

## UNDERSTANDING THE LOWER RIO GRANDE INTERSTATE WATER SETTLEMENT

This seven-page summary explains what the August 29, 2025, proposed settlement requires of New Mexico and how the settlement's compliance mechanisms function, and at whose expense.

The settlement obligations imposed on New Mexico matter statewide because they (1) are costly, (2) require substantially reduced total Lower Rio Grande water use, and (3) must be followed by either continued large state expenditures to buy and lease more water for delivery to El Paso or by adequate state priority administration if water users don't reach agreement on an equivalent shortage-sharing arrangement.

For more than a decade, the negotiations and technical work underlying the settlement were available only to the parties and their attorneys and technical advisors. On September 12, 2025, the settlement documents were first presented publicly to the Legislature's Water & Natural Resources Committee. To date, New Mexico's water agencies have provided only very high-level summaries of the settlement and New Mexico's expected costs.

Now that the documents are public, the need for clear, accurate explanation is substantial. This document is intended as a durable public reference for legislators, water professionals, local governments, and communities seeking to understand the structure, obligations, and implications of the proposed settlement.

The proposed settlement consists of a draft Consent Decree and four implementing agreements among New Mexico, Texas, the United States, the Bureau of Reclamation, the Elephant Butte Irrigation District (EBID), and the El Paso

County Water Improvement District No. 1 (EPCWID). Together, these documents exceed 130 pages and establish multiple mechanisms that operate jointly to define and require deliveries of water to meet the Effective El Paso Index (EEPI). Many provisions must be read together to understand their combined effect.

This document answers two fundamental questions:

- **How does the settlement work?**
- **Who pays for each part of it?**

The information is presented in four parts:

- **Compliance Mechanisms Table** – concise descriptions of each mechanism, when it applies, what it does, and who carries it out and pays.
- **Settlement Authority Notes** – citations linking each mechanism to settlement document citations.
- **Glossary** – definitions of specialized terms and accounting concepts used throughout the settlement.
- **Expert Interpretation Disclosure** – brief explanations of the five instances that rely on professional interpretation, not just the plain requirements set forth in the settlement.

The Water Advocates strive to provide accurate and thorough information. **If you identify any errors or omissions in this summary, we encourage you to let us know.** Your feedback is valuable and will help us maintain the accuracy and usefulness of this resource. Thank you for your assistance in ensuring the quality of this public reference.

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# Compliance Mechanisms Under the Lower Rio Grande Settlement

Mechanism (governing instruments)	What the Mechanism Does / Settlement Function	Responsible Party / Funder
<b>1. Permanent Retirement of 18,200 AF/yr of Groundwater Depletions</b> ( <i>Groundwater Settlement Agreement</i> )	<p>New Mexico must permanently retire 18,200 AF/yr of hydrologically connected groundwater depletions. ISC/OSE may purchase groundwater rights from willing sellers. When ISC purchases combined groundwater + EBID Project water rights, the groundwater component counts toward the retirement. The surface-water component becomes part of ISC’s Base Allocation.</p>	<p><b>NM taxpayers — ISC</b> funds groundwater-right purchases. Sellers transfer rights voluntarily.</p>
<b>2. Base Allocation Water</b> ( <i>Third-Party Implementing Contract</i> )	<p>ISC may acquire EBID Project water rights from willing sellers. EBID assigns ISC the annual Project allotment corresponding to those rights. When ISC acquires combined rights under the GSA, the surface-water portion becomes Base Allocation water. Unused portions may convert to Converted Water Credits.</p>	<p><b>NM taxpayers — ISC</b> funds purchase of EBID Project water rights. EBID adjusts its irrigable acreage roll.</p>
<b>3. Converted Water</b> ( <i>Conversion Contract + Third-Party Implementing Contract</i> )	<p>Up to 100,000 acre-feet of Project irrigation water may be converted to other uses under the 1920 Miscellaneous Purposes Act, including interstate delivery. ISC may purchase converted water. Municipal and industrial water users with rights junior to EBID’s 1903 adjudicated priority date will require access to converted water under OSE administration (see row 8).</p>	<p><b>NM taxpayers — ISC</b> purchases converted water. EBID and Reclamation administer conversion accounting. <b>Junior water users</b> may pay for converted water to avoid being cut off by priority or alternative administration.</p>
<b>4. Leased Project Water</b> ( <i>Third-Party Implementing Contract + Operations Settlement Agreement</i> )	<p>EBID, acting as a district, may lease a portion of its district-wide annual Project allotment to ISC. This is a district-level action; individual irrigators do not participate. ISC uses leased water to support Allocation Transfers and EEPI compliance.</p>	<p><b>NM taxpayers — ISC</b> pays EBID for leased water. Water burden is distributed district-wide through EBID’s allocation decisions.</p>
<b>5. Forbearance Water</b> ( <i>Third-Party Implementing Contract</i> )	<p>Individual EBID irrigators may voluntarily enroll in compensated Allocation Forbearance contracts, agreeing not to divert all or part of their personal Project allotment. EBID makes the voluntarily foregone volumes available to ISC for Allocation Transfers.</p>	<p><b>NM taxpayers — ISC</b> compensates participating irrigators directly.</p>

Mechanism (governing instruments)	What the Mechanism Does / Settlement Function	Responsible Party / Funder
<p><b>6. Compensated Allocation Transfers (EBID → EPCWID)</b> (<i>Operations Settlement Agreement</i>)</p>	<p>When EEPI accounting shows Excess Negative Accrued Departure, New Mexico may order an EBID Allocation Transfer to EPCWID in the amount determined by the EEPI calculation. Reclamation executes the transfer. This is a compulsory but fully compensated reallocation of Project water to make up for New Mexico’s severe accrued under deliveries, exercised at the ISC’s discretion constrained by the OSA.</p>	<p><b>NM Taxpayers</b> – “New Mexico shall not take or reduce EBID’s annual Project Allocation without just compensation under this TPIC” or in contravention of Reclamation law. <b>TPIC, 8.b.</b> p8</p>
<p><b>7. Penalty Deliveries (Increased Index Obligation)</b> (<i>Consent Decree</i>)</p>	<p>After three consecutive years exceeding the Accrued Negative limit, New Mexico’s Index Obligation increases by 12,000 AF/yr; after five years, by 15,000 AF/yr. The settlement does not prescribe how New Mexico must obtain the water to satisfy the increased delivery requirement. New Mexico must reverse Negative Accrued Departures within time limits.</p>	<p><b>NM Taxpayers</b> unless the State Engineer implements compliance mechanism #8.</p>
<p><b>8. OSE Administrative Authority Preserved</b> (<i>Consent Decree preserves state authority and provides some discretion</i>)</p>	<p>The proposed Consent Decree mandates that New Mexico take “water management actions ... to avoid excessive Accrued Index Departures.” When the “Negative Departure Trigger” exceeds 80,000 AF, including penalties required by a lower trigger, “New Mexico shall take water management actions to reduce the Accrued Negative Departures... . New Mexico shall have discretion to determine what water management actions are necessary and appropriate.” It is unclear how the negotiations required by Section II of the Operations Settlement Agreement will constrain that discretion.</p>	<p><b>OSE</b> administers under existing authority and appropriations. Not a settlement-specific funding obligation. Curtailment impacts fall on junior rights holders, not State finances. Presumably <b>junior uses</b> must utilize mechanism #3 for their water.</p>
<p><b>9. Indicator Wells Aquifer Condition Trigger</b> (<i>Groundwater Settlement Agreement</i>)</p>	<p>The GSA designates a set of Indicator Wells used to monitor aquifer conditions in the Lower Rio Grande. These wells provide diagnostic data for evaluating aquifer trends. The GSA requires analysis, not mandated physical remediation or expenditures.</p>	<p><b>OSE/ISC, EBID, and USGS</b> continue monitoring under existing cooperative programs.</p>
<p><b>10. CAB3 + Indicator Wells Action Trigger</b> (<i>Groundwater Settlement Agreement</i>)</p>	<p>If (1) the 3-year average Caballo release (CAB3) exceeds 400,000 AF and (2) Indicator Wells show statistically significant decline, New Mexico must evaluate probable causes, document findings, and consider corrective measures. This is a reporting and diagnostic requirement, not a mandatory operational program.</p>	<p><b>OSE/ISC</b> performs evaluation under existing funding. No State expenditure required. EBID cooperation continues under current programs.</p>

# Settlement Authority Notes

1. The requirement to permanently retire **18,200 AF/yr** of groundwater depletions is established in the **Groundwater Settlement Agreement (GSA), §§ III.A.1-3, p6.**
2. ISC’s authority to receive the annual Project allotment associated with any **EBID Project water rights** it acquires, including the surface-water portion of combined-rights purchases, is set out in the **Third-Party Implementing Contract (TPIC), §§ 2–3., p3.** Only the Project water right portion becomes Base Allocation water.
3. Authority to convert up to **100,000 acre-feet** of Project irrigation water for purposes other than irrigation comes from the **Conversion Contract, §§ 2–5, p4,** pursuant to the **1920 Miscellaneous Purposes Act, ch. 86, 41 Stat. 451.** The cap is an annual volumetric limit.
4. EBID’s ability to lease a portion of its **district-wide Project allotment** to ISC is authorized in the **Operations Settlement Agreement (OSA), § I.C.4,** with cross-reference in the TPIC. Leasing is an EBID institutional action.
5. Voluntary Allocation Forbearance agreements, in which individual EBID irrigators agree not to divert Project water in exchange for compensation, are defined in the **TPIC, §§ 5.1–5.4.** Participation is always voluntary and compensated.
6. ISC determines if it will require compensated EBID → EPCWID Allocation Transfers, triggered by Excess Negative Accrued Departure. EBID Allocation transfers are governed by the **OSA, § I.C.4.** The **Consent Decree**

**Injunction, § II.B. and C.,** preserves New Mexico’s discretion over whether to utilize compensated surface water allocation transfers or to deliver water through non-compensated administration of junior water rights.

7. Increased Index Obligations (“Penalty Deliveries”)—**12,000 acre-feet** after three consecutive years of Excess Negative Accrued Departure and **15,000 acre-feet** after five—are specified in the **Consent Decree, § II.C.4.b.** The settlement does not prescribe how New Mexico must obtain or deliver the additional water.
8. The State Engineer’s statutory authority to regulate water uses in New Mexico is unchanged per the **Consent Decree, § II.D.2.a.** The US, NM, and EBID must negotiate with Las Cruces, NMSU, and other LRG amici who did not agree to the settlement. Negotiation topics are potential appeals of their state adjudication court water rights decisions and the State Engineer’s future LRG administration. Deadline is October 1, 2026, **Operations Settlement Agreement, § II.B.**
9. The definition and monitoring role of Indicator Wells are set out in the **GSA, §§ 4.1–4.3 and Appendix A.** Indicator Wells do not directly affect EEPI accounting; they serve as diagnostic tools for evaluating aquifer conditions.
10. The combined trigger—CAB3 > 400,000 acre-feet and declining Indicator Wells—and the requirement for New Mexico to evaluate probable causes are established in the **GSA, §§ 4.4–4.5.** The settlement requires analysis and reporting, not mandatory implementation of corrective measures.

# Glossary

## **Accrued Departure**

Cumulative difference between New Mexico's required and actual deliveries under the EEPI. Excess Negative Accrued Departure triggers mandatory Allocation Transfers and, after multiple years, Penalty Deliveries.

## **Active Water Resources Management (AWRM)**

Statutory authority of the New Mexico State Engineer to administer surface- and groundwater rights in priority or by equivalent agreements between water users to share shortages.

## **Allocation Forbearance**

A voluntary, compensated agreement in which an EBID irrigator agrees not to divert Project water. EBID makes the foregone water available to ISC for Allocation Transfers.

## **Allocation Transfer**

A reallocation of Project water used to satisfy EEPI Index Obligations or correct Accrued Departure. Mandatory transfers occur from EBID to EPCWID under or from EPCWID to EBID. Transfers are initiated by the ISC.

## **Base Allocation Water**

The annual Project water allotment assigned to ISC corresponding to EBID Project water rights it acquires. Only the surface-water portion of EBID combined-rights purchases becomes Base Allocation water that EBID assigns to ISC.

## **CAB3 (Three-Year Average Caballo Releases)**

The three-year rolling average of releases from Caballo Dam. Used as a trigger in the Groundwater Settlement Agreement.

## **Converted Water**

Project irrigation water reclassified for non-irrigation uses under Reclamation's 1920 Miscellaneous Purposes Act. Up to 100,000 acre-feet may be converted annually.

## **Effective El Paso Index (EEPI)**

An accounting system that evaluates the efficiency of delivering Project water from Caballo Dam to the state line and determines Index Supply, Index Obligation, Annual Departure, and Accrued Departure.

## **Excess Negative Accrued Departure**

A condition in which cumulative under-deliveries exceed thresholds set in the Operations Settlement Agreement. Triggers mandatory Allocation Transfers and, if persistent, Penalty Deliveries.

## **Indicator Wells**

Designated wells monitored to detect changes in Lower Rio Grande shallow aquifer conditions. Used diagnostically and, together with CAB3, as part of an evaluation trigger.

## **Index Obligation**

The amount of water New Mexico must cause to be delivered downstream based on EEPI accounting.

**Index Supply**

The volume of Project water available for delivery in a given year under the EEPI formula.

**Mandatory Allocation Transfers**

Transfers of Project water from EBID to EPCWID are required when Excess Negative Accrued Departure exists and ISC decides to require this fully compensated option.

**Miscellaneous Purposes Water**

Water reclassified from irrigation use under the Miscellaneous Purposes Act for industrial, municipal, environmental, or other non-irrigation uses.

**Penalty Deliveries**

Increases in New Mexico's Index Obligation based on persistent Excess Negative Accrued Departure.

**Project Water**

Surface water stored in or released from the Rio Grande Project Reservoirs including irrigation return flows, administered by the Bureau of Reclamation, and allocated among EBID, EPCWID, and Mexico.

**Rio Grande Project (Project)**

A federal water storage and delivery system operated by the U.S. Bureau of Reclamation, consisting primarily of **Elephant Butte and Caballo Reservoirs**, diversion structures, canals, and drains that supply irrigation water to **EBID** in New Mexico, **EPCWID** in Texas, and to **Mexico** under the 1906 Convention.

The Project, authorized by Congress in 1905, was the first of its kind.

The Project stores, allocates, and delivers water among these entities and governs the releases central to EEPI accounting and settlement compliance. Rio Grande Project surface rights and combined rights in New Mexico have a state-adjudicated 1903 priority date. Few other Lower Rio Grande water rights are senior to the Rio Grande Project. The 1903 priority applies to both Project surface water and irrigators' supplemental groundwater as required for a full Project water supply.

## Expert Interpretation Disclosure

Except for the five items described below, all descriptions in this document reflect explicit settlement requirements and cited provisions. This disclosure distinguishes between settlement text and the limited expert judgment required to explain how the settlement functions as an integrated whole.

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### 1. Reading the Settlement as an Integrated Set of Agreements

The settlement consists of five separate documents. Several compliance mechanisms appear in more than one agreement, and no single document explains how those mechanisms operate collectively. Where this summary describes a single mechanism using provisions drawn from multiple agreements, that description reflects expert synthesis of the settlement as a whole.

### 2. Operational Meaning of the Effective El Paso Index (EEPI)

The settlement defines EEPI and establishes compliance consequences that will be incorporated into the Rio Grande Compact through a final decree. The settlement documents establish the specific process and options for New Mexico EEP1 Deliveries to meet its EEPI Delivery Obligations specify Rio Grande Compact annual accounting and operations, including how Project accounting and operations are adjusted under varying hydrologic conditions and compliance situations. Descriptions of how this new compact delivery index obligation will work to ensure Texans get their water reflect expert interpretation relies on expert knowledge of Rio Grande Compact accounting and the history of the case, accounting framework, and established Rio Grande Project operating practice.

### 3. Treatment of Combined Water Rights Acquired by the ISC

The settlement requires New Mexico to retire 18,200 AF/yr of groundwater depletions but does not specify how surface-water components of combined rights are treated when such rights are acquired by the ISC. This summary's description—that groundwater components count toward depletion retirement and that associated surface-water components flow into the ISC's Base Allocation (the portion of EBID's Base Allocation annually assigned to the ISC under the Third-Party Implementing Contract)—is an inference.

### 4. State Actions to Maintain Compliance During Extended Shortage

The settlement specifies required outcomes but does not describe how New Mexico must act if EEPI compliance cannot be achieved through district operations alone during extended periods of low surface-water availability. The settlement provides numerous methods requiring state compensation and requires negotiations to reach agreement on future non-compensated administration by October 1, 2026. Descriptions of potential State actions focus on implementing AWRM, upheld by the NM Supreme Court in 2012, *Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio*, 2012-NMSC-039.

### 5. Interpretation of State Intent Regarding Long-Term Funding

The settlement obligates New Mexico to fund a one-time retirement of 18,200 AF/yr of groundwater depletions and does not require ongoing State-funded depletion reductions beyond that amount. The conclusion that the State does not intend to undertake continuing extraordinary expenditures beyond meeting this requirement reflects the author's expert professional judgment regarding the State's likely implementation position. Nothing in the settlement precludes future State compliance by curtailing water uses by priority.

