

Water Review

A Perspective On Western Water Issues Prepared By The Family Farm Alliance And Its Members

NEW MEXICO / TEXAS

Historic Agreement

It's Reached Among Rio Grande Water Users

THE PROJECT

The Rio Grande Project ("Project") was authorized as a federal Reclamation project under the Reclamation Acts of June 17, 1902 and February 25, 1905. The United States owns and controls Elephant Butte Dam and Reservoir, Caballo Dam and Reservoir, the bed and banks of the Rio Grande River within the Project, and six Project diversion dams on the river.

The U.S. Bureau of Reclamation ("Reclamation"), EBID, and EPCWID have entered into a series of contracts relating to the construction, operation



The Rio Grande near Caballo Dam.



Elephant Butte Reservoir (left) and Caballo Dam (above) on the Rio Grande.

and maintenance of the Project in New Mexico and Texas.

All of these parties for some time have recognized the need to establish procedures for the allocation, accounting and delivery of Project Water consistent with federal and state water laws.

SIGNIFICANCE

Over the years, the El Paso County Water Improvement District No. 1 and Elephant Butte Irrigation District have never signed an operating agreement,

plan, or criteria, but have acquiesced and cooperated with Reclamation's procedures on a year to year basis. This latest revision of the procedures attempts to accommodate changes proposed and negotiated among the parties.

ISSUES

The United States entered into contracts with EBID and EPCWID in 1979 and 1980, respectively, for the transfer of the operation and maintenance of

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Rio Grande:

Historic Agreement

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project works. Those contracts required a detailed plan for operations and establishment of procedures for water delivery and accounting. This challenge has been complicated by two lawsuits filed in Texas and New Mexico between EBID and EPCWID and the United States.

SOLUTIONS AND M4E

What is widely seen as a historic Agreement is expected to bring new water supply stability to the region. (Please see “Key Points of the Operating Agreement,” Page 3.)

Notably, the Agreement contains language to implement portions of Reclamation’s Managing for Excellence Plan (M4E).

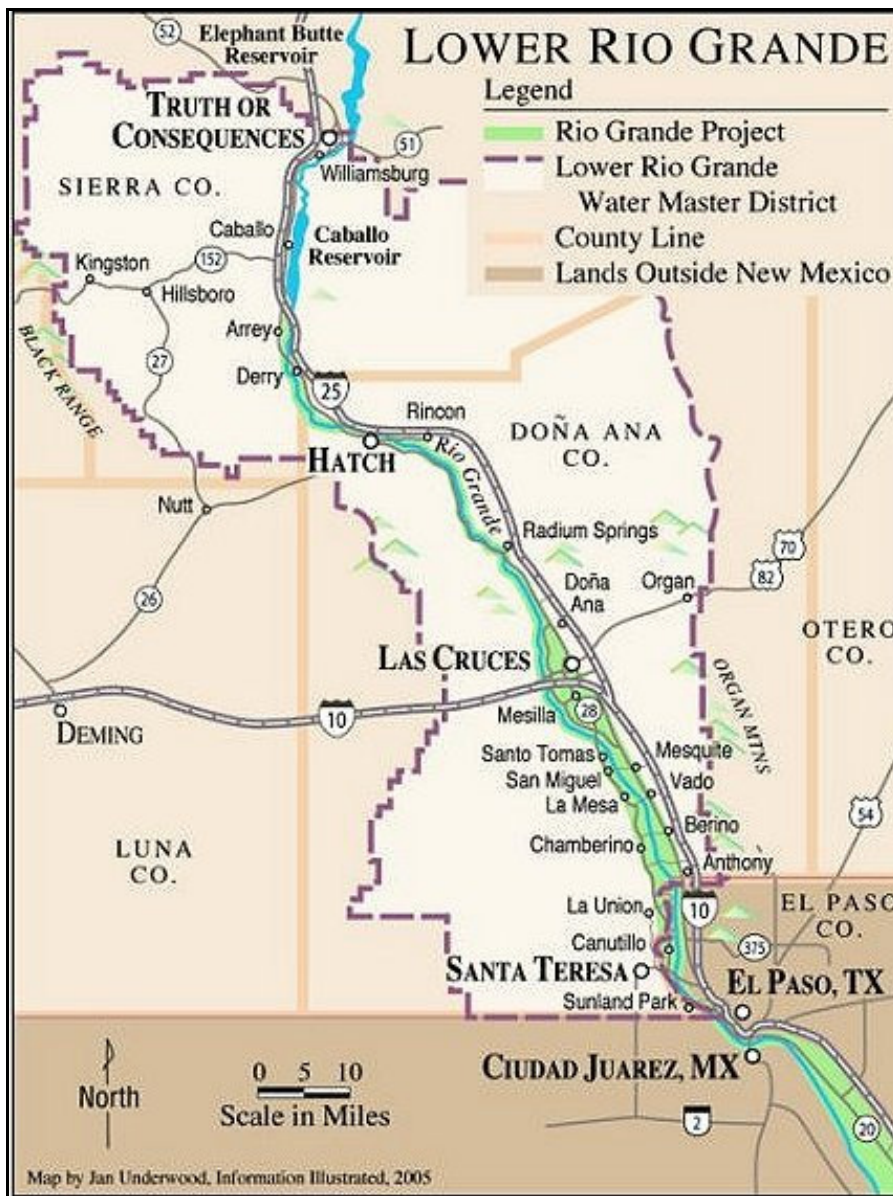
The United States has agreed to conduct an internal review of the Operations portion of the El Paso Field Office.

That is to address concerns of the districts in order to formulate a dialogue with EBID and EPCWID to further the M4E goals of Transparency in Accounting, Transparency in Planning, Commitment to Cost Effective Project Operation and Maintenance.

It is also to identify areas, if any, where the two districts may assume further operation and maintenance functions currently conducted by the USA.

“Managing for Excellence” is Reclamation’s response to *Managing Construction and Infrastructure in the 21st Century Bureau of Reclamation*, a comprehensive report completed in 2006 by the National Research Council (NRC) of the National Academy of Sciences. Executing the action plan has been a primary initiative for Reclamation over the past year.

This process has provided an important opportunity for western water users to find further ways to improve trans-



parency in Reclamation decision-making, provide improved accountability, and make the organization as efficient as possible.

Several Family Farm Alliance members – including EBID – and other Western water and power customers recently signed off on objectives they would like to see reflected in Reclamation’s final collaboration policy and Directives and Standards.

“Much of the language used in the settlement is directly pulled from the work we developed in Managing for Excellence,” said Gary Esslinger, gen-

eral manager of EBID. “There are eight major settlement points and the philosophy is based in large part on Managing for Excellence.”

Climate change is also a concern that is driving EBID to seek innovative solutions.

“With climate changes severely affecting our Project Supply, we need to move forward with new and innovative water management policies,” said Mr. Esslinger. “We can’t rely on antiquated methods to measure and distribute water.”

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Key Points Of The Operating Agreement

- Elephant Butte Irrigation District guarantees deliveries of surface water to Texas using a new concept named “D3,” which was first implemented by EBID in 2006.
- With the implementation of D3, EBID constituents and other groundwater users in the Lower Rio Grande Basin (LRG) can now plan for the most efficient and equitable use of its groundwater resources without the threat of litigation from Texas.
- With the implementation of D3, EBID plans to proceed forward to address regional issues regarding flooding and the need for storage reservoirs to address climate change impacts on Project water supply.
- EBID also will move forward and initiate negotiations with the Office of the State Engineer to resolve issues in the LRG stream adjudication regarding the rights of EBID in the Rio Grande Project water supply.
- The two districts have initiated the right of each district to maintain a carryover account of conserved water of up to 60% of a full allocation (232,915 acre-feet for El Paso County Water Improvement District No. 1 and 305,918 acre-feet for EBID) that can be stored in the Project reservoirs on a yearly basis.
- This carryover water should result in higher levels of water in Elephant Butte Reservoir, which will promote recreation in the lake and also allow more upstream storage of water by New Mexico under the Rio Grande Compact.
- To further conservation of water, the districts and Reclamation will develop scheduling tools to run the Project as efficiently as possible.
- The Compromise and Settlement Agreement procedurally incorporates the new Operating Agreement and requires the dismissal of two lawsuits, one in Texas and one in New Mexico Federal District Courts.

Mini-Compact: Years Of New Mexico, Texas Litigation Resolved

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Steven Hernandez, Attorney for Elephant Butte Irrigation District, said the dispute has existed since February 15, 1979.

“It took almost 29 years to the day to resolve this dispute,” said Mr. Hernandez. “The agreement is basically a mini-compact between New Mexico and Texas and considering all the failed efforts by other Western states to resolve their interstate disputes, this agreement should be looked at as a model for other states to consider.”

Stephen Hubert, who is Mr. Her-

nandez’s law partner, agrees. “This agreement brings certainty and stability to the farmer’s rights to the surface and groundwater resources of the Rio Grande Project and ends years of litigation between EPCWD and EBID,” said Mr. Hubert. “It is without question, a significant achievement for the farmers in both districts, and brings a degree of independence from state and federal water officials.”

“I don’t know if people will grasp the significance and importance of this monumental agreement and what it means for New Mexico and Texas,”

said Mr. Esslinger. “What other states could not accomplish and resulted in costly Supreme Court decisions, 14 farmers in the Rio Grande Project were able to agree and resolve this interstate dispute. This is a major, major victory for New Mexico irrigators.”

The Agreement

To read or download the Operating Agreement document in its entirety, please visit the following site: <http://ebid-nm.org/Static/PDF/OpAg/OpAg.pdf>