and/or decrees in the Snake River Basin Adjudication.

IT IS SO ORDERED.

Signed this 18th day of December, 1992.


DANIEL C. HURLBUTT, JR.
DISTRICT JUDGE

CERTIFICATE OF MAILING

I, Diana R. Delaney, hereby certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER GRANTING IDAHO DEPARTMENT OF WATER RESOURCES' MOTION FOR INTERIM ADMINISTRATION WITH LIMITATIONS was mailed this 18th day of December, 1992, in an envelope with sufficient first-class postage prepaid thereon to the following:

Clive J. Strong
Office of the Attorney General -- BY FACSIMILE
State of Idaho 334-2690
Room 210, Statehouse
Boise, ID 83720

Peter G. Monson
U.S. Department of Justice -- BY FACSIMILE
Land & Natural Resources 202/786-4010
Division
Indian Resources Section
P.O. Box 44378
Washington, DC 20026-4378

James C. Tucker
Gary D. Slette
Bruce M. Smith
Rosholt, Robertson & Tucker -- BY FACSIMILE
P.O. Box 1906 736-0040
Twin Falls, ID 83303-1906 334-6034

William R. Hollifield
Hollifield, Tolman & Sevan, P.A. -- BY FACSIMILE
P.O. Box 66 734-8677
Twin Falls, ID 83303-0066

David B. Shaw, Chief
Adjudication Bureau
Idaho Department of Water
Resources
1301 North Orchard
Boise, ID 83706
(six copies)

Court Certificate of Mailing

Robert S. Fort
Clerk of the 5th District Court

By 
Diana R. Delaney
Deputy Clerk

MEMORANDUM DECISION AND ORDER GRANTING IDAHO
DEPARTMENT OF WATER RESOURCES' MOTION FOR
INTERIM ADMINISTRATION WITH LIMITATIONS

BIG LOST RIVER BASIN

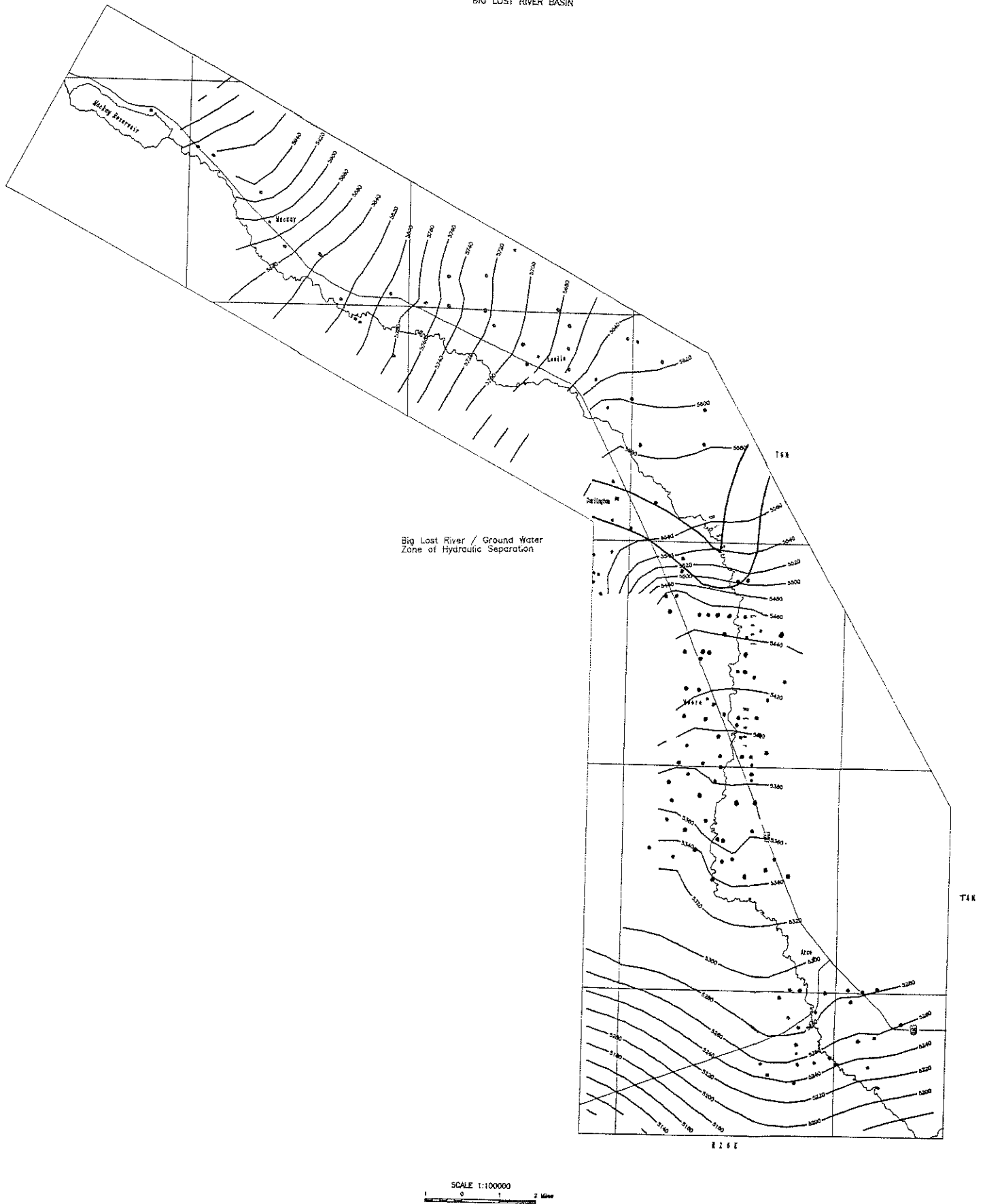
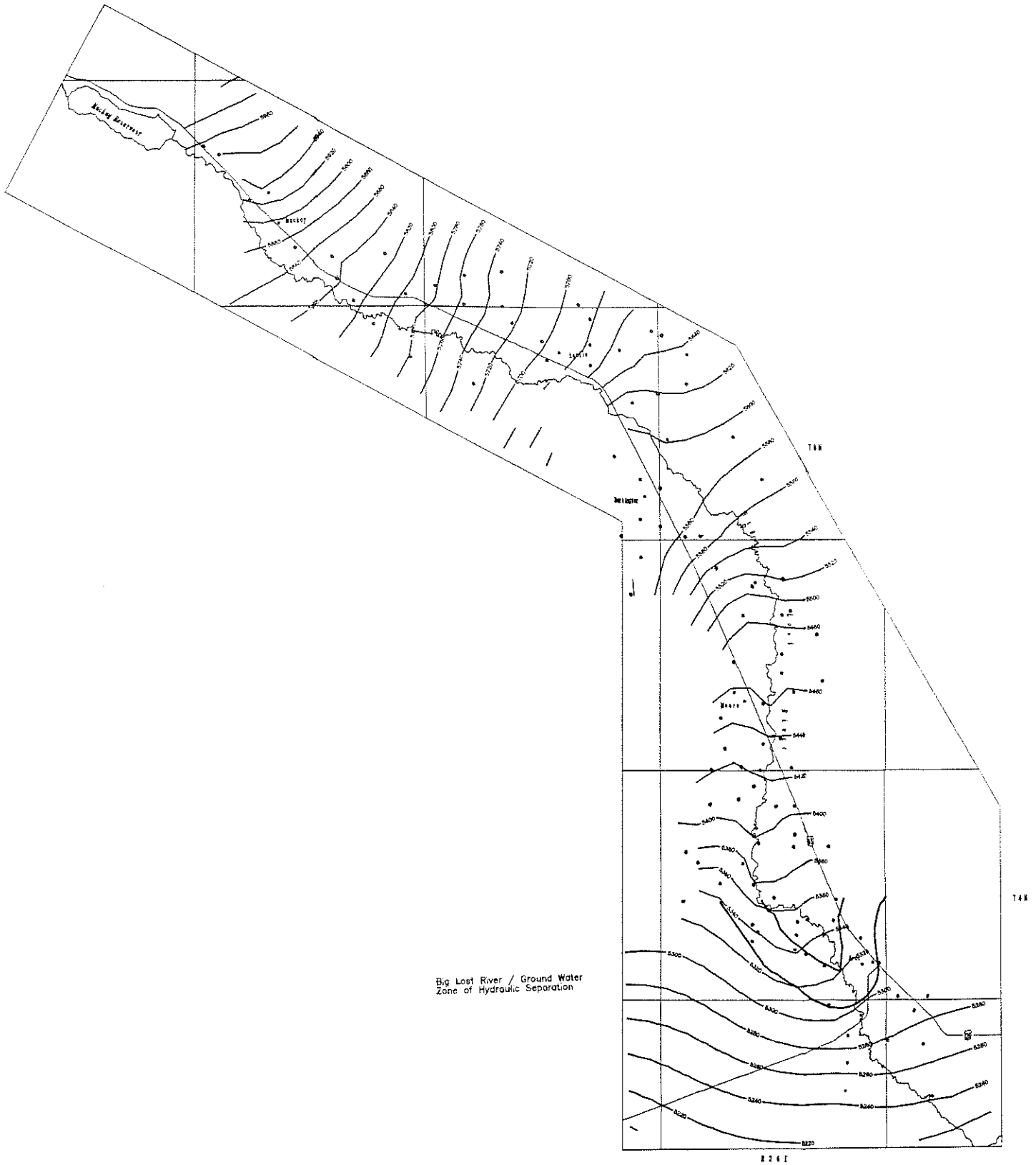


FIGURE 1. WATER-LEVEL ELEVATION MAP, SPRING 1991

BIG LOST RIVER BASIN



BIG LOST RIVER BASIN

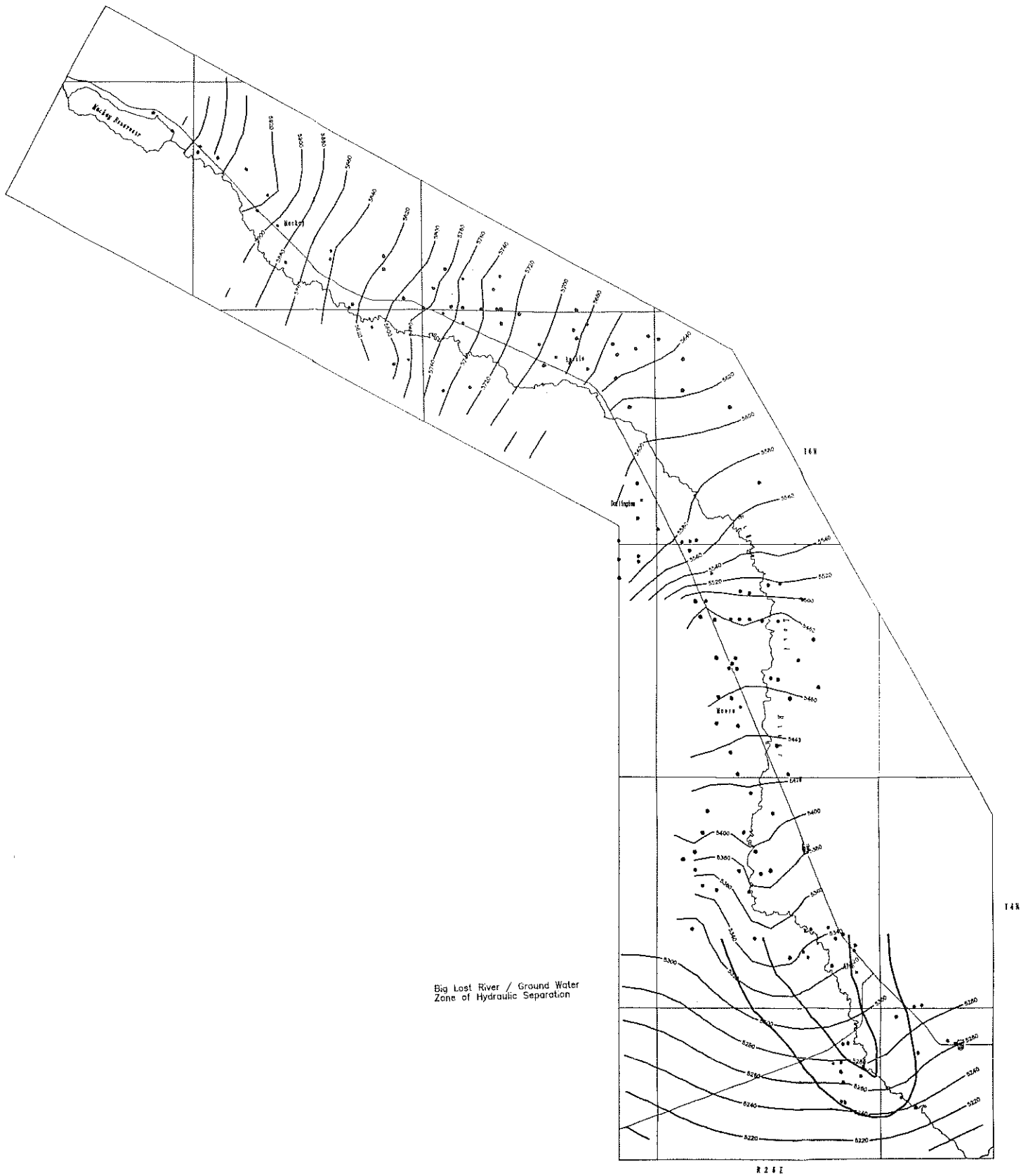
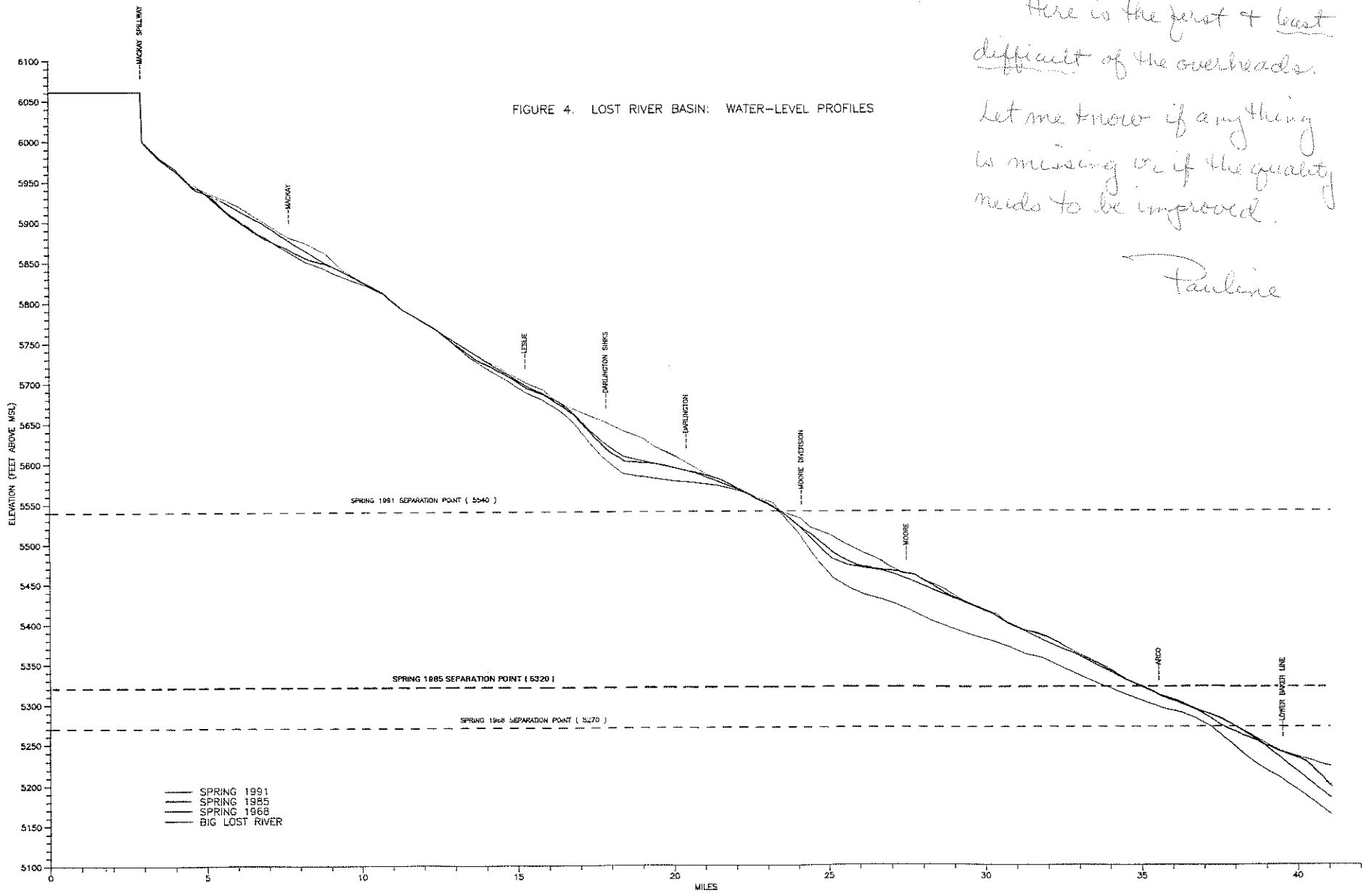


FIGURE 3. WATER-LEVEL ELEVATION MAP, SPRING 1968



Gerald,

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difficult of the overheads.

Let me know if anything
is missing or if the quality
needs to be improved.

Pauline

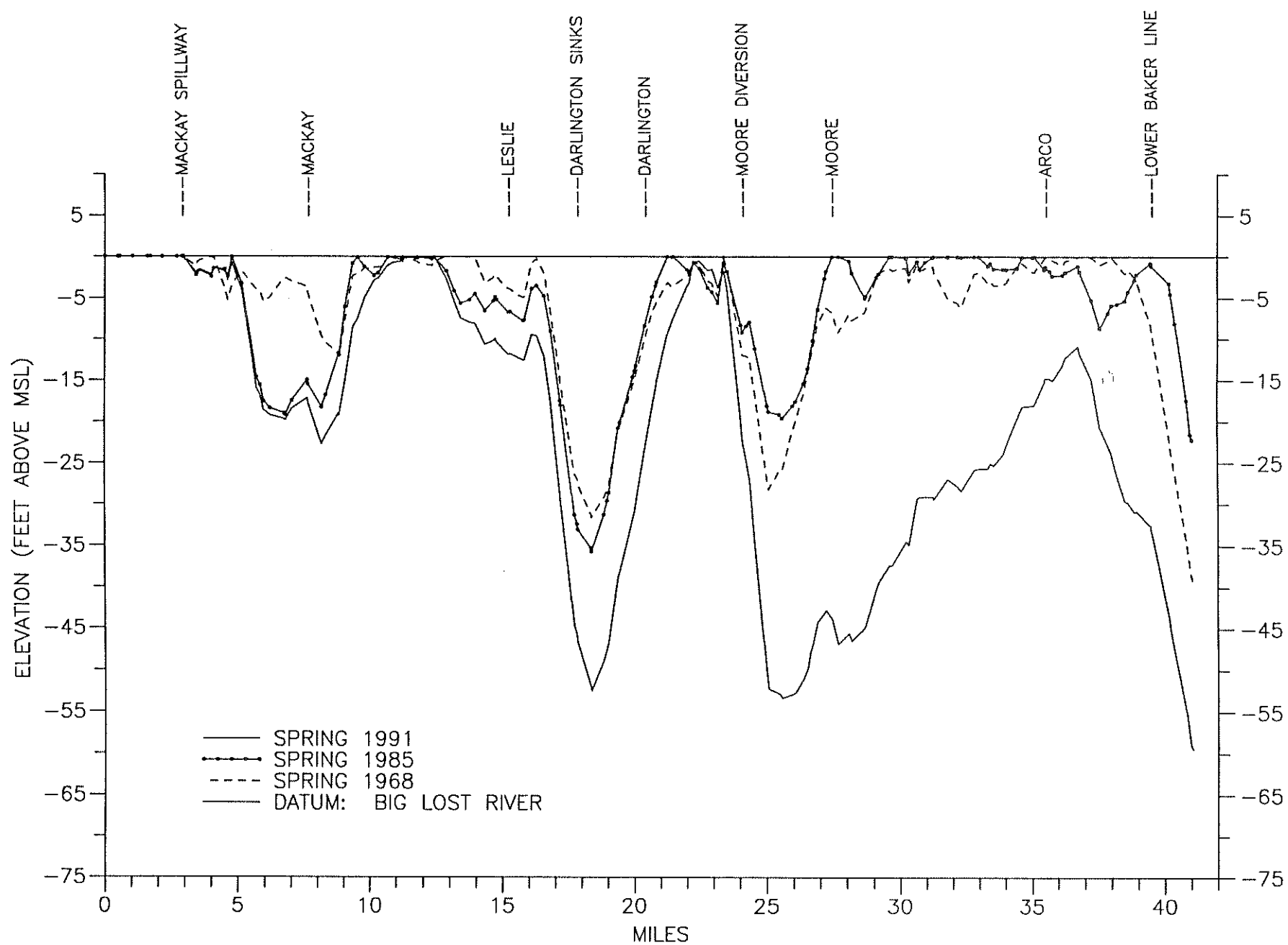


Figure 5. Profile of Water-Level Elevation Maps

IDWR addresses Big Lost River water issues

Note: The following memorandum from the Idaho Department of Water Resources has been received by those having an interest in IDWR management in Big Lost River Basin, from R. Keith Higginson, Director.

The memorandum addresses Department Policy concerning enjoining of use of water where the only right is an adjudication claim:

I believe that good progress has been made toward addressing many of the water management problems in the Big Lost River Basin. The advisory committee meetings have provided useful exchanges of information, a full review of the issues, and I am confident will help to develop and implement a management program to protect all users in the basin while allowing the water resources of the area to be fully used for the benefit of all. The Big Lost River Irrigation District is insuring that its policies are fully aligned with Idaho water law and coordinated with this department and the Water District. The Water District is taking steps to improve and refine water management. These are very positive indications that effective management of the combined surface and ground water resource will be realized as soon as next year.

However, with the 1990 irrigation season now commencing and another very water short year apparently occurring, it is necessary for me to describe the approach IDWR will be taking concerning the use of water where the only right to use water is represented by a claim in the Snake River Basin Adjudication (SRBA). Various uses of water without a valid recorded right have been brought to my attention during the past year. IDWR's response has been to issue administrative orders to "cease and desist" use of water if either no water right is of record with the department or if the only record is an unapproved application. This continues to be IDWR's policy where no valid right to use water is evident, and IDWR will seek injunctions and civil fines as necessary to enforce the administrative orders.

Subsequent to the issuance of the administrative orders, claims have been filed in the SRBA asserting that valid rights exist to irrigate some of the lands in question because of either expansions authorized to be claimed by Section 42-1416, Idaho Code, or changes in point of diversion or place of use authorized to be claimed by Section 42-1416A, Idaho Code. IDWR is now confronted with the question of whether to seek to enjoin use of the

water because the validity of these claims has not been confirmed by the court or to allow continued use pending action of the court.

The claims, if found by the court to represent a valid right, represent a property right which cannot be taken or subjected to interference without due process. IDWR has accelerated the SRBA in the Big Lost River Basin to allow a director's report to be filed with the court in 1991. This report can be the basis of an interim order allowing administration of the rights.

I have previously stated my intention of including ground water rights in the water district to be managed with surface rights. Thus, the procedures have been commenced to allow the validity of the claimed rights to be determined and to have in place the management entity needed to administer the rights effectively during the 1991 irrigation season.

I have also previously expressed that, based upon my understanding of the ground water resource depleted by three dry years and the low runoff predicted this year, terminating pumping of ALL wells in the basin would not restore the stream flows to provide a full water supply to holders of surface rights. From a practical and fairness standpoint, I cannot require water users with claims that may prove to be legally valid to cease using water when doing so is unlikely to restore water flows to those asserting injury to their surface water rights.

• Allowing continued pumping of claimed rights may effect some users of shallow wells, but I believe the effect will be insignificant unless the pumping well is located in close proximity to the shallow well. The primary reason for the drying up of shallow wells is the extended number of years of very low runoff.

Therefore, IDWR will not seek to prevent use of ground water where the right to use the water is based upon a claim unless:

- (1) The claim is obviously without merit because the use clearly did not commence prior to the required dates or the use was obviously expanded after the statutory deadline.
- (2) The rate of diversion exceeds the rate of the right which is claimed as expanded or transferred.
- (3) Documented evidence exists that the claimed use by itself or in conjunction with the use of other claimed uses is directly and insignificantly injuring another valid right or rights.

Craters of the Moon possible expansion to be discussed at meetings

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NOV 21 1989

November 13, 1989
Moore, Idaho

Department of Water Resources

State of Idaho
Department of Water Resources
1301 N. Orchard Street
Boise, Idaho 83720

Dear Mr. Higginson;

As requested, I am enclosing a number of concerns that I feel are important to discuss in our advisory committee meetings in District #34 (Big Lost River) and am confident that if these areas are addressed and lawful conclusions are reached and enforced, that most of the serious problems over which we have control, will be solved.

These are a combination of areas that may be resolved by State action, local irrigation district action, and possibly in some cases a combination of both.

I appreciate your concern, your time, and your willingness to be of service.

Sincerely yours,

Lawrence R. Babcock

WATER DISTRICT 34

Areas of concern and topics for discussion.

11. Declining ground water level.
- ✓ 12. Increase of minimum stream flow as needed.
- ✓ 13. Unaccounted or uncontrolled flow outside district.
- ✓ 14. Encourage recoverable recharge of aquifer.
(Irrigation & diversion practices)
- ? 15. No water in U.C. canal.
16. Departments control of Junior/Primary wells.
(Rothwell vs. Jones and McAfee)
17. Transport agreements.
- ✓ 18. Pumps and surface water used where licensed.
- ? 19. Pumping stations removed from canal channel.
20. Measuring devices an all headings/pumps, in and out.
21. Excessive shrink.
22. Unlicensed pumps should not run.
23. Pumping for credit.
24. Board member qualifications.
25. Ecological concerns.
- 26. Posterity survival and community well-being.
- ? 27. Accuracy of water delivery records.
- 28. Obey and enforce water laws.
- ? 29. Policies of electric board.