



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”

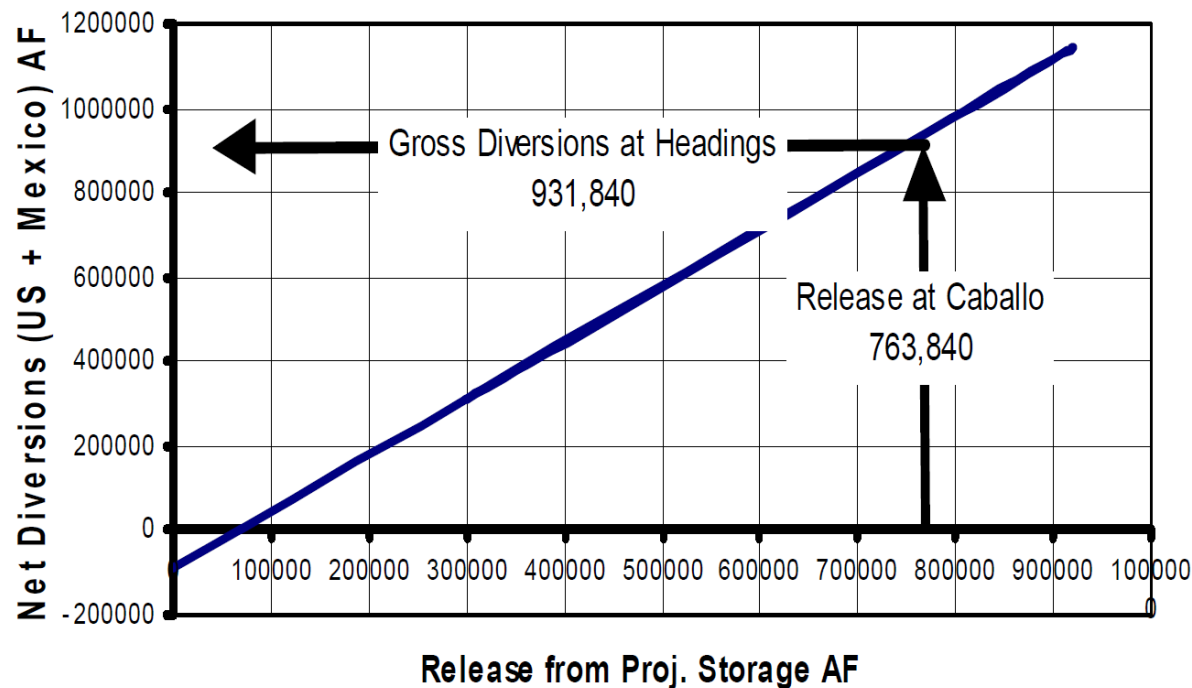
RIO GRANDE PROJECT— MAJOR EVENTS

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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