

Settemeyer, Herman R.

Volume 1 - 07/30/2020

Summary Proceeding with Highlighted Clips

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CONFIDENTIAL

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Page 00001

01: 00001: IN THE SUPREME COURT OF THE UNITED STATES  
BEFORE THE OFFICE OF THE SPECIAL MASTER

02: HON. MICHAEL J. MELLODY

03: STATE OF TEXAS, :

:

04: Plaintiff, :

:

05: VS. : Original Action Case

: No. 220141

06: STATE OF NEW MEXICO AND : (Original 141)

STATE OF COLORADO, :

07: :

Defendants. :

08:

09:

\*\*\*\*\*

10: ORAL AND VIDEOTAPED DEPOSITION OF

HERMAN ROBERT SETTEMEYER

11: JULY 30, 2020

VOLUME 1

12: \*\*\*\*\*

13: ORAL AND VIDEOTAPED DEPOSITION OF HERMAN ROBERT

14: SETTEMEYER, produced as a witness at the instance of the

15: Defendant State of New Mexico, and duly sworn, was taken

16: in the above-styled and numbered cause on July 30, 2020,

17: from 9:18 a.m. MDT to 4:10 p.m. MDT, via Zoom, before

18: PHYLLIS WALTZ, RMR, CRR, CRC, Texas CSR, TCRR, Louisiana

19: CCR, in and for the State of Texas, recorded by machine

20: shorthand, pursuant to the Federal Rules of Civil

21: Procedure and the provisions stated on the record or

22: attached hereto; that the deposition shall be read and

23: signed before any Notary Public.

24:

25:

(continued page 00002)

01: 00002: A P P E A R A N C E S

02:

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(continued page 00003)

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(continued page 00004)

01: 00004: A P P E A R A N C E S (Continued)  
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 07:  
 08: VIDEOGRAPHER:  
 Mr. Christian Barrett  
 09:  
 ALSO PRESENT:  
 10: Dr. Al Blair  
 Ms. Suzy Valentine, Texas  
 11: Mr. J. Phillip King, New Mexico

Page 00007

01: 00007: THE VIDEOGRAPHER: The time is 9:18 a.m.  
 02: and we are on the record.

03: HERMAN ROBERT SETTEMEYER,  
04: having been first duly sworn, testified as follows:

Page 00029

25: Q. So then on the -- the next entry that I just

(continued page 00030)

01: 00030: mentioned for the next 25 years, is what you've entered  
02: here, the "Engineer Advisor/Manager," are those two  
03: separate duties or two separate titles that you held?  
04: A. Well, beginning in 1987 is when I started  
05: doing the work related to the interstate compacts, and I  
06: was the Engineer Adviser for the Canadian, Pecos, Red,  
07: Rio Grande, and Sabine River Compacts. Although for a  
08: portion of that time, I only became the, quote, official  
09: Engineer Adviser on the Rio Grande during the tenure of  
10: the commissioner before Pat Gordon. We used to have  
11: a -- a staff out in El Paso of an engineer and  
12: administrative assistant and -- and that was the  
13: official -- that engineer was the official Engineer  
14: Adviser for the Rio Grande up until, like I said, during  
15: the tenure of the commissioner preceding Pat Gordon,  
16: whose name escapes me at the moment.

17: But, anyway, but I was always Engineer Adviser  
18: for the Canadian, Pecos, Red, and Sabine River Compacts  
19: and then for the Rio Grande for I don't know how long  
20: that was, 18 years, ten years, something like that.  
21: But -- but even during that period of time, from 1987  
22: forward, while I was not the official Engineer Adviser,  
23: I was kind of -- I was -- I was an additional Engineer  
24: Adviser, and the -- the other gentleman would actually

25: sign the Engineer Adviser's reports during that time,

(continued page 00031)

01: 00031: until, like I said, during the time when that position

02: was done away with under the commissioner previous to

03: Commissioner Gordon.

04: Q. Okay. So when you say you were an additional

05: Engineer Adviser, what I may use sometimes the shorthand

06: of EA, does that mean you attended all of those EA

07: meetings?

08: A. Yes. Yeah.

09: Q. And then would you help develop the Engineer

10: Adviser reports?

11: A. Yes.

Page 00043

01: 00043: Q. And what portion, then, was allocated to

02: Texas?

03: A. Well, the Rio Grande Project is apportioned

04: 57 -- 57 percent to -- to New Mexico and 43 percent to

05: Texas. So the portion that Texas got associated with

06: the Rio Grande Project was the -- was the 43 percent.

07: Q. And describe for me what that's 43 percent of.

08: Is it 43 percent of the water in storage?

09: A. No, the -- the Bureau of Reclamation operates

10: the Rio Grande Project and, as such, they make an

11: allocation each and every year to -- to New Mexico and

12: to Texas, EBID EP No. 1, they make an allocation and

13: those -- that allocation is split 57/43 between the two

14: districts, basically, between the two states.

15: Q. Is that 43 percent, though, of the deliveries,

16: or is it of the storage?

17: A. Well, there are -- there are curves used by

18: the Bureau of Reclamation that determine under various

19: conditions when you release X amount of water out

20: Elephant Butte, then that produces X amount of water for

21: EBID and EP No. 1. You know, during a full allotment

22: year, a release of water will provide, actually, more

23: than that release to the -- to the two districts based

24: on return flows that come back from the project.

25: Q. And so it's 43 percent of that whatever is on

(continued page 00044)

01: 00044: the curve that Texas is entitled to?

02: A. Yes, that's my recollection.

03: Q. And when you say "the curve," are you

04: referring to what's sometimes referred to as the D-1 and

05: D-2 curves?

06: A. Yes.

Page 00045

20: Q. So on the -- the Pecos Compact, we were just

21: talking about 1947 condition. Was there anything

22: similar for the Rio Grande, a similar type of year

23: condition?

Page 00046

01: 00046: A. I don't recall. I don't think so.

02: Q. (BY MS. THOMPSON) And when you say "I don't

03: think so," why is that?

Page 00046

15: Oh, I just asked, so on the Pecos Compact, we

16: were just talking about the 1947 condition, was there

17: anything similar for the Rio Grande, a similar type of  
18: year condition?  
19: And you said, "I don't recall. I don't think  
20: so."  
21: And I was just asking you to explain more why  
22: you said, "I don't think so."

**Page 00046**

25: A. There is not a specific date similar to the

**(continued page 00047)**

01: 00047: Pecos in the Rio Grande.

**Page 00047**

25: Q. Did you personally ever investigate what type

**(continued page 00048)**

01: 00048: of impacts were occurring from New Mexico's groundwater  
02: pumping?  
03: A. Well, I toured -- toured the Rio Grande  
04: Project, both in New Mexico and in Texas. I've  
05: observed, you know, the pumps and the wells and -- and  
06: those activities. I've done that.  
07: Q. Have you tried to quantify -- or, excuse me,  
08: did you -- during your career at TCEQ, did you ever try  
09: to quantify what those impacts were?  
10: A. No, I'm not a groundwater modeler.  
11: Q. Did you work with anyone, you know, or hire  
12: any consultants to do that quantification?  
13: A. Not until after the -- well, I didn't, no.  
14: Q. Do you know -- I mean, during your time at  
15: TCEQ. So I'm -- and during the time you were Engineer  
16: Adviser is what I'm asking about. Separate and apart



17: from the current litigation, did you ever hire anyone to  
18: try to quantify those impacts?  
19: A. I didn't, no.  
20: Q. Did you -- did anyone else at Texas?  
21: A. I don't know.  
22: Q. Do you not know just because you weren't  
23: involved or weren't personally involved in any of those  
24: quantifications?

**Page 00049**

02: A. It's my -- it's my understanding, my belief  
03: that the two districts hired experts to make  
04: calculations.

**Page 00049**

18: Q. When you -- when you say that you were  
19: participating in some of the negotiations, did you  
20: attend some of the negotiations to develop the 2008  
21: operating agreement?  
22: A. Yes.  
23: Q. Did you attend with the Texas Water  
24: Commissioner?  
25: A. I'm sorry? You mean the Texas Compact

**(continued page 00050)**

01: 00050: Commissioner?  
02: Q. Yes, thank you. Sorry about that.  
03: A. Yes, I -- me and myself and Commissioner  
04: Gordon attended. I don't recall if anyone else from  
05: Texas attended, other than the districts.  
06: Q. And what was Commissioner Gordon's role during  
07: the negotiations between the districts?

08: A. He -- he -- he was primarily a mediator,  
09: trying to get the two districts to -- to reach an  
10: agreement to resolve this longstanding issue.

11: Q. And what was your involvement or role during  
12: the negotiations?

13: A. Basically, to discuss with Commissioner Gordon  
14: and discuss with the districts the ideas, thoughts,  
15: proposals that were put on the table.

16: Q. Would you evaluate, do an independent  
17: evaluation of some of the proposals that were put on the  
18: table?

19: A. Did I?

20: Q. Yes.

21: A. No.

22: Q. So would you just provide technical support,  
23: then, to Commissioner Gordon?

24: A. Yes.

**Page 00054**

14: Q. Do you have any opinions, as the EA adviser at  
15: that time, whether or not the operating agreement  
16: resolved the concerns related to Texas not receiving its  
17: water?

18: A. Well, it was my belief at the time that the  
19: operating agreement resolved the concerns of the -- of  
20: the Texas Irrigation District.

21: Q. So you were -- you were very careful in that  
22: answer to mention it -- it resolved the concerns of the  
23: Texas Irrigation District. And I was asking more  
24: whether or not it resolved the concerns of Texas. So

25: did it resolve the -- as you being the Engineer Adviser

(continued page 00055)

01: 00055: at that time, did it resolve the concerns of Texas?

02: MR. HOFFMAN: Objection; lack of

03: foundation.

04: A. Well, Texas was satisfied at that time with

05: the results of the operating agreement.

06: Q. (BY MS. THOMPSON) And how do -- what's your

07: understanding of why Texas was satisfied at that time

08: with the results of the operating agreement?

09: A. Well, you know, historically, over time the

10: two districts were always expressing issues relating to

11: the allocation of water associated with the Rio Grande

12: Project. And the two districts sat down and -- and

13: resolved this matter by developing the operating

14: agreement and, as such, you know, Texas, through the

15: Rio Grande Compact Commission, commissioner was part of

16: the negotiation of that operating agreement, and so, you

17: know, it -- so, you know, Texas, through the Rio Grande

18: Compact Commissioner, believed that that operating

19: agreement provided Texas an entitlement at that -- at

20: that time.

Page 00067

16: Q. If Mexico does pump and depletes the stream in

17: this section, would that have any concern for you, as

18: the Texas EA?

19: MR. HOFFMAN: Objection.

20: Sorry, go ahead.

21: A. No, I don't think so.

22: Q. (BY MS. THOMPSON) And why not?

23: A. Because -- because -- because Texas' rights

24: under the Rio Grande Compact, we would have already

25: diverted our water. They would not have an impact on

(continued page 00068)

01: 00068: the flows into American Dam or Mesilla Dam.

02: Q. What about the Riverside Diversion?

03: A. I don't think there is a Riverside Diversion

04: anymore.

05: Q. When did that cease to exist?

06: A. I don't recall.

07: Q. Did it exist during your time as an Engineer

08: Adviser?

09: A. I don't recall.

10: Q. If it still did exist today, would the

11: question I asked you about groundwater pumping, would

12: that have any concern when you were the Engineer

13: Adviser?

14: MR. HOFFMAN: Objection; improper

15: hypothetical. It doesn't state facts in evidence.

16: A. If it -- if it would impact water -- Texas'

17: water associated with the Rio Grande Project, we would

18: have a concern.

19: Q. (BY MS. THOMPSON) And why is it that you

20: would have a concern?

21: A. Because it would be taking Rio Grande

22: Project's water. Another country would be taking Texas'

23: Rio Grande Project water.

Page 00069

17: Q. And then next in your resume, you list,  
18: "Completed the Rio Grande above Fort Quitman  
19: adjudication."  
20: A. Yes.  
21: Q. That's a topic that we'll spend quite a bit of  
22: time discussing, but for now, from just from a high  
23: level, what was kind of the general timing of that  
24: adjudication?  
25: A. Oh, I don't remember. It's been, like -- I

(continued page 00070)

01: 00070: don't know, it's been a long time ago. It was the last  
02: water rights adjudication in the state of Texas, and I  
03: was the only person left that had adjudication  
04: experience, so I was assigned to be the engineer in  
05: charge of doing that adjudication, which was, basically,  
06: the same as the adjudication in the other segments. I  
07: went out and did a field investigation of the water  
08: rights associated with the -- with the Rio Grande in  
09: Texas above Fort Quitman, did an investigation report,  
10: prepared maps. We had -- we had public hearings and  
11: then the hearings examiner issued a determination on the  
12: water rights and they were -- went through the court  
13: process.  
14: Q. Once they go through the court process, is the  
15: Certificate of Adjudication the final step?  
16: A. Yes.  
17: Q. And then to bookend that, is the first step,  
18: does the applicant actually have to file evidence of

19: their water rights with TCEQ?

20: A. Well, pursuant to the Adjudication Act, which

21: was in 19-- late 1960s, everyone that felt they had a

22: water right had to file a claim for that water right.

23: And so those claims that were filed were sitting there,

24: waiting to be adjudicated, and we finally got to those

25: water rights in the late '90s and -- and proceeded with

(continued page 00071)

01: 00071: adjudication.

02: Q. And so would EP1 -- and when I say EP1, do you

03: know who I'm referring to, which entity?

04: A. El Paso County Water Improvement District

05: No. 1?

06: Q. Yes.

07: A. Yes.

08: Q. Yeah. I'll probably use EP1 as a shorthand,

09: if that's okay with you.

10: A. Sure.

11: Q. Okay. So if EP1 wanted to present a claim on

12: water right, then they file their water rights claim

13: with TCEQ; is that correct?

14: A. Yes.

15: Q. Okay. And for those files, do you know where

16: those are located at TCEQ?

17: A. The original claims?

18: Q. Yes.

19: A. Let me -- let me -- let me say this to -- EP

20: No. 1 had a -- had a certified filing. And then EP

21: No. 1 came into the agency and amended that certified

22: filing and got a permit, and that permit went through  
23: the adjudication process and was issued a Certificate of  
24: Adjudication. Where all those old historical documents  
25: are, I don't know.

**Page 00073**

03: Q. And were you personally involved with the  
04: adjudication process for this segment of the Rio Grande  
05: right from the very beginning all the way until the end?  
06: A. Yes, I -- I conducted field investigation,  
07: prepared the investigation report, and presented  
08: testimony at the adjudication hearings.  
09: Q. When you say you did the field investigations,  
10: what did that entail?  
11: A. I went out and visited with each water right  
12: holder, discussed their historical use of water, located  
13: their -- their lands, diversion locations, reservoirs,  
14: et cetera, on a map, and, you know, discussed -- I say  
15: discussed their historical use of water, and put all  
16: that information into the investigation report. And  
17: that investigation report and the associated maps were  
18: introduced as exhibits in the adjudication hearings.

**Page 00083**

22: Q. Prior to that time, as the Engineer Adviser  
23: for many, many years, had you heard a concern about  
24: having to use higher salinity groundwater in Texas as an  
25: issue?

**(continued page 00084)**

01: 00084: A. Yes.  
02: Q. And who did -- who did you hear that from?

03: A. The district.

04: Q. In what -- what capacity did they raise that

05: to you?

06: A. I don't recall.

07: Q. What do you recall about what their concern

08: was?

09: A. Well, the concern was that they didn't have

10: enough project water and that they were having to divert

11: some groundwater and the groundwater was higher -- of

12: higher salinity than the project water would have been.

13: Q. Was that an issue that you raised during the

14: Compact Commission meetings?

15: A. That I raised? I didn't raise, no.

16: Q. Was that an issue that you raised to the

17: Engineer Advisers?

18: A. No, not that I recall.

19: Q. And do you know why that was something you

20: didn't decide to raise to the Compact commissioners or

21: the EAs?

22: A. I don't recall.

Page 00106

07: Q. Okay. So then under "Amount of water," there

08: the first item listed is EP1 is authorized 376,000

09: acre-feet per year from the Rio Grande from the

10: following sources. Where does that number 376,000 come

11: from?

12: A. I don't recall at this time.

13: Q. Would that have been information that the

14: applicant provided with their filing, or is that



15: information that you would have collected?

16: MR. HOFFMAN: Lack of foundation.

17: A. This -- that amount of water -- what's listed  
18: here is authorized by their certificate. Exactly how we  
19: got there, I don't remember anymore.

20: Q. (BY MS. THOMPSON) Would that be information  
21: that's submitted, though, by the claimant?

22: MR. HOFFMAN: Objection; lack of  
23: foundation.

24: A. Possibly.

25: Q. (BY MS. THOMPSON) So then that amount of

(continued page 00107)

01: 00107: water is listed as coming from, it looks like four  
02: sources total. So these four sources make up that total  
03: 376. The first one is "All rights which the District  
04: acquired or perfected pursuant to Certified Filing  
05: No. 123." And, again, would you explain to me what that  
06: Certified Filing No. 123 was?

07: A. It was a -- it was a water right that was  
08: filed with the county clerk's office back with, I guess,  
09: the Board of Water Engineers back in, like, 1914.

10: Q. Do you recall any history with that water  
11: right, like, how much it was for or what the purpose  
12: was?

13: A. No.

14: Q. So on the second one, it says, "67/155 of all  
15: water stored in project storage..." Do you know how  
16: that was derived?

17: A. I'm think -- I'm thinking that comes from the

18: 57/43 split, the project water.

19: Q. Do you recall if the 155, is that related to

20: the project acreage?

21: A. I don't recall.

22: Q. So here, though, it says that it's 67/155 of

23: all water stored in project storage and legally

24: available for release to Elephant Butte Irrigation

25: District and El Paso -- EP1, plus any additional share

(continued page 00108)

01: 00108: of project water obtained through allocation, purchase

02: and/or operation rules, "Project Water" being defined as

03: all water legally dedicated to the Rio Grande Project.

04: So it appears this water is the water in storage that's

05: available for release; is that right?

06: MR. HOFFMAN: Objection; lack of

07: foundation.

08: A. The water in storage plus any water that's

09: legally dedicated to the Rio Grande Project, which would

10: include the return flows.

11: Q. (BY MS. THOMPSON) And where are the return

12: flows included in this statement here, No. 2?

13: A. It's been 25 years. I -- I don't recall. But

14: reading the statement would indicate that.

15: Q. And which part do you think indicates that?

16: MR. HOFFMAN: Objection; lack of

17: foundation.

18: A. All water legally designated to the Rio Grande

19: Project.

20: Q. (BY MS. THOMPSON) So it's the definition of

21: project water?

22: MR. HOFFMAN: Asked and answered.

23: A. I mean, it -- it is what it says it is. I

24: mean, it's been 25 years. I don't really have any

25: additional remembrance of this stuff.

(continued page 00109)

01: 00109: Q. (BY MS. THOMPSON) And then on to the third

02: source, it says, "Any waters entering Texas in the bed

03: of the Rio Grande from New Mexico, including, but not

04: limited to, return flows from New Mexico's use and

05: groundwater discharged into the Rio Grande." Do you see

06: that?

07: A. Yeah.

08: Q. So this would be return flows from

09: New Mexico's use. What does the "and groundwater

10: discharged into the Rio Grande" mean?

11: MR. HOFFMAN: Objection; lack of

12: foundation.

13: A. It is what it says it is. Groundwater

14: discharged into the Rio Grande.

15: Q. (BY MS. THOMPSON) But do you take from that,

16: is that groundwater from -- discharged in the Rio Grande

17: from New Mexico or is it from New Mexico and Texas?

18: MR. HOFFMAN: Objection; lack of

19: foundation.

20: A. It could be either one.

21: Q. (BY MS. THOMPSON) And then on to the fourth

22: one. "Any measurable return flows from the District

23: entering the Rio Grande in Texas above Riverside Dam."

24: Do you understand "the District" there to be the EPl  
25: District?

(continued page 00110)

01: 00110: A. Yes.

02: Q. And then this says that those return flows

03: entering the Rio Grande in Texas above Riverside Dam.

04: Why would this subpart be return flows just in that

05: section?

06: MR. HOFFMAN: Objection; lack of

07: foundation.

08: A. I don't recall.

09: MS. THOMPSON: Mr. Hoffman, he's the

10: author of this report. I'm not sure I understand your

11: objection.

12: MR. HOFFMAN: He said he didn't remember

13: anything other than what's written there, that's why.

14: Q. (BY MS. THOMPSON) So, Mr. Settemeyer, during

15: the lunch break, did you have a chance to have any

16: discussions with your counsel?

17: A. No.

18: Q. Did you have any discussions with anybody

19: during lunch?

20: A. I talked to Carlos Rubinstein about a

21: different matter we're working on together, related to a

22: reservoir in East Texas. I talked -- I talked to my

23: Farm Bureau Insurance Company.

24: Q. All right. On to the -- so those four

25: sources, if I understand this right, are what make up

(continued page 00111)

01: 00111: the total 376,000; is that right?

02: A. Yes, the -- the District was authorized to

03: divert 376,000 acre-feet from those four combined

04: sources.

Page 00115

12: Q. And then the number of acres, that 69,010, do

13: you know where that came from?

14: A. That's the EP No. 1 irritable [sic] acreage.

Page 00116

14: Q. Do you recall whether or not -- well, you

15: talked about earlier the amount of water going to Texas

16: based on what you call the curves, or the D-1, D-2

17: curves. Do you remember that discussion?

18: A. Yeah.

19: Q. Do you recall how much water was calculated

20: for EP1 under those curves?

21: A. Ooh, a full allotment of water, my

22: recollection, equated to 940 -- 900 plus thousand

23: acre-feet and then Mexico gets some and then EP No. 1

24: gets its 43 percent.

25: Q. I'm going to mark another exhibit, Exhibit 6.

(continued page 00117)

01: 00117: Can you open up Exhibit 6, please?

02: A. Sure.

03: Okay.

04: Q. Have you seen this document before?

05: A. I'm trying to.

06: Yeah, I've seen that document.

07: Q. What's your understanding of what this  
08: document is?  
09: A. Other than reading -- other than reading the  
10: title, I don't remember.  
11: Q. Do you see on Page 3, Section B,  
12: "Determination of Allotment For Full Supply"?  
13: A. I'm -- yeah, I see that.  
14: Q. Okay. And there is a number there at the  
15: bottom, 931,841.  
16: A. Yeah.  
17: Q. And then if you scroll to the next page, it  
18: says at the top, "Allocation for a full supply:"  
19: Delivery to U.S. Headings and Mexico equals 931,841. Is  
20: that, do you think, what the -- the number was that you  
21: were just describing as something over 900,000  
22: acre-feet?  
23: A. That's -- I would think so, yes.  
24: Q. So that's the total allocation for full  
25: supply, correct?

(continued page 00118)

01: 00118: A. Yes.

Page 00138

20: Q. Okay. And then I just marked Exhibit No. 7.  
21: If you could open that up, please.  
22: A. Okay.  
23: Q. And would you identify this document?  
24: A. That appears to be the Certificate of  
25: Adjudication that was issued to the USA and the El Paso

(continued page 00139)

01: 00139: County Water improvement District No. 1.

**Page 00142**

03: Q. Again, Under the Certificate No. 1. b.,  
04: Certificate Holders United States and EP1 are authorized  
05: to divert and Certificate Holder EP1 is authorized to  
06: use an aggregate amount of water from the Rio Grande not  
07: in excess of 376,000 acre-feet per year from the  
08: following sources. And so that's pretty similar to what  
09: we saw before, isn't that right, in the adjudication  
10: report?  
11: A. Yes.

**Page 00172**

10: Q. Okay. And what is accrued credit?  
11: A. That's accrued over-deliveries by Colorado at  
12: the New Mexico state line and accrued credits by  
13: New Mexico at the Elephant Butte Reservoir.  
14: Q. And for New Mexico, taking New Mexico for  
15: example, if they have accrued credits in Elephant Butte  
16: Reservoir, what can they do with those credits?  
17: A. They can under-deliver the next year or in  
18: subsequent years, because they have a credit. They can  
19: offer to relinquish those credits, and the Texas  
20: commissioner has the opportunity to accept or deny that  
21: offer of relinquishment of the credits. Relinquishment  
22: of the credit would convert the credit water to project  
23: storage water.

**Page 00173**

07: Q. (BY MS. THOMPSON) And if Texas does approve a

08: relinquishment offer, then what is New Mexico able to do  
09: with the amount of water that gets relinquished?  
10: A. What can New Mexico do with it?  
11: Q. Yeah, just that quantity.  
12: A. Well, then -- then that water is, basically,  
13: converted to project storage and it's -- it's allocated  
14: to the project, part of it to EBID and part of it to EP  
15: No. 1.  
16: Q. Is it allocated 57/43?  
17: A. Yes, this just -- it's just normal -- it  
18: becomes normal project storage.

Page 00174

10: Q. For full allotment, does that mean that the  
11: maximum amount of allotment was available for EBID and  
12: for EP1?  
13: A. Yes. That doesn't necessarily mean either one  
14: of them used their full allotment, but it was available  
15: to them.  
16: Q. Okay. And so, you know, in this case there is  
17: a period of damages claimed by Texas. How is it that  
18: during a full allotment period -- or a particular full  
19: allotment year that EP1 could have been shorted?  
20: MR. HOFFMAN: Objection; lack of  
21: foundation.  
22: A. Well, EP No. 1 gets shorted when additional  
23: water has to be released from Elephant Butte Reservoir,  
24: and so as additional water has to be released, that  
25: reduces the supply that's available for the next year.



(continued page 00175)

01: 00175: So, you know, if that continues, then -- then it

02: enhances -- enhances the time when full allotments are

03: no longer available.

Settemeyer, Herman R.

Volume 2 - 07/31/2020

Summary Proceeding with Highlighted Clips

Printed 08/25/2021 10:48AM CDT

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Page 00187

01: 00187: IN THE SUPREME COURT OF THE UNITED STATES  
BEFORE THE OFFICE OF THE SPECIAL MASTER

02: HON. MICHAEL J. MELLOY

03: STATE OF TEXAS, :

:

04: Plaintiff, :

:

05: VS. : Original Action Case

: No. 220141

06: STATE OF NEW MEXICO AND : (Original 141)

STATE OF COLORADO, :

07: :

Defendants. :

08:

09:

\*\*\*\*\*

10: ORAL AND VIDEOTAPED DEPOSITION OF

HERMAN ROBERT SETTEMEYER

11: JULY 31, 2020

VOLUME 2

12: \*\*\*\*\*

13: ORAL AND VIDEOTAPED DEPOSITION OF HERMAN ROBERT

14: SETTEMEYER, produced as a witness at the instance of the

15: Defendant State of New Mexico, and duly sworn, was taken

16: in the above-styled and numbered cause on July 31, 2020,

17: from 9:03 a.m. MDT to 3:50 p.m. MDT, via Zoom, before

18: PHYLLIS WALTZ, RMR, CRR, CRC, Texas CSR, TCRR, Louisiana

19: CCR, in and for the State of Texas, recorded by machine

20: shorthand, pursuant to the Federal Rules of Civil

21: Procedure and the provisions stated on the record or

22: attached hereto; that the deposition shall be read and

23: signed before any Notary Public.

24:

25:

(continued page 00188)

01: 00188: A P P E A R A N C E S

02:

03: COUNSEL FOR PLAINTIFF STATE OF TEXAS:

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04: Mr. Robert B. Hoffman

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07: rhoffman@somachlaw.com  
08: AND  
09: Ms. Priscilla M. Hubenak  
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10: OFFICE OF ATTORNEY GENERAL OF TEXAS  
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25:

(continued page 00189)

01: 00189: A P P E A R A N C E S (Continued)  
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NO. 1:

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15: P.O. Box 303187  
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16: Tel: (512) 480-8231  
E-mail: rhicks@renea-hicks.com

17:

18: VIDEOGRAPHER:  
Mr. Christian Barrett

19:

20: ALSO PRESENT:  
Dr. Al Blair

21: Ms. Suzy Valentine, Texas

**Page 00214**

03: Q. I didn't understand the answer you gave,  
04: sorry. I'll just ask the questions, make sure it's  
05: clear. So if you didn't agree with the accounting  
06: sheets, then you wouldn't have signed the accounting  
07: sheets; is that right?

08: A. That's correct. There is a spot -- there is a  
09: spot on those accounting tables for the Engineer  
10: Advisers to initial. That's my recollection. And my  
11: recollection was the ones that I didn't agree with or  
12: somebody didn't agree with, they didn't initial those  
13: sheets. That's my recollection.

**Page 00315**

04: Q. And so with that said, then, this letter was  
05: sent specifically for the Alta Gold. Are you aware of  
06: other letters for each of the wells as they were getting  
07: permitted and drilled in New Mexico below Elephant Butte  
08: Reservoir?

09: A. I don't recall.

10: Q. Do you recall any letters at all related to

11: wells other than this Alta Gold well, where Texas was

12: sending a letter requesting accounting related to the

13: well?

14: A. I don't recall.

15: Q. Do you remember yourself ever drafting any

16: letters like that?

17: A. In the last, what, 30 years, 35 years? I

18: don't recall.

19: Q. So there is -- there is hundreds and hundreds

20: of wells, right, below Elephant Butte within New Mexico?

21: A. Thousands.

22: Q. Thousands of wells. But you don't recall --

23: A. I mean, I don't know. I mean, you -- I don't

24: know how many wells there are, but there is a lot.

**Page 00316**

03: Q. Would you agree that there has been

04: conjunctive use of groundwater to supplement the surface

05: water supply in New Mexico and Texas since the early

06: '50s?

07: A. Since when?

08: Q. Early 1950s.

09: A. Yes.

10: Q. Would you agree that both New Mexico and Texas

11: have relied upon that supplemental groundwater pumping

12: to allow for ongoing agricultural development within

13: both states within the project area?

14: A. Yes, those -- there is groundwater development

15: in -- in -- in both states.

**Page 00317**

12: Q. (BY MS. THOMPSON) And so under that position,

13: then, who has the authority to restrict groundwater

14: pumping in Texas?

15: MR. HOFFMAN: Objection; lack of

16: foundation.

17: A. Who has the authority?

18: Q. (BY MS. THOMPSON) Yes.

19: A. I don't -- I don't -- it depends on where they

20: are in the state of Texas. Texas -- Texas has

21: groundwater districts scattered all over the state and

22: there -- there is groundwater regulations associated

23: with those groundwater districts.

24: Q. What about in the Rio Grande Basin above

25: Fort Quitman?

**(continued page 00318)**

01: 00318: A. I don't -- I don't recall if there is a

02: groundwater district.

03: Q. And if there is not a groundwater district,

04: then who would have the authority to restrict

05: groundwater pumping in Texas?

06: A. I don't know that there is somebody that has

07: global authority to restrict groundwater pumping.

**Page 00318**

21: Q. (BY MS. THOMPSON) All right. Mr. Settemeyer,

22: I think we're kind of in the home stretch here, so let's

23: keep going. We're looking at now --

24: MS. THOMPSON: Or if you could put up on

25: the screen, Christian, Exhibit 21, please.

**(continued page 00319)**

01: 00319: Q. (BY MS. THOMPSON) All right. Mr. Settemeyer,

02: will you please identify this document for me.

03: A. This appears to be a interoffice memorandum

04: that I wrote to the Commissioners at the TCEQ in 1997.

05: Q. And you have on here, it goes through two

06: other people. Who are those other individuals?

07: A. Kariann Sokulsky was the -- my immediate

08: supervisor of the Surface Water Uses Section. Ken

09: Petersen was the deputy director over the Surface Water

10: Uses Section.

**Page 00321**

15: Q. I was going to ask you about this part in the

16: middle here, the "Discussion of the Problem." But if

17: you want to look at any other section, certainly let me

18: know. I'll just scroll around. Just trying to stay --

19: try to stay within our allotted time here as best I can.

20: So the -- this section, though, "Discussion of

21: the Problem," the first statement here is that "There is

22: no specific quantity or quality of water required to be

23: delivered to Texas at the stateline." And, first, let's

24: start with the quantity. And do you agree that that's

25: true, that there is no specific quantity of water

**(continued page 00322)**

01: 00322: required to be delivered to Texas at the state line?

02: A. That's probably a bad wording by myself on

03: that. There is no specific -- I mean, Texas takes its

04: water deliveries at American Dam and at Mesilla Dam,



05: primarily. And, you know, the -- what I'm -- the  
06: Compact doesn't specifically specify a quantity. It's  
07: been my position all along that the Compact incorporates  
08: the Rio Grande Project and the allocation of water under  
09: the Rio Grande Project to the Texas user.  
10: Q. And the project then determines the quantity  
11: of water required to be delivered to Texas?  
12: A. Un- -- yes, under the -- under -- but, you  
13: know, it's the process of the Rio Grande Project and the  
14: Compact incorporating the Rio Grande Project and  
15: incorporating those deliveries to Texas.

**Page 00325**

09: Q. And then the last statement there: "The  
10: result is that a lower" -- sorry, let me -- let me back  
11: up and just read that full sentence before, to give you  
12: context.  
13: The Bureau requires EP1 to use return flows  
14: from EBID, as well as use the sewage effluent (which  
15: includes groundwater) from the City of El Paso as part  
16: of the Project water. The result is that a lower  
17: quality of water is delivered to EP1 than EBID, who gets  
18: all of its water directly from Elephant Butte Reservoir.  
19: And on that last statement about the lower  
20: quality of water, do you still believe that to be true?  
21: A. I have no reason to believe it's not.

**Page 00330**

04: Q. We talked about this a little bit yesterday.  
05: But then you state here that the "Rio Grande Project  
06: water users enjoyed full allocations of water from 1979

07:                   until 2003." I think yesterday you couldn't recall what

08:                   years. Do you have any reason to doubt that those are

09:                   all full supply years?

10:                   A. No.

## Contact

[www.linkedin.com/in/herman-settemeyer-51b6ab9b](http://www.linkedin.com/in/herman-settemeyer-51b6ab9b) (LinkedIn)

## Top Skills

Research

Water Resources

Water

## APPENDIX D

# Herman Settemeyer

Partner at RSAH2O, LLC  
Castell, Texas

EXHIBIT

Settemeyer 02

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## Summary

Proud Texas Aggie with over 40 years experience in Texas water issues:

- Texas water policy and procedures
- Interstate river compact administration
- Interstate river compact Supreme Court litigation
- International treaty compliance
- Adjudication of Texas' water rights
- Water rights permitting and enforcement
- Texas' member of Association of Western States Engineers
- Western States Water Council participant
- Coordination of issues involving federal agencies - Bureau of Reclamation, Corps of Engineers, U. S. Geological Survey, U. S. Fish and Wildlife Service, International Boundary and Water Commission
- Contracted federal studies through the Corps of Engineers

---

## Experience

### RSAH2O, LLC

Partner

September 2015 - Present (4 years 11 months)

Austin, Texas

Provide consulting expertise on environmental activities primarily related to consultation, assistance, and advice regarding water resources policy, permits, projects, or compliance.

RSAH2O, LLC - Carlos Rubinstein, Principal; Herman Settemeyer, Partner; Ricky Anderson, Partner

### Texas Commission on Environmental Quality

Engineer Advisor - Rio Grande Compact Commission

September 2012 - August 2015 (3 years)

Austin, Texas

- Complete technical analysis required to administer the Rio Grande Compact

## APPENDIX D

- Manage administrative and budget issues for the Rio Grande Compact
- Member of Texas team assembled to conduct research to file Rio Grande Compact Supreme Court litigation v. New Mexico and Colorado
- Member of team that assembled the technical and legal team required to file the Supreme Court litigation and conduct the required technical evaluations
- Provided technical support to administered Rio Grande 1944 Water Treaty and 1906 Convention

### Texas Commission on Environmental Quality

#### Engineer Advisor/Manager

1987 - 2012 (25 years)

Austin, Texas

- Engineer Advisor to the Canadian, Pecos, Red, Rio Grande, and Sabine River Compacts
- Manage administrative, technical, and budget issues required to administer each compact
- Provided technical support to the Pecos and Canadian River Compact Supreme Court litigations
- Member of the Rio Grande Silvery Minnow Recovery Team
- Represented Texas on the Association of Western States Engineers
- Provided technical support to administer the Rio Grande 1944 Water Treaty and the 1906 Convention
- Managed contractual projects related to the Rio Grande with the Corps of Engineers
- Completed the Rio Grande above Fort Quitman adjudication
- Representative on the Edwards Aquifer Recovery Implementation Program
- Provided support and guidance on water right applications
- Served as Section Manager for the Waters Rights Permitting Program
- Served as Team Leader for the Interstate Compacts Team
- Provided support to the National Flood Insurance Program
- Represented Texas' member of Western States Water Council at council meetings

### Texas Water Rights Commission and Subsequent Agencies (TCEQ)

#### Engineer

1975 - 1987 (12 years)

Austin, Texas

- Completed water right adjudications regarding the Bosque, Trinity, Neches, and Red Rivers requiring technical field investigations and testimony at hearings

## APPENDIX D

- Conducted compliance investigations for water right complaints
- Processed applications for water rights

---

## Education

### University of Wyoming

Master's Degree, Agricultural Engineering · (1973 - 1974)

### Texas A&M University

Bachelor of Science, Agricultural Engineering · (1968 - 1972)



November 1995  
AS-79

EXHIBIT

Settemeyer 05

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# Report of the Investigation of Claims of Water Rights in the Upper Rio Grande (above Fort Quitman) Segment of the Rio Grande Basin, Texas

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Agriculture and Watershed Management

---

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

TX\_00281695



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Back to

---

**Report of the Investigation of Claims of Water Rights**  
**in the**  
**Upper Rio Grande (above Fort Quitman) Segment**  
**of the**  
**Rio Grande Basin, Texas**

---

Prepared by the  
**Agriculture and Watershed Management Division**

Project Manager: Herman Settemeyer  
Technical Support: Zack L. Dean  
Kirk Kennedy

Under the Authorization of the  
Texas Natural Resource Conservation Commission  
Order of Adjudication  
August 5, 1994

**Texas Natural Resource Conservation Commission**  
November 1995  
AS-79





**Barry McBee, Chairman**  
**R. B. "Ralph" Marquez, Commissioner**  
**John M. Baker, Commissioner**  
**Dan Pearson, Executive Director**

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*Contact Surface Water Use Section, Interstate Compacts Team, at ☎ (512) 239-4707 for any assistance on any data and/or information contained in this report.*

## TABLE OF CONTENTS

	<u>Page</u>
ORDER OF ADJUDICATION OF AUGUST 5, 1994	iv
INTRODUCTION	vi
GENERAL INSTRUCTIONS	viii
INSTRUCTIONS FOR USE OF REPORT ON STATUTORY WATER RIGHTS AND CLAIMS	ix
RELEVANT DATA AND INFORMATION BY DIVERSION POINT AND TRACT	1
ALPHABETICAL LISTING OF WATER USERS	35

## FIGURES

1. Rio Grande and Facilities Associated with the Upper Rio Grande (above Fort Quitman) Adjudication Segment	vii
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## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AN ORDER of Adjudication of all Claims of Water Rights  
in the Upper Rio Grande (above Fort Quitman, Texas) Segment  
of the Rio Grande Basin

On April 21, 1994, the Executive Director of the Texas Natural Resource Conservation Commission ("Commission") received a request from the El Paso County Water Improvement District Number One to adjudicate the water rights in the Rio Grande from Fort Quitman, Texas to the New Mexico Boundary Line. Documents filed by the El Paso County Water Improvement District Number One indicate that the City of El Paso and the Hudspeth County Conservation and Reclamation District Number One are not opposed to the requested water rights adjudication.

Pursuant to sections 11.304 and 11.305 of the Texas Water Code, and section 275.12 of title 30 of the Texas Administrative Code, the Commission, upon its own motion, has considered the facts and conditions concerning claims of water rights in the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin. The commission finds that an adjudication of these claims of water rights is in the public interest. The segment to be adjudicated is the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin. This segment consists of the Rio Grande River and its tributaries in the United States from the Texas-New Mexico state line downstream to the International Boundary and Water Commission stream flow gaging station near Fort Quitman, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION that it is in the public interest that all claims of water rights within the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin, be adjudicated. The Upper Rio Grande (above Fort Quitman, Texas) Segment is located within all or portions of El Paso and Hudspeth Counties, Texas.

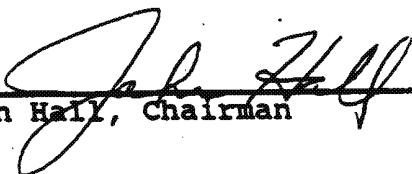
BE IT FURTHER ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION that the Executive Director shall conduct an investigation of above-described area in order to gather relevant data and information essential to the proper understanding of the claimed water rights involved. The results of the investigation will be reduced to a written report and made a matter of record in the commission's office. Maps will be prepared as an appendix to the investigation report which will show with substantial accuracy the relevant portions of the water courses within the Upper Rio Grande (above Fort Quitman, Texas) Segment on which known non-exempt users of state water are located. The

APPENDIX D

appendix to the investigation report shall be a series of maps placed together in a mosaic with original surveys and property lines superimposed thereon, mapping with substantial accuracy the relevant portions of the Upper Rio Grande (above Fort Quitman, Texas) Segment and its tributaries. For information purposes and convenience, a copy of the investigation report, together with its appendix, will be placed in the offices of the County Clerks of El Paso and Hudspeth Counties, Texas, and in the Office of the Texas Natural Resource Conservation Commission in Austin, Texas.

Signed this the 5th day of August, 1994

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION

  
\_\_\_\_\_  
John Hall, Chairman

ATTEST:

  
\_\_\_\_\_  
Gloria Vasquez, Chief Clerk

## INTRODUCTION

By order of August 5, 1994, the Texas Natural Resource Conservation Commission found that an adjudication of water rights and all claims of water rights in the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin would be in the public interest and ordered an investigation and report on water uses in the segment. The adjudication of water rights is a judicial process as set forth in the Texas Water Code by which the validity of statutory water right and/or a claim to use water from a natural stream or water furnished through a ditch or canal are upheld, (or denied), and if upheld the extent of the right is defined. Adjudicated Rights are then certified by issuance of a "Certificate of Adjudication".

The Upper Rio Grande (above Fort Quitman, Texas) consists of the Rio Grande and its tributaries within Texas from the Texas-New Mexico state line downstream to the International Boundary and Water Commission stream flow gaging station near Fort Quitman, Texas (see Figure 1). The Upper Rio Grande Segment is located within all or portions of El Paso and Hudspeth Counties, Texas.

Data and information essential to understanding the statutory water rights and claims of water rights involved are summarized in this report by individual summary listing. The appendix to this report consists of a reference in the form of topographic maps of all applicable areas of the Upper Rio Grande Segment within the purview of the Adjudication Order. General instructions regarding the use of the report and a brief explanation of each statutory water right and claim are also provided.

This report and its Appendix of topographic maps have been compiled in accordance with Section 5a of the Water Rights Adjudication Act of 1967, now codified as Section 11.305 of the Texas Water Code. This report does not describe any new permits, amendments to permits or certified filings, temporary or contractual permits and their amendments, or claims, granted or reinstated after August 1, 1995.



FIGURE 1

Rio Grande and Facilities Associated with the Upper Rio Grande (above Fort Quitman) Adjudication Segment  
vii

## GENERAL INSTRUCTIONS

This investigative report consists of two key parts:

- (1) The summary of statutory water rights and claims.
- (2) The Appendix consisting of topographic maps.

If the name of an owner of a particular water right or claim to a water right is known, that name can be found in the ALPHABETICAL LISTING OF WATER USERS on page 35 wherein reference is made to the page number in the report that contains the descriptive information on the statutory water right or claim. Included within the alphabetical listing and the report are the diversion point and tract numbers as assigned by the Commission staff together with the map page number in the Appendix on which they are located.

## INSTRUCTIONS FOR USE OF REPORT ON STATUTORY WATER RIGHTS AND CLAIMS

Information presented herein is the result of recent investigations of statutory water rights and claims of water rights in the Upper Rio Grande (above Fort Quitman) Segment of the Rio Grande Basin. A clear understanding of each water right or claim may be made by using the data presented in the report in conjunction with the topographic maps of the areas of water use.

An asterisk (\*) denotes information was not available. A note after any section contains remarks pertaining to that section only. Any section in the report may refer to another diversion point (D-\_\_\_\_) or tract (T-\_\_\_\_) for further explanation or data previously supplied.

The data presented in each section are:

### No. 1

#### Diversion Point No. 0050 and 0100

#### Tract No. 0050

The diversion point and tract numbers are Commission staff designations and indicate where State water is diverted and used, respectively. A diversion point number may be assigned to a dam, relift station, canal diversion, or a well. When diversion points and dam locations are unknown, the diversion point number is used as a general reference only. In all cases, the locations are numbered sequentially starting at the most upstream part of the watershed going downstream.

#### Ownership:

John Doe  
Route 9, Box 123  
El Paso, Texas 99999

This represents the name and address of the owner(s) of the permit, certified filing, claim, or non-statutory user of State water.

#### County: El Paso

#### Appendix: Page No. 5

This locates the water use in El Paso County as shown on page 5 of the Appendix.

#### Location:

Diversion Point- A-567 and A-678

Tract- A-678 and A-987

This locates the diversion point in Abstracts (Absts.) 567 and 678 (hereafter referred to as A-\_\_\_\_). The tract is located in all or parts of A-678 and A-987. When a survey lies across a county boundary the Abstract numbers are given for the survey in each county.



**Statutory Appropriation: Permit No. 2222**

If a statutory water right exists (has been granted by the Texas Natural Resource Conservation Commission or one of its predecessor agencies), it will be listed under this line item. **None** indicates that no statutory water right exists.

Purpose of use - irrigation  
 Amount of water- 2,500 acre-feet per year  
 Rate of diversion- 25.0 cfs by gravity  
 No. of acres- 1,000  
 No. of reservoirs- 1; capacity- 500 acre-feet  
 Priority date- August 23, 1950  
 Type of flow- storm and flood  
 Source of water- Rio Grande  
 Partially cancelled- June 3, 1980  
 Amended- May 1, 1975

These items represent the evaluation of the statutory right after partial cancellation or amendment. If not partially cancelled or amended, they show what was originally authorized in a permit, or stated in a certified filing. **Priority date** refers to the date the application for a permit was filed with the Commission or its predecessors, or for a certified filing, the date it was originally filed with the county clerk. If no particular diversion rate is stated, **no rate of diversion specified** is printed.

**Section 11.303 Water Right Claim: 2345**

Nature of claim- riparian and Article 7500a  
 Purpose of use- irrigation  
 Source of water- Rio Grande  
 Diversion by- gravity  
 No. of reservoirs- 2; capacity- 300 acre-feet, each reservoir  
 Area irrigable with existing system- 400 acres  
 Maximum area to be irrigated- 400 acres  
 Date of first beneficial use- 1940  
 Maximums during period 1963 to 1967, inclusive:  
     Amount of water- 200 acre-feet in 1967  
     Rate of diversion- 3.0 cfs in 1965  
     Area irrigated- 100 acres in 1967

The items in this section reflect, as closely as possible, the statements made in the applicable water right claim which was filed in compliance with Section 11.303 of the Texas Water Code. **None** indicates that no claim was filed. Any valid water right claim to which Section 11.303 of the Texas Water Code applies shall be recognized only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967.

**Data From TNRCC Census: January 1995**

Areas declared irrigated:  
     Maximum ever- 100 acres in 1985  
     Maximum 1963 to 1967- 100 acres in 1967

The data in this section was obtained from actual field investigations, interviews and computations by staff. Irrigation data were printed out when available. When irrigation is not a purpose of use,

only the first line of the section is printed.

### Description of System:

#### Diversion:

Type of energy- gravity

Estimated rate- 3.0 cfs

Purpose of use- irrigation

No. of reservoirs- 2; estimated capacity- 300 acre-feet

Diversion is from the Rio Grande by gravity flow into a canal system which delivers the water to two off-channel reservoirs for subsequent release into a canal distribution for delivery to the farm for flood irrigation.

The information in this section was obtained from actual field investigations and interviews by the staff. Unless otherwise noted, the system described was existing on the day of the field investigation. Estimated rate reflects the rate of diversion at the diversion point if known by the operator or estimated by the investigator.

### Survey Information:

Survey	Abst. No.	Class	File No.	Patent Date
Scott	567	BEX PRE	1789	1/12/1867
Evans	678	BEX BTY	2345	7/14/1857
Jones	987	BEX 1st	1234	9/23/1874

This information is included for surveys pertinent to a Section 11.303 Claim.

### Annual Reports of Surface Water Used:

Earliest annual report was for 1918

Maximums reported

Purpose- irrigation

Max. Water used- 300 acre-feet in 1980

Max. Area irrigated- 200 acres in 1980

Max. Diversion rate- 3.0 cfs in 1980

Maximum reported 1963 to 1967

Purpose- irrigation

Max. Water used- 200 acre-feet in 1967

Max. Area irrigated- 100 acres in 1967

Max. Diversion rate- 3.0 cfs in 1965

These data were taken from the Annual Reports of Surface Water Used on file with the Texas Natural Resource Conservation Commission. The reports may have been filed under a Permit (P-\_\_\_\_), a Section 11.303 Claim (C-\_\_\_\_), a Certified Filing (CF-\_\_\_\_), or a Riparian Reporting Number (RN-\_\_\_\_).

### Remarks:

This sub-section includes general remarks. Additional explanatory statements pertaining to a particular section are presented here.

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## RELEVANT DATA AND INFORMATION BY DIVERSION POINT AND TRACT

**No. 1**

**Diversion Point No. 0050, 0100, 0150, 0200, 0250, 0500, 0600**

**Tract No. 0050**

**Ownership:**

El Paso County Water  
Improvement District No. 1  
294 Candelaria Street  
El Paso, Texas 79907

**County:** El Paso and Hudspeth, Texas  
Sierra and Dona Ana, New Mexico

**Appendix:** Pages No. 1, 2, 3,  
4, 5, 6, 7, 8, 9, 10, 11, 12, 13,  
14, 15, 17 and 18

**Location:**

**Diversion Point-**

Elephant Butte Reservoir- Section 30, Township 13 South, Range 3 West  
Caballo Reservoir- Section 19, Township 16 South, Range 4 West  
Percha Dam- Section 36, Township 16 South, Range 5 West  
Leesburg Dam- Section 10, Township 21 South, Range 1 West  
Mesilla Dam- Section 12, Township 24 South, Range 1 East  
American Dam- A-2804  
Riverside Dam- A-214

**Statutory Appropriation:** Permit No. 5433

Certified filing No. 123 and Permit No. 293 owned by El Paso County Water Improvement District No. 1 (EPCWID No. 1) were amended and combined into Permit No. 5433 in September 1993.

**Purpose of use-** irrigation, municipal, industrial, mining, and recreation

**Amount of water-**

- (A) El Paso Country Water Improvement District No. 1 is authorized 376,000 acre-feet per year from the Rio Grande from the following sources:
- 1) All rights which the District acquired or perfected pursuant to Certified Filing No. 123;
  - 2) 67/155 of all water stored in project storage (as defined by the Rio Grande Compact) and legally available for release to Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, plus any additional share of project water obtained through allocation, purchase and/or operation rules, "Project Water" being defined as all water legally dedicated to the Rio Grande Project;
  - 3) Any waters entering Texas in the bed of the Rio Grande from New

- Mexico, including, but not limited to, return flows from New Mexico's use and groundwater discharged into the Rio Grande; and
- 4) Any measurable return flows from the District entering the Rio Grande in Texas above Riverside Dam.
  - (B) Any measurable surface water based effluent, groundwater based effluent or groundwater discharged into the Rio Grande by the District or any other entity with whom the District has entered into legal contract for such water.
  - (C) An average of 1899 acre-feet of water per annum, when averaged over any five-year period, from tributary inflows of the Rio Grande between the Texas/New Mexico state line and Riverside Dam.

Rate of diversion- 1355.0 cfs for water described in (A) and (B)

10.0 cfs for water described in (C)

No. of acres- 69,010 acres

Reservoirs- Elephant Butte Reservoir, Caballo Reservoir, American Dam and Riverside Dam

Priority date- 1914 for water included in (A) and (B)

1918 for water included in (C)

Type of flow- unspecified

Source of water- Rio Grande

Permittee is authorized to sell any of the permitted water surplus to the District's needs for any of the authorized purposes of use in El Paso and Hudspeth Counties.

This permit does not supersede any legal requirement for the protection of environmental water needs pursuant to international treaty, interstate compact, or other applicable law to which permittee is subject irrespective hereof. Nothing in this condition is intended to grant to the state of Texas any authority additional to that provided by law or waive any right of the permittee.

This permit was granted without prejudice to the claims and rights, if any, of the United States in or to the waters and facilities of the Rio Grande Project.

This permit is not intended to in any way compromise or diminish the volume of water which the United States is obligated to provide to Mexico on an annual basis pursuant to the terms of the Convention of May 21, 1906 between the United States and Mexico; nor does the permit grant to the district, for any use whatsoever, any waters to which Mexico is entitled pursuant to the above-referenced 1906 Convention.

**Section 11.303 Water Right Claim:** none

**Data from TNRCC Census 1995:**

Description of System:

The El Paso County Water Improvement District No. 1 (EPCWID No. 1) comprises a 69,010 acre irrigation district in El Paso County. The EPCWID No. 1 has contracted with the U. S. Bureau of Reclamation (Reclamation) for 67/155 of the

water allocated to the Rio Grande Project. Reclamation completed construction of Elephant Butte Dam and Reservoir in 1915. Current project storage capacity is 2,065,000 acre-feet. Caballo Dam and Reservoir was completed in 1938 and provides an additional 231,500 acre-feet of project storage and 100,000 acre-feet of flood control capacity. Elephant Butte and Caballo Reservoirs are located in New Mexico. The remaining 88/155 of project waters are used by the Elephant Butte Irrigation District (EBID) in New Mexico.

Water is released from Elephant Butte and Caballo reservoirs downstream to supply water to the two irrigation districts. The first two diversion dams (Percha Dam and Leasburg Dam) are used by the EBID to deliver water to their irrigation district. The next diversion dam is Mesilla Dam. Mesilla Dam is located in New Mexico but is used to supply irrigation water to both EBID and EPCWID No. 1. American Dam is the next structure downstream on the Rio Grande. It is the first diversion dam in Texas. American Dam diverts water into the Franklin canal system which distributes water to the irrigated farms and the City of El Paso.

The City of El Paso has an intake structure on the Franklin Canal to divert water to their treatment plant. The City has contracted with the irrigation district to pay taxes on lands which have been subdivided within the District in exchange for the water associated with these lands.

Downstream from American Dam a short distance is International Dam. International Dam is used to supply 60,000 acre-feet of water to Mexico pursuant to the International Treaty of 1906. International Dam is the only authorized point of diversion for Mexico upstream of the Fort Quitman stream flow gage.

The last diversion dam used with the Rio Grande Project is Riverside Dam. Water is diverted at Riverside Dam into a canal system for use by EPCWID No. 1 and the City of El Paso.

#### **Annual Reports of Surface Water Used:**

Water use reports for Certified Filing No. 123 were filed beginning in 1916. Reports were filed from 1916 to 1952 by the U. S. Bureau of Reclamation. Since 1953 the reports have been filed by the EPCWID No. 1.

#### **1993 Water Use Reported Under P-5433**

Acre-Feet- 419,014

Acres- 68,388

Water use reports for permit No. 293 were sparsely filed from 1918 until 1950. The only reported use from the Rio Grande was in 1918-1919.

**Remarks:**

Water diverted by the EPCWID No. 1 pursuant to P-5433 (Rio Grande Project Water) is currently used to irrigate:

Section 11.303 Claim No. 40 (T-0100) U. S. Correctional Institution;

Section 11.303 Claim No. 3942 (T-0150) Frank P. Fullerton;

Permit No. 192 (T-0200) G. B. Spence Farms, Inc.; and

Permit No. 270 (T-0250) L. R. Allison.

**No. 2**

**Diversion Point No. 0250 and 0300**

**Tract No. 0100**

**Ownership:**

U. S. Federal Correctional Institute  
La Tuna Box 1000  
Anthony, New Mexico-Texas 88021

**County:** El Paso

**Appendix:** Page No. 6

**Location:**

Diversion Point- A-167  
Tract- A-167

**Statutory Appropriation:** none

**Section 11.303 Water Right Claim: 40**

Nature of claim- unspecified  
Source of water- Rio Grande  
Purpose of use- irrigation  
Maximum amount of water- 812.39 acre-feet in 1967  
Diversion by gravity  
Maximum rate of diversion- 4000 gpm 1963-67  
Maximum area irrigated- 400 acres 1963-67  
No. of reservoirs- Elephant Butte and Caballo Reservoirs  
Mesilla Diversion Dam  
Area irrigable with existing system- 400 acres  
Maximum area to be irrigated- 400 acres  
Date of first beneficial use- 1931

**Data From TNRCC Census: January 1995**

Areas irrigated:

1963-67	* acres
1995	327 acres

**Description of System:**

Diversion:

Type of energy- gravity  
Rate- unknown  
Purpose of use- irrigation  
No. of reservoirs- Elephant Butte and Caballo Reservoirs  
Mesilla Diversion Dam  
The claimed tract of land is located adjacent to the boundaries of the El Paso County



**APPENDIX D**

Water Improvement District No. 1 (EPCWID No. 1). All water used to irrigate the tract has been supplied by the EPCWID No.1 pursuant to the Rio Grande Project. The water is diverted at Mesilla Diversion Dam in New Mexico via arrangement between Elephant Butte Irrigation District and the EPCWID No. 1. The water is conveyed via gravity canals for flood irrigation. Groundwater is also used to irrigate the tract. Some orchards are irrigated via a drip system. The tract does not abut the Rio Grande or any other water course.

**Survey Information:**

Survey No.	Abst. No.	Class	File No.	Patent Date
GC&SF RR CO	167	BEX SCRIP	39176	10-9-1942

**Annual Reports of Surface Water Used:**

Water use reports were filed for 1969-79.

Maximum water reported- 1245.33 acre-feet in 1975

Maximum acres irrigated- 400 acres in 1969 and 79

Maximum diversion rate- 3.37 cfs in 1970

**Remarks:**

Diversion Point No. 0250 is the diversion point at Mesilla Dam used by the EPCWID No. 1 to divert water from the Rio Grande pursuant to the Rio Grande Project. D-0300 is the point on the canal system where water is diverted to the claimed tract.

**No. 3**

**Diversion Point No. 0250 and 0350**

**Tract No. 0150**

**Ownership:**

Frank P. Fullerton

P. O. Box 637

El Paso, Texas 79944

**County:** El Paso

**Appendix:** Page No. 9

**Location:**

Diversion point- A-179

Tract- A-179

**Statutory Appropriation:** none

**Section 11.303 Water Right Claim: 3942**

Nature of claim- contract with El Paso County Water Improvement District No. 1  
(EPCWID No. 1) and Bureau of Reclamation

Source of water- Rio Grande

Purpose of use- irrigation

Maximum amount of water- 4.28 acre-feet in 1963

6.42 acre-feet in 1969

Diversion by gravity

Maximum rate of diversion- unspecified 1963-67

Maximum area irrigated- 2.14 acres 1963-69

No. of reservoirs- 0

Area irrigable with existing system- 2.14 acres

Maximum area to be irrigated- 2.14 acres

Date of first beneficial use- 1918

**Data From TNRCC Census:**

Areas irrigated:

1963-67 2.0 acres

1994 \*

**Description of System:**

Diversion:

Type of energy- gravity

Rate- unknown

Purpose of use- irrigation

No. of reservoirs- 0

The claimed tract of land is located within the boundaries of the EPCWID No. 1. All

**APPENDIX D**

water used to irrigate the tract has been supplied through the District pursuant to the Rio Grande Project. Mr. Fullerton has never independently diverted any water to irrigate this tract. The tract of land does not abut the Rio Grande or any other water course.

**Survey Information:**

Survey No.	Abst. No.	Class	File No.	Patent Date
MG&RR CO	179	BOS SCRIP	1518	12-7-1871

**Annual Reports of Surface Water Used:**

No water use reports have been filed.

**Remarks:**

Tract No. 0150 is located within the boundaries of the EPCWID No. 1 (T-0050). Diversion Point No. 0250 is the diversion point at Mesilla Dam used to divert water from the Rio Grande by the EPCWID No.1 pursuant to the Rio Grande Project. D-0350 is the diversion point at the canal where water is diverted to the farm.

**No. 4**

**Diversion Point No. 0400 and 0450**

**Tract No. None**

**Ownership:**

Southwestern Portland Cement Co.  
P. O. Box 392  
El Paso, Texas 79943

Rio Grande Portland Cement Corporation  
ownership unverified  
2825 W. Paisano Drive  
El Paso, Texas 79922

**County:** El Paso

**Appendix:** Page No. 9

**Location:**

Diversion point- A-2679 and A-2692  
Tract- none

**Statutory Appropriation:** none

**Section 11.303 Water Right Claim: 2474**

Nature of claim- as a riparian owner and as an appropriator of water since acquisition of the properties and commencement of use and/or as a claimant of water rights under the Irrigation Acts of 1889 and 1895 for which no filings were made by the claimant, if required, and as a claimant under the state of Texas.

Source of water- Rio Grande

Purpose of use- industrial, manufacture of portland cement

Maximum amount of water- 178 acre-feet in 1963-67

Maximum rate of diversion- 1600 gpm 1963-67

No. of reservoirs- 1; capacity- 137 acre-feet

Date of first beneficial use- 1910

**Data From TNRCC Census: July 1995**

Potable water is currently purchased from the City of El Paso for use within the industrial plant for cooling water, power plant turbines and cement manufacturing. Historically, water was pumped from the Rio Grande to a reservoir located on a tributary of the Rio Grande and then diverted for use within the plant for manufacturing cement.

**Description of system:**

Diversion: no diversion is currently occurring from the Rio Grande. No diversion facilities were observed.

Purpose of use- industrial

No. of reservoirs- 1; capacity- \* acre-feet

The claim originally applied to a cement manufacturing plant. It appears three entities (Rio Grande Portland Cement, Jobe Concrete Product, Inc. and Southwestern Portland Cement Company) are currently involved in some type of concrete manufacturing process through lease arrangements and agreements. The reservoir was observed during the investigation and it was indicated that it was on land owned by Southwestern Portland Cement Company. No one interviewed had specific knowledge as to the amounts of water diverted during the 1963-1967 period.

**Survey Information:**

Survey No.	Abst. No.	Class	File No.	Patent Date
Schertz	2692	BEX PRE	6520	3-8-1888
Morago	2679	BEX PRE	6523	3-23-1894
Barker	7	BEX 2ND	549	9-29-1856

**Annual Reports of Surface Water Used:**

Water use reports were filed in 1955 and from 1969 through 1979.

Maximum reported use- 552.6 acre-feet in 1955

178 acre-feet were reported used each year from 1969-74

**Remarks:**

The original cement plant facility appears to be located in Abstract No. 7.

**No. 5**

**Diversion Point No. 0500, 0550, 0600 and 0650**

**Tract No. None**

**Ownership:**

City of El Paso  
Water Utilities  
Public Service Board  
P. O. Box 511  
El Paso, Texas

**County:** El Paso

**Appendix:** Pages No. 9 and 13

**Location:**

Diversion point- A-2804, A-214 and A-7

**Statutory Appropriation: Permit No. 1535C**

Purpose of use- municipal and domestic  
Amount of water- 11,000 acre-feet per year  
Rate of diversion- 5,000 cfs  
No. of reservoirs- 0  
Priority date- November 1, 1948  
Type of flow- return and flood waters  
Source of water- Rio Grande

Permit No. 1535 was granted May 10, 1950 to the City of El Paso. Permittee was authorized to divert 27,000 acre-feet of the unappropriated storm, flood and return waters of the Rio Grande for municipal and domestic purposes. Permittee was authorized to impound 16,000 acre-feet of the 27,000 acre-feet per annum in an off-channel storage reservoir having a capacity of 3,000 acre-feet.

Permit No. 1535A was granted September 10, 1963 and amended P-1535 to change the location of the storage reservoir and authorize the 5,000 cfs diversion capacity of Riverside Canal. Water exchanges between the stored water and Rio Grande Project operated by the Bureau of Reclamation were authorized.

Permit No. 1535B was granted August 25, 1969 and amended 1535A to delete the requirement to construct a 3,000 acre-foot off-channel reservoir. The right to divert water was reduced to 11,000 acre-feet per annum.

Permit No. 1535B was amended by 1535C on September 8, 1993 as shown above.

**Section 11.303 Water Right Claim:** none

**Data From TNRCC Census January 1995:**

The City of El Paso Public Service Board uses a combination of ground water and surface water to supply the water demands of the City of El Paso. Currently surface water comprises 42%, while ground water comprises 58% of the total water used. The ground water comes from the Mesilla Basin (16%) and the Hueco Basin (42%).

All surface water is acquired through contracts with the El Paso County Water Improvement District No. 1 (EPCWID No. 1). The City and the District have a contractual arrangement whereby the City pays the District's taxes on lands urbanized and taken out of farming in return for the water allotments associated with each tract. The City owns 2,000 acres with water allotments and leases 8,000 additional acres.

The City began using surface water in 1943 and has steadily increased the amounts of surface water used. All surface water used is treated and used for municipal purposes. The city operates three water treatment plants, the Elmwood Umbenhauger and W. R. Robinson plant (20 mgd each) and the Jonathan Rogers Plant (40 mgd).

**Description of System:**

**Diversion:**

Water is diverted from the Franklin Canal operated by the EPCWID No. 1 for treatment at the Robertson and Umbenhauger plants and from the Riverside Canal (also operated by the EPCWID No. 1) for treatment at the Jonathan Rogers Plant.

Water is diverted by the EPCWID No. 1 from the Rio Grande into the Franklin Canal at American Dam and into the Riverside Canal at Riverside Dam. Diversion Point No. 0500 represents the diversion point at American Dam used to divert water for the City by the EPCWID No.1.

D-0600 represents the diversion point at Riverside Dam used by the District to divert water for the City. D-0550 represents the diversion point on the Franklin Canal used by the City to divert water to the Robertson/Umbenhauger Water Treatment Plants. D-0650 represents the diversion point on the Riverside Canal used to divert water to the Jonathan Rogers Water Treatment Plant.

Purpose of use- municipal

No. of reservoirs- 0

**Annual Reports of Surface Water Used:**

Water use reports have been filed since 1953.

Maximum reported use- 28,062 acre-feet in 1990

No diversion rate was reported.

The reports indicate a general increase in surface water use.

Ground water use has also been reported.

**Remarks:**

The City of El Paso has implemented an extensive water conservation program to sustain their water supplies. The City is actively participating in the New Mexico-Texas Water Commission, a regional water planning initiative, to develop future water supplies for the region.



**No. 6**

**Diversion Point No. 0700**

**Tract No. None**

**Ownership:**

Indian Cliffs Ranch, Inc.

P. O. Box 1065

Fabens, Texas 79838

**County:** El Paso

**Appendix:** Page No. 16

**Location:**

Diversion Point- A-2038

**Statutory Appropriation:** Permit No. 3544

Purpose of use- recreation

Amount of water- impoundment only

No. of reservoirs- 1; capacity- 52 acre-feet

Priority date- October 11, 1977

Source of water- San Felipe Arroyo and groundwater

**Section 11.303 Water Right Claim:** none

**Data From TNRCC Census 1995:**

Indian Cliffs Ranch, Inc. maintains a dam and reservoir on an unnamed tributary of San Felipe Arroyo. The impoundment is used for recreational purposes associated with a restaurant and entertainment park. Ground water is diverted into the reservoir during times of low runoff. The reported actual reservoir capacity is 16 acre-feet instead of 52 acre-feet.

**Description of System:**

Diversion:

No diversion occurs from the reservoir.

Purpose of use- recreation

No. of reservoirs- 1; capacity- 16 acre-feet

**Annual Reports of Surface Water Used:**

Water use reports were filed by Indian Cliffs Ranch, Inc. beginning in 1979. Various amounts of water use are indicated on the reports. This appears to represent evaporation loss which is replaced by ground water pumping.

**Remarks:**

D-0700 represents the location of the dam on an unnamed tributary of San Felipe Arroyo. It appears that the permit incorrectly lists the dam and reservoir as being on San Felipe Arroyo.

**No. 7**

**Diversion Point No. 0500, 0600 and 0750**

**Tract No. 0200**

**Ownership:**

G. B. Spence Farms, Inc.

P. O. Box 553

Fabens, Texas 79838

**County:** El Paso

**Appendix:** Page No. 17 and 18

**Location:**

Diversion point- University Land, Survey 3, Block L

Tract- University Land, Surveys No. 6, 7, 8, and 9, Block L

Note: no abstract numbers exist for University Lands as per General Land Office.

**Statutory Appropriation:** Permit No. 192

Purpose of use- irrigation

Amount of water- 2,220 acre-feet per year

Rate of diversion- 25.0 cfs

No. of acres- 740

No. of reservoirs- 0

Priority date- April 2, 1917

Type of flow- unspecified

Source of water- Rio Grande

**Section 11.303 Water Right Claim:** none

**Data From TNRCC Census 1995:**

Areas irrigated:

Tract No. 0200 is located within the boundaries of the El Paso County Water Improvement District No. 1 (EPCWID No. 1). The EPCWID No. 1 owns Permit No. 5433 (See D-0050). The water currently used to irrigate this tract is obtained through the EPCWID No. 1.

Mr. John Spence and Mrs. G. B. Spence did not know if water had been diverted from the Rio Grande independent of the EPCWID No. 1 to irrigate this tract of land. Mr. Spence indicated that the Rio Grande rectification project was completed in the mid 1940's. This project rechanneled the Rio Grande away from its normal course and consequently, the original authorized diversion point on the old channel of the Rio Grande is no longer on the river. It is likely that no diversions have occurred from the Rio Grande since the rectification project.

Pecans and cotton are the primary crops currently grown on this tract with water obtained through the EPCWID No. 1. The entire tract appears to be irrigated with the exception of roads, canals, and other minor outages. The irrigated area is approximately 600 to 700 acres.

**Description of System:**

Diversion:

Type of energy- gravity system of canals and laterals for flood irrigation.

Rate- unknown

Purpose of use- irrigation

No. of reservoirs- 0

Water is delivered to the tract via the EPCWID No. 1 Tornillo Canal System. Diversion Point No. 0750 represents the original diversion point as authorized on the Rio Grande before the river was channelized. Currently, water is diverted by the EPCWID No 1 at American Dam (D-0500) and Riverside Dam (D-0600) to irrigate this tract (T-0200). Tract No. T-0200 is within the boundaries of the EPCWID No. (T-0050).

**Annual Reports of Surface Water Used:**

Mr. W. J. Stahmann reported the diversion of 2500 acre-feet of water to irrigate 500 acres in 1917. No reports were filed again until 1946 when Robert Hoover acquired the property. Mr. Hoover periodically reported water use. The reports indicated the water was from Elephant Butte Reservoir. Elephant Butte Reservoir is the source of the Rio Grande Project Water used by the EPCWID No. 1. The reports filed by G. B. Spence indicate water was delivered from the EPCWID No. 1.

**Remarks:**

Mr. G. B. Spence is on the board of directors of the EPCWID#1.

**No. 8**

**Diversion Point No. 0500, 0600 and 0800**

**Tract No. 0250**

**Ownership:**

L. R. Allison  
P. O. Box 137  
Tornillo, Texas 79853

**County:** El Paso

**Appendix:** Page No. 18

**Location:**

Diversion point- University Land, Survey 9, Block L  
Tract- A-26 and A-27

Note: No abstract numbers exist for University Lands as per General Land Office.

**Statutory Appropriation:** Permit No. 270

Purpose of use- irrigation  
Amount of water- 6,000 acre-feet per year  
Rate of diversion- 60.0 cfs  
No. of acres- 2000  
No. of reservoirs- 0  
Priority date- March 16, 1918  
Type of flow- unspecified  
Source of water- Rio Grande

**Section 11.303 Water Right Claim:** none

**Data From TNRCC Census 1995:**

**Areas irrigated:**

Tract No. 0250 is located within the boundaries of the El Paso County Water Improvement District No. 1 (EPCWID No 1). The EPCWID No. 1 owns Permit No. 5433 (See D-0050). The water currently used to irrigate this tract is obtained through the EPCWID No. 1.

Mr. James Porter (property manager) did not know how much water had been diverted from the Rio Grande independent of the EPCWID No. 1 water used to irrigate this tract of land. Mr. Porter indicated that he understood that many years ago, water was diverted from the Rio Grande at the point on the old channel where the diversion point appears to be authorized.

The Rio Grande rectification project was completed in the mid 1940's. This project rechanneled the Rio Grande away from its normal course and consequently, the original authorized diversion point on the old channel of the Rio Grande is no longer

on the river. It is likely that no diversions have occurred from the Rio Grande since the rectification project.

Pecans and cotton are the primary crops currently grown on this tract with water obtained through the EPCWID No. 1. The entire tract appears to be irrigated with the exception of roads, canals, and other minor outages. The irrigated area is approximately 1500 acres.

Four groundwater wells are used to supply water during periods when the supply from EPCWID No. 1 is insufficient. The wells are located near the Rio Grande and are shallow (approximately 40 feet deep). It is likely that they could divert underflow of the Rio Grande when they are operating.

#### **Description of System:**

##### **Diversion:**

Type of energy- gravity system of canals and laterals for flood irrigation

Rate- unknown

Purpose of use- irrigation

No. of reservoirs- 0

Water is delivered to the tract via the EPCWID No. 1 canal system. Diversion Point No. 0800 represents the original diversion point as authorized on the Rio Grande before the river was channelized. Currently, water is diverted by the EPCWID No. 1 at American Dam (D-0500) and Riverside Dam (D-0600) to irrigate this tract (T-0250). Tract No. T-0250 is within the boundaries of the EPCWID No.1 (T-0050).

#### **Annual Reports of Surface Water Used:**

No water use reports were filed by the original owner, Mr. W. Brandenburg, et al. The first report was filed in 1943 by Mr. L. R. Allison. Mr. Allison has filed reports since that date indicating some surface and groundwater use. It is likely that the surface water used was delivered from the EPCWID No. 1.

#### **Remarks:**

Mr. Porter indicated that he knew of some individuals who may have knowledge of water use from the Rio Grande at the authorized diversion point prior to the rectification project. Diversion Point No. 0800 represents the original diversion point as authorized on the Rio Grande before the river was channelized. Currently, water is diverted by the EPCWID No. 1 at American Dam (D-0500) and Riverside Dam (D-0600) to irrigate this tract (T-0250). Tract No. T-0250 is within the boundaries of the EPCWID No. 1 (T-0050).

**No. 9**

**Diversion Point No. 0850 and 0900**

**Tract No. 0300**

**Ownership:**

Hudspeth County Conservation and  
Reclamation District No. 1  
P. O. Box 125  
Fort Hancock, Texas 79839

**County:** El Paso and Hudspeth

**Appendix:** Pages No. 19, 21, 22, 23  
and 25

**Location:**

Diversion point- A-26 and A-1773

**Statutory Appropriation:** Permit No. 236A

Purpose of use- irrigation  
Amount of water- 27,000 acre-feet per year  
Rate of diversion- 400.0 cfs  
No. of acres- 9000  
No. of reservoirs- 0  
Priority date- November 22, 1917  
Amendment filed- April 30, 1993  
Type of flow- normal flow  
Source of water- Rio Grande

**Section 11.303 Water Right Claim:**

See Claims No. 3215, 3216, 3217, 3218 and 3219 (D-1500, D-1400, D- 0950, D-1250 and D- 1150, respectively)

**Data From TNRCC Census January 1995:**

Tract No. 0300 encompasses the boundaries of the Hudspeth County Conservation and Reclamation District No. 1 (HCCRD No. 1). HCCRD No.1 uses a complex system of canals and drains to collect return flows from the El Paso County Water Improvement District No. 1 (EPCWID No. 1) and diverts water from two locations on the Rio Grande (D-0850 and D-0900).

Ground water can also be used to irrigate the District lands. HCCRD No. 1 has entered into a "Warren Act" type contract with the Bureau of Reclamation to use return flows from the Rio Grande Project (EPCWID No. 1). Two off-channel regulating reservoirs are used within the system.

The HCCRD No. 1 canal system is integrated with the EPCWID No. 1 canals and drains to collect return and drain flows from the EPCWID No. 1. Also, water is diverted by the HCCRD No. 1 from the Rio Grande. This water is diverted into the canal distribution system. As the system collects the water, it is stored in the regulating off-channel reservoirs for subsequent use. A system of drains are used to return excess flows to the Rio Grande.

HCCRD No. 1 owns Section 11.303 Claims No. 3218, 3215, 3217, 3216, and 3219 which apply to Soil Conservation Service (SCS) flood control reservoirs on tributaries of the Rio Grande. The reservoirs are located outside the HCCRD No. 1 boundaries. However, water stored in these reservoirs has been released down the tributaries which enter the HCCRD No. 1's canal system. Thence, the water is collected and diverted into the canal system for irrigation of HCCRD#1 lands. Use of water in this manner has not occurred for several years.

All use of water within the District is for irrigation purposes. Cotton and pasture land are the primary crops within HCCRD No. 1.

The two off-channel regulating reservoirs have capacities of 2,500 and 1,000 acre-feet of water.

**Annual Reports of Surface Water Used:**

Water use reports have been filed regularly by HCCRD No. 1 since 1939. The original owner of the permit did not report any water use, however reports were only filed in 1918 and 1919.

Maximum water reported- 119,740 acre-feet in 1946  
Maximum acreage irrigated- 18,330 acres in 1954-55

The water use reported appears to include groundwater, return flows from the Rio Grande Project and diversions from the Rio Grande.

**Remarks:**

Diversion Point No. 0850 is located within the boundaries of the EPCWID No. 1. Tract No. 0300 represents the boundaries of the Hudspeth County Conservation and Reclamation District No. 1.

The tracts of land associated with Section 11.303 Claims No. 3218, 3215, 3217, 3216, and 3219 are primarily within the boundaries of the permit 236A (T-0300).

**No. 10**

**Diversion Point No. 0950, 1000, 1050 and 1100**

**Tract No. 0350**

**Ownership:**

Hudspeth County Conservation and  
Reclamation District No. 1  
P. O. Box 125  
Fort Hancock, Texas 79839

**County:** Hudspeth

**Appendix:** Pages No. 20, 21 and 22

**Location:**

Diversion point- A-5115, A-199, A-3402 and A-380  
Tract- A-380, A-699, A-1187, A-1286, A-1746, A-1772, A-1773, A-1774,  
A-1775, A-1776, A-1777, A-1778, A-1779, A-1780, A-1781, A-1782, A-1783,  
A-1784, A-1785, A-1786, A-2280, A-2539, A-2854, A-2855, A-2856, A-2857,  
A-5748 and A-5881

**Statutory Appropriation:** See Permit No. 236A (D-0850)

**Section 11.303 Water Right Claim: 3217**

Nature of claim- Article 7500a Revised Civil Statutes of Texas  
Source of water- Alamo Arroyo  
Purpose of use- irrigation  
Maximum amount of water- 600 acre-feet in 1963-67  
Diversion- gravity  
Maximum rate of diversion- unspecified 1963-67  
Maximum area irrigated- 1800 acres 1963-67  
No. of reservoirs- 3; capacity 200 acre-feet each (600 acre-feet)  
Area irrigable with existing system- 3682 acres  
Maximum area to be irrigated- 1800 acres  
Date of first beneficial use- July, 1962

**Data From TNRCC Census:**

Areas irrigated:

1963-67	unknown
1994	0

**Description of System:**

Diversion:

Type of energy- gravity  
Rate- unknown  
Purpose of use- irrigation



# APPENDIX D

No. of reservoirs- 3; estimated capacity 600 acre-feet (200 acre-feet each)

Three SCS flood control dams and reservoirs are located on Alamo Arroyo with capacities of 200 acre-feet each. Water is released by gravity from each of the reservoirs down Alamo Arroyo to a ponding area where the Alamo control structure releases water into the Hudspeth canal system for distribution throughout portions of the District. Water used pursuant to this claim is combined with water diverted under Permit No. 236A. Water is only released from the reservoirs during years when sufficient rainfall occurs to impound water during the irrigation season. No water had been released from the reservoirs for several years. Diversion Point No. 0950 designates Alamo Arroyo Dam and Reservoir No. 1; D-1000 designates Alamo Arroyo Dam and Reservoir No. 2; and D-1050 designates Alamo Arroyo Dam and Reservoir No. 3. D-1100 designates the point on Alamo Arroyo where the water is diverted into the Hudspeth County Conservation and Reclamation District No. 1's canal system.

## Survey Information:

Survey No.	Abst. No.	Class	File No.	Patent Date
BBB&C RR CO	380	BEX SCRIP	837	6-19-1873
Duggan,	699	BEX SCRIP	1379	8-10-1869
Hemley, M	1187	SCHOOL	104494	2-17-1940
Hubbard, J	1286	BEX 1ST	1514	3-27-1877
Mason, A	1746	BEX 1ST	1380	8-9-1869
Maverick, S	1772	BEX SCRIP	851	4-10-1873
Maverick, S	1773	BEX SCRIP	852	4-10-1873
Maverick, S	1774	BEX SCRIP	853	10-17-1860
Maverick, S	1775	BEX SCRIP	855	10-17-1860
Maverick, S	1776	BEX SCRIP	854	10-17-1860
Maverick, S	1777	BEX SCRIP	856	10-18-1860
Maverick, S	1778	BEX SCRIP	857	10-18-1860
Maverick, S	1779	BEX SCRIP	858	4-14-1873
Maverick, S	1780	BEX SCRIP	859	4-11-1873
Maverick, S	1781	BEX SCRIP	860	4-16-1873
Maverick, S	1782	BEX SCRIP	861	4-12-1873
Maverick, S	1783	BEX SCRIP	862	10-19-1860
Maverick, S	1784	BEX SCRIP	863	10-19-1860
Maverick, S	1785	BEX SCRIP	865	4-11-1873
Maverick, S	1786	BEX SCRIP	864	4-12-1873
Ortiz, R	2280	BEX 1ST	1381	4-18-1873
Robinson, W	2539	SCHOOL	60486	6-9-1920
T&P RR CO	2854	BEX SCRIP	27750	6-5-1889
T&P RR CO	2855	BEX SCRIP	27748	6-12-1889
T&P RR CO	2856	BEX SCRIP	27747	5-4-1883
T&P RR CO	2857	BEX SCRIP	27746	6-12-1889
Davis, L	5748	SCHOOL	148750	11-20-1946

APPENDIX D

Survey No.	Abst. No.	Class	File No.	Patent Date
Ashton, T.J.	5881	SCHOOL	151196	10-8-1958

**Annual Reports of Surface Water Used:**

No water has been reported used since 1973. The maximum reported water use under Claim No. 3217 was 14,594 acre-feet in 1972 when 2750 acres were reported irrigated. Water from Permit No. 236A or return flows from the EPCWID No. 1 may have been included in this total.

**Remarks:**

Alamo Arroyo Dams and Reservoirs No. 1 and 3 are located on land owned by Betty and John McGuire. Alamo Arroyo Dam No. 2 and Reservoir No. 2 are located on land owned by the Texas General Land Office.

Hudspeth County Conservation and Reclamation District No. 1, Hudspeth County Commissioners Court and the Soil Conservation Service are the participating sponsors for the structures. The District is responsible for the annual maintenance on the structures.

Tract No. 0350 is located almost entirely within the boundaries of Permit No. 236A (T-0300). T-0350 was derived from plats filed with the original claim. T-0350 overlaps into Section 11.303 Claim No. 3219 (T-0400).

**No. 11**  
**Diversion Point No. 1150 and 1200**  
**Tract No. 0400**

**Ownership:**

Hudspeth County Conservation and  
 Reclamation District No. 1  
 P. O. Box 125  
 Fort Hancock, Texas 79839

**County:** Hudspeth

**Appendix:** Pages No. 22 and 23

**Location:**

Diversion point- A-2464 and A-1786  
 Tract- A-381, A-1746, A-1785, A-1786, A-1787, A-1788, A-1789, A-1790, A-2280 and  
 A-2857

**Statutory Appropriation:** See Permit No. 236A (D-0850)

**Section 11.303 Water Right Claim: 3219**

Nature of claim- Article 7500a Revised Civil Statutes of Texas  
 Source of water- Camp Rice Arroyo  
 Purpose of use- irrigation  
 Maximum amount of water- 200 acre-feet in 1963-67  
 Diversion- gravity  
 Maximum rate of diversion- 40 cfs 1963-67  
 Maximum area irrigated- 600 acres 1963-67  
 No. of reservoirs- 1; capacity 200 acre-feet  
 Area irrigable with existing system- 1987 acres  
 Maximum area to be irrigated- 600 acres  
 Date of first beneficial use- July, 1963

**Data From TNRCC Census:**

Areas irrigated:	
1963-67	unknown
1994	0

**Description of System:**

Diversion:  
 Type of energy- gravity  
 Rate- unknown  
 Purpose of use- irrigation  
 No. of reservoirs- 1; estimated capacity 200 acre-feet  
 A SCS flood control dam and reservoir is located on Camp Rice Arroyo with a capacity of

## APPENDIX D

200 acre-feet. Water is released by gravity from the reservoir down Camp Rice Arroyo to a ponding area where a control structure releases water into the Hudspeth canal system for distribution throughout portions of the District. Water used pursuant to this claim is combined with water diverted under Permit No. 236A.

Water is only released from the reservoir during years when sufficient rainfall occurs to impound water during the irrigation season. No water has been released from the reservoir for several years.

Tract No. 0400 is located entirely within the boundaries of Permit No. 236A (T-0300). T-0400 was derived from plats filed with the original claim. T-0400 overlaps into Section 11.303 Claims No. 3217 (T-0350) and 3218 (T-0450).

### Survey Information:

Survey No.	Abst. No.	Class	File No.	Patent Date
BBB&C RR CO	381	BEX SCRIP	838	6-24-1873
Mason, A	1746	BEX 1ST	1380	8-9-1869
Maverick, S	1785	BEX SCRIP	865	4-11-1873
Maverick, S	1786	BEX SCRIP	864	4-12-1873
Maverick, S	1787	BEX SCRIP	866	4-12-1873
Maverick, S	1788	BEX SCRIP	867	10-12-1860
Maverick, S	1789	BEX SCRIP	868	4-16-1873
Maverick, S	1790	BEX SCRIP	869	4-15-1873
Ortiz, R	2280	BEX 1ST	381	4-18-1873
T&P RR CO	2857	BEX SCRIP	27746	6-12-1889

### Annual Reports of Surface Water Used:

No water has ever been reported used.

### Remarks:

Camp Rice Dam and Reservoir are located on land owned by the Texas General Land Office. Hudspeth County Conservation and Reclamation District No. 1, Hudspeth County Commissioners Court and the Soil Conservation Service are the participating sponsors for the structures. The District is responsible for the annual maintenance on the structures.

Diversion Point No. 1150 designates Camp Rice Arroyo Dam and Reservoir. D-1200 designates the point on Camp Rice Arroyo where the water is diverted into the Hudspeth County Conservation and Reclamation District No. 1's canal system.

**No. 12**

**Diversion Point No. 1250, 1300, and 1350**

**Tract No. 0450**

**Ownership:**

Hudspeth County Conservation and  
Reclamation District No. 1  
P. O. Box 125  
Fort Hancock, Texas 79839

**County:** Hudspeth

**Appendix:** Pages No. 22, 23 and 24

**Location:**

Diversion point- A-5678, A-3369 and A-700  
Tract- A-381, A-700, A-1745, A-1786, A-1787, A-1788, A-1789, A-1790,  
A-1791, A-1792, A-1793, A-1794, A-1794, A-1795, A-1796, A-1797,  
A-1798, A-1799, A-1800, A-1801, A-1802, A-2280, A-2859, A-2860, and A-6075

**Statutory Appropriation:** See Permit No. 236A (D-0850)

**Section 11.303 Water Right Claim: 3218**

Nature of claim- Article 7500a Revised Civil Statutes of Texas  
Source of water- Diablo Arroyo  
Purpose of use- irrigation  
Maximum amount of water- 1032 acre-feet in 1963-67  
Diversion- gravity  
Maximum rate of diversion- 118.8 cfs 1963-67  
Maximum area irrigated- 1432 acres 1963-67  
No. of reservoirs- 2; capacity 200 acre-feet each (400 acre-feet)  
Area irrigable with existing system- 4046 acres  
Maximum area to be irrigated- 600 acres  
Date of first beneficial use- July, 1962

**Data From TNRCC Census:**

Areas irrigated:

1963-67	unknown
1994	0

**Description of System:**

Diversion:

Type of energy- gravity  
Rate- unknown  
Purpose of use- irrigation  
No. of reservoirs- 2; estimated capacity 400 acre-feet (200 acre-feet each)

## APPENDIX D

Two SCS flood control dams and reservoirs are located on Diablo Arroyo with capacities of 200 acre-feet each. Water is gravity released from each of the reservoirs down Diablo Arroyo to a ponding area where the Diablo control structure releases water into the Hudspeth canal system for distribution throughout portions of the District.

Water used pursuant to this claim is combined with water diverted under Permit No. 236A. Water is only released from the reservoirs during years when sufficient rainfall occurs to impound water during the irrigation season. No water has been released from the reservoirs for several years.

Diversion Point No. 1250 designates Diablo Arroyo Dam and Reservoir No. 1 and D-1300 designates Diablo Arroyo Dam and Reservoir No. 2. D-1350 designates the point on Diablo Arroyo where the water is diverted into the Hudspeth County Conservation and Reclamation District # 1's canal system.

### Survey Information:

Survey No.	Abst. No.	Class	File No.	Patent Date
BBB&C RR CO	381	BEX SCRIP	838	6-24-1873
Duggan, M	700	BEX 1ST	1379	8-10-1869
Mason, A	1745	BEX 1ST	1380	10-28-1861
Maverick, S	1786	BEX SCRIP	864	4-12-1873
Maverick, S	1787	BEX SCRIP	866	4-12-1873
Maverick, S	1788	BEX SCRIP	867	10-19-1860
Maverick, S	1789	BEX SCRIP	868	4-16-1873
Maverick, S	1790	BEX SCRIP	869	4-15-1873
Maverick, S	1791	BEX SCRIP	870	10-19-1860
Maverick, S	1792	BEX SCRIP	871	4-11-1873
Maverick, S	1793	BEX SCRIP	872	10-19-1860
Maverick, S	1794	BEX SCRIP	873	10-19-1860
Maverick, S	1795	BEX SCRIP	874	4-14-1873
Maverick, S	1796	BEX SCRIP	875	4-11-1873
Maverick, S	1797	BEX SCRIP	876	4-11-1873
Maverick, S	1798	BEX SCRIP	877	10-19-1860
Maverick, S	1799	BEX SCRIP	878	4-11-1873
Maverick, S	1800	BEX SCRIP	879	4-12-1873
Maverick, S	1801	BEX SCRIP	880	4-12-1873
Maverick, S	1802	BEX SCRIP	881	4-12-1873
Ortiz, R	2280	BEX 1ST	1381	4-18-1873
T&P RR CO	2859	BEX SCRIP	27744	6-6-1889
T&P RR CO	2860	BEX SCRIP	27743	6-6-1889
Ivey, R.C.	6075	SCHOOL	152772	9-19-1951

**Annual Reports of Surface Water Used:**

No water has been reported used since 1973. The maximum reported water use under Claim No. 3218 was 6,000 acre-feet in 1970 when 4000 acres were reported irrigated. Water from Permit No. 236A or return flows from the El Paso County Water Improvement District No. 1 may have been included in this total.

**Remarks:**

Diablo Dams and Reservoirs No. 1 and 2 are located on land owned by the Texas General Land Office. Hudspeth County Conservation and Reclamation District No. 1, Hudspeth County Commissioners Court and the Soil Conservation Service are the participating sponsors for the structures. The District is responsible for the annual maintenance on the structures.

Approximately 60-70% of Tract No. 0450 is located within the boundaries of Permit No. 236A (T-0300). T-0450 was derived from plats filed with the original claim. T-0450 overlaps into Section 11.303 Claim No. 3219 (T-0400).

**No. 13**

**Diversion Point No. 1400 and 1450**

**Tract No. 0500**

**Ownership:**

Hudspeth County Conservation and  
Reclamation District No. 1  
P. O. Box 125  
Fort Hancock, Texas 79839

**County:** Hudspeth

**Appendix:** Pages No. 23, 24 and 25

**Location:**

Diversion Point- A-2242 and A-1745  
Tract- A-1745, A-2861, A-2862 and A-3718

**Statutory Appropriation:**

See Permit No. 236A (D-0850)

**Section 11.303 Water Right Claim: 3216**

Nature of claim- Article 7500a Revised Civil Statutes of Texas

Source of water- Madden Arroyo

Purpose of use- irrigation

Maximum amount of water- 200 acre-feet in 1963-67

Diversion- gravity

Maximum rate of diversion- 50 cfs 1963-67

Maximum area irrigated- 600 acres 1963-67

No. of reservoirs- 1; capacity 200 acre-feet

Area irrigable with existing system- 1277 acres

Maximum area to be irrigated- 600 acres

Date of first beneficial use- July, 1963

**Data From TNRCC Census:**

Areas irrigated:

1963-67	unknown
1994	0

**Description of System:**

Diversion:

Type of energy- gravity

Rate- unknown

Purpose of use- irrigation

No. of reservoirs- 1; estimated capacity 200 acre-feet

A SCS flood control dam and reservoir is located on Madden Arroyo with a capacity



of 200 acre-feet. Water is gravity released from the reservoir down Madden Arroyo to a ponding area where the Madden control structure releases water into the Hudspeth canal system for distribution throughout portions of the District.

Water used pursuant to this claim is combined with water diverted under Permit No. 236A. Water is only released from the reservoir during years when sufficient rainfall occurs to impound water during the irrigation season. No water has been released from the reservoir for several years.

Diversion Point No. 1400 designates Madden Arroyo Dam and Reservoir. D-1450 designates the diversion point on Madden Arroyo where the water is diverted into the Hudspeth County Conservation and Reclamation District No. 1's canal system.

**Survey Information:**

Survey No.	Abst. No.	Class	File No.	Patent Date
Mason	1745	BEX 1ST	1380	10-28-1861
T&P RR CO	2861	BEX SCRIP	27742	6-6-1889
T&P RR CO	2862	BEX SCRIP	27741	6-8-1889
Cathy, G	3718	SCHOOL	127310	6-24-1968

**Annual Reports of Surface Water Used:**

No water has been reported used since 1972. The maximum reported water use under Claim No. 3216 was 25,000 acre-feet in 1971. Water from Permit No. 236A or return flows from the El Paso Country Water Improvement District No. 1 (EPCWID No. 1) may have been included in this total.

**Remarks:**

Madden Arroyo Dam and Reservoir are located on land owned by Sierra Blanca Ranch Association. Hudspeth County Conservation and Reclamation District No. 1, Hudspeth County Commissioners Court and the Soil Conservation Service are the participating sponsors for the structures. The District is responsible for the annual maintenance on the structures.

Tract No. 0500 is located almost entirely within the boundaries of Permit No. 236A (T-0300). T-0500 was derived from plats filed with the original claim.

**No. 14**

**Diversion Point No. 1500 And 1550**

**Tract No. 0550**

**Ownership:**

Hudspeth County Conservation and  
Reclamation District No. 1  
P. O. Box 125  
Fort Hancock, Texas 79839

**County:** Hudspeth

**Appendix:** Page No. 25

**Location:**

Diversion Point- A-5344 and A-129

Tract- A-129, A-1810, A-1811, A-1812, A-1813, A-1814, A-1815, A-1816, A-1834,  
A-1835, A-1836, A-1837, A-1838, A-1839, A-2424, A-2863, A-2864, A-3903,  
A-5704 and A-5705

**Statutory Appropriation:** See Permit No. 236A (D-0850)

**Section 11.303 Water Right Claim: 3215**

Nature of claim- Article 7500a Revised Civil Statutes of Texas

Source of water- Macho Arroyo

Purpose of use- irrigation

Maximum amount of water- 200 acre-feet in 1963-67

Diversion- gravity

Maximum rate of diversion- 50 cfs 1963-67

Maximum area irrigated- 600 acres 1963-67

No. of reservoirs- 1; capacity 200 acre-feet

Area irrigable with existing system- 1268 acres

Maximum area to be irrigated- 600 acres

Date of first beneficial use- July, 1962

**Data From TNRCC Census:**

Areas irrigated:

1963-67	unknown
1994	0

**Description of System:**

Diversion:

Type of energy- gravity

Rate- unknown

Purpose of use- irrigation

No. of reservoirs- 1; estimated capacity 200 acre-feet

## APPENDIX D

A SCS flood control dam and reservoir is located on Macho Arroyo with a capacity of 200 acre-feet. Water is gravity released from the reservoir down Macho Arroyo to a ponding area where the Macho Arroyo control structure releases water into the Hudspeth canal system for distribution throughout portions of the District.

Water used pursuant to this claim is combined with water diverted under Permit No. 236A. Water is only released from the reservoir during years when sufficient rainfall occurs to impound water during the irrigation season. No water has been released from the reservoir for several years.

Diversion Point No. 1500 designates Macho Arroyo Dam and Reservoir. D-1550 designates the diversion point on Macho Arroyo where the water is diverted into the Hudspeth County Conservation and Reclamation District No. 1's canal system.

### Survey Information:

Survey No.	Abst. No.	Class	File No.	Patent date
Bean, J	129	SCHOOL	103271	11-28-1919
Maverick, S	1810	BEX SCRIP	889	6-30-1873
Maverick, S	1811	BEX SCRIP	890	10-17-1860
Maverick, S	1812	BEX SCRIP	891	4-14-1873
Maverick, S	1813	BEX SCRIP	892	4-15-1873
Maverick, S	1814	BEX SCRIP	901	11-27-1874
Maverick, S	1815	BEX SCRIP	902	9-20-1861
Maverick, S	1816	BEX SCRIP	903	6-24-1874
Maverick, S	1834	BEX SCRIP	1015	7-15-1861
Maverick, S	1835	BEX SCRIP	1016	7-15-1861
Maverick, S	1836	BEX SCRIP	1017	7-15-1861
Maverick, S	1837	BEX SCRIP	1018	7-15-1861
Maverick, S	1838	BEX SCRIP	1021	7-16-1861
Maverick, S	1839	BEX SCRIP	1020	7-16-1861
Pruitt, O	2424	SCHOOL	92026	1-15-1946
T&P RR CO	2863	BEX SCRIP	27740	6-12-1917
T&P RR CO	2864	BEX SCRIP	27739	6-12-1917
Fenley, J	3903	SCHOOL	131312	11-16-1923
Alarcon, J	5704	SCHOOL	146705	9-18-1929
Bouldin, J	5705	SCHOOL	146768	11-26-1929

### Annual Reports of Surface Water Used:

No water use has been reported.

**Remarks:**

Macho Arroyo Dam and Reservoir are located on land owned by the Texas General Land Office. Hudspeth County Conservation and Reclamation District No. 1, Hudspeth County Commissioners Court and the Soil Conservation Service are the participating sponsors for the structures. The District is responsible for the annual maintenance of the structures. Tract No. 0550 is within the boundaries of Permit No. 236A (T-0300). T-0550 was derived from plats filed with the original claim.

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## ALPHABETICAL LISTING OF WATER USERS

<u>Name</u>	<u>Appendix Page</u>	<u>Report Page</u>
Allison, L. R.	18	17
El Paso County Water Improvement District No. 1	1-15, 17-18	1
El Paso, City of Water Utilities Public Service Board	9, 13	11
Fullerton, Frank P.	9	7
Hudspeth County Conservation and Reclamation District No. 1	19, 21, 22, 23, and 25	19
Hudspeth County Conservation and Reclamation District No. 1	20-22	21
Hudspeth County Conservation and Reclamation District No. 1	22, 23	24
Hudspeth County Conservation and Reclamation District No. 1	22, 23, and 24	26
Hudspeth County Conservation and Reclamation District No. 1	23, 24, and 25	29
Hudspeth County Conservation and Reclamation District No. 1	25	31
Indian Cliffs Ranch	16	14
Rio Grande Portland Cement Corp.	9	9
Spence, G. B. Farms	17 and 18	15
Southwestern Portland Cement Co.	9	9
U. S. Federal Correctional Institute	6	5

# RIO GRANDE PROJECT

## WATER SUPPLY ALLOCATION PROCEDURES

Bureau of Reclamation  
Albuquerque Area Office  
El Paso Field Division  
El Paso, Texas

EXHIBIT

Settemeyer 06

exhibitsticker.com



## APPENDIX D

### E. Definitions

1. Project Water Supply - stored water legally available for release from Elephant Butte and Caballo Reservoirs and including the legally appropriated waters reaching the bed of the Rio Grande between Caballo Dam and Riverside Diversion Dam.

2. Allocated Water - that portion of the project water supply, as defined in Article E.1. above, which is determined to be available for diversion and use by the Elephant Butte Irrigation District (EBID), and El Paso County Water Improvement District (EPCWID) and the Republic of Mexico during any irrigation season. The irrigation season is defined as that period of a year when storage releases are being made from Caballo Reservoir for irrigation purposes.

3. Non-Allocated Water - water in the Rio Grande, during non-irrigation season and after the closing of Caballo Dam gates, which originates from drain flows and other sources which may be diverted by the irrigation districts for application to irrigable land areas within their boundaries. All diversions made by the districts during the non-irrigation season utilizing return flow made by the districts during the non-irrigation season utilizing return flow waters shall not be charged against the Districts' respective allocations.

### II. ALLOCATION

#### A. Procedure

The following procedure is used for the allotment and control of the Rio Grande Project water supply. It is required because the Bureau no longer delivers water at the farms, but rather at the districts' river headings. The procedure provides for an equitable distribution of project water between the U.S. and Mexico consistent with historic operations.

The 1906 Treaty with Mexico requires that Mexico be provided 60,000 AF/yr at the bed of the Rio Grande at the headworks of the Acequia Madre except in times of extraordinary drought or serious accident to the irrigation system in the United States. The amount delivered to the Mexican Canal (Acequia Madre) shall be diminished in same proportion as the water delivered to lands under said irrigation system in the United States. The first allocation to lands in the United States was made in 1951. An analysis done at that time established 3.024 AF/acre (applied to lands) as a full supply to U.S. farms of 468,720 AF (3.024 AF/acre x 155,000 acres) for the full project water right acreage of 155,000 acres. This analysis was based on the period of 1946 - 1950 during which a full water supply was available and deliveries were considered "normal".

Statistical evaluations of operational records for the period of 1951 through 1978 inclusive have been made. These evaluations have provided graphs, equations, and data that can be used to ensure that future allocations to Mexico and the allocations to the U.S. maintain the historical relationship between the delivery of water to U.S. farms and Mexico. The historical period of relationship is defined as the years 1951-1978 inclusive.

Curve D-1, enclosed as Exhibit No. 1, illustrates the historic water relationship between the water released from storage and the corresponding delivery to farms in the United States and to the heading of the Mexican Canal. Curve D-1 is used to determine the allocation to the Mexican heading and the two U.S. Irrigation Districts.



## APPENDIX D

Prior to application of Curve D-1, it is necessary to determine the amount of water in storage available for release. This determination takes into account minimum pool requirements, non-project waters in storage, and estimated reservoir losses. Reservoir losses include evaporation, bank storage and seepage.

The amount available for irrigation to U.S. river headings is determined from Curve D-2, enclosed as Exhibit No. 3, which shows releases from Caballo vs. Net Diversions from the river (U.S. + Mexico). Mexico's allotment is subtracted from Net Diversions to obtain the amount available to the U.S. The diversion of water between the U.S. districts is based on acreage.

Curve D-1 will not be adjusted as it is based on the 1951-1978 period in which the allocations were made to farm deliveries. It should be noted that Curve D-2 is to be used as a guide and adjustments may be necessary due to current conditions. A review of the data base for curve D-2 will be made annually using the preceding year's data.

Reclamation will make the initial allocation of project water each year by December 1. In years of less than a full allotment, the allocation will be reviewed and updated as determined necessary. A review of the allocation will be made on a monthly basis and in conference with officials of EBID, EPCWID, and the U.S. Section of the IBWC, no later than the 10th of the following month.

### B. Determination of Allotment for Full Supply

This procedure is based on a full supply of 468,700 acre-feet to authorized irrigated lands in the U.S. and full allocation to Mexico of 60,000 AF for a total of 528,700 AF.

Curve D-1 can be used to determine the historic release requirement necessary to deliver a full supply to U.S. authorized lands and Mexico (528,700 AF). From D-1, the required release from project storage is 763,800 AF. The release for a full supply is not limited to 763,800 AF.

$$\begin{aligned}\text{Release Required} &= \frac{(\text{Full Supply}) - (\text{Y-Intercept})}{(\text{Slope})} \\ &= \frac{(528,700) - (-102,305)}{(0.8260932)} \\ &= 763,842 \text{ AF} \quad (763,800 \text{ AF})\end{aligned}$$

From Curve D-2, the Net Diversion at Headings (US and Mexico) for a release of 763,800 AF is 931,841 AF (1951-1978 data).

$$\begin{aligned}\text{Net Diversions} &= (\text{Slope})(\text{Release}) + (\text{Y-Intercept}) \\ &= (1.3377994)(763,800) + (-89,970) \\ &= 931,841 \text{ AF}\end{aligned}$$

## APPENDIX D

Allocation for a full supply:

Delivery to U.S. Headings and to Mexico	=	931,841 AF
Delivery to Mexico	=	<u>-60,000 AF</u>
Delivery to U.S. Headings	=	871,841 AF
EBID Delivery to Headings = 56.774% of 871,841 AF	=	494,979 AF
EPCWID Delivery to Headings = 43.226% of 871,841 AF	=	376,862 AF

### C. Example for 100% Allotment

Net diversion requirement for a full supply of 528,700 AF to authorized irrigated lands in the U.S. and Mexico has been found to be 931,841 AF.

Step 1. From Curve D-2, the Caballo release required to meet a net diversion at Headings of 931,841 AF is 763,800 AF.

Step 2. Determine amount of water in storage available for release.

Total Storage
-Estimated Reservoir Losses
-Storage for Others
<u>=Water in Storage Available for Release</u>

Storage for others is the City of Albuquerque which is limited to a maximum storage of 50,000 AF.

Water available for release is greater than 763,800 AF.

Step 3. If amount of water in storage available for release (from Step 2) equals or exceeds the release requirement (from Step 1), then the allotment is 100%. Then, the net diversions are 931,841 AF for a full supply to U.S. farms and Mexico.

Step 4. Available for diversions at headings:

Mexico	60,000 AF
EBID	494,979 AF
EPCWID	<u>376,862 AF</u>
	931,841 AF

### D. Example of Allotment for Less Than Full Supply

Step 1. Determination of water in storage available for release assumed storage:

Elephant Butte	600,000 AF
Caballo Dam	<u>32,000 AF</u>
Total	632,000 AF
Minimum pool requirement	<u>-50,000 AF</u>
	582,000 AF
Estimated reservoir evaporation losses	<u>-90,000 AF</u>
Total water in storage available for release	492,000 AF

## APPENDIX D

492,000 AF is less than 763,800 AF, the net diversion which would provide a full supply to U.S. farms and Mexico.

- Step 2. From Curve D-1, total delivered to U.S. farms and Mexico vs. releases from storage

For a release of 492,000 AF, the total delivered to U.S. farms and Mexico = 304,133 AF

- Step 3. Mexico's allotment = 11.3486% of total deliveries to U.S. farms and Mexico's headgate

$$\left[ \frac{60,000}{528,700} = 0.113486 \right]$$

$$304,133 \times 0.113486 = 34,515 \text{ AF}$$

- Step 4. Delivery to U.S. Headings from Curve D-2, for:

Caballo releases of 492,000 AF

Delivery to U.S. Headings and to Mexico (492,000 x 1.3377994 - 89,970)	568,227 AF
---	------------

Delivery to Mexico	<u>34,515 AF</u>
--------------------	------------------

Delivery to U.S. Headings	<u>533,712 AF</u>
---------------------------	-------------------

- Step 5. Allocation to Districts:

EBID = 56.774% of 533,712 =	303,010 AF
EPCWID#1 = 43.226% of 533,712 =	230,702 AF



# APPENDIX D

CURVE D-1

CALENDER YEAR	DELIVERED TO FARMS ACRE-FEET	ACEQUIA HADRE ACRE-FEET	NON-FARM DELIVERIES ACRE-FEET	Y	X	X*Y	X^2	Y^2
				TOTAL	RELEASE			
				DELIVERY	FROM STORAGE			
1951	287,618	33,059	7,018	327,695	469,450	153836417750	2.2038E+11	1.0738E+11
1952	331,846	49,890	6,597	388,333	543,975	211243443675	2.9591E+11	1.5080E+11
1953	310,440	37,760	5,955	354,155	528,628	187216249340	2.7945E+11	1.2543E+11
1954	102,270	10,147	1,752	114,169	244,165	27876073885	5.9617E+10	1.3035E+10
1955	80,463	8,185	2,071	90,719	219,157	19881703883	4.8030E+10	8.2299E+09
1956	69,458	7,864	1,002	78,324	246,140	19278669360	6.0585E+10	6.1346E+09
1957	170,117	23,290	2,155	195,562	397,103	77658256886	1.5769E+11	3.8244E+10
1958	400,767	60,050	6,432	467,249	737,125	344420919125	5.4335E+11	2.1832E+11
1959	406,989	60,110	6,772	473,871	687,414	325745559594	4.7254E+11	2.2455E+11
1960	402,400	60,320	6,527	469,247	705,162	330895153014	4.9725E+11	2.2019E+11
1961	325,981	48,610	4,949	379,540	561,697	213186479380	3.1550E+11	1.4405E+11
1962	411,420	60,057	6,234	477,711	651,941	311439387051	4.2503E+11	2.2821E+11
1963	313,006	39,693	3,828	356,527	517,172	184385781644	2.6747E+11	1.2711E+11
1964	64,968	6,653	938	72,559	206,085	14953321515	4.2471E+10	5.2648E+09
1965	234,600	36,658	4,034	275,292	505,598	139187084616	2.5563E+11	7.5786E+10
1966	301,468	49,618	8,341	359,427	610,341	219373034607	3.7252E+11	1.2919E+11
1967	225,269	29,829	4,021	259,119	456,517	118292228523	2.0841E+11	6.7143E+10
1968	255,721	39,677	7,475	302,873	505,691	153160150243	2.5572E+11	9.1732E+10
1969	364,068	59,884	10,423	434,375	667,669	290018721875	4.4578E+11	1.8868E+11
1970	388,549	60,065	9,670	458,284	661,125	302983009500	4.3709E+11	2.1002E+11
1971	269,090	34,847	5,722	309,659	498,375	154326304125	2.4838E+11	9.5889E+10
1972	122,652	16,077	2,719	141,448	260,911	36905339128	6.8075E+10	2.0008E+10
1973	338,769	60,000	10,850	409,619	617,461	252923757359	3.8126E+11	1.6779E+11
1974	351,904	60,050	13,291	425,245	640,843	272515281535	4.1068E+11	1.8083E+11
1975	345,686	60,052	13,545	419,283	580,617	243442837611	3.3712E+11	1.7580E+11
1976	375,070	60,172	13,794	449,036	679,676	305198992336	4.6196E+11	2.0163E+11
1977	193,221	24,824	5,234	223,279	416,496	92994810384	1.7347E+11	4.9854E+10
1978	112,349	14,903	3,587	130,839	356,167	46600534113	1.2685E+11	1.7119E+10
TOTAL	7,556,159	1,112,344	174,936	8,843,439	14,172,701	5049939502057	7.8682E+12	3.2884E+12
AVG.	269,863	39,727	6,248	315,837	506,168	180,354,982,216	2.8101E+11	1.1744E+11

SLOPE= 0.8260932  
 Y-INTRCPT= -102,305  
 CORR.  
 COEFF.= 0.9781202  
 X STD.  
 DEV.= 160,375  
 Y STD.  
 DEV.= 135,448

## APPENDIX D

CURVE D-2

DATA 1951-1978

ALENDER 1R	B	E	Y (B+E)	X G	X*Y	X^2	Y^2
	ACEQUIA	PROJECT	TOTAL	RELEASE			
	MADRE	NET	HEADING	FROM			
		SUPPLY	DIVERSIONS	STORAGE			
	ACRE-FEET	ACRE-FEET	ACRE-FEET	ACRE-FEET			
-----							
1951	33,059	541,171	574,230	469,450	269572273500	2.2038E+11	3.2974E+11
1952	49,890	572,430	622,320	543,975	338526522000	2.9591E+11	3.8728E+11
1953	37,760	564,209	601,969	528,628	318217668532	2.7945E+11	3.6237E+11
1954	10,147	275,615	285,762	244,165	69773078730	5.9617E+10	8.1660E+10
1955	8,185	169,754	177,939	219,157	38996577423	4.8030E+10	3.1662E+10
1956	7,864	178,408	186,272	246,140	45848990080	6.0585E+10	3.4697E+10
1957	23,290	309,029	332,319	397,103	131964871857	1.5769E+11	1.1044E+11
1958	60,050	761,712	821,762	737,125	605741314250	5.4335E+11	6.7529E+11
1959	60,110	781,248	841,358	687,414	578361268212	4.7254E+11	7.0788E+11
1960	60,320	791,861	852,181	705,162	600925658322	4.9725E+11	7.2621E+11
1961	48,610	639,574	688,184	561,697	386550888248	3.1550E+11	4.7360E+11
1962	60,057	770,701	830,758	651,941	541605201278	4.2503E+11	6.9016E+11
1963	39,693	647,655	687,348	517,172	355477139856	2.6747E+11	4.7245E+11
1964	6,653	229,936	236,589	206,085	48757444065	4.2471E+10	5.5974E+10
1965	36,658	443,130	479,788	505,598	242579853224	2.5563E+11	2.3020E+11
1966	49,618	644,994	694,612	610,341	423950182692	3.7252E+11	4.8249E+11
1967	29,829	503,037	532,866	456,517	243262387722	2.0841E+11	2.8395E+11
1968	39,677	539,878	579,555	505,691	293075747505	2.5572E+11	3.3588E+11
1969	59,884	742,543	802,427	667,669	535755632663	4.4578E+11	6.4389E+11
1970	60,065	743,097	803,162	661,125	530990477250	4.3709E+11	6.4507E+11
1971	34,847	556,910	591,757	498,375	294916894875	2.4838E+11	3.5018E+11
1972	16,077	279,618	295,695	260,911	77150078145	6.8075E+10	8.7436E+10
3	60,000	646,177	706,177	617,461	436036756597	3.8126E+11	4.9869E+11
1974	60,050	704,544	764,594	640,843	489984712742	4.1068E+11	5.8460E+11
1975	60,052	693,609	753,661	580,617	437588388837	3.3712E+11	5.6800E+11
1976	60,172	808,169	868,341	679,676	590190537516	4.6196E+11	7.5402E+11
1977	24,824	468,239	493,063	416,496	205358767248	1.7347E+11	2.4311E+11
1978	14,903	321,478	336,381	356,167	119807811627	1.2685E+11	1.1315E+11
-----							
TOTAL	1,112,344	15,328,726	16,441,070	14,172,701	9250967124996	7.8682E+12	1.0960E+13
AVG.	39,727	547,455	587,181	506,168	330,391,683,036	2.8101E+11	3.9143E+11

SLOPE= 1.3377994  
 Y-INTRCPT= -89,970  
 CORR.  
 COEFF.= 0.9754545  
 X STD.  
 DEV.= 160375  
 Y STD.  
 DEV.= 219948

**RIO GRANDE PROJECT  
ALLOTMENT PROCEDURES**

**REGRESSION ANALYSIS CURVE D-1**

- Annual Data Used (1951-1978)
- Y-Axis - Sum of Deliveries, including:
  - Acre-Feet Delivered to Farms
  - Acre-Feet Delivered Internationally to Mexico
  - Non-Farm Deliveries (M&I) in Acre-Feet
- X-Axis:
  - Acre-Feet Releases from Storage
- Regression Analysis Curve D-1 Data:
  - Slope            =     0.8260932
  - Y-Intercept    =     - 102,305
  - Corr Coeff     =     0.9781202
  - Y Std Dev      =     160,375
  - X Std Dev      =     135,448



**RIO GRANDE PROJECT  
ALLOTMENT PROCEDURES**

**REGRESSION ANALYSIS CURVE D-2**

- Annual Data Used (1951-1978)
- Y Axis - Total Diversions:  
Total Acre-Feet Diverted
- X-Axis - Total Releases:  
Water Supply Releases from Storage
- Regression Analysis Curve D-2 Data:  
Slope = 1.3377994  
Y-Intercept = - 89,970  
Corr Coeff = 0.9754545  
X Std Dev = 160,375  
Y Std Dev = 219,948

## RIO GRANDE PROJECT ALLOTMENT PROCEDURES

- Full Allotment to U.S. Farms and Mexico:

$$3.024 \text{ AF/Ac} \times 155,000 \text{ Ac} = 468,720 \text{ AF}$$

$$\text{Full Allotment to Mexico (1906 Treaty)} + 60,000 \text{ AF}$$

---


$$528,720 \text{ AF}$$

Use: 528,700 AF

- Using D-1 Curve, Determine Release for Full Allotment:

$$\text{Slope} = 0.8260932; \text{ Y-Intercept} = -102,305 \text{ AF}$$

$$Y = (0.8260932) X + (-102,305 \text{ AF}) = 528,700 \text{ AF}$$

$$X = \text{Releases} = \frac{(528,700 + 102,305)}{0.8260932} = 763,842 \text{ AF}$$

Use: 763,840 AF

- Using D-2 Curve, Determine Total Diversions:

$$\text{Slope} = 1.3377994; \text{ Y-Intercept} = -89,970 \text{ AF}$$

$$Y = (1.3377994)(763,840) \text{ AF} + (-89,970) \text{ AF} = 931,841 \text{ AF}$$



## RIO GRANDE PROJECT ALLOCATION PROCEDURES

- Full Water Supply Allocation:

Total Allocation Diversions:	931,841 AF
------------------------------	------------

Allocation to Mexico (1906 Treaty):	-60,000 AF
-------------------------------------	------------

Allocation to U.S. Districts	871,841 AF
------------------------------	------------

- Full Allocation to U.S. Districts:

EBID =  $(88,000/155,000)(871,841)AF$

$= (0.56774)(871,841)AF = 494,979 AF$

EPCWID =  $(67,000/155,000)(871,841)AF$

$= (0.43226)(871,841)AF = 376,862 AF$

## RIO GRANDE PROJECT ALLOTMENT PROCEDURES

- Example of a 100% Allocation:

Allotment Letter:

Mailed to the IBWC and U.S. Districts in Dec.  
(Year prior to irrigation season)

Full allocation is based on:

Full Supply to authorized U.S. Lands:	468,700 AF
Full allocation to Mexico	: +60,000 AF
	<hr/>
	528,700 AF
From Curve D-1, release from storage is: (Full Allotment to U.S. Farms & Mexico)	763,840 AF
From Curve D-2, total diversions are: (Full Allotment to U.S. Farms & Mexico)	931,841 AF
Full Allocation to Mexico (1906 Treaty):	60,000 AF
Full Allocation to U.S. Districts:	871,841 AF
Full Allocation to EBID: (871,841)(0.56774)AF = 494,982 AF	494,979 AF
Full Allocation to EPCWID: (871,841)(0.43226)AF = 376,862 AF	376,862 AF

## RIO GRANDE PROJECT ALLOTMENT PROCEDURES

- Example - Allotment for Less than Full Supply:

Determine Project Water Supply Available in Storage:

Elephant Butte Reservoir		600,000 AF
Caballo Reservoir		+32,000 AF
	Total	632,000 AF
Minimum Pool	:	-50,000 AF
Evaporation Losses	:	-90,000 AF
Available In storage	:	492,000 AF

492,000 AF is less than the 763,840 AF which would provide a full supply to the U.S. Farms and Mexico.

From Curve D-1, 492,000 AF release would provide the U.S. Farms and Mexico with:

$$Y = (0.8260932)(492,000 \text{ AF}) + (-102,305) = 304,133 \text{ AF}$$

Mexico's Allotment = 11.3486% of the total deliveries to the U.S. Farms and Mexico:

$$(60,000 \text{ AF} / 528,700 \text{ AF})(100\%) = 11.3486\%$$

Mexico's Allotment would be:

$$(304,133 \text{ AF})(0.113486) = 34,515 \text{ AF}$$

## RIO GRANDE PROJECT ALLOTMENT PROCEDURES

- Example - Allotment for Less than full Supply (Cont.):

Deliveries to U.S. Headings:

Available in Storage = 492,000 AF

From Curve D-2, Diversions to the U.S. Districts and Mexico:

$(492,000)(1.3377994)AF + (-89,970)AF = 568,227 AF$

Delivery to Mexico -34,515 AF

Delivery to U.S. Headings = 533,712 AF

Allocations to U.S. Districts:

$EBID = (533,712)AF(0.56774) = 303,010 AF$

$EPCWID = (533,712)AF(0.43226) = 230,702 AF$

EBID

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a  
Texas Commission on Environmental Quality document,  
which is filed in the permanent records of the Commission.  
Given under my hand and the seal of office on

## CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION NO. 23-5940

*LaDonna Castaneda* MAR 20 2007

LaDonna Castaneda, Chief Clerk  
Texas Commission on Environmental Quality

Names of Holders:	United States of America	Address:	Bureau of Reclamation 505 Marquette NW, Suite 1313 Albuquerque, NM 87102-2162
	El Paso County Water Improvement District No. 1		294 Candelaria Street El Paso, TX 79907
Priority Dates:	July 6, 1889 and January 1, 1918		
Purpose:	Agricultural, Municipal, Industrial, Mining, and/or Recreational Uses	Counties:	El Paso and Hudspeth
Watercourse:	Rio Grande (above Ft. Quitman, Texas)	Watershed:	Rio Grande Basin

WHEREAS, in 1905, the United States enacted the Rio Grande Reclamation Project Act of February 25, 1905, 33 Stat. 814, authorizing the construction of storage facilities on the Rio Grande in the Territory of New Mexico for storage of water of the Rio Grande for irrigation of lands in New Mexico and Texas for the Rio Grande Reclamation Project;

WHEREAS, in 1905, the State of Texas enacted House Bill 588, 29<sup>th</sup> Legislature, Chapter 101 (as amended, now Section 11.052 of the Texas Water Code), which authorized the Secretary of the Interior to make all necessary examinations and surveys for, and to locate and construct reclamation works for irrigation purposes within the State of Texas, and to perform any and all acts necessary to carry into effect the provisions of the Reclamation Act of 1902 (38 Stat. 388, now 43 U.S.C. § 371, *et seq.*) as to such lands, subject to all the provisions, limitations, charges, terms and conditions of the said Reclamation Act;

WHEREAS, Section 8 of the Reclamation Act of 1902 (now 43 U.S.C. §§ 372 and 383) provides in part: "Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the

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Settemeyer 07

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Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof.”;

WHEREAS, in 1906, the United States entered into the Convention with Mexico for the Rio Grande providing for the equitable distribution of water of the Rio Grande for irrigation purposes (34 Stat.2953). The Convention also provides that the delivery of said amount of water to Mexico shall be assured by the United States, and shall be distributed through the year in the same proportions as the water supply furnished from said irrigation system to lands in the United States in the vicinity of El Paso, Texas, and in case of extraordinary drought or serious accident to the irrigation system in the United States, the amount delivered to Mexico at the Acequia Madre shall be diminished in the same proportion as the water delivered to lands under said irrigation system in the United States. Under Article IV of such Convention, Mexico waived any and all claims to the waters of the Rio Grande for any purpose whatever between the head of the Acequia Madre and Fort Quitman, Texas; ←

WHEREAS, in 1906 and 1908, pursuant to the Reclamation Act of 1902, the Reclamation Service notified the Territorial Irrigation Engineer for the Territory of New Mexico of reservations by the United States of Rio Grande water for the Rio Grande Reclamation Project in accordance with the laws of the Territory of New Mexico; ←

WHEREAS, in 1910, Congress approved an Act (36 Stat. 559) which enabled the people of New Mexico to form a constitution and state government and to be admitted to the Union on an equal footing with the original States. Section 2 of such Act provided in part, “that there be and are reserved to the United States, with full acquiescence of the State [New Mexico], all rights and powers for the carrying out of the provisions by the United States of an Act of Congress entitled ‘An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands’ approved June seventeenth, nineteen hundred and two, and Acts amendatory thereof or supplementary thereto [43 U.S.C. § 371 *et seq.*], as to the same extent as if said State had remained a Territory”;

WHEREAS, in 1911, the State of Texas adopted what is now Section 11.005, Texas Water Code, which provides as follows: “This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 371 *et. seq.*), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.”;

WHEREAS, the United States stores water in two reservoirs, Elephant Butte and Caballo, located in New Mexico, for use throughout the Rio Grange Reclamation Project and for delivery to Mexico. The United States releases water from such storage and supplements such released water with return flow to the Rio Grande and water in the Rio Grande from other sources, and



diverts such water at a series of diversion dams on the Rio Grande in New Mexico and Texas;

WHEREAS, the United States purchased lands, canals and water rights in Texas for the construction of the Rio Grande Reclamation Project, and such purchases included, without limitation, the Franklin Canal and the lands and water rights identified in the Loomis affidavits of 1889, later embodied in Certified Filing No. 123, using Reclamation funds which were subject to reimbursement to the United States by Rio Grande Reclamation Project water users;

WHEREAS, in 1939, the United States, Colorado, New Mexico and Texas entered into the Rio Grande Compact (53 Stat. 785; Section 41.009, Texas Water Code), which constitutes statutory law of the United States and the States of Colorado, New Mexico, and Texas and by the terms of the Compact cannot be modified without the approval of all four parties to the Compact;

WHEREAS, the United States releases stored water from Elephant Butte and Caballo Reservoirs to supply water to the Elephant Butte Irrigation District in New Mexico and the El Paso County Water Improvement District No. 1 in Texas. The first two diversion dams downstream of Caballo Dam (Percha Diversion Dam and Leasburg Diversion Dam) are used by the United States to deliver water to land in New Mexico. A substantial amount of water diverted by these two diversion dams for use in New Mexico is returned to the Rio Grande for use downstream of the dams. The next downstream diversion dam is the Mesilla Diversion Dam, which is located in New Mexico but is used to divert water to both the Elephant Butte Irrigation District and the El Paso County Water Improvement District No. 1. The American Diversion Dam is the next diversion dam downstream on the Rio Grande. It is the first diversion dam in Texas, and divides water in the Rio Grande between Mexico and the United States. Water for Mexico is provided by the United States and delivered to Mexico at the International Diversion Dam, in the Rio Grande downstream of the American Diversion Dam. Water for the El Paso County Water Improvement District No. 1 is presently diverted by the United States into the American Canal at the American Diversion Dam, but for many years the United States diverted some of such water at the Riverside Diversion Dam, which is presently not functional but may be rebuilt in the future;

WHEREAS, approximately 2.3 miles downstream from the American Diversion Dam is the International Diversion Dam. The International Diversion Dam is used to provide and deliver 60,000 acre-feet of water per year to Mexico pursuant to the 1906 Convention, and is the only diversion location authorized by the 1906 Convention or any other treaty between the United States and Mexico for diversion of water from the Rio Grande upstream of Fort Quitman, Texas. The Riverside Diversion Dam is the last downstream diversion dam on the Rio Grande below Caballo Dam and upstream of Fort Quitman, Texas. The Riverside Diversion Dam is presently not functional but may be rebuilt in the future;

WHEREAS, the United States entered into a contract dated December 29, 1917, with the El Paso County Water Improvement District No. 1 and the El Paso Valley Water Users' Association. Thereafter, the El Paso Valley Water Users' Association was dissolved;

WHEREAS, the El Paso County Water Improvement District No. 1 ("District") is a political subdivision of the State of Texas, organized and existing under Article XVI, Section 59 of the Texas Constitution, and is subject to Chapter 55 of the Texas Water Code and other provisions thereof. The District is authorized by statute to enter into contracts or other obligations with the United States (§ 55.185, Texas Water Code). By statute the District is required to "...distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the secretary of the interior, and provisions of the contract" (Section 55.364, Texas Water Code). The El Paso County Water Improvement District No. 1 includes 69,010 acres within its boundaries that are classified by the United States and the District as irrigable;

WHEREAS, in 1920, the El Paso County Water Improvement District No. 1 merged with the El Paso County Conservation and Reclamation District No. 2, with the merged districts thereafter known as the El Paso County Water Improvement District No. 1;

WHEREAS, in 1924, the United States entered into a contract (the "Warren Act Contract") with the Hudspeth County Conservation and Reclamation District No. 1 ("HCCRD"), pursuant to the Warren Act of 1911 (43 U.S.C. §§ 523-525), and the parties amended such contract in 1951. HCCRD holds Texas Permit No. 236 as amended by Permit No. 236A. Such permit authorizes HCCRD to divert water from the Rio Grande at two grade control structures, located at latitude 31.413 degrees north 106.096 degrees west in El Paso County, Texas and at latitude 31.318 degrees north and longitude 105.936 degrees west in Hudspeth County, Texas;

WHEREAS, in 1996, the United States conveyed to the El Paso County Water Improvement District No. 1 certain facilities and rights-of-way within the District's boundaries but reserved ownership of the American Canal, the American Canal Extension, and the American, International and Riverside Diversion Dams;

WHEREAS, pursuant to 43 U.S.C. § 521, which allows the Secretary of the Interior to authorize conversion of water used in the Rio Grande Reclamation Project from irrigation to other uses, the United States entered into contracts with the El Paso County Water Improvement District No. 1 and the City of El Paso in 1941, 1944, 1949, 1962, 1999, and 2001 for the supply of Rio Grande Reclamation Project irrigation water for municipal and industrial uses by the City. The United States, the El Paso County Water Improvement District No. 1, and the Lower Valley Water District entered into similar contracts in 1988 and 1999 pursuant to 43 U.S.C. § 521 as well;

WHEREAS, in 1991, the District applied for a permit and asserted in its application that without waiving any, and while still preserving all, of its legal and "equitable" rights under federal and state law, (including, without limitation, the Rio Grande Compact; the 1906 Water Convention, May 21, 1906, between the United States and Mexico; contracts between or among the El Paso County Water Improvement District No. 1 and other entities, including the United States and New Mexico or its agencies; the Reclamation Laws of the United States and those



acquired in New Mexico by virtue of the reservation of water rights by the United States as provided by notices from the United States to the New Mexico Territorial Engineer in 1906 and 1908). The Texas Natural Resource Conservation Commission (the "Commission") recognized that the El Paso County Water Improvement District No. 1 had those rights to that portion of the facilities and water of the Rio Grande Reclamation Project and the Rio Grande and its tributaries which have been reserved for or appropriated by or for the benefit of the District and its predecessors and beneficial users or which otherwise have been provided to them by law, equity or contract;

WHEREAS, pursuant to such application, the Commission issued to the District Permit No. 5433;

WHEREAS, by final decree of the 327<sup>th</sup> Judicial District Court of El Paso County, Texas, in Cause No. 2006-3291, In Re: Adjudication of All Claims of Water Rights in the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin, dated October 30, 2006, rights were recognized authorizing the United States and the El Paso County Water Improvement District No. 1 to impound, divert, and use waters of the State of Texas as set forth below.

NOW, THEREFORE, this certificate to appropriate waters of the State of Texas in the Rio Grande Basin is issued to the United States of America and the El Paso County Water Improvement District No. 1, subject to the following terms and conditions:

1. IMPOUNDMENT AND USE

- a. Certificate Holder United States is authorized to impound 2,638,860 acre-feet of water in Elephant Butte Reservoir and Caballo Reservoir in New Mexico
- b. Certificate Holders United States and El Paso County Water Improvement District No. 1 are authorized to divert and Certificate Holder El Paso County Water Improvement District No. 1 is authorized to use an aggregate amount of water from the Rio Grande not in excess of 376,000 acre-feet per year from the following sources:
  - i. all rights which Certificate Holders acquired or perfected pursuant to Certified Filing No. 123;
  - ii. 67/155 of all water stored in Project Storage (as defined in the Rio Grande Compact) and legally available for release to the Elephant Butte Irrigation District and the El Paso County Water Improvement District No. 1, plus any additional share of Project Water obtained by Certificate Holders, or either of them, through allocation, purchase and/or operation rules, "Project Water" being defined as all water legally dedicated to the Rio Grande Reclamation Project;

and

- iii. any waters entering Texas in the bed of the Rio Grande from New Mexico, including, but not limited to, return flows from New Mexico's use and groundwater discharged into the Rio Grande.
- c. In addition to the water diverted pursuant to paragraph 1.b above, Certificate Holders are authorized to divert from the Rio Grande up to 234,022 acre-feet per year of measurable surface-water based effluent, groundwater based effluent, or groundwater discharged into the Rio Grande by the District or any other entity with whom the District has entered into legal contract for such water. "Effluent" as used in this Certificate of Adjudication means any and all water that reaches the bed of the Rio Grande from agricultural drains, sewage treatment plants, or storm water runoff.
- d. In addition to the water diverted pursuant to paragraphs 1.b. and 1.c. above, Certificate Holders are authorized to divert from the Rio Grande an average of 1.899 acre-feet of water per year, when averaged over any five-year period, from tributary inflows of the Rio Grande between the Texas/New Mexico state line and the Riverside Diversion Dam.
- e. Certificate Holders are authorized to use the bed and banks of the Rio Grande to transport the water which is the subject of this Certificate of Adjudication, and to operate and maintain diversion dams and works.

## 2. DIVERSION POINTS

- a. Certificate Holders are authorized to divert all or any part of the water authorized for diversion in paragraphs 1.b and 1.c above at the following diversion points:
  - i. Mesilla Diversion Dam located on the Rio Grande in New Mexico;
  - ii. American Diversion Dam located on the Rio Grande at the point where Texas, Mexico, and New Mexico meet; and
  - iii. Riverside Diversion Dam located on the Rio Grande approximately 13.5 miles downstream of the American Diversion Dam;

at a combined maximum diversion rate of 1,355 cubic feet per second.
- b. Certificate Holders are authorized to divert the water authorized for diversion in paragraph 1.d above, from the American Diversion Dam and the Riverside Diversion Dam at a combined maximum diversion rate of 10 cubic feet per second.

## 3. PURPOSE AND PLACE OF USE

Certificate Holder El Paso County Water Improvement District No. 1 is authorized to use all of the water authorized herein for agricultural, municipal, industrial, mining, or recreational purposes and/or irrigation of a maximum of 69,010 acres of land within the District's boundaries and/or to sell any of this water surplus to the District's needs for any of the authorized purposes of use in El Paso and Hudspeth Counties.

## 4. SPECIAL CONDITIONS

- a. This Certificate of Adjudication does not supersede any legal requirement for the protection of environmental water needs pursuant to international treaty, interstate compact, or other applicable law to which Certificate Holders are subject irrespective hereof. Nothing in this condition is intended to grant to the State of Texas any authority additional to that provided by law or to waive any right of Certificate Holders.
- b. This Certificate of Adjudication is not intended to in any way compromise or diminish the volume of water which the United States is obligated to provide to Mexico on an annual basis pursuant to the terms of the Convention of May 21, 1906, between the United States and Mexico; nor does the Certificate grant to the District, for any use whatsoever, any waters to which Mexico is entitled pursuant to the above referenced 1906 Convention.
- c. Nothing in this Certificate of Adjudication is intended to modify any authority of the State of Texas or the United States of America provided by law, now or in the future.

## 5. PRIORITY

- a. The time priority for use of the water included in paragraphs 1.b. and 1.c., as referenced above, is July 6, 1889.
- b. The time priority for use of the water included in paragraph 1.d., as referenced above, is January 1, 1918.

The locations of pertinent features related to this Certificate of Adjudication are shown on pages 1 through 18 of the Appendix to the Report of the Investigation of Water Rights in the Upper Rio Grande (above Fort Quitman) Segment of the Rio Grande Basin, Texas. Copies of such pages are located in the office of the Texas Commission on Environmental Quality, Austin, Texas.

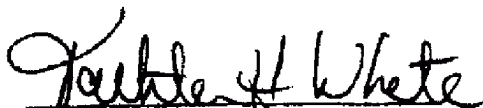
This Certificate of Adjudication is issued subject to all terms, conditions and provisions in the Final Decree of the 327<sup>th</sup> Judicial District Court of El Paso County, Texas, in Cause No. 2006-

3291, In Re: Adjudication of All Claims of Water Rights in the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin dated October 30, 2006, and supersedes all rights of Certificates Holders asserted in that cause.

This Certificate of Adjudication is issued subject to senior and superior water rights in the Rio Grande Basin.

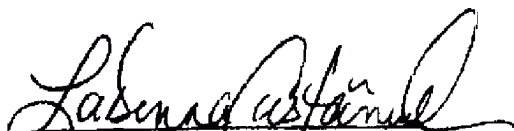
This Certificate of Adjudication is issued subject to the rules of the Texas Commission on Environmental Quality and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code, to the extent that such rules and supervision are not inconsistent with the federal Reclamation Act (43 U.S.C. § 371, *et seq.*) or the regulations made under that Act by the Secretary of the Interior as provided in Section 11.005 of the Texas Water Code.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

  
Kathleen Hartnett White, Chairman

3/7/07  
Date Issued

ATTEST:

  
Lajonna Castanuela, Chief Clerk

# Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

**To:** Barry R. McBee, Chairman  
John M. Baker, Commissioner  
Ralph Marquez, Commissioner

**Date:** February 11, 1997

**Through:** *WJ* Ken Petersen, Deputy Director, Water Resource Management  
*per* Kariann Sokulsky, Manager, Surface Water Uses Section

**From:** *HRS* Herman Settemeyer, Interstate Compacts Coordinator  
Surface Water Uses Section

**Subject:** The Role of the TNRCC and the State of Texas in Rio Grande Water Issues  
from Elephant Butte, New Mexico to Fort Quitman, Texas

The Commission directed staff in 1994 to begin adjudication of water rights for the Upper Rio Grande (above Fort Quitman) Segment of the Rio Grande. The adjudication is still before SOAH. However, as a result of this process, unrelated, unresolved issues regarding allocation of surface water between Texas and New Mexico have been identified by the El Paso area water users. Dan Pearson has asked that each of you be apprised of his recommendation that staff brief the Governor's Office regarding the need to address a water allocation between Texas and New Mexico below Elephant Butte Dam.

## Problem:

The Rio Grande Compact specifies that all Rio Grande water "to Texas" is delivered at Elephant Butte Reservoir (see map). That is, the Compact considers "Texas" to begin at Elephant Butte; it does not divide this water between New Mexico users below Elephant Butte and Texas users who receive water from Elephant Butte. The Texas water users have approached TNRCC staff and the Office of the Attorney General for assistance in protecting that water obligated to Texas users. We will need to respond to them shortly.

The State of New Mexico recently started the process of adjudicating water rights of the Rio Grande from Elephant Butte to the Texas/New Mexico stateline. This adjudication is occurring in State District Court. Its adjudication is on a fast track with jurisdictional briefs and hearings scheduled for February. New Mexico's adjudication also includes groundwater. It is possible that the outcome of New Mexico's adjudication could detrimentally affect deliveries of water to Texas.

## Background:

The Rio Grande Project (primarily the Elephant Butte Reservoir) was developed by the U. S. Bureau of Reclamation. The Bureau constructed Elephant Butte in 1905 primarily to store water for the

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**EXHIBIT**

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irrigation of lands in Texas and New Mexico. Water is also stored for Mexico under the 1906 United States/Mexico Treaty. Mexico is provided 60,000 acre-feet of water annually. The irrigated lands in New Mexico are within the Elephant Butte Irrigation District (EBID); the irrigated lands in Texas are within the El Paso County WID No. 1 (EPCWID#1) (see map).

The Rio Grande Compact was finalized in 1939 between the States of Colorado, New Mexico, and Texas. The Rio Grande Compact Commissioner for Texas represents all interests below Elephant Butte, including EBID in New Mexico. Although the Compact is silent on any division of Elephant Butte water between New Mexico and Texas, contracts exist between the Bureau, EBID, and EPCWID#1 which (after delivery to Mexico of 60,000 acre-feet of water) operate to annually divide the Elephant Butte water so that 57% goes to the EBID and 43% to the EPCWID#1.

### **Discussion of the Problem:**

The El Paso area water interests are concerned that:

1. There is no specific quantity or quality of water required to be delivered to Texas at the stateline. The Compact specifies New Mexico's delivery obligation at Elephant Butte. The contracts with the Bureau are the only mechanism currently dividing the Elephant Butte water between Texas and New Mexico.
2. As water is released out of Elephant Butte for downstream users, water is lost to aquifer recharge in New Mexico. If additional groundwater rights in New Mexico are recognized and additional withdrawals made as a result of the New Mexico adjudication, more water from the Rio Grande will be lost to aquifer recharge.
3. The Bureau operates the Rio Grande Project to provide a quantity of water at the diversion dams (see map). The Bureau requires EPCWID#1 to use return flows from EBID, as well as use the sewage effluent (which includes groundwater) from the City of El Paso as part of the Project water. The result is that a lower quality of water is delivered to EPCWID#1 than to EBID, who gets all of its water directly from Elephant Butte Reservoir.

These concerns arise from the failure of the Compact to address the division of water between New Mexico and Texas below Elephant Butte. Staff of the TNRCC and Office of the Attorney General have held numerous discussions with the local El Paso interests and the Rio Grande Compact Commission to discuss these concerns.

Adjudication (in Texas and/or New Mexico) cannot address the issue of an interstate division of these waters. Some type of State vs. State division of water for the region needs to be accomplished. The question from the El Paso users is what should be the role of the TNRCC and the State of Texas?

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The Executive Director recommends:

1. The El Paso interests are convinced that the adjudication of water rights in New Mexico by a New Mexico judge must be stopped. The City of El Paso has intervened as a party and the EPCWID#1 has requested party status. The judge has not ruled on EPCWIC#1's request. The El Paso interests have requested SOAH to delay the Texas adjudication until the jurisdictional questions of the New Mexico adjudication are answered. SOAH has granted this request. **The TNRCC recommends that the Texas Attorney General take appropriate action regarding the New Mexico adjudication to ensure Texas' water is protected.**

2. A forum to formalize an allocation of Elephant Butte waters between Texas and New Mexico (at the state line) needs to be established. Negotiations on a local level between affected parties, including federal interest, have occurred, yet no agreements have been reached. **It is recommended that negotiations at a State of Texas to State of New Mexico level be initiated.** The ED would like to proceed with briefing the Governor's staff.

If these negotiations are unsuccessful, Texas could then file litigation in the U. S. Supreme Court asking for an equitable division of water for the Elephant Butte to Fort Quitman region.

Attachments

cc: Dan Pearson, Executive Director  
Margaret Hoffman, Legal Services

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