



TEXAS V NEW MEXICO: (SHORT) HISTORY AND BACKGROUND

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THE RIO GRANDE PROJECT

- Elephant Butte Dam is completed in 1916
- Landowners in NM and TX form districts, began signing contracts with Reclamation
- In 1929, States sign a temporary compact designed to “maintain the status quo” on the river while a more permanent compact can be negotiated
- States and federal government launch a joint hydrologic investigation, which forms the basis for negotiations of the Rio Grande Compact of 1938
- The Compact specifies how much water must be delivered to Elephant Butte, and discusses project deliveries from Elephant Butte, but does not expressly divide water between TX and NM
 - It also does not contain express provisions regarding groundwater use in either State.
- Why these omissions?

THE RIO GRANDE COMPACT

Why no mention of the division of water below Elephant Butte or groundwater use in the Rio Grande Compact?

- **Clayton Letter (TX negotiator explained that it was infeasible based on cross-border diversions, and unnecessary due to unified management of project)**
 - **155,000 project acres (57% in NM, 43% in TX) managed on the basis of every acre getting equal amount of water**
- **TX asked to keep groundwater out of the scope of the joint investigation, stating it was “of little importance”**

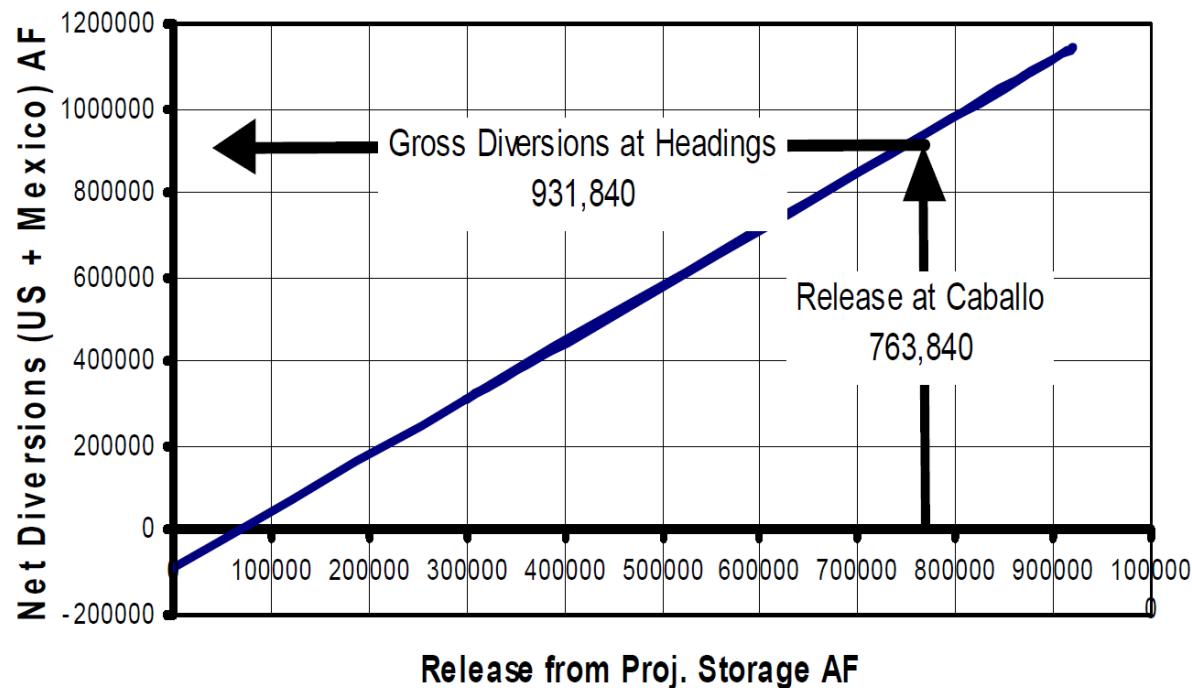
RIO GRANDE PROJECT— MAJOR EVENTS

1940s and 1950s – major expansion of GW use in NM and Texas, with the support of Reclamation.

1978 – Districts pay off contracts with Reclamation, execute Transfer Contracts. Instead of Reclamation delivering water directly to farmers, water will now be allocated to Districts. Operating Plan is supposed to be negotiated.

BASIS FOR ALLOCATION OF PROJECT WATER

USBR D-2 Curve



D2 Curve was based on actual Reclamation releases and deliveries from the period 1951-1978, which is now called “the D2 period.”

D1/D2 PROJECT ALLOCATIONS

Allocations for a Full Water Supply ¹ (acre-feet)						
Release Requirement ²	Net Diversions at Headings ³	Mexico Allocation	EBID Allocation	EBID Percentage ⁴	EPCWID Allocation	EPCWID Percentage ⁴
763,842	931,841	60,000	494,979	56.77%	376,860	43.23%
1. Full water supply is 468,700 acre-feet to farm head gates of US lands (3.024 AF/A for 155,000 authorized acres) and 60,000 acre-feet to Mexico at the International Dam 2. Release from Caballo Reservoir necessary to meet full water supply at diversion headings 3. Net Diversion at Headings determined from Curve D2 (includes US and Mexico) 4. Percentage is based upon the net amount remaining to U.S., after deducting Mexico's allocation						

(Barroll, 2019)

TEXAS V NEW MEXICO – LEADUP TO ORIGINAL ACTION

During the 1980s, the Districts and Reclamation are unable to agree upon an operations plan, as contemplated under the Transfer Contracts. Reclamation operates the project pursuant to the D1/D2 curves.

In 1980, New Mexico declares the Lower Rio Grande Groundwater Basin, which gives the State Engineer jurisdiction over the use of groundwater.

TEXAS V NEW MEXICO – LEADUP TO ORIGINAL ACTION CONT'D

There is litigation in the 1990s and 2000s between the Districts and Reclamation regarding project operations. There are also some adjustments to project accounting for changes to the project within Texas.

Between 2006 and 2008, the Districts and Reclamation negotiate an “Operating Agreement,” which sets out a new procedure for allocation based on a D3 Curve and a Diversion Ratio.

2008 OPERATING AGREEMENT

The major intent behind the 2008 Operating Agreement is to ensure Texas receives the amount of water it would have been receiving at a given Project Supply during the D2 Period.

- The Operating Agreement attempts to calculate how much water Texas should have received under D2 conditions, and then if it receives less, there is an allocation transfer from EBID to EPCWID.**
 - In effect, EBID would bear responsibility for all decreases in project efficiency.**

2008 OPERATING AGREEMENT CONT'D

The 2008 Operating Agreement had other important provisions:

- It appeared to protect the rights of EBID farmers to rely on groundwater**
- It allowed for carryover storage for both districts. This was of greater value to EPCWID, which would now enjoy greater allocations.**

TEXAS V NEW MEXICO – LEADUP TO ORIGINAL ACTION

State of New Mexico was not a party to negotiations over the Operating Agreement, and after studying how it functioned in connection with accounting changes, opposed it.

In 2011, following a related dispute regarding Reclamation's handling of New Mexico's credit water, New Mexico files suit in federal court.

TEXAS V NEW MEXICO – THE ACTION BEGINS

In 2013, Texas files an Original Action in the U.S. Supreme Court.

The Texas Complaint asserted that New Mexico was not allowed, under the Rio Grande Compact, to deplete the Rio Grande below Elephant Butte beyond depletions that were occurring in 1938.

In effect, this would have made unlawful all post-1938 groundwater development in New Mexico below Elephant Butte from sources hydrologically connected to the Lower Rio Grande.

TEXAS V NEW MEXICO – LITIGATION

All parties file motions for summary judgment in late 2020. In May 2021, the Special Master rules on summary judgment motions.

- The Special Master rules that New Mexico has a duty to not interfere with project deliveries to Texas, but the question is left open as to what that obligation is (i.e., “1938 Condition” vs NM’s position, which is that D2 level of depletions are acceptable)**

TEXAS V NEW MEXICO – LITIGATION

In the Fall of 2021, the parties held the first phase of trial with fact and historian witnesses.

The expert phase of trial was set for the spring of 2022.

In December 2021, a new mediator was appointed, and the parties commenced mediation efforts.

The parties came close, but failed, to reach a comprehensive settlement including the US.

Thank you!

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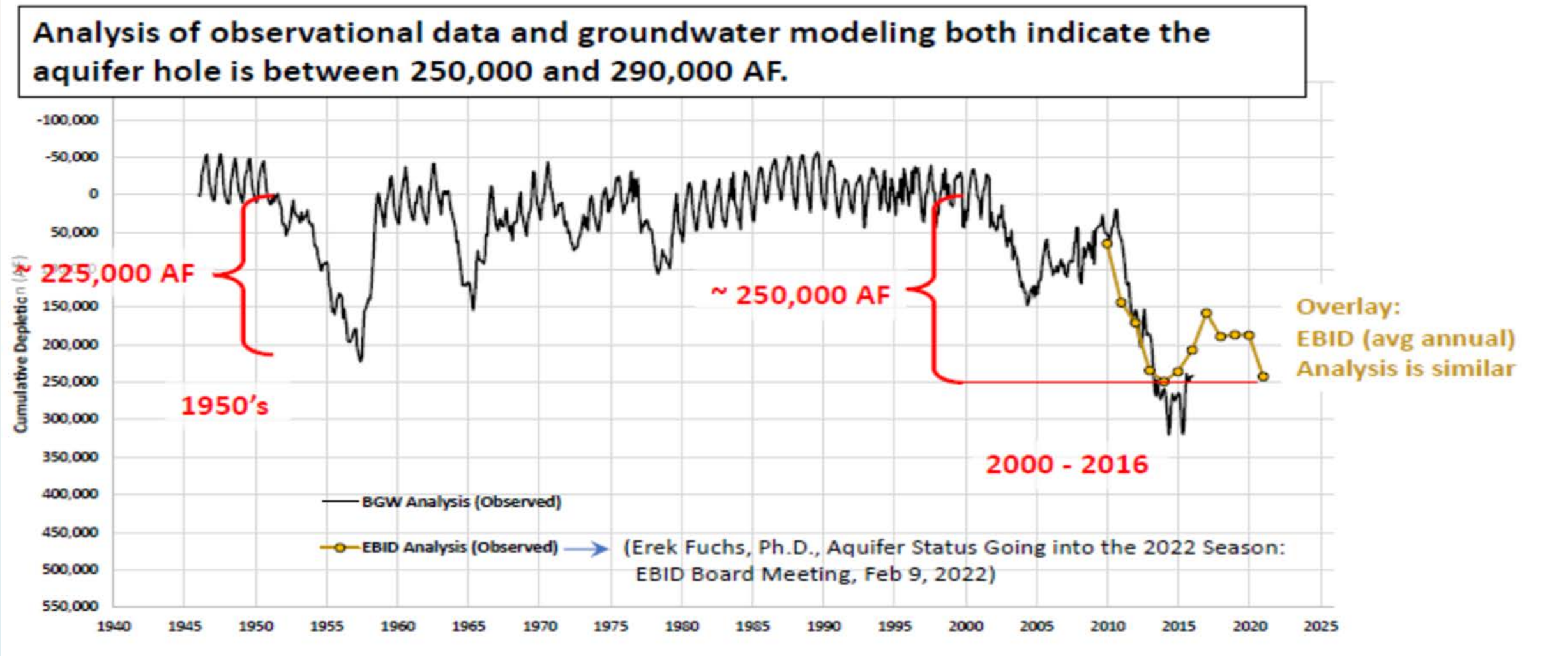
Nathaniel.Chakeres@ose.nm.gov

Photo Credit: Fall 2025 Trout
Unlimited "EcoFlight" in the LRG

TX v NM Settlement Implementation Update



2. Hydrologic Reality

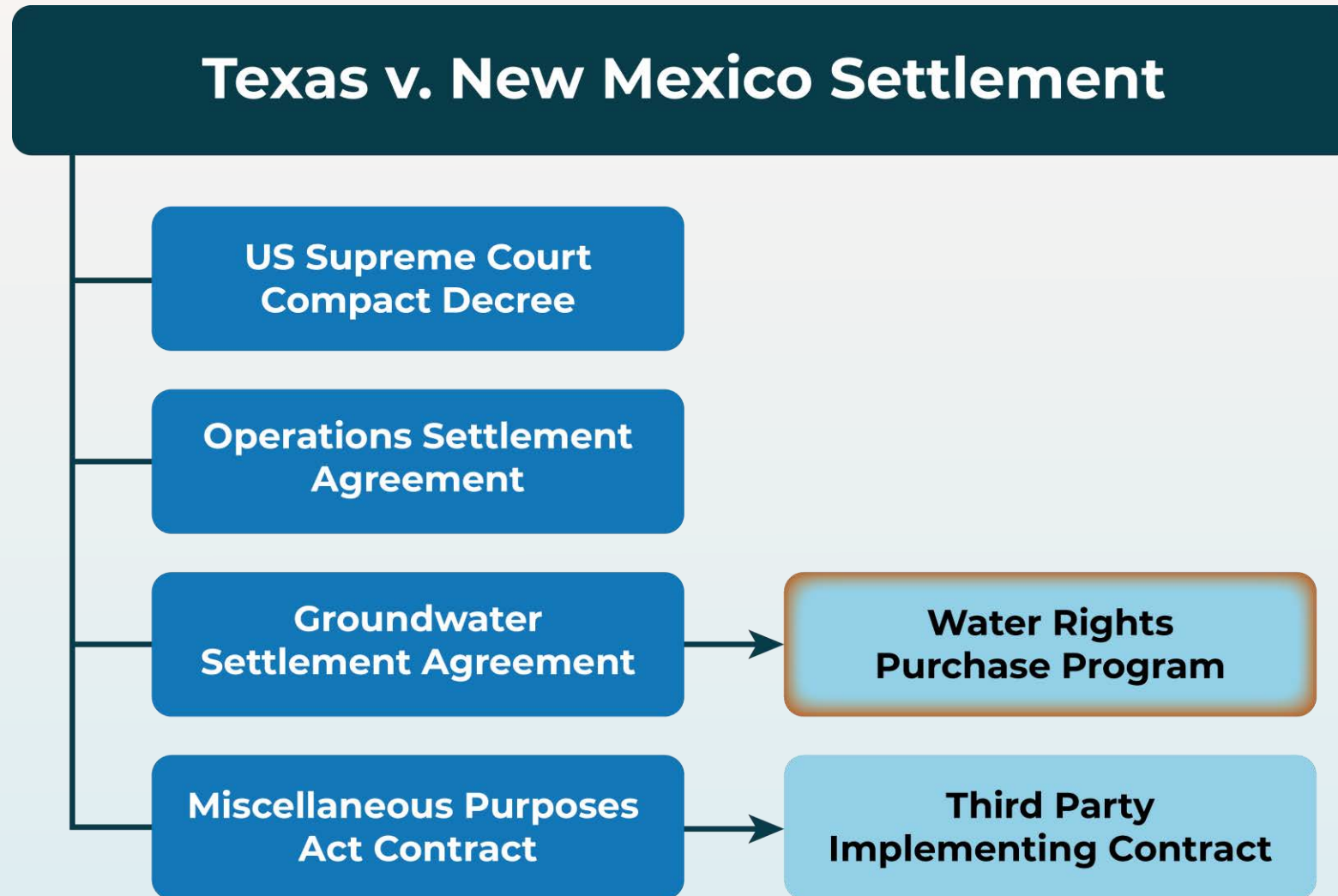


WY 2026's Position in History

Annual Caballo Release		
Rank	Year	Release, AF
1	2013	168,558
2	1964	206,084
3	1955	219,109
4	2026	221,000
5	2021	229,700
6	1954	244,124
7	1956	246,050
8	2025	248,440
9	1972	260,890
10	2022	268,840
11	2014	306,001

Annual Minimum Combined Storage, AF				
Rank	Year	Elephant Butte	Caballo	Combined
1	1951	17,600	4,220	21,820
2	1956	22,800	3,540	26,340
3	1954	9,900	8,640	29,600
4	2026	17,000	13,000	30,000
5	1971	30,600	3,630	34,330
6	1957	33,100	2,600	39,920
7	1964	42,100	3,720	46,020
8	1952	16,300	2,400	52,620
9	2013	60,327	5,592	67,404
10	2025	62,674	2,187	74,571
11	2018	58,240	23,824	82,448

3. Texas v. New Mexico Settlement Framework and Summary





Texas v. New Mexico Settlement

Resolving the disputes requires several related agreements:

Compact Decree in U.S. Supreme Court

Parties: CO, NM, TX

- Resolves pending litigation
- Does not change the 1938 Compact but does resolve ambiguities
- Clarifies New Mexico's water delivery obligation below Elephant Butte Reservoir and specifies how to measure and demonstrate Compact compliance
- Establishes a framework for water accounting, including a state line index obligation with allowable positive and negative departures (Effective El Paso Index – EEPI)
- Allows for a reasonable level of continued groundwater pumping in both NM and TX



Texas v. New Mexico Settlement

Project Operations Settlement Agreement

Parties: US, NM, EBID, EP No. 1

- Resolves outstanding disputes regarding Rio Grande Project operations and accounting
- Operating Agreement continues with modifications that “harmonize” project operations with the Compact Decree accounting framework
- Includes allocation transfers under certain conditions to assist with Compact Decree compliance
- Resolves outstanding issues regarding priority dates for supplemental groundwater rights within EBID
 - SSI 101 amendment for 1903 supplemental GW required by 1/31/2027



Texas v. New Mexico Settlement

Project Operations Settlement Agreement

Parties: US, NM, EBID, EP No. 1

- Provides a framework for a negotiated resolution of other outstanding issues in the LRG Adjudication (currently ongoing – October 2026 deadline)
 1. potential objections of LRG Parties to the proposed amended subfile order in SSI 101
 2. other appealable issues raised by the United States' and New Mexico's notices of appeals in SSI 104
 3. a separate appeal filed by the City of Las Cruces in SSI 104
 4. final decrees of subfile orders on the water rights of EBID, the City of Las Cruces, and New Mexico State University
 5. Alternative Administration



Texas v. New Mexico Settlement

Miscellaneous Purposes Act Contract

Parties: US, EBID

- Allows Rio Grande Project water to be used for purposes other than irrigation within the Project
- Important contract terms
 - Annual conversion limit – 100,000 ac-ft
 - Administrative fees for EBID and Reclamation
 - Reclamation fees are reserved for Project maintenance
 - Priority to NM for water needed to comply with Compact Decree
- Third-Party Implementing Contracts
 - Establishes terms for specific users to acquire MPA water from EBID
 - EBID may enter into one or more contracts to provide water for specific uses



Texas v. New Mexico Settlement

Third-Party Implementing Contract

Parties: NM, EBID

- Arguably, the settlement's most critical innovation is this new contract that creates a flexibility for meeting our Compact Decree obligations
 - Water is transferred from EBID to EPI
- Sources of water for NM transfers
 - Purchased water rights – Annual pro-rata allotment
 - Water leased from another EBID member's Annual Allotment
 - Allocation Forbearance – Water made available to NM prior to member allotment
 - Credit available from prior year unused purchased water rights
- Annual constraints
 - Intended to mitigate impacts to EBID operations
 - Limits volume based on water available to EBID
 - Sets restrictions on when transfers can occur (before irrigation season)



Texas v. New Mexico Settlement

Groundwater Settlement Agreement

Parties: US, NM

- Resolves US claims of Rio Grande Project interference related to groundwater pumping in NM
- Requires the state to permanently retire groundwater rights to reduce depletions by **18,200 acre-feet per year**
- Establishes a process for state consultation with federal partners on water management actions if key aquifer health metrics are hit, ensuring we address potential issues before they become crises
- Requires New Mexico to adopt Water Management Plan for the LRG within two years of the effective date of the agreement, to create a public roadmap for future water administration in the LRG
- LRG Plan will include stakeholder input and will allow for a reasonable level of continued groundwater pumping in NM



Texas v. New Mexico Settlement

Groundwater Settlement Agreement

LRG Plan

1. Actions to satisfy and maintain the Depletion Reduction obligation
2. Basin Closure Order
3. Actions to keep UVDR3 above 0.79
4. Actions to achieve stable or gaining Aquifer levels when CAB3 is greater than 400,000 acre-feet
5. Actions to limit Depletions from Domestic Wells
6. DSR Rule Promulgation SE Orders, Approved AAPs
 - a) Administrable list
 - b) Basin Guidelines
 - c) GHA
 - d) Water Master Manual

Settlement requires 18,200 AF in annual depletion reductions within 10 years (by 2036):

- 2.6 AF of depletion reduction for every acre of primary groundwater permanently retired
- 1.97 AF of depletion reductions for every acre of combined EBID surface + groundwater rights retired
- 50% of goal to be acquired within 5 years
- If met through acquisition and retirement of combined surface/groundwater rights = 9,240 acres
 - $(18,200 \text{ AF} / 1.97 \text{ AF/acre} = 9,240 \text{ acres})$
- Other types of GW rights also eligible (e.g. primary groundwater, commercial rights)

4. Depletion Reduction Timeline and Accounting

Groundwater Settlement: Water Right Eligibility Requirements



Location:

Mesilla and Rincon aquifers between Caballo and El Paso gage

Type of Use:

Irrigation, Commercial, Municipal, or Industrial rights

Eligibility:

“...irrigation groundwater rights must have been used on the lands to be Permanently Retired a minimum of 5 years out of every moving 10-year period since 2010.”

“...non-irrigation rights must have been used a minimum of 5 years out of every moving 10-year period since 2010.”

“...groundwater rights must be in good standing with the New Mexico Office of the State Engineer.”

Water rights enrolled in the “Lower Rio Grande Groundwater Conservation Program shall be deemed to have been used during the period of enrollment.”

*****All Requirements derived from Groundwater Settlement Agreement (Section III. B)**

5 Years Out of Every Moving 10-year Period Eligibility Criteria



Period 1	Period 2	Period 3	Period 4	Period 5	Period 6	Period 7
2010						
2011	2011					
2012	2012	2012				
2013	2013	2013	2013			
2014	2014	2014	2014	2014		
2015	2015	2015	2015	2015	2015	
2016	2016	2016	2016	2016	2016	2016
2017	2017	2017	2017	2017	2017	2017
2018	2018	2018	2018	2018	2018	2018
2019	2019	2019	2019	2019	2019	2019
	2020	2020	2020	2020	2020	2020
		2021	2021	2021	2021	2021
			2022	2022	2022	2022
				2023	2023	2023
					2024	2024
						2025

- Eligible water rights must have been used 5-years out of every moving 10-year period since 2010.
- Evidence of use includes, but is not limited to, historical aerial photography, records of historical diversions, or historical studies containing evidence regarding water use.