


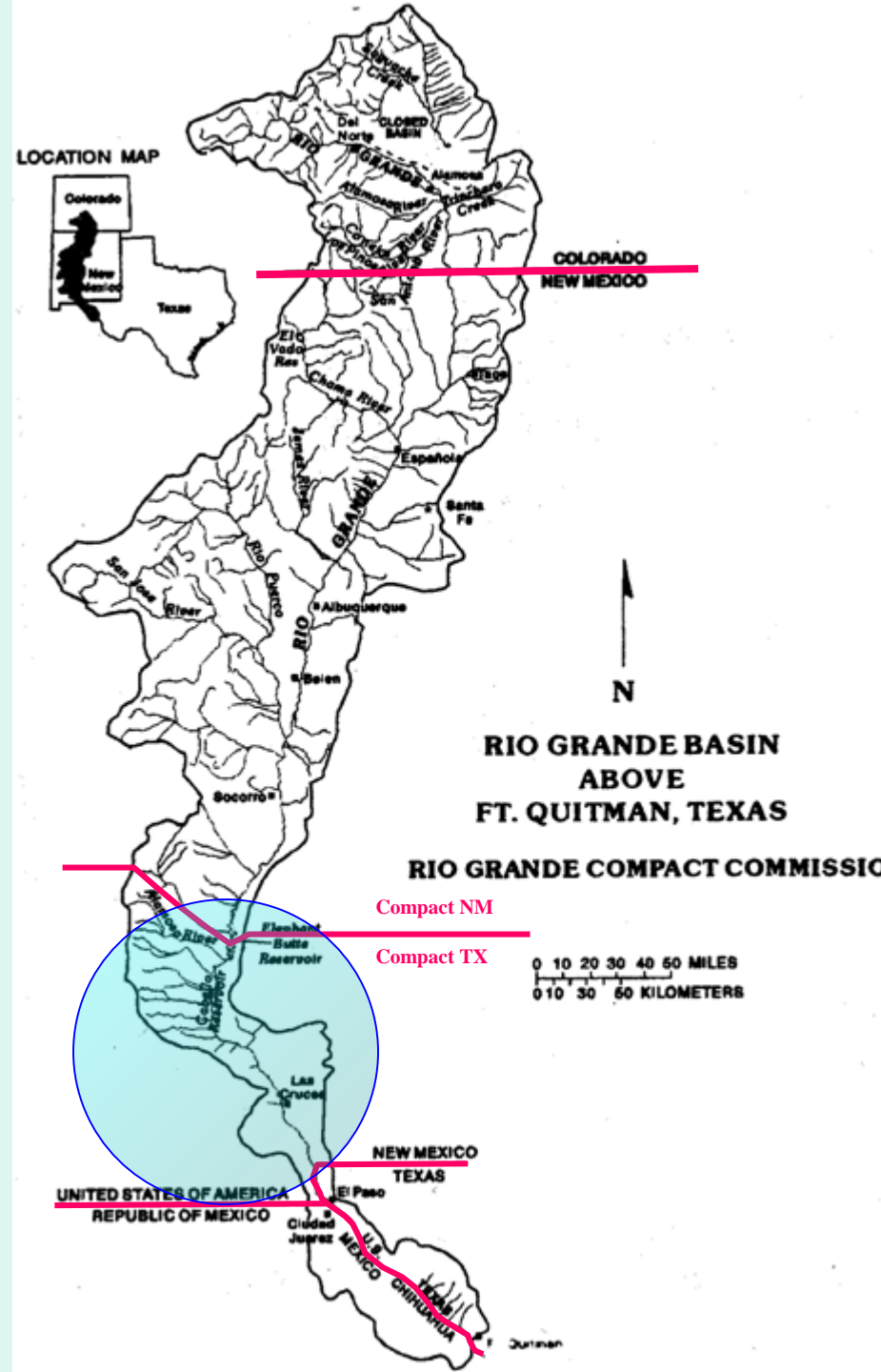
Water Wars in the Lower Rio Grande Users

A large, blue-painted metal gear mechanism is mounted on a concrete structure in the foreground. The gear is connected to a thick steel cable that runs across the frame. In the background, a wide, dry riverbed stretches into the distance under a clear blue sky. The surrounding landscape is arid with sparse, dry vegetation and low hills.

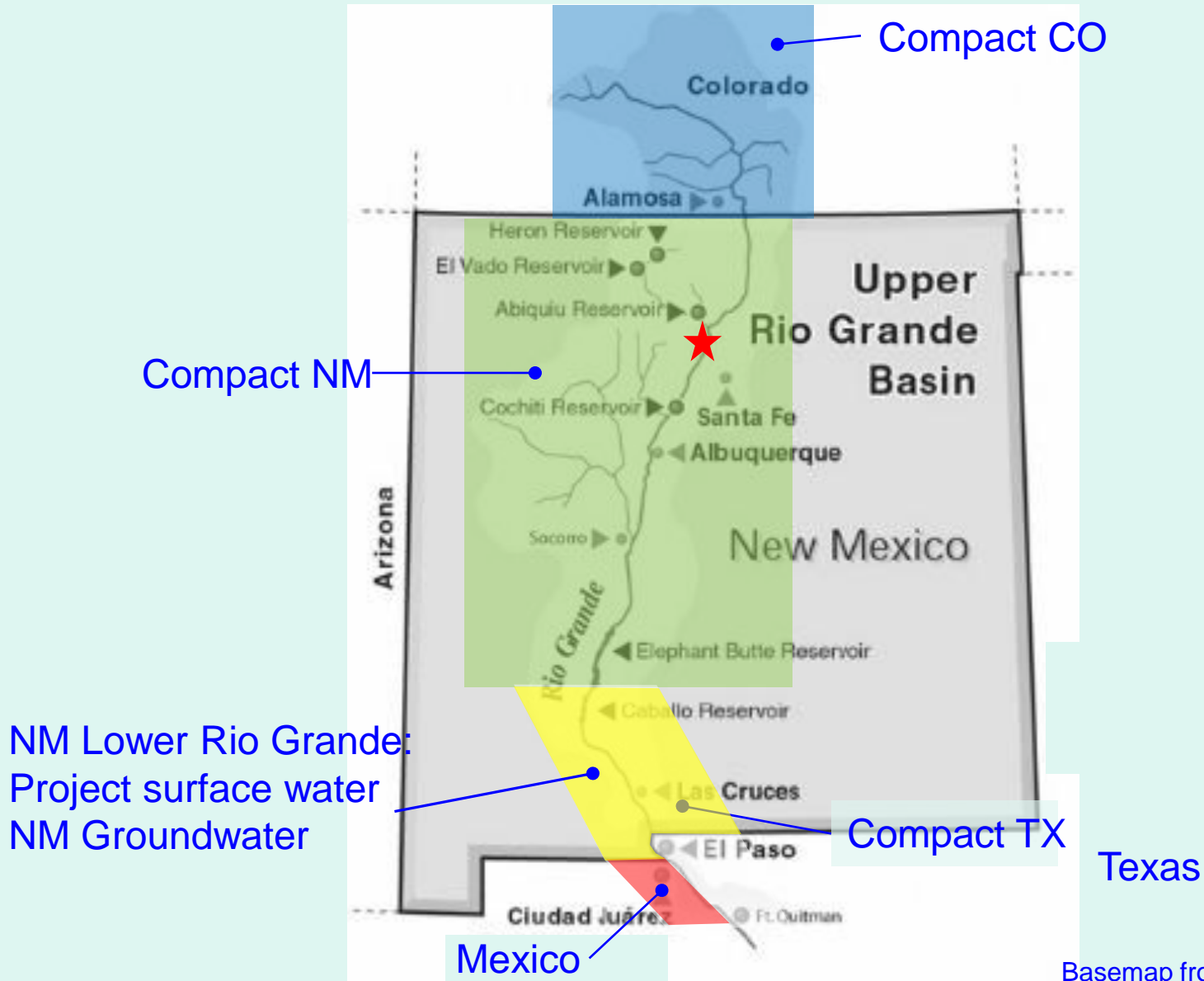
Gary Esslinger, Treasurer/Manager
Elephant Butte Irrigation District

The Rio Grande Compact

- Interstate Compact for Surface Water Allocation
 - New Mexico
 - Texas
 - Mexico (1906 Treaty)
- Colorado delivery to New Mexico
- New Mexico Delivery to Texas
- No man's land: EBID



Compact States: It Seemed so Clear in 1938...





Compact Texas and Geographic NM



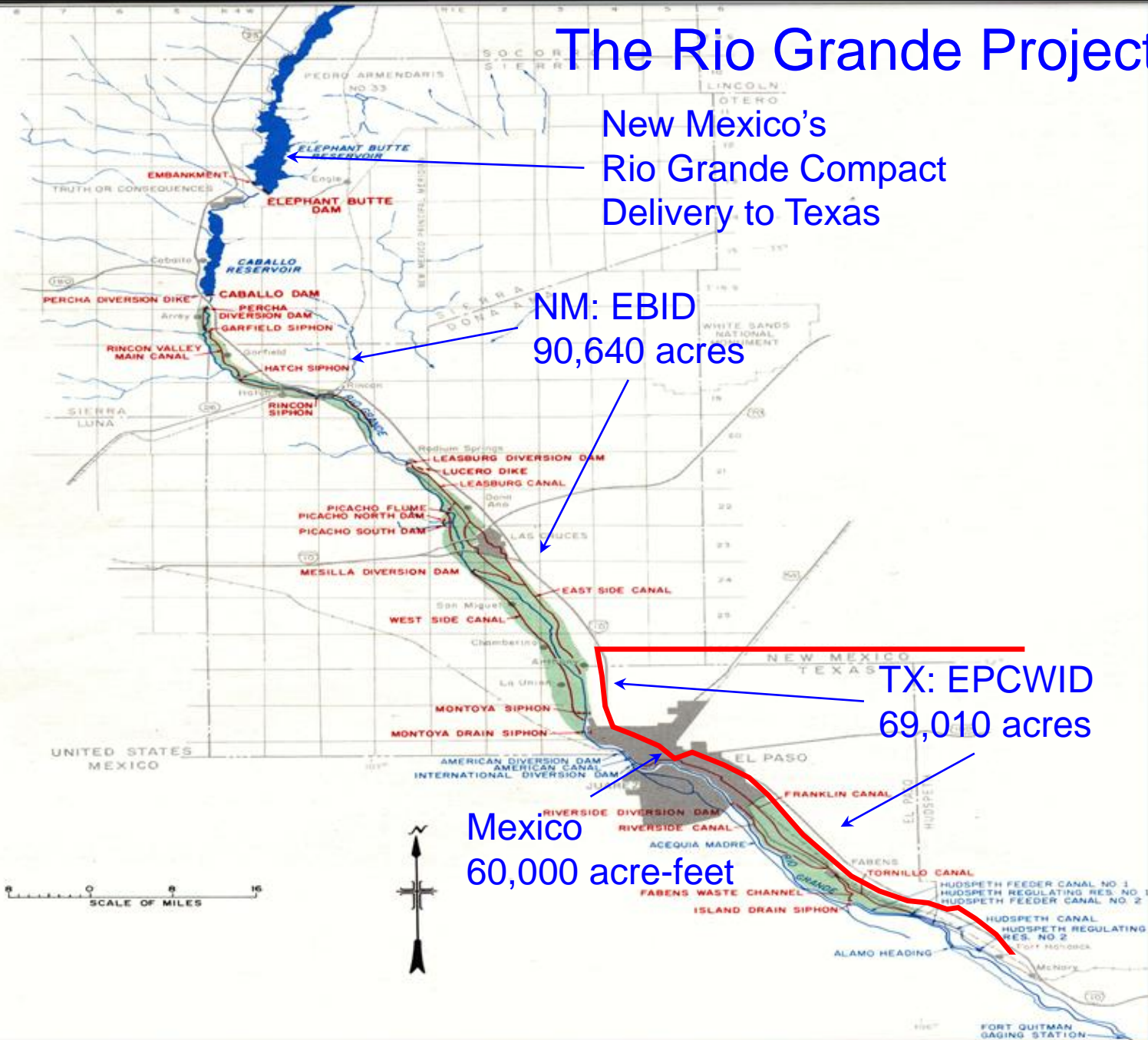
The Rio Grande Project

New Mexico's
Rio Grande Compact
Delivery to Texas

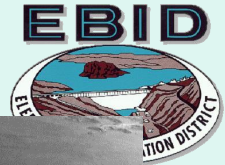
NM: EBID
90,640 acres

TX: EPCWID
69,010 acres

Mexico
60,000 acre-feet



Release and Diversion Points



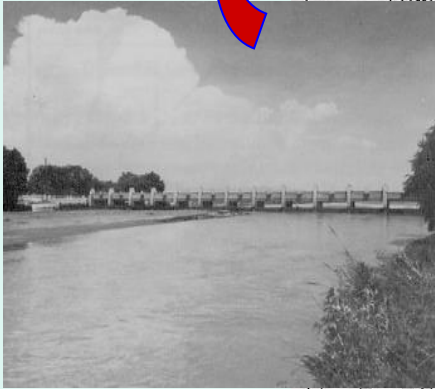
Leasburg Dam



Elephant Butte Dam



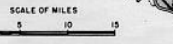
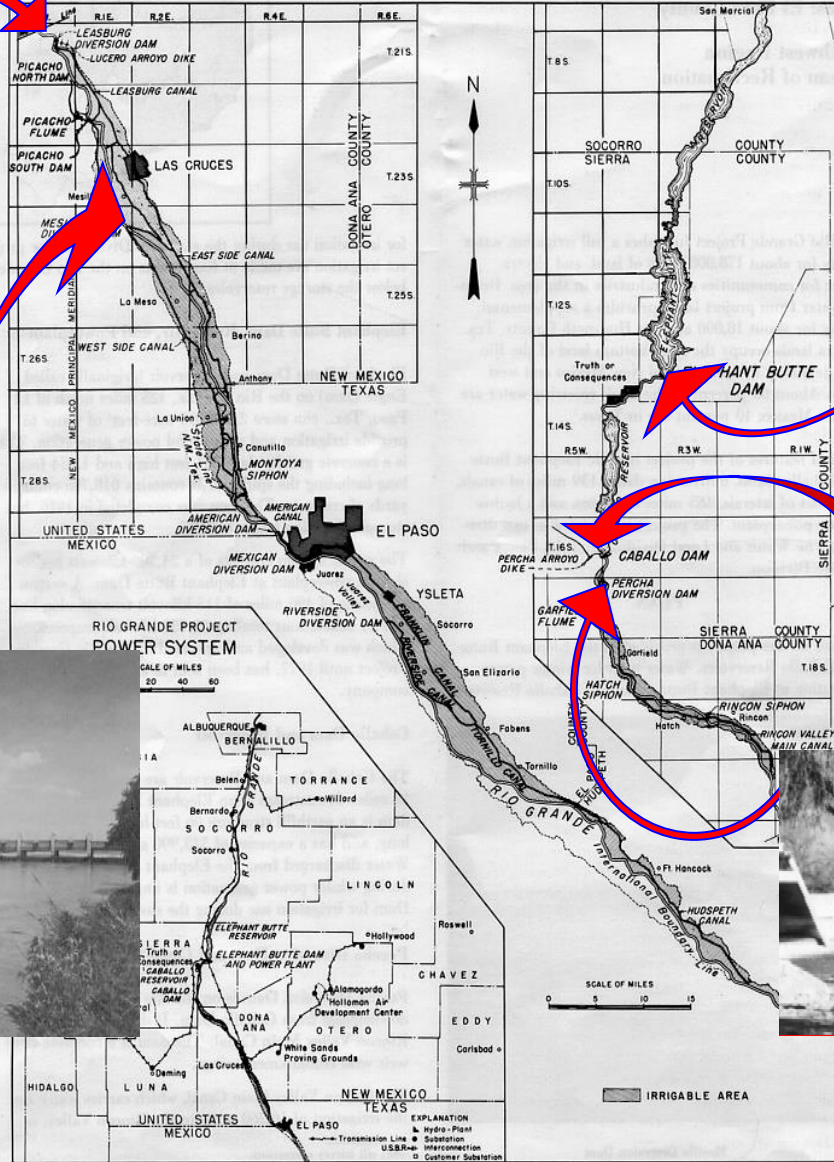
Caballo Dam



Mesilla Dam

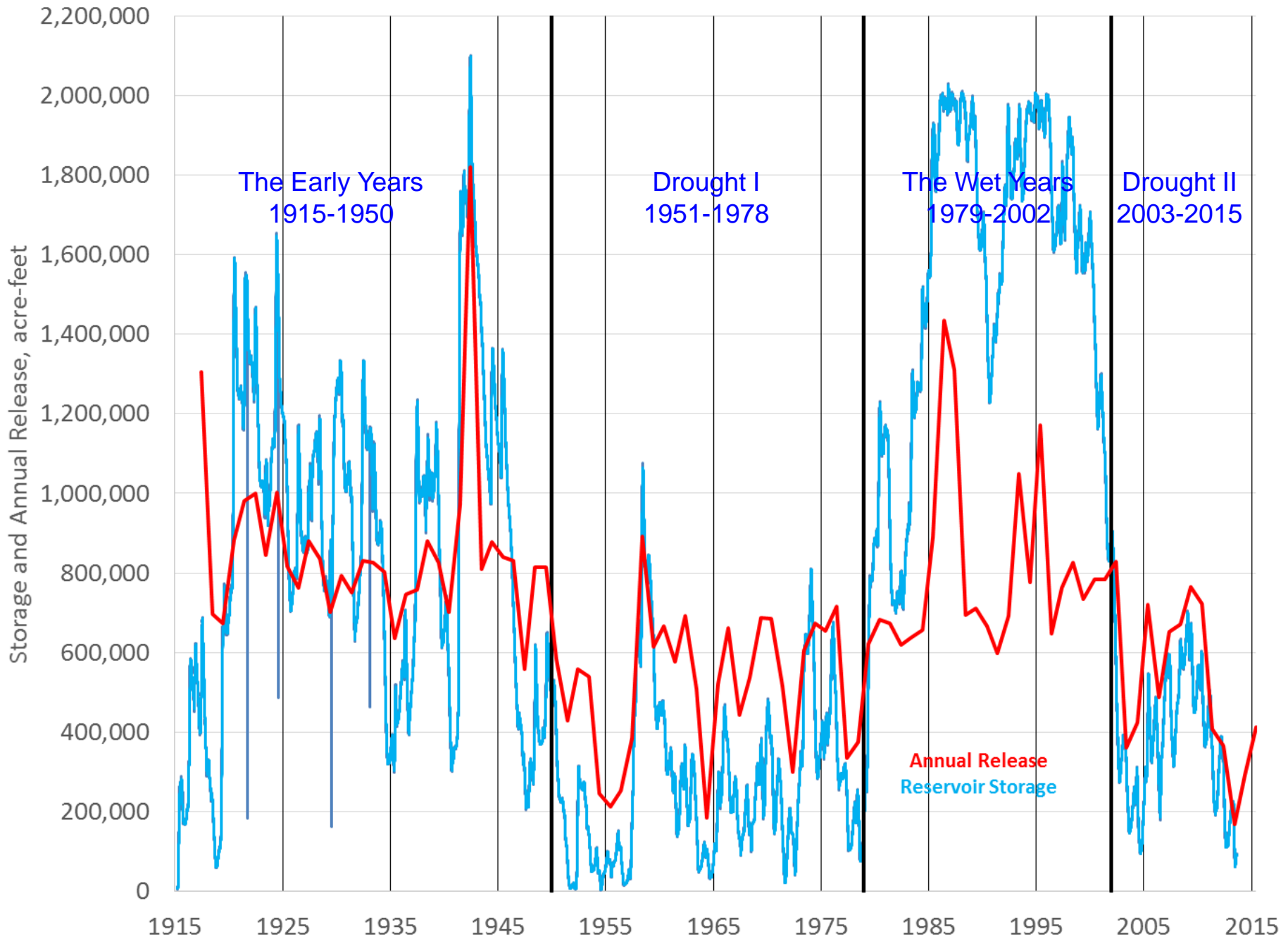


Percha Dam

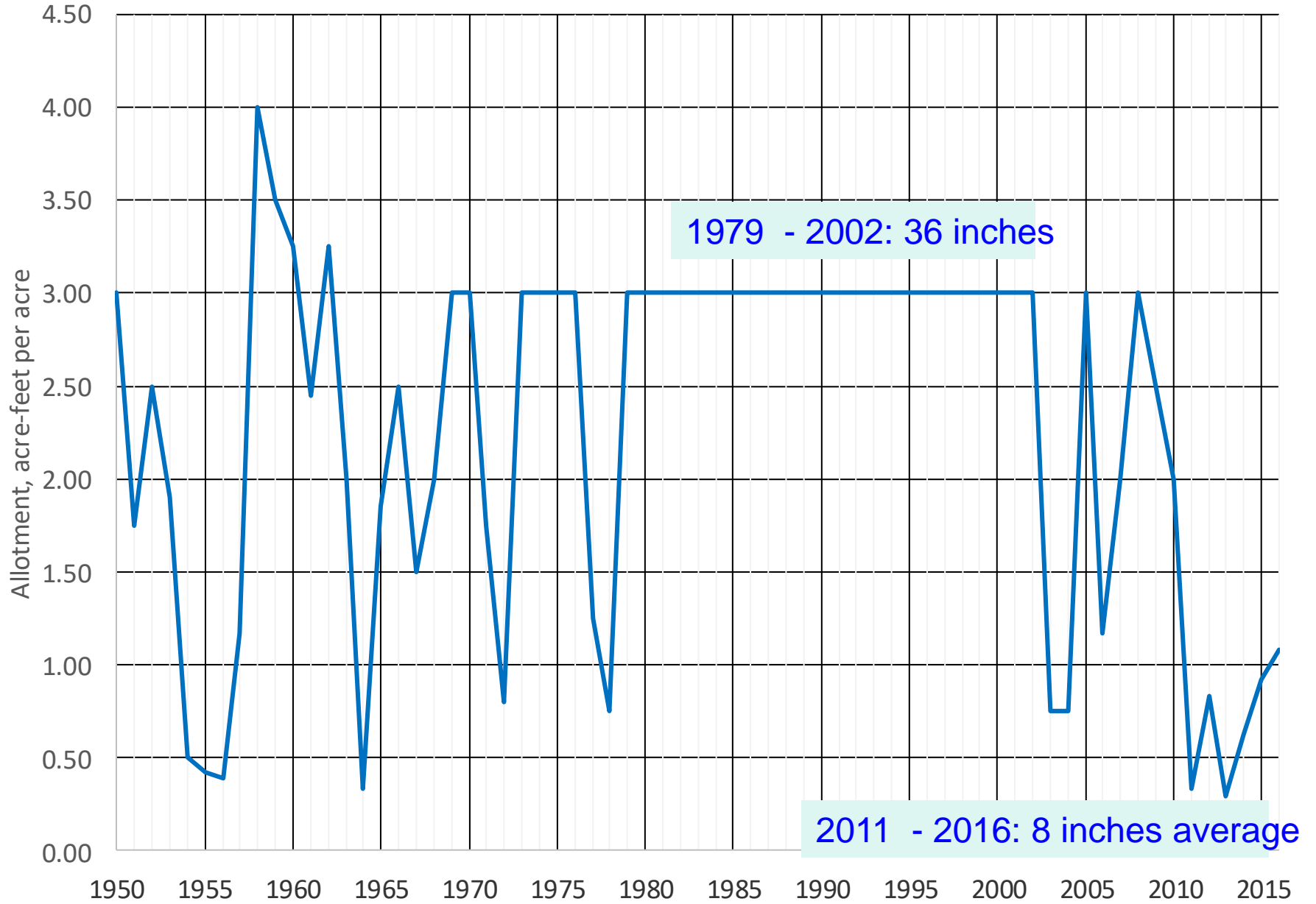


EXPLANATION
 ● Hydro-Piact
 ○ Substation
 — Interconnection
 □ Customer Substation

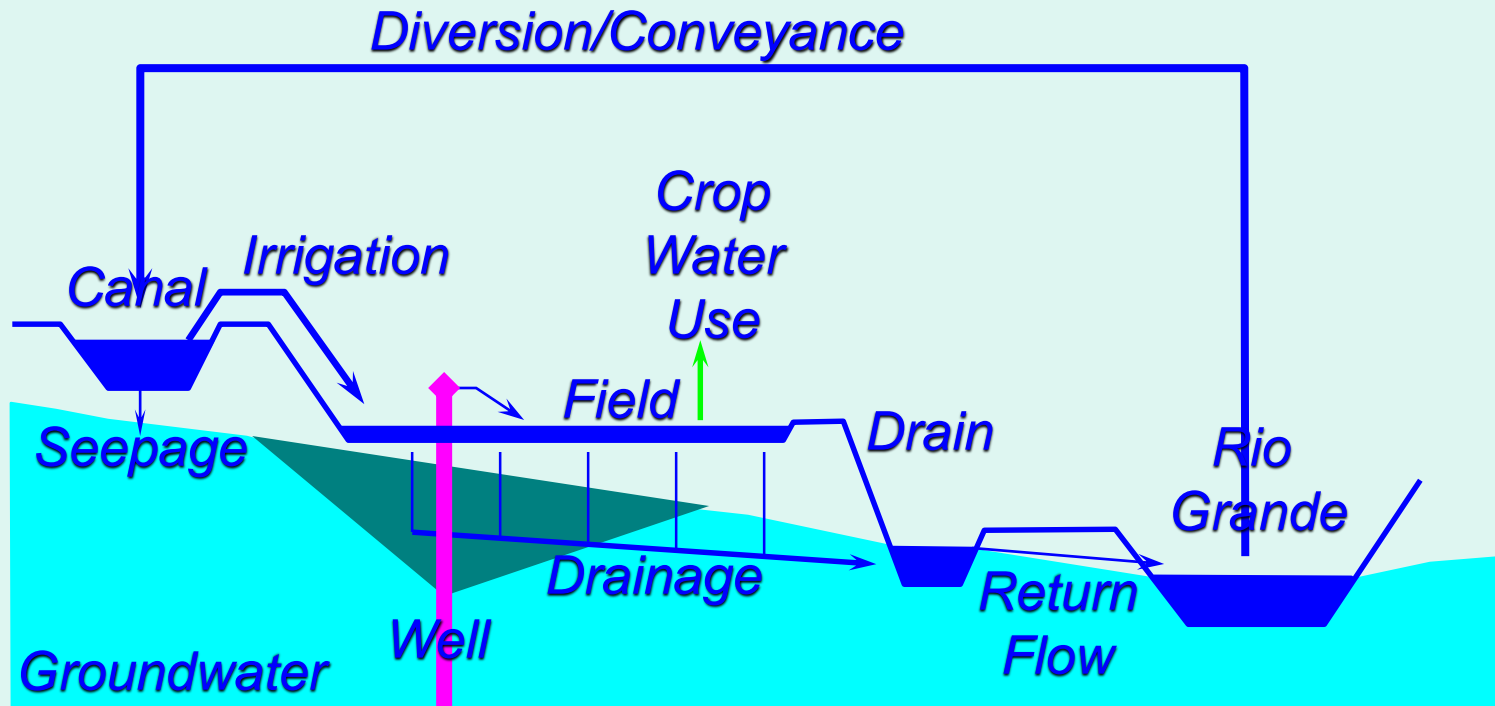
Rio Grande Project Hydrologic History, 1916-2015



Annual Allotment



Hydrologic Cycle



Rio Grande Project Timeline as EBID Takes Over

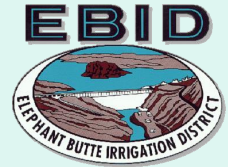


- **1979-1980 EBID and EPCWID #1 pay off Project Construction Costs and takeover operation and maintenance of the NM portion and Texas portion of the project. Contract requires districts and US BOR to agree on allocation scheme based on release from storage at canal heading deliveries to the two districts rather than a total release to farmers head gates from project supply as BOR had historically done.**
- 1979-2002 Full water allocations to districts and Mexico.
- 1986- EBID files Stream Adjudication against the New Mexico OSE in Las Cruces to determine all water rights in Lower Rio Grande. (El Paso case strategy)
- **1987- EBID takes over the O&M of Percha, Leasburg and Mesilla Diversion Drains from the BOR.**
- **1996- Congressional Title Transfer requires BOR to deed all canals, laterals, drains and wasteways to EBID.**
- 1997-2001 US files lawsuit in federal court to vest US with Project water rights and EPCWID#1 raises claim over how US is allocating water to the districts **BUT** not accounting for **NM GW pumping**. Mediation fails and suit dismissed in 2001 and transferred to the state stream adjudication. OSE now assumes role as Plaintiff in 1996 Stream Adjudication and starts hydrographic survey of all water rights.
- 2003 – After 24 years of full supply, drought returns.
- 2003 Texas threatens lawsuit in Supreme Court over NM GW pumping. Both states ramp up with war chests.
- 2003-2006 Reclamation employs “ad hoc” allocation method.
- 2007 both districts file suit in respective federal courts in NM and Texas because neither district agrees with allocation by the US.



2008- Operating Agreement Litigation Settlement

- Operating Agreement Litigation Settlement describes how the BOR will handle the allocation of Project Water accounting for both districts as contemplated in the original BOR contract takeover in 1979.
- Allocation insures that EPCWID#1 gets the wet water they have ordered and released from reservoirs in NM that is physically delivered by EBID to the Texas state line headings.
- EPCWID#1 abandons its claim that all pumping in NM after 1938 Compact must be accounted for and **grandfathers in all ground water pumping in NM from 1951-1978.**
- Carryover accounts set up for both districts encouraging conservation.
- Districts now control releases from reservoirs for maximum conservation in delivery and EBID can utilize flood flows without delivery obligation to Texas.
- Annual Operating Manual Review allows parties to address unforeseen issues such as the continuation of the drought condition, inefficiencies in delivering and conservative measures.
- Texas threat to file in USSC removed... But



NM v. United States, EBID, EPWCID#1 D.N.M. 11-CV-691 (2011)

- Attorney General King claims US erred in Compact accounting that gave more water to Texas.
- NM claims 2008 Operating Agreement has changed allocation of Project water to favor Texas.
- EBID Cross Claim against US for releases by IBWC to Mexico in violation of Mexican Treaty of 1906 which costs districts 25,000AF of Project Supply.
- Motions to dismiss filed by major parties and argued November 2012.
- No decision on motions, instead action stayed by Judge Browning awaiting outcome of Texas v NM.
- Meanwhile back in state court...



NM v. EBID, et al., 96 CV-888 (2012)

- Stream Adjudication of all Water Rights including the Project filed by EBID on September 12, 1986. In 1996 OSE became Plaintiff and began funding the hydrologic surveys mapping and determining all water rights in the LRG.
- August 16, 2012 court grants NM motion that US has no claim to groundwater as a source of water for the Project, only surface releases.
- However, the Court recognizes that from a release of 790,000 AF of water from reservoirs, 930,000 AF of water is delivered to farmers. Judge rules that under state law when surface water through seepage reaches an underground reservoir and loses its identity as surface water, they become subject to appropriation under NM water law and not federal law.
- The court found that determining whether Project water retains its identity as Project water is a condition specific and technical inquiry. The scope of the adjudication, in contrast is more limited, focusing on defining the elements of the right.
- The Court leaves the determination of whether Project water retains its identification to administrative proceedings conducted before the State Engineer.
- The issue of the status and quantity of return flows captured in 457 miles of EBID drains has still not been addressed.
- However, the Special Master has discussed this in Texas v NM.

Litigation rises to USSSC level



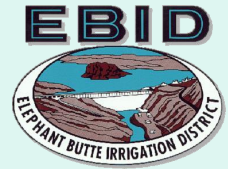
- January 2013, Texas filed suit against New Mexico in the US Supreme Court alleging NM officials have allowed the illegal taking of Rio Grande Compact water destined for Texas through groundwater pumping in NM.
- The United States is granted intervention status siding with Texas claiming that NM continues to allow interception of Rio Grande Project water by non-Project contractors.
- NM's defense is that the compact only requires delivery to Elephant Butte Dam ,and the state has no obligation to shepherd Texas' water to the state line.



Special Master's Draft Report, June 28, 2016



- NM files motion to dismiss the case but the Supreme Court's Special Master (SP) recommends that the lawsuit should proceed and Texas can seek its damages in water or money.
- SM also finds that the US complaint against NM for not protecting the surface water should also proceed.
- SM's report makes clear that all Project water delivered by EBID and EPCWID#1 is senior in right to all other water rights in NM's Lower Rio Grande.
- EBID's Motion to be allowed to intervene as a party is denied, but SM says EBID should participate as an "Active Amicus".

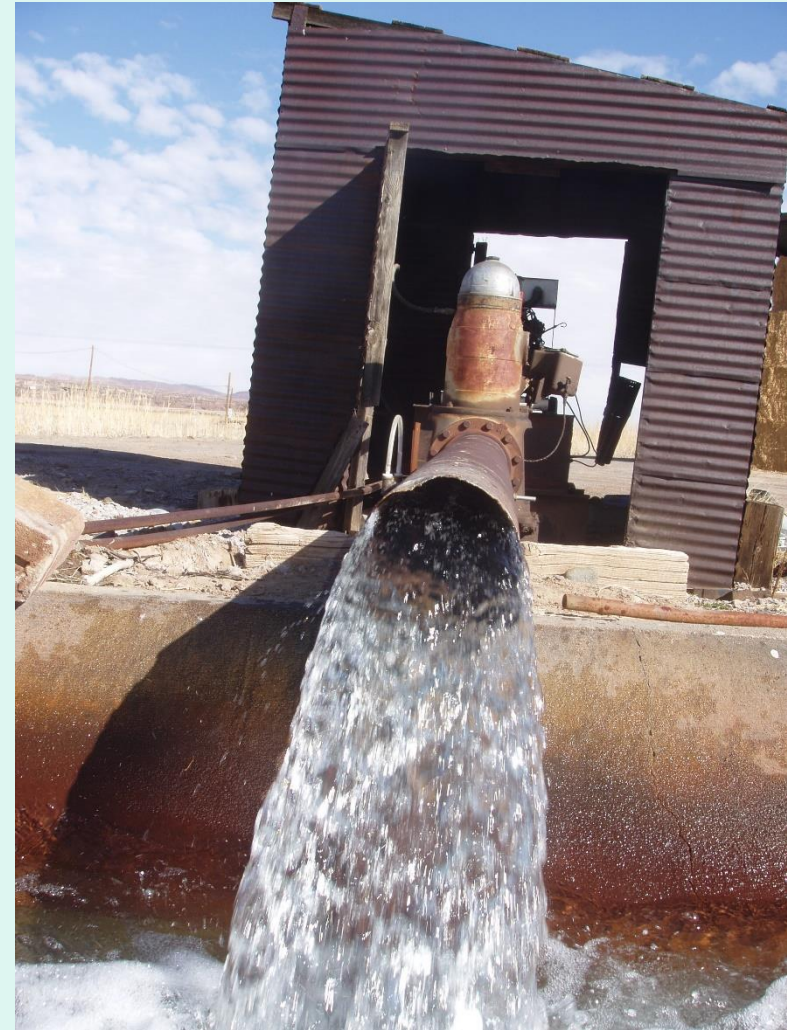


Quotes from draft SM Report

- “The equitable apportionment achieved by the 1938 Compact commits the water New Mexico delivers to Elephant Butte Reservoir to the Rio Grande Project; that water is not subject to appropriation or distribution under New Mexico state law.” (Page 182)
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- “ . . . New Mexico, through its agents or subdivisions, may not divert or intercept water it is required to deliver pursuant to the 1938 Compact to Elephant Butte Reservoir after that water is released from the Reservoir by Reclamation for deliveries pursuant to the administration of the Rio Grande Project. That water has been committed by compact to the Rio Grande Project for delivery to Texas, Mexico, and lower New Mexico, and that dedication takes priority over all other appropriations granted by New Mexico.” (Page 184)
-
- “ . . . New Mexico itself, as a quasi-sovereign, relinquished its own rights to the water it delivers in Elephant Butte Reservoir, allocating the rights to that instead to the Rio Grande Project to irrigate lands in Texas and lower New Mexico. . . . New Mexico state law does not govern the distribution of the water apportioned by the Compact.” (Page 186)
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- “ . . . New Mexico . . . is without discretion to veer from the method of distribution of Project water after it leaves Elephant Butte Reservoir, as the 1938 Compact, by incorporating the Rio Grande Project, requires the water at that point be controlled, and delivered to its destinations by Reclamation.” (Page 188)
-
- “The 1938 Compact . . . imposes duties upon . . . New Mexico to maintain scheduled deliveries to the Project and to protect Project deliveries from Elephant Butte Reservoir to ensure that Texas and lower New Mexico receive their bargained-for apportionments of Rio Grande water.” (Page 190)

Possible Solutions

- Negotiations with the states and irrigation districts should begin immediately with the 2008 Operating Agreement as the foundation.
- EBID members already offset the effects of their groundwater pumping through the 2008 Operating Agreement.
- Other groundwater users need to do the same.
- EBID's Depletion Reduction Offset Program (DROP) will allow Municipal and Industrial (M&I) water users to become Rio Grande Project contractors and offset their impact on RG Project surface supply to avoid future threat to their use by USSC rulings.
- Explore additional sources of water.





Current Directions

- Legal Environment:
 - State Stream Adjudication
 - Federal Litigation
 - NM v. EBID, EP1 and Reclamation
 - United States Supreme Court: Texas v NM.
- Changing needs:
 - Traditional Suspension and Transfers
 - Agriculture to M&I Use
 - Innovative Conservation Practices
- Technical Issues
 - Improve Metering & Monitoring
 - Water Quality
 - NM/TX Water Planning
 - Environmental Impacts

Any more questions?

