

Issues on the Lower Rio Grande of New Mexico

- * Pre Rio Grande Project
- * Rio Grande Project
- * Rio Grande Compact -1938
- * Operating Agreement
- * Texas v New Mexico & Colorado



1859 Map Submitted to Congress by President Buchanan



Pre Rio Grande Project

Before the construction of Elephant Butte and Caballo dams, "the Rio Grande was essentially a storm-water stream subject to great and sudden floods" (Lee, 1907).

- * Between 1897 and 1905 the yearly Rio Grande discharge at El Paso varied from a minimum 50,768 acre-feet in 1902 to 2,011,794 acre-feet in 1905 (Lee, 1907). Slichter (1905) reported that the Rio Grande was dry for several months in 1904 at El Paso, Texas

Monthly Discharge from 1897 to 1905 in acre-feet at El Paso, Texas (from Lee, 1907)

Year	1897	1898	1899	1900	1901	1902	1903	1904	1905
Min.	17,212	28,201	112,272	1,200	1,200	14,200	120,000	200	20,000
Max.	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Avg.	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Std. Dev.	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Min.	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Max.	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Avg.	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
Std. Dev.	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200

Pre Rio Grande Project

To address fluctuations and depletions of the Rio Grande, the Elephant Butte Dam was authorized in 1905 under the Newlands Reclamation Act of 1902

- * Construction began in 1908, was available for storage starting in 1915, although construction was not completed until 1916 (EBID, 1998).
- * The farmers were required to pay back the United States for the building of the dam.
- * In 1906, a treaty between the US and Mexico led to the distribution of water of the Rio Grande between the two countries. This treaty allotted to Mexico 60,000 acre feet annually of the waters of the Rio Grande (1906 Border Convention).

Rio Grande Project

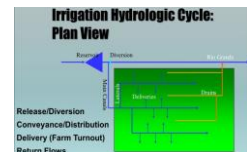
The New Mexico portion of the project consisted of 90,640 acres (57%) and the Texas portion totaled 69,010 acres (43%).

- * The division of water, even to this day, is based on these irrigated acreages and percentages.
- * With construction of canals and laterals came a rise in the water table, and in the 1920's a series of drains were installed to prevent waterlogging.
- * Repayment and drain financing issues led to the formation of the irrigation districts (EBID and EPCWID).



Rio Grande Project

- * The last major component of the Project, Caballo Dam, was built in 1938 to provide flood protection for the projects downstream and stabilize outflows from Elephant Butte.
- * Most irrigation releases occur from Caballo.



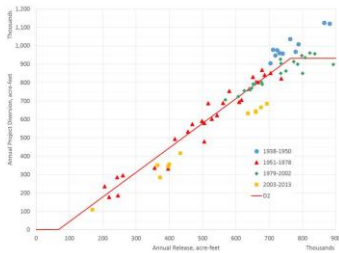
Rio Grande Project

1951-1978 – Persistent recurring drought

Rio Grande Project farmers respond to short water supply by developing groundwater pumping capacity

- D2 curves developed for future allocation to EBID and EPCWID

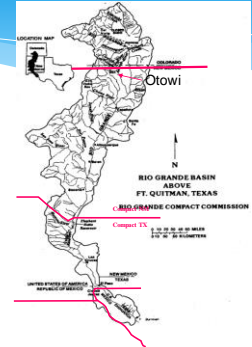
Release and Diversion in the Rio Grande Project, 1938-2013



The Rio Grande Compact

- The Rio Grande Compact is the agreement, signed in 1939, that provides for the equitable apportionment of the waters of the Rio Grande between Colorado, New Mexico and Texas

- Entire Rio Grande Project included in Texas portion of the project.
- The Rio Grande Project apportionment of water between Texas and NM not explicitly included in Compact Texas.
- Federal government operated the Rio Grande Project as a single unit
- The state engineer of NM (who is the NM Compact Commissioner) controls the groundwater permitting in the NM portion of the Texas Compact portion.



Operating Agreement

- In the late 1970s, USBR began to suffer a series of budget cuts and political setbacks that ultimately relegated it to specifying only the releases from the Caballo Reservoirs and forced the two irrigation districts to manage the diversions.
- The independence of the two districts from the USBR increased further when EBID paid off its construction loan in 1979 and EPCWID paid off its loan in 1980
- An operating agreement (which covers both the operations and management of the system) became imperative.
- In 1997, USBR files what is called a quiet-title suit in federal court and EPCWID files a cross-claim alleging inequitable allocation of project water by USBR because of groundwater pumping in New Mexico.
- The late 1990s began an era of dispute resolution, so the three parties—EBID, EPCWID, and the USBR—sat down to negotiate and by 2000 the negotiations collapsed
- Things got uglier in 2001. The attorneys general of Texas and New Mexico and their respective state legislatures got involved. Each state's legislature appropriated millions of dollars to support the probable pending litigation.

Operating Agreement

- Even though the formal negotiations collapsed in 2001 and remained officially dormant for the next six years, the districts and technical representatives of the USBR were talking, sometimes in Las Cruces, and once in Tucson, under the auspices of The National Science Foundation (NSF) Science and Technology Center for Sustainability of semi-Arid Hydrology and Riparian Areas (SAHRA).
- Two critical negotiation points emerged from the discussions: carry-over storage and New Mexico groundwater pumping:
 - Carry-over storage would allow each district to store water from an irrigation season and use it the following year.
 - Groundwater depletions in New Mexico were reducing the drain return flows, thereby reducing the water supply available for diversion and New Mexico needed to ameliorate this loss to Texas.
- In 2006, the EBID proposed a new curve called D3, which tied EPCWID and Mexico allocations to project releases and predicts the amount of project water that EPCWID and Mexico should receive for annual releases from Caballo Reservoir.

Operating Agreement

Key points:

- EPCWID wanted and got carryover storage;
- EPCWID wanted and got protection from the impacts of excessive groundwater pumping by EBID, guaranteeing that EPCWID would receive the D3 allocation at the state line;
- EBID wanted and got D3 as the basis for allocation of project water;
- EBID wanted and got the right to provide the EPCWID allocation in the manner of its own choosing.

On February 14, 2008, 14 New Mexican and Texas farmers signed the operating agreement that they thought would end the 29-year dispute.

Texas v New Mexico & Colorado

- The Attorney General of New Mexico brings a series of lower court cases in an attempt to abrogate the Operating Agreement because it provides too much water to Texas.
 - Carry-over-storage provides Texas with additional waters.
 - The D3/D2 curve implies an amount of water at the Texas/New Mexico state line and the compact does not explicitly require an amount.

Texas v New Mexico & Colorado

On January 8, 2013, Texas files suit in The Supreme Court of the United States and alleges

- That once Reclamation releases EP No. 1's Project water into the Rio Grande from the reservoir, south central New Mexico residents – farmers and others – intercept the water as it flows down the river to the state line.
- That the interstate agreement was created to support the interstate project system in supplying water to users in south-central New Mexico and far west Texas.
- a Compact violation even though the Compact does not make a specific allocation to the State and this violation has occurred since 1938.
- that although it has adjudicated its water rights in the Project in 2006, the decree and the Certificate of Adjudication issued cannot have practical effect unless New Mexico ensures the deliveries of EP No. 1's allocation to the state line.

Texas v New Mexico & Colorado

New Mexico Attorney General's Position

- New Mexico asserts that the Texas' claims are not truly Compact based claims, but arise from an operational dispute about the Rio Grande Project. Those issues are before the Federal District Court in New Mexico and the Adjudication Court in New Mexico. Those cases should be allowed to proceed;
- **There is no New Mexico-Texas state line delivery obligation;**
- New Mexico asserts that Texas' arguments rely upon faulty assumptions that the Pecos River Compact and the Rio Grande Compact are similar in these requirements;
- For example, the Pecos River Compact states "New Mexico shall not deplete by man's activities the flow of the Pecos River at the New Mexico-Texas state line below an amount which will give to Texas a quantity of water equivalent to that available to Texas under the 1947 condition";
- **The Rio Grande Compact does not have a "1938 condition". A purpose of the 1938 Rio Grande Compact was to free New Mexico and Colorado up for growth and development.**

Texas v New Mexico & Colorado

Visualizing Groundwater Impacts

