



**TEXAS V NEW MEXICO:
LEGAL IMPLICATIONS OF THE PROPOSED
CONSENT DECREE**

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THE RIO GRANDE PROJECT

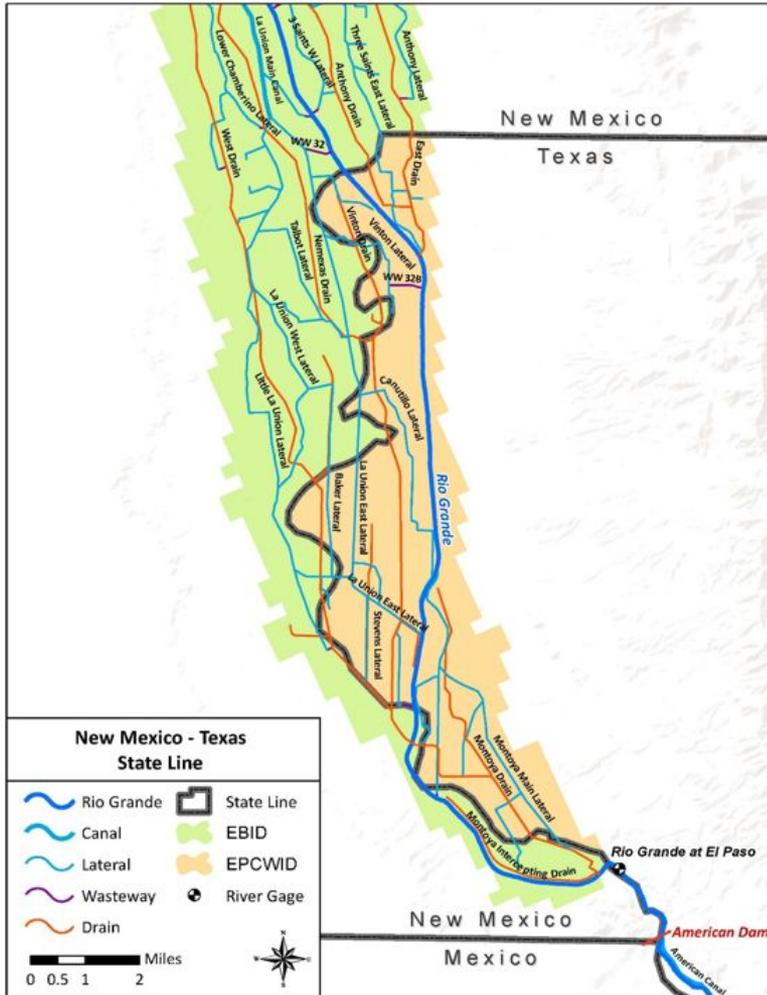
- **Elephant Butte Dam is completed in 1916**
- **Landowners in NM and TX form districts, began signing contracts with Reclamation**
- **In 1929, States sign a temporary compact designed to “maintain the status quo” on the river while a more permanent compact can be negotiated**
- **States and federal 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”

THE RIO GRANDE COMPACT



Project works crisscross the state line, which made measurement of net deliveries in 1938 impractical.

RIO GRANDE PROJECT— MAJOR EVENTS

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

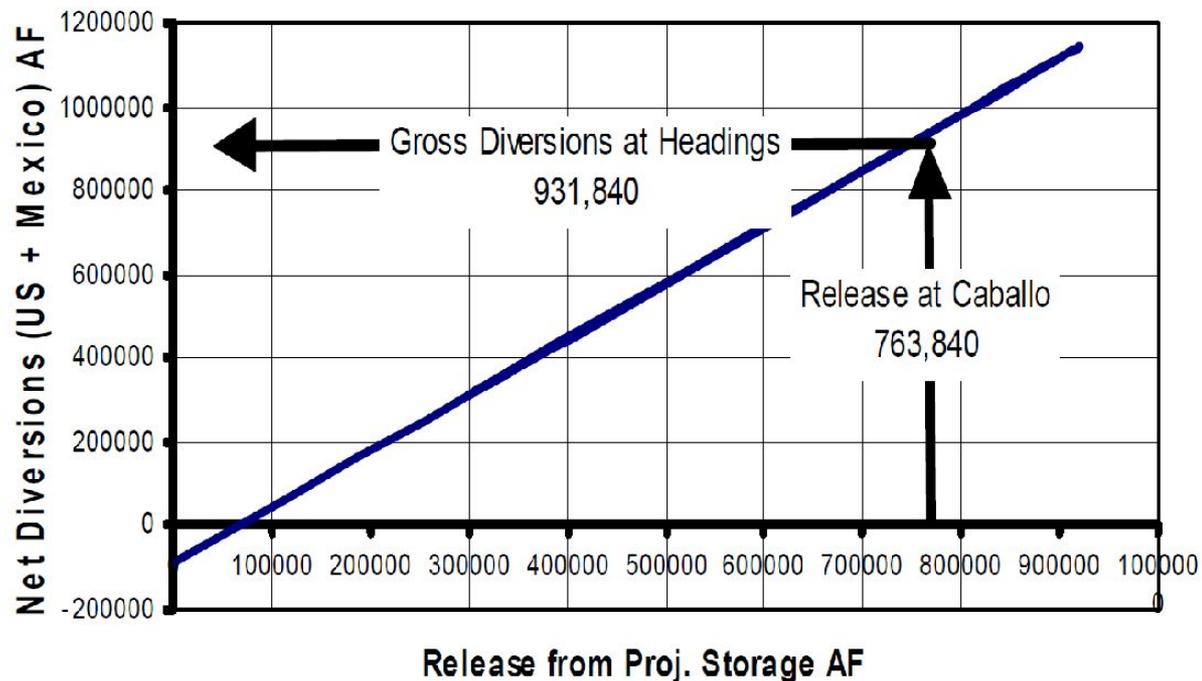
1978 – Districts pay off contracts with Reclamation, execute Transfer Contracts. Instead of Reclamation delivering water directly to farmers, water will now be allocated to Districts. Operating Plan is supposed to be negotiated.

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.

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%
<ol style="list-style-type: none"> 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 – LITIGATION

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

- New Mexico has a compact apportionment below Elephant Butte**
- 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 – PROPOSED CONSENT DECREE

- **The proposed consent decree is based around several key principles.**
 - **First, Texas wanted, and the consent decree provides, a specific index delivery obligation at the TX state line, which will allow it to easily obtain relief if it is not met.**
 - **Second, NM wanted the delivery obligation to be based upon D2 levels of groundwater depletions, not 1938 levels of groundwater depletions, and that is what the consent decree provides.**
 - **Third, the consent decree contains adjustments to accounting procedures that the states have concluded are necessary to effectuate the equitable apportionment of the waters of the Rio Grande.**

TEXAS V NEW MEXICO – WHAT THE CONSENT DECREE DOES NOT DO

- **The Consent Decree does NOT affect the relative rights of parties within New Mexico.**
 - **The United States has raised claims that NM groundwater users have intercepted project water and/or interfered with project deliveries.**
 - **Some of these claims have been raised in the ongoing LRG adjudication.**
 - **These claims are not resolved here.**
- **The Consent Decree does NOT specify exactly how NM must comply.**
 - **Initially, the Consent Decree requires NM to take water management actions to correct a negative departure.**
 - **If those actions are not sufficient, there will be an allocation transfer of water from EBID to EPCWID.**

TEXAS V NEW MEXICO – WHAT THE CONSENT DECREE DOES NOT DO

- **The Consent Decree does NOT specify how water rights will be administered in times of shortage in NM.**
- **The Consent Decree does NOT give the States authority to dictate Project operations.**
- **The Consent Decree does NOT change anything about NM's duty to comply with Article IV delivery requirements to Elephant Butte from the Middle Rio Grande.**

Thank you!

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