

No. 141, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF TEXAS,

Plaintiff,

v.

**STATE OF NEW MEXICO and
STATE OF COLORADO,**

Defendants.

OFFICE OF THE SPECIAL MASTER

**DECLARATION OF STUART L. SOMACH IN SUPPORT OF TEXAS'S
MOTION TO STRIKE OR FOR PARTIAL JUDGMENT REGARDING NEW
MEXICO'S COUNTERCLAIMS AND AFFIRMATIVE DEFENSES, FEDERAL
RULES OF CIVIL PROCEDURE, RULE 12(c) AND RULE 56**

Hearing: February 19, 2019; 9:00 a.m.

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**Counsel of Record*

December 26, 2018

I, Stuart L. Somach, declare as follows:

1. I am an attorney admitted to practice before the United States Supreme Court and am a shareholder with the law firm of Somach Simmons & Dunn, attorneys for the State of Texas (Texas) in this matter. I am Counsel of Record for Texas. The following matters are within my personal knowledge and, if called as a witness, I can competently testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the 2008 “Operating Agreement for the Rio Grande Project.”

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of December 2018 at Sacramento, California.



Stuart L. Somach

EXHIBIT A

OPERATING AGREEMENT
FOR THE RIO GRANDE PROJECT

THIS OPERATING AGREEMENT (" Agreement ") is entered into this 10th day of March 2008, by and among the United States of America, by and through the Bureau of Reclamation (" United States " or " Reclamation " or " USA ") acting pursuant to the Reclamation Act of June 17, 1902, 32 Stat. 390, as amended and supplemented; the Elephant Butte Irrigation District (" EBID "), an irrigation district and a quasi municipal corporation in the State of New Mexico, incorporated and organized under New Mexico law, N.M.S.A. 1978, § 73 10 1 et seq. (1985 Repl. Pamp.); and the El Paso County Water Improvement District No. 1 (" EPCWID "), a political subdivision of the State of Texas, under Art. XVI, § 59 of the Texas Constitution (collectively, " the Parties " to this Agreement).

NOW THEREFORE, the Parties recognize the following terms and conditions to constitute an operational plan for the Rio Grande Project and the Parties agree as follows:

1 DEFINITIONS

When used in this Agreement, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the following definitions shall apply:

1.1 Normal Annual Release

A Normal Annual Release from Project Storage for all authorized uses is 790,000 acre- feet as measured at the first gauging station downstream of Caballo Dam. It is possible that during any Water Year the aggregate quantity of water released for EBID and EPCWID, and for the United States (pursuant to the Convention of 1906), including release of Carryover Water for EBID and EPCWID, may be more or less than the Normal Annual Release from Project Storage of 790,000 acre-feet.

1.2 Project-Authorized Acreage

There are 159,650 authorized acres within the Project. Of the Project Authorized Acreage, 90,640 acres are within EBID and 69,010 acres are within EPCWID.

1.3 Project Storage

Elephant Butte Reservoir, Caballo Reservoir, and such additional storage facilities (less flood control space) as may be authorized by Congress or provided for pursuant to the Rio Grande Compact (Act of May 31, 1939, 53 Stat.785).

1.4 Rio Grande Project

The Project was authorized by an Act of Congress on February 25, 1905, 33 Stat. 814, pursuant to the Reclamation Act of 1902, 32 Stat. 390. The Project includes facilities and works with their appurtenant lands authorized by the Act of February 25, 1905, as amended and supplemented, particularly Elephant Butte Dam and Reservoir, Caballo Dam and Reservoir, a power generating plant, and six diversion dams (Percha, Leasburg, Mesilla, American, International, and Riverside) on the Rio Grande in New Mexico and Texas, and includes the Project lands and service area authorized for water delivery pursuant to the Rio Grande Project Act of February 25, 1905, as amended and supplemented and the Reclamation Act of 1902 as amended and supplemented.

1.5 Water Year

The water year shall be a calendar year beginning on the first day of January and ending on the thirty-first day of December.

1.6 Project Water

Project Water, as used herein, shall mean: 1) usable water in Project Storage; 2) all water required by the Rio Grande Compact of 1938 to be delivered into Elephant Butte Reservoir; and 3) all water released from Project Storage and all inflows reaching the bed of the Rio Grande between Caballo Dam, New Mexico and Fort Quitman, Texas.

1.7 Annual Allocated Water

Annual Allocated Water is the quantity of Project Water that is determined by United States, in accordance with this Agreement, the Operations Manual, and in consultation with EBID and EPCWID, to be allocated each Water Year for delivery to EBID and EPCWID, and to the United States (pursuant to the Convention of 1906).

1.8 Carryover Water

Carryover Water is the Annual Allocated Water allotment balance remaining on the water account for each district at the end of a given Water Year. EBID and EPCWID shall have the right to carry over any amount of their respective Annual Allocated Water subject to provisions of Section 1.10 herein.

1.9 Actual Carryover Water

Actual carryover water is the increase in a district's allocation due to applying carryover water amounts for each district in the allocation calculations.

1.10 Carryover Limit

Actual carryover water may be accumulated in an account for each district to a maximum of sixty percent (60%) of each district's respective full yearly allocation or an amount of actual carryover water equal to 232,915 acre-feet for EPCWID and 305,918 acre-feet for EBID.

1.11 Excess Carryover Balance

At the end of the water year, either district's carryover balance in excess of its respective carryover limit shall be transferred to the carryover account of the other district. If both districts' carryover limits are exceeded, each district's carryover balance shall be equal to its respective limit.

1.12 Rio Grande Project Water Accounting and Operations Manual (Operations Manual)

The United States, EBID, and EPCWID shall produce an Operations Manual. The Operations Manual shall contain detailed information regarding the methods, equations, and procedures used by EBID, EPCWID, and the United States to account for all water charges and operating procedures for the Rio Grande Project. This Agreement shall be effective upon execution regardless of the status of the Operations Manual.

1.13 Non-Allocated Water

Project Water is available for diversion from the Rio Grande by EBID or EPCWID that is not charged by the United States against any allocation account. Non-Allocated water is typically available only during periods when no water is being released from storage or during flood events.

2 ALLOCATION OF PROJECT WATER

2.1 Use of Project Water

All Project Water in Project Storage, including any actual Carryover Water shall be used for the authorized purposes set forth in the Reclamation Act of June 17, 1902, 32 Stat. 390, and the Rio Grande Project Act of February 25, 1905, 33 Stat. 814, as amended and supplemented.

2.2 Determination of Project Water in Project Storage

At the beginning of each Water Year and during each month of the Water Year, The United States shall determine the total quantity of Project Water in Project Storage.

2.3 Determination of Annual Allocation to Mexico, EBID, and EPCWID

The United States shall determine the quantity of Annual Allocated Water to Mexico, EBID, and EPCWID by the first of December for the following Water Year utilizing the Project Water in storage amounts and Carryover Water amounts for each district. The United States may reconsider the Annual Allocated Water each month during a Water Year and adjust it as necessary in consultation with EBID and EPCWID in accordance with this Agreement.

2.4 Annual Allocation for United States for delivery to Mexico

The portion of the Annual Allocated Water which shall be allocated for the United States to meet its obligations pursuant to the Convention of 1906 shall be 11.3486 percent (11.3486%) of the sum of the quantity of Project Water delivered to lands in the United States plus the quantity of Project Water delivered to the head works of the Acequia Madre in acre-feet per Water Year as set forth in equation 2-1 and Table 1 that follow:

$$Y=0.826093 (X) - 102,305 \qquad (2-1)$$

where X =Annual Released Water (in acre-feet per Water Year), and Y = sum of the quantity of Project Water delivered to lands in the United States plus the quantity of Project Water delivered to the head works of the Acequia Madre (in acre-feet per Water Year).

Table 1

Annual Amount of Water Released from Caballo Reservoir (ac-ft/acre)	Sum of the quantity of Project Water delivered to lands in the United States plus the quantity of Project Water delivered to the head works of the Acequia Madre (in acre-feet per Water Year).	Quantity of Project Water delivered to the head works of the Acequia Madre (in acre-feet per Water Year)
790,000	550,309	60,000
763,842	528,700	60,000
700,000	475,960	54,015
650,000	434,656	49,327
600,000	393,351	44,640
550,000	352,046	39,952
500,000	310,742	35,265
450,000	269,437	30,577
400,000	228,132	25,890
350,000	186,828	21,202
300,000	145,523	16,515
250,000	104,218	11,827
200,000	62,914	7,140

The United States shall be entitles to release all or such portion of the Annual Allocated Water which has been allocated for the United States as it Deems necessary to meet the requirement of the Convention of 1906 to deliver water in the bed of the Rio Grande at the head works of the Acequia Madre.

2.5 Annual Allocation for EBID and EPCWID

EBID's and EPCWID's portions of the quantity of Annual Allocated Water, exclusive of the United States' portion of Annual Allocated Water pursuant to the Convention of 1906, shall be determined by the process described in Table 2 for a full allocation condition and Table 3 when there is less than a full water supply available. EBID 's and EPCWJD 's yearly allocation shall be determined using the empirically derived linear regression analysis equation (D-2). Equation D-2 was derived using historical Rio Grande Project data correlating releases from Rio Grande Project storage and corresponding yearly deliveries to Rio Grande Project diversions from the Rio Grande for EBID, EPCWID and Mexico during the Water Years 1951 to 1978 inclusive. The amount of Annual Allocated Water shall be determined using the D-2 equation for EPCWID, using equation 2-1 for the United States (pursuant to the Convention of 1906), and using the diversion ratio (ratio of the amount of water Charged to the amount of water Released) for EBID and in accordance with Tables 1 through 4 herein.

Table 2 – Rio Grande Project Hypothetical Example of Full Allocation

1	Rio Grande Project Diversion Allocation	ac-ft
2	Elephant Butte Reservoir Storage	1,000,000
3	Caballo Reservoir Storage	44,005
4	Total Rio Grande Project Storage	1,044,005
5	Estimated Rio Grande Compact Credit Waters	(196,000)
6	Estimated San Juan-Chama Water	(4,553)
7	Water Released from Storage	-
8	Total Usable Water Available for Release	843,452
9	Carryover Obligation using Estimated Diversion Ratio	14,654
10	Total Usable Water Available for Current Year Allocation	790,000
11	EBID Allocation Balance (Previous Year)	10,000
12	EPCWID Allocation Balance (Previous Year)	5,000
13	EBID Estimated Allocation Balance (End-of-Year)	-
14	EPCWID Estimated Allocation Balance (End-of-Year)	-
15	Storage for EBID and WPCWID Estimated Allocation Balance (End-of-Year)	-
16	Estimated Release of Current Usable Water	804,654
17	Estimated End-of-Year Release for Diversion Ratio	781,208
18	D1 Delivery	562,414
19	Mexico's Current Diversion Allocation	60,000
20	Gross D2 Diversion Allocation	972,709
21	EPCWID ACE Conservation Credit	-
22	Net D2 Diversion Allocation for EBID and EPCWID	912,709
23	D2 Diversion Allocation for EPCWID	394,526
24	EPCWID Diversion Allocation (w/o Conservation Credit)	399,526
25	EPCWID Diversion (w/o Conservation Credit or 67/155 th of Row 30)	399,526
26	Diversion Ratio	1.023633
27	Diversion Ratio Adjustment	19,017
28	Sum of Release and Diversion Ratio Adjustment	823,670
29	EBID D2 Diversion Allocation	518,183
30	Difference between EBID Diversion Ratio Allocation and D2 Diversion Allocation	-
31	EBID Diversion Ratio Allocation	354,144
32	EBID Diversion Allocation	354,144
33	Total EBID Diversion Allocation (includes 88/155 th of Value in Row 30)	364,144
34	Total EPCWID Allocation (includes Row 21 and 67/155 th of Value in Row 30)	399,526
35	Total EBID, EPCWID, and Mexico Allocation	823,670

Table 3 – Rio Grande Hypothetical Example of Less than Full Allocation

1	Rio Grande Project Diversion Allocation	ac-ft
2	Elephant Butte Reservoir Storage	408,773
3	Caballo Reservoir Storage	23,772
4	Total Rio Grande Project Storage	432,545
5	Estimated Rio Grande Compact Credit Waters	(187,800)
6	Estimated San Juan-Chama Water	(4,053)
7	Water Released from Storage	-
8	Total Usable Water Available for Release	240,692
9	Carryover Obligation using Estimated Diversion Ratio	112,931
10	Total Usable Water Available for Current Year Allocation	127,761
11	EBID Allocation Balance (Previous Year)	-
12	EPCWID Allocation Balance (Previous Year)	106,982
13	EBID Estimated Allocation Balance (End-of-Year)	-
14	EPCWID Estimated Allocation Balance (End-of-Year)	-
15	Storage for EBID and WPCWID Estimated Allocation Balance (End-of-Year)	-
16	Estimated Release of Current Usable Water	240,692
17	Estimated End-of-Year Release for Diversion Ratio	800,000
18	D1 Delivery	96,529
19	Mexico's Current Diversion Allocation	10,955
20	Gross D2 Diversion Allocation	80,948
21	EPCWID ACE Conservation Credit	-
22	Net D2 Diversion Allocation for EBID and EPCWID	69,994
23	D2 Diversion Allocation for EPCWID	30,255
24	EPCWID Diversion Allocation (w/o Conservation Credit)	137,237
25	EPCWID Diversion (w/o Conservation Credit or 67/155 th of Row 30)	137,237
26	Diversion Ratio	0.947320
27	Diversion Ratio Adjustment	(12,680)
28	Sum of Release and Diversion Ratio Adjustment	228,012
29	EBID D2 Diversion Allocation	39,738
30	Difference between EBID Diversion Ratio Allocation and D2 Diversion Allocation	40,082
31	EBID Diversion Ratio Allocation	79,820
32	EBID Diversion Allocation	39,738
33	Total EBID Diversion Allocation (includes 88/155 th of Value in Row 30)	62,495
34	Total EPCWID Allocation (includes Row 21 and 67/155 th of Value in Row 30)	154,563
35	Total EBID, EPCWID, and Mexico Allocation	228,012

Table 4 – Description of Values and Calculations Tables 2 and 3

Row	Description	Source of Value	Equation
1	Rio Grande Project Diversion Allocation	NA	NA
2	Elephant Butte Reservoir Storage	USBR	NA
3	Caballo Reservoir Storage	USBR	NA
4	Total Rio Grande Project Storage	Calculated	[2]+[3]
5	Estimated Rio Grande Compact Credit Waters	USBR	NA
6	Estimated San Juan-Chama Water	USBR	NA
7	Water Released from Storage	USBR	NA
8	Total Usable Water Available for Release	Calculated	[4] + [5] + [6] + [7]
9	Carryover Obligation using Estimated Diversion Ratio	Calculated	(([11] + [12]) / [26])
10	Total Usable Water Available for Current Year Allocation	Calculated	MIN(790000,[8] - [9])
11	EBID Allocation Balance (Previous Year)	EPCWID, EBID, USBR	NA
12	EPCWID Allocation Balance (Previous Year)	USBR	NA
13	EBID Estimated Allocation Balance (End-of-Year)	EBID	NA
14	EPCWID Estimated Allocation Balance (End-of-Year)	EPCWID	NA
15	Storage for EBID and WPCWID Estimated Allocation Balance (End-of-Year)	Calculated	(([14]+[13]) / [26])
16	Estimated Release of Current Usable Water	USBR	[10] + [9] - [15]
17	Estimated End-of-Year Release for Diversion Ratio	USBR	NA
18	D1 Delivery	Calculated	MAX(0,([16]*0.8260932) - 102305)
19	Mexico's Current Diversion Allocation	Calculated	MIN(60000,[18]*0.113486)
20	Gross D2 Diversion Allocation	Calculated	MIN(7638642,[10])*1.3377994-89970+MAX(0,[16]-763842)
21	EPCWID ACE Conservation Credit	USBR	NA
22	Net D2 Diversion Allocation for EBID and EPCWID	Calculated	[20] - [19]
23	D2 Diversion Allocation for EPCWID	Calculated	[22] * 67 / 155
24	EPCWID Diversion Allocation (w/o Conservation Credit)	Calculated	[23] + [12]
25	EPCWID Diversion (w/o Conservation Credit or 67/155ths of Row 30)	Calculated	[24] - [14]
26	Diversion Ratio	Calculated	0.00000042113634*[17]+0.6946382
27	Diversion Ratio Adjustment	Calculated	(([26] - 1) * [16])
28	Sum of Release and Diversion Ratio Adjustment	Calculated	[16] + [27]
29	EBID D2 Diversion Allocation	Calculated	[22] * 88 / 155
30	Difference between EBID Diversion Ratio Allocation and D2 Diversion Allocation	Calculated	IF([16]<60000, MAX(0,[31]-[29]),0)
31	EBID Diversion Ratio Allocation	Calculated	[28] - [25] - [19] - [11] - [21]
32	EBID Diversion Allocation	Calculated	IF([16]<600000, MIN([29],[31]),[31])
33	Total EBID Diversion Allocation (includes 88/155 th of Value in Row 30)	Calculated	[32]+[11]+88/155*[30]
34	Total EPCWID Allocation (includes Row 21 and 67/155 th of Value in Row 30)	Calculated	[24]+[30]*67/155+[21]
35	Total EBID, EPCWID, and Mexico Allocation	Calculated	[34]+[33]+[19]

3 RELEASE FROM STORAGE

3.1 Orders for Release of Rio Grande Project Water from Storage

EBID and EPCWID may order releases from Project storage to meet their respective delivery requirements of Annual Allocated Water or Carryover Water at their river headings during the Water Year at such times and in such quantities as they respectively elect. Water orders shall be delivered by the United States to their respective diversion and delivery points as prescribed by agreed to travel times, or as described in the Operations Manual when completed. EBID shall not order changes more frequently than four times per week. EPCWID shall not order changes more frequently than twice per week.

EBID and EPCWID shall determine the amount of water to be released from Caballo Reservoir necessary to meet the diversion orders at the time and days requested by EBID, EPCWID, and the United States (pursuant to the Convention of 1906). If EBID and EPCWID cannot agree on the amount or timing of release, then the United States shall make such determinations.

The parties shall develop a schedule of order changes that will best meet the needs of each party at their respective delivery points.

The United States shall only release Project Water ordered by EBJD when EBID has Annual Allocated Water or Carryover Water remaining in their allocation. The United States shall only release Project Water ordered by EPCWID when EPCWID has Annual Allocated Water or Carryover Water remaining in their allocation.

The Parties may make non-scheduled order changes to adjust for rainfall/runoff or flood events, accident to the delivery system, or for public safety.

The United States may make releases from storage in such quantities as necessary to meet the requirements of the Convention of 1906 and according to the schedule determined by the United States under the authority of the Convention of 1906.

4 DELIVERIES

4.1 Operation of Release and Diversion Structures

The United States shall operate Elephant Butte Reservoir so as to provide for sufficient quantities of water to be available for released from Caballo Reservoir to the Parties, as outlined in Section 3.1 herein. The United States or its designee shall operate Percha, Leasburg, and Mesilla diversion dams so as to provide sufficient flows for the districts'

diversions on the Rio Grande. The United States shall operate the American and International diversion dams and make the diversions into the American Canal.

4.2 Obligations to Deliver Project Water

Within a reasonable amount of time from the time requested for the release by EBID and EPCWID, or as defined in the Operations Manual when completed, the United States shall release from project storage those quantities of Project Water which will meet the individual requirements of each district as communicated in their water order to the United States to be delivered at the Arrey Canal Heading, Leasburg Canal Heading, Eastside Canal Heading, Westside Canal Heading, Del Rio Lateral Heading and any additional authorized points of delivery for EBID, and to be delivered to the Franklin Canal Heading, the Riverside Canal Heading, the City of El Paso 's water treatment plants and any additional authorized points of delivery for EPCWID. Within a reasonable of amount time from the time requested for the delivery, or as defined in the Operations Manual when completed, the United States shall deliver those quantities of Project Water in the Rio Grande at the head works of the Acequia Madre in accordance with the orders designated by the United States.

5 FLOW REQUIREMENTS

5.1 Order

An " Order " is a request to the United States by a Party to deliver a quantity of Project Water to each district's delivery and accounting stations at a specific flow rate (cubic feet per second) and at specified delivery time and day.

5.2 Release

A " Release " is a flow rate (cubic feet per second) of Project Water released from Project Storage.

5.3 Delivered Flow

A " Delivered Flow " is a flow rate (cubic feet per second) of Project Water that meets the conditions required to meet the delivery requirement for each district and Mexico at their designated delivery point or metering stations (stations) and at specified delivery time and day.

5.4 Charge

A " Charge " is a quantity of Project Water (acre-feet) that is deducted from (i.e. charged against) a Party's Annual Allocated or actual Carryover Water account.

5.5 Charge Against EBID's and EPCWID's Annual Allocated Water including Carryover Water

EBID 's and EPCWID 's remaining Annual Allocated Water shall be computed by subtracting a Charge which shall be equal to EBID 's or EPCWID 's respective delivery at main canal headings and any other designated and authorized metering stations at the Rio Grande diversion dams against their respective remaining portion of Annual Allocated Water including carryover water.

Allocation charges for water diverted by EPCWID, EBID, and Mexico shall be made as follows, or in accordance with the procedures and methods contained in the Operations Manual when completed.

1. EBID and EPCWID shall report to the United States the flow records for their respective diversion and water delivery stations for each month by the 5th day of the following month.
2. The reports may be transmitted electronically by any party to the other parties.
3. The United States shall report to EBID and EPCWID the previous month's Allocation Charges and the cumulative year-to-date Allocation Charges for EBID, EPCWID, and the United States by the 10th day of the month.

A hypothetical example of summary tables of the Allocation Charges for EBID and EPCWID is contained in Appendix A attached here to.

Water diverted from the Rio Grande by EBID may be returned (bypassed) to the Rio Grande for credit to their water allocation account at one designated location each within the Leasburg, Eastside, and Westside canal system, and two designated locations within the Arrey Canal system. Water diverted from the Rio Grande by EPCWID may be returned (bypassed) to the Rio Grande for credit to their water allocation account at one designated location on the La Union East Canal. Such credits shall be the smaller of the amount of water declared for bypass by the respective district or the actual amount of water that was measured and returned to the Rio Grande.

The United States shall make every effort to match the delivery and the order for each district at all designated metering and delivery stations in order to minimize spill water and meet the order at any given time.

5.6 Charge Against United States' Annual Allocated Water for Delivery to Mexico

United States' remaining quantity of Annual Allocated Water shall be equal to United States' previous allocation of Annual Allocated Water during the current Water Year minus the water delivered to Mexico at their diversion point on the Rio Grande at the Acequia Madre during the Water Year. The United States will maintain the gates at the International Dam so as to minimize the leakage to the greatest extent practical.

5.7 Compliance with Delivery of Project Water to Mexico at the Acequia Madre

If the flow at the first metering station above International Diversion Dam does not meet the Acequia Madre delivery requirement, the United States will adjust the gates at American Diversion Dam to reduce the flow to meet the corresponding delivery requirement for that day. The United States will give notice to EBID and EPCWID of such action except when such flow is due to storm runoff or flood events, short term debris clearing or sluicing operations. Any time the United States manually adjusts the flow at the American Diversion Dam by more than 25 cfs, for any reason, or at anytime the flow diverted at the American Diversion Dam into the American Canal exceeds the capacity of the American Canal, United States shall notify EPCWID as soon as possible.

5.8 Diversion Points

The diversion points used for EBID are as follows: Percha Lateral, Arrey Canal, Leasburg Canal, California Extension, various designated river pumps, Del Rio Lateral, East Side Canal, and West Side Canal. The diversion points used for the EPCWID are as follows: the New Mexico/Texas state line crossings for the La Union East Lateral, Three Saints Lateral, and La Union West lateral in the Mesilla Valley. In the El Paso Valley, deliveries to EPCWID will be made at the Robertson/Umbenhauer Water Treatment Plant, Franklin Canal, Jonathan Rogers Water Treatment Plant, and Riverside Canal.

5.9 Compliance with Delivery of Project Water to EBID and EPCWID

The United States shall closely match the order and diversion at each designated delivery metering station through close monitoring of releases from Project Storage and river accretions or losses. Close coordination and daily communication shall be maintained between EBID, EPCWID, and the United States in order to make adjustments to releases

from Project Storage such that water deliveries match water order amounts as closely as possible at each delivery point in the Project.

6 GENERAL PROVISIONS

6.1 Compliance with Federal Law

The terms of this Agreement are subject to applicable federal law. All Parties will cooperate to comply with all federal law prior to and during implementation of this Agreement.

6.2 Other Agreements

This Agreement is not intended to conflict with terms of any prior agreements or contracts between the EBID and EPCWID, or EBID and the United States, or EPCWID and the United States, or among all of the Parties; however, the Agreement represents the current conditions and present understanding that future operations shall be as provided for herein unless further modified upon having reached unanimous consent of the Parties.

6.3 Required Continuous Flow Metering Stations

A list of required continuous flow metering stations is attached to this Agreement as Appendix B. Each Party shall distribute and exchange copies of all flow records for all flow metering stations for which it is responsible, as listed in Appendix B, among the other Parties at least monthly with a goal of real time data exchanges.

6.4 Regulating Reservoirs Downstream of Caballo Dam

Nothing in this Agreement shall be interpreted to prohibit the construction and/or operation of an off-channel regulating reservoir, providing however that no such reservoir shall affect the water order or delivery requirements of the Parties under this Agreement.

6.5 Emergency Conditions (Force Majeure)

If any Party through no fault of its own is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, then the obligations of such Party, so far as they are affected by such Force Majeure, shall be suspended during the time reasonably necessary to remedy such inability, but for no longer period. The term "Force Majeure" shall mean acts of God, wars, terrorism, vandalism, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, hazardous spills, or explosions.

6.6 Term of Agreement

This Agreement shall be in effect from January 1, 2008 until December 31, 2050.

6.7 Modification of Agreement

The Parties may modify any provisions of this Agreement upon having reached unanimous consent.

6.8 Assignment Limited - Successors and Assigns Obligated

The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto. No assignment of any right or obligation shall be made by any Party without first obtaining written approval by the other Parties.

6.9 Obligations to Indian Tribes Not Affected

Nothing in this Agreement shall be construed as affecting the obligations of the United States of America to the Indian Tribes, or as impairing the rights of the Indian Tribes.

6.10 Obligations to Mexico Not Affected

Nothing in this Agreement shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties.

6.11 Amendment of Agreement

This Agreement shall be reviewed for improvement of operations at least on an annual basis or as agreed to by the majority of the parties. Any of the parties may submit a written request to the other parties for review of this Agreement at any time.

6.12 Rio Grande Compact

Nothing herein is intended to alter, amend, repeal, modify, or be in conflict with the provisions of the Rio Grande Compact.

APPENDIX A-Hypothetical Example of Allocation Charges for EBID and EPCWID

The tables below are hypothetical examples of summary tables of Allocation Charges for EBID and EPCWID. The Operations Manual, when completed, shall contain detailed information regarding the methods, equations, and procedures used by EBID, EPCWID, and the United States to account for all water charges and operating procedures for the Rio Grande Project.

EPCWID Diversion Allocation Charges

Diversion Location	Metered Volume	Adjustment for Conveyance Losses for NM Deliveries	Diversion Allocation Charges for Month	Beginning of Month Totals	End-of-Month Totals
	ac-ft	ac-ft	ac-ft	ac-ft	ac-ft
L U E Canal – TX	2,395	95%	2,275	17,065	19,340
L U W Canal – TX	947	95%	900	6,620	7,520
Three Saints Lateral	134	100%	134	1,426	1,560
Total Mesilla Valley (Texas)			3,309	25,112	28,420
Umbenhauer/Robertson Water Treatment Plant	3,345	100%	3,345	16,701	20,046
Franklin Canal	7,400	100%	7,400	39,293	46,694
United States – Ysleta del Sur Agreement	0	100%	0	200	200
United States Section – IBWC (Construction Water)	1	100%	1	22	23
Jonathan W. Rogers Water Treatment Plant	4,666	100%	4,666	27,747	32,413
Riverside Canal	20,079	100%	20,079	125,831	145,910
Haskell R. Street WWTP Effluent	-1,599	100%	-1,599	-8,180	-9,779
Credit for Diversions greater than Orders (EP Valley)	-2,790	100%	-2,790	-3,233	-6,023
Total Allotment Diversion Charges			34,411	223,493	257,904
Diversion Allocation				382,486	390,105
Est. Annual Conservation Credit Diversion Allocation					18,742
Accrued Conservation Credit Diversion Allocation					12,390
Total Diversion Allocation				382,486	390,105
District Allotment Balance				158,993	144,591
2006 Carryover Balance					36,200

ELEPHANT BUTTE IRRIGATION DISTRICT

WATER ALLOTMENT CHARGES

SUBJECT TO REVISION

	GROSS DIVERSIONS	(AC-FT)	DIVERTED TO TEXAS	(AC-FT)	NET DIVERSIONS	(AC- FT)
	TO DATE		TO DATE		TO DATE	
ARREY CANAL	9775	63725			9775	63725
PERCHA LATERAL	93	508			93	508
LEASBURG CANAL	8739	67663			8739	67663
CALIFORNIA EXTENTION	0	353			0	353
EASTSIDE CANAL	7295	48677	311	1920	5984	46757
DEL RIO LATERAL	476	2989			476	2989
WESTSIDE CANAL	18793	135991	5267	41097	13526	94894
PUMPED FROM RIVER**	0	56			0	56
GROSS TOTAL	45171	319962	5578	43017	39593	276945
			NET	TO		
			DIVERSION	DATE		
TOTAL CHARGES (AC-FT)			39593	276945		
CREDIT AT ARREY (-)			1215	3882		
CREDIT AT LEASBURG (-)			0	233		
NET ALLOTMENT CHARGE			38,377	272,830		
DISTRICT ALLOTMENT					311,517	
DISTRICT BALANCE					38,687	
**GREENWOOD AND DURAN RIVER PUMPS (EBID DATA)						

APPENDIX B –Required Flow Metering Stations

In order to assure accurate metering of allocated water deliveries to EBID, EPCWID and Mexico, the following metering stations will be maintained by the described agencies. The letter prefix before each metering station indicates the valley in which the metering station is located (R for Rincon, M for Mesilla, and E for El Paso).

The following continuous stage recorders shall be maintained by the United States:

R 1 - Rio Grande Below Caballo - located on the east side of the river and approximately 0.8 mile downstream of Caballo Dam.

M2 - Rio Grande at Leasburg Canal - located approximately 1.5 miles downstream of Leasburg Diversion Dam on the river channel just downstream of Leasburg Wasteway No. 1.

Miscellaneous Sites: Any location, not identified herein, at which water from Rio Grande downstream of Elephant Butte Dam and upstream of the Ft. Quitman, Texas, is diverted by the United States, including without limitation, diversions for the Bonita Lateral.

The following continuous stage recorders shall be maintained by EBID:

R2 - Arrey Canal - The metering bridge is located just downstream of the canal heading and the CMP shelter and recorder are located just downstream of the Percha State Park bridge crossing.

R3 - Percha Lateral - The lateral water flow is measured just downstream of the lateral heading and the CMP shelter with recorder are located downstream of the metering RC Box culvert.

R4 - Wasteway No. 5 at Hatch Siphon - This wasteway is located upstream of the Hatch Siphon at the Rio Grande.

R5 - Garfield Drain - located north of the US Hwy 85 bridge, 3 miles north of Hatch, New Mexico, and west of the highway on the drain channel.

R6 - Rio Grande at Hatch - located approximately 3 miles north Hatch, New Mexico, and west of the US Hwy 85 bridge on the right side of the river channel.

R7 - Wasteway No. 16 at Rincon Siphon - located downstream on the river channel from the A.T. & S. F. Railroad crossing the Rio Grande approximately 2 miles east of Hatch, New Mexico.

R8 - Hatch Drain - located on the drain upstream of UW Hwy 85 approximately 2.5 miles east of Hatch, New Mexico.

R9 - Wasteway No. 18 from Rincon Lateral - located approximately 8 miles east of Hatch, New Mexico, north of the US Hwy 85, and on the left side of the Rio Grande.

R10 -Rio Grande at Hayner Bridge - located approximately 8 miles east of Hatch, New Mexico on the Rio Grande just upstream of the Tonuco River crossing.

R11 - Rincon Drain - located approximately 8 miles east of Hatch, New Mexico, 1 mile north of the Tonuco River crossing, and downstream of the intersection of the Rincon Lateral and Rincon Drain.

M1 -Leasburg Canal - located approximately 1.5 miles from the canal heading and approximately 0.5 miles east from the intersection of Fort Selden Road (from US I-25) and US Hwy 85.

M3 - Selden Drain - located approximately 3.5 miles south of Radium Springs, New Mexico and just east of U.S. Hwy 85, immediately upstream of the intersection of Kerr Lateral with the drain.

M4 -Wasteway No. 5 - located approximately 5 miles north of Las Cruces, New Mexico and one mile south of the intersection of NM Hwy 430 and US Hwy 85, on the left side of the river channel.

M5 - Wasteway No. 8 - located approximately 3 miles north of Las Cruces, New Mexico on the left side of the river approximately 2 miles west of US Hwy 85.

M6 - Picacho Drain - located approximately 2.0 miles northwest from Mesilla Diversion Dam, west of the Rio Grande, and just downstream from the Nusbaum Lateral inflow into the Picacho Drain.

M8 -West Side Canal - located west off the Mesilla Diversion Dam. Station is located approximately 0.5 miles downstream of the canal heading and contains a metering bridge and CMP shelter with recorder.

M9 -East Side Canal - located east off the Mesilla Diversion Dam. The Station is located approximately 0.25 miles downstream of the canal heading and contains a metering bridge and CMP shelter with recorder.

M10 - Del Rio Lateral - located east off the Mesilla Diversion Dam. Station is located approximately 0.5 miles downstream of the lateral heading and contains a metering bridge and CMP shelter with recorder.

M11 - Rio Grande Below Mesilla - located approximately 0.75 miles downstream of Mesilla Diversion Dam on the Rio Grande.

M12 - Wasteway No. 15 - located approximately 200 feet upstream of the left (east) of the river levee and 1.6 miles downstream from the New Mexico State Hwy No. 28 bridge crossing of the Rio Grande.

M13 - Santo Tomas River Drain - located approximately 3.4 miles downstream of the New Mexico State Hwy No. 28 bridge crossing and 0.8 miles upstream of the Mesquite- San Miguel Road bridge crossing the Rio Grande. The station is on the west side of the river on the Santo Tomas River Drain upstream of the culvert through the levee.

M14 - Wasteway No. 25 -located approximately 3.5 miles downstream of the New Mexico State Hwy No. 28 bridge crossing and 0.7 mile upstream of the Mesquite-San Miguel Road Bridge crossing the Rio Grande. The station is on the west side of the river on the tail end of the Santo Tomas River Lateral on the river side of the lateral embankment.

M15 - Wasteway No. 26 - located approximately 1.5 miles west of Mesquite, New Mexico on the right side of the river off the Upper Chamberino Lateral and just downstream of the river crossing the Mesquite-San Miguel state road.

M16 -Brazito River Lateral Wasteway - located on the east side and 0.7 mile downstream of the Mesquite-San Miguel Road bridge crossing the Rio Grande. The station is on the tail end of the Brazito River Lateral and is downstream of the river levee.

M17 - Wasteway No. 18 - located approximately 1.5 miles northwest from Vado, New Mexico on the left (east) side of the river. This station is just upstream where the wasteway crosses Del Rio Drain and downstream of the railroad tracks.

M19 - Del Rio Drain -- located approximately 3 miles south of Mesquite, New Mexico and north of Vado, New Mexico. Station is just west off US Hwy 85 and 125 feet downstream of the Vado Mesquite Road Crossing Del Rio Drain.

M20 - Wasteway No. 19 - located between a fork formed by the river on the west and the A.T. & S.F. railroad and approximately 2.0 miles northwesterly from Berino, New Mexico. The wasteway station is approximately 500 feet from the Three Saints Lateral and wastes this lateral into the Rio Grande.

M21 - Wasteway No. 30 - located downstream of the New Mexico State Road 226 from Berino, and downstream of the river levee between the Chamberino East Lateral and the Rio Grande.

M22- La Mesa Drain - located approximately 2 .5 miles west of Berino, New Mexico, west of the river, and ½ mile from wasteway No. 31.

M23 - Wasteway No. 31 - located approximately 2.5 miles southwest of Berino, New Mexico, west of the river, and 3 miles downstream from the intersection of the river with State Hwy 226 (Berino to Chamberino).

M24 -Wasteway No. 20 -located on the east side of the Rio Grande and wastes the Three Saints West Lateral. This wasteway is approximately 1.6 miles upstream of the Anthony bridge crossing the Rio Grande.

M25 -- Wasteway No. 3 1 B -located approximately 0.5 mile upstream of the Anthony bridge crossing and on the west side of the Rio Grande. This wasteway is on the tail end of the Jimenez Lateral and is upstream of the river levee.

M26 -Wasteway No. 21 - located approximately 0.5 mile upstream and on the east side of the Rio Grande. This wasteway is on the tail end of the Three Saints West Lateral and is 300 feet upstream of the river levee.

M27 -La Union West Canal -located approximately 3 miles west of Anthony, New Mexico just downstream of the canal heading.

Miscellaneous Sites: Any location where diversion of water from the Rio Grande occurs in New Mexico downstream of Caballo Dam and upstream of the upstream of the American Diversion Dam, including but not limited to the California Lateral Extension and various river pumps.

The following continuous stage recorders shall be maintained by EPCWID:

M28 - La Union East Canal - located approximately 3 miles west of Anthony, New Mexico just downstream of the canal heading.

M29 - Three Saints East - located approximately 0.3 mile upstream of the intersection of the Three Saints Lateral and FM1905 from Anthony.

M30 -Wasteway No. 32 - located approximately 2 miles west of Anthony, New Mexico, on the right side of the river, and just downstream of New Mexico State Hwy 225.

M32 -East Drain - located approximately 2 miles south of Anthony, New Mexico and west of US Hwy 80A.

M33- Wasteway No. 32A - located 2 miles upstream of the Anthony bridge crossing and on the west side of the Rio Grande. This wasteway is on the tail end of the Rowley Lateral and just upstream of the river levee.

M35 - Wasteway No. 32B - located west and downstream of the Vinton bridge crossing the Rio Grande. Station is on the tail end of the Vinton Cutoff Lateral and just downstream of the river levee.

M36 - Wasteway No. 34 -- located just downstream of the Montoya Siphon and is on the tail end of the Canutillo Lateral.

M37 -Wasteway No. 34A - located approximately 0.6 mile upstream of the Combined La Union Lateral and on the west side of the Rio Grande.

M38 -Wasteway No. 35 - located 3.5 miles downstream from Canutillo, Texas on the right side (west) of the Rio Grande.

M39 - Wasteway No. 35C - located just downstream and on the west side of the Rio Grande. Station is on the tail end of the Schutz Lateral and upstream of the river levee.

M40 - Wasteway No. 36 - located at the tail end of the Montoya Lateral A and on the east side of the Rio Grande.

M41 - Montoya Drain - located in the Upper Valley, Texas, approximately two miles downstream of Country Club Road on the Montoya Drain.

M42 - Wasteway No. 38 - located just down stream of the Sunland Park Road on the Montoya Main Lateral.

M45 - Rio Grande at Canutillo - located approximately 1.0 mile north of Canutillo, Texas and on the right and west side of the Rio Grande.

E1 - American Canal - located off Paisano Drive on canal concrete lined channel just downstream of the Paisano Siphon and ASARCO plant.

E2 - Robertson/Umbenhauer Water Treatment Plant - located adjacent to the American Canal Extension near Canal Street in downtown El Paso.

E3 -Franklin Canal - located downstream of heading of the Franklin Canal near the 2nd Street Check on the American Canal Extension.

E4 -Jonathan Rogers Water Treatment Plant - located adjacent to the Riverside Canal immediately upstream of the ES metering station

E5 - Riverside Canal - located on the right side (south) and approximately 800 feet downstream of the canal heading.

E6 - Riverside Canal Wasteway No. 1 -- located on the right side of the canal just south of the Bosque Park. Wasteway is from Riverside Canal to the Rio Grande.

E7 -Riverside Canal Wasteway No. 2 - located downstream from Riverside Canal Wasteway No. 1, at a point where the canal channel departs from the river levee, approximately 2.5 miles northwest of Cuadrilla, Texas.

E8 - Fabens Waste Drain - located on the Waste Drain Channel just west of U.S. Hwy 20 at Fabens, Texas.

E9 - Fabens Waste Channel - located southeast of Fabens, Texas, downstream on the waste channel from the Tornillo Canal Heading and the Cook-Schultz Lateral inlet intersection.

E10 -Waste Channel Below Tornillo Wasteway No. 1 - located on the Fabens Waste Channel below the Tornillo Canal Wasteway and the Tornillo-Caseta Road.

E12 -Hudspeth Feeder Canal -located on the Hudspeth Feeder Canal approximately six miles downstream from the Guadalupe-Caseta Road and International Bridge in to Caseta, Mexico.

E13 - Tornillo Canal Wasteway No. 2 - located approximately I mile east of Alamo Alto, Texas on the canal channel adjacent to U.S. Hwy 20 Alternate.

E14 - Tornillo Drain - located on drain channel just downstream and 800 feet from the Alamo Alto Drain inlet, approximately 0.5 miles southeast of Alamo Alto, Texas.

Miscellaneous Sites: Any location where diversion of water from the Rio Grande occurs in Texas downstream of Mesilla Dam and upstream of the former location of Riverside Diversion Dam.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the 10th day of March, 2008.

Attest:

ELEPHANT BUTTE IRRIGATION DISTRICT

/s/ Willie Koenig
Willie Koenig
Secretary

By: /s/ James Salopek
James Salopek
President

Attest:

EL PASO COUNTY WATER IMPROVEMENT
DISTRICT NO. 1

/s/ Indar Singh
Indar Singh
Secretary

By: /s/ Johnny Stubbs
Johnny Stubbs
President of the Board of Directors

Attest:

UNITED STATES OF AMERICA

/s/ Christopher B Rich
For Regional Solicitor

By: /s/ Larry Walkoviak
Regional Director
Upper Colorado Region
Bureau of Reclamation

No. 141, Original

In the
SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

OFFICE OF THE SPECIAL MASTER

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of December 2018, I caused a true and correct copy of **DECLARATION OF STUART L. SOMACH IN SUPPORT OF TEXAS'S MOTION TO STRIKE OR FOR PARTIAL JUDGMENT REGARDING NEW MEXICO'S COUNTERCLAIMS AND AFFIRMATIVE DEFENSES, FEDERAL RULES OF CIVIL PROCEDURE, RULE 12(C) AND RULE 56** to be served upon all counsel for all parties to this action and amici, via electronic mail, as indicated in the Service List attached hereto.

Respectfully submitted,

Dated: December 26, 2018


Christina Garro

SERVICE LIST

SPECIAL MASTER
(Service via E-Mail and U.S. Mail)

Honorable Michael J. Melloy

Special Master
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