

THE RIO GRANDE COMPACT

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The recorded history of the Upper Rio Grande watershed began with the discovery of the Rio Grande by Coronado in 1540. We have not been able to pinpoint the exact location where Coronado discovered the Rio Grande, but it would be a safe statement to say it was in the general vicinity of what is now Bernalillo, New Mexico.

The Rio Grande originates in the Colorado Rockies and the San Juan Mountains of New Mexico, and flows southward out of Colorado for more than 400 miles across New Mexico. After leaving New Mexico, it forms the boundary between Texas and Mexico for about 1,250 miles to its mouth at the Gulf of Mexico. The total length of the river is about 1,800 miles.

For many years explorers thought the Upper Rio Grande above what is now Fort Quitman, Texas, and the Lower Rio Grande below Fort Quitman, Texas, were two different rivers. I do not have the exact date when it was finally determined that the two rivers were one and the same.

It was evident to the Spanish explorers that the Upper Rio Grande in what is now New Mexico and Colorado had been farmed by the Indians, probably Pueblo Indians or their predecessors, for perhaps hundreds of years. There was evidence of irrigation systems with irrigation ditches having been prepared by the Indians.

The Spaniards brought with them to the new world the Mighty War Machine (the horse), Christianity and irrigation customs, law and knowledge. A few years ago, the great John Clark, a former director of the Water Resources Research Institute here in Las Cruces, was invited to Spain to attend a meeting of an irrigation district board, which had met regularly for about 900 years.

Irrigation by non-Indians in the San Luis Valley of Colorado began in the early 1850s.

The Rio Grande is an interstate and international stream. It rises in Colorado, flows southward for more than 400 miles across New Mexico, and down the international boundary to the Gulf of Mexico, furnishing irrigation water to the different irrigated areas of the three states.

Above Fort Quitman, Texas, almost all of the water of the Rio Grande originates in Colorado and New Mexico. Below Fort Quitman, Texas, the river is supplied mainly by tributaries from Mexico.

The main natural divisions of the Upper Basin north of Fort Quitman, Texas, are: (1) the San Luis Valley section of Colorado, (2) the middle section of New Mexico; and (3) the Elephant Butte, Fort Quitman, section in New Mexico-Texas and Mexico.

In the early 1890s, water shortages occurred along the Rio Grande in the Mesilla and El Paso valleys. It became evident that certain sections on the Upper Rio Grande were being overdeveloped and that some interstate and international attention should be applied to the consequent problems. In 1896, the secretary of the Interior Department embargoed any new development of the Upper Rio Grande.

On February 25, 1905, Congress authorized the Rio Grande Reclamation Project, which now operates Elephant Butte Dam and below and is known as the Rio Grande Project.

In 1906, Mexico and the United States completed the negotiation of a treaty having to do with the division of the waters of the Upper Rio Grande between the United States and Mexico. The treaty also allowed for delivery by the United States at El Paso, Texas, of 60,000 acre-feet a year to Mexico.

After the authorization of the Rio Grande Reclamation Project and the Treaty of 1906 between Mexico and the United States, Elephant Butte Dam was authorized. Elephant Butte Dam was completed in 1916.

In 1923, Colorado and New Mexico enacted statutes authorizing their respective governors to appoint commissioners to negotiate a Rio Grande Compact. In 1924, the first meeting of the Rio Grande Compact Commission was called to order by the Honorable Herbert Hoover, then secretary of Commerce who was designated by the United States to be the nonvoting federal chairman of the commission. Secretary Hoover, who was appointed by President Coolidge influenced negotiations of a temporary compact. The Compact of 1929 was entered into among New Mexico, Colorado and Texas. The compact was to have a life of six years, which would give the three states an opportunity to negotiate a permanent compact. The temporary compact was later extended to about 10 years.

New Mexico State Engineer Thomas M. McClure took the position as New Mexico commissioner. He stated that within the context of the Compact, Elephant Butte Reservoir would be the dividing line between New Mexico and Texas. He also stated that New Mexico was willing to negotiate the right to the use of water under the Elephant Butte Project on the basis of fixing a definite amount of water to which that project would be entitled. Texas Commissioner Frank B. Clayton also considered the lands in both states below Elephant Butte Reservoir as a unit.

In order to obtain a large volume of dependable data on which to base the negotiation of a permanent Rio Grande Compact, the states requested, through the president, that the United States have a study performed by the National Resources Committee.

In August 1937 the chairman of the Consulting Board of the Rio Grande Joint Investigation, said:

For three-quarters of a century the Western States have been creating and perfecting, gradually but definitely, the legal principles and the social institutions needed where irrigation is the chief basis of economic life. Although much remains to be accomplished, none of the Western States lacks authority for adequate control and administration of intrastate waters, whether surface waters or underground waters. On the other hand, the authority of a State to control and administer interstate waters is limited. If the claims of two or more States to such waters are in conflict, the States may settle the controversy through negotiation of an interstate compact or may have recourse to the Supreme Court of the United States for adjudication of the differences at issue. The weight of public opinion favors the interstate compact. Moreover, the Supreme Court repeatedly has taken a friendly attitude toward the compact mode of action.

The U.S. Constitution sets forth the following in Section II:

The Judicial Power shall extend to all cases in Law and Equity arising under this Constitution . . . to controversies to which the United States shall be a party; to controversies between two or more states

The National Resources Committee composed of many agencies of the United States, submitted a report entitled, The Rio Grande Joint Investigation In the Upper Rio Grande Basin, In Colorado, New Mexico, and Texas. The study was conducted in 1936 and 1937. The committee report

was printed in February 1938 and consisted of 566 pages of detailed narratives, maps, charts, graphs and statistical data.

The agencies involved in the Rio Grande Joint Investigation were: the U.S. Department of the Interior; the U.S. Geological Survey (USGS), Water Resources Branch Division of Ground Water, Water Resources Branch of Quality of Water, Conservation Branch; Bureau of Reclamation, Water and Power Division; and the Office of Indian Affairs. The U.S. Department of Agriculture was involved with the Bureau of Agricultural Engineering, the Soil Conservation Service, the Bureau of Plant Industry, and the Resettlement Administration.

In 1939 due to the thoroughness of this report and the hard work of the three states and the federal chairman, the resultant Rio Grande Compact became the law of Colorado, New Mexico, Texas and the United States. The compact has not been amended since its establishment in 1939. There has been no request by any signatory state to have the compact amended.

The Rio Grande Compact is a concise, clear document. It is administered by the Rio Grande Compact Commission. The commissioners for Colorado and New Mexico are the state engineers of their respective states. The commissioner for Texas is appointed by the governor of Texas. The chairman of the Compact Commission is appointed by the president of the United States, and presides without vote. All official actions of the commission require the unanimous consent of the commissioners.

The first paragraph of the Rio Grande Compact reads:

The State of Colorado, the State of New Mexico and the State of Texas, desiring to remove all causes of present and future controversy among these states and between citizens of these states, and citizens of another state, with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of Interstate Committee, and for the purpose of effecting and equitable apportionment of such waters have resolved to conclude a Compact for the attainment of these purposes

The compact provides for an equitable apportionment of all waters of the Rio Grande above Fort Quitman, Texas, and provides for the operation and maintenance of about 20 gaging stations upstream from Fort Quitman.

The compact sets forth the obligations of Colorado to deliver varying amounts of waters to New Mexico and Texas at the Colorado/New Mexico state line. For example, Colorado's yearly obligation to deliver water in the Rio Grande at the Colorado/New Mexico state line would be 350,000 acre-feet of water out of 1 million acre-feet passing various key Colorado gauges. The compact sets forth New Mexico's obligation to deliver to Texas varying amounts of waters at Elephant Butte Reservoir for users below the reservoir. For example, New Mexico's yearly obligation to deliver water to Texas at Elephant Butte Reservoir would be 800,000 acre-feet, if the amount of water flowing past the Otowi index station would be 1,200,000 acre-feet. Also in the compact are articles that control the allowable water storage and release from water storage of Colorado and New Mexico in upstream reservoirs, and the circumstances surrounding the control of such storage.

The compact recognizes that conditions in the Upper Rio Grande above Elephant Butte Reservoir are such that annual and seasonal variables in the amounts of run-off and the conditions under which water can be stored must be considered. The compact provides that upstream states above Elephant Butte Reservoir may from time to time and under certain circumstances incur debits, both annually and accumulatively. It also provides for conditions and actions required in the event that Elephant Butte Reservoir spills.

Now that the San Juan-Chama Project has been constructed, the compact recognizes that waters brought from the western slopes of the Continental Divide to the eastern slope will be separate from those of the Rio Grande.

The compact recognizes and acknowledges that the schedules contained and the quantities of water allocated shall never be increased or diminished by reason of any increase or diminishment in the delivery or loss of water to Mexico. Nothing in the compact shall be construed as affecting the obligations of the United States to Mexico under existing treaties, or to the Indian tribes, or as impairing the rights of the Indian tribes. There are about 17 Indian tribes in the Rio Grande watershed upstream from Elephant Butte Reservoir. New Mexico has spent many years in the federal court system attempting to work out water rights, water entitlements, and places of use of the water with the Indian tribes.

The federal courts have held that when interstate compacts are negotiated, and have been approved by the U.S. Congress, the law set forth in the compact overrides any conflicting law of a state, concerning questions arising therefrom.

The Compact Commission works with many agencies outside the commission itself. These agencies include the Bureau of Reclamation, the Corps of Engineers, the USGS, Fish and Wildlife, Parks and Recreation, universities, water resources research institutes, irrigation districts, canal companies, state agencies, legislatures, the U.S. Congress, and the U.S. International Boundary and Water Commission.

The Compact Commission, with and through its engineer advisors, determines transmission losses of the Rio Grande and its tributaries, determines evaporation from reservoirs, accounts for all of the water flowing in the system, as well as transmountain diversions of water coming from other river systems into the Rio Grande. For example, the Bureau of Reclamation in Elephant Butte Reservoir now stores Rio Grande waters, San Juan-Chama waters in the Permanent Recreation Pool, and San Juan-Chama waters for the French wine grape growers project east of Elephant Butte Reservoir. Permanent recreation pools also are being operated, or being studied for, Jemez, Cochiti and Abiquiu reservoirs in New Mexico.

About 25 important reservoirs are in the Upper Rio Grande system, north of Elephant Butte Reservoir. Four of these reservoirs are operated by the Corps of Engineers, which also has responsibilities and authority in connection with the operation of Platoro Reservoir in Colorado under certain circumstances.

The reservoirs north of Elephant Butte Reservoir in the Upper Rio Grande system include: Cochiti, Abiquiu, Jemez, El Vado, Heron, McClure, Nichols, Galisteo, San Gregorio, Acomita, Squaw Lake, Rio Hondo, Hermit Lakes, Troutvale, Big Meadows, Nambu and Rio Grande.

The distribution of waters for agricultural use in the Upper Rio Grande Basin in Colorado is the primary responsibility of the Colorado state engineer working with the irrigation districts and other entities having to do with delivery of waters to farmers.

In New Mexico above Elephant Butte Reservoir, the waters are under the jurisdiction of the New Mexico state engineer who works with the Bureau of Reclamation, and the groups representing irrigation districts, community ditches and small acequias.

The delivery of water to farmers below Elephant Butte Reservoir in New Mexico, which for compact purposes is the state of Texas, is handled by the Bureau of Reclamation and the three irrigation districts below Elephant Butte. There is one irrigation district in New Mexico and two in Texas. The surface waters of the Rio Grande below Elephant Butte Reservoir historically have been divided by the Bureau of Reclamation under the authority of the secretary of the Interior. This division process, which also involves the irrigation districts in New Mexico and Texas, roughly divides the waters at 57 percent to New Mexico and 43 percent to Texas. The waters below Elephant Butte originally were divided between New Mexico and Texas in about 1907. The current contracts between the irrigation districts and the Bureau of Reclamation covering water deliveries were entered into in 1938. These dates contain the basic divisions of the waters between New Mexico and Texas and are acknowledged and recognized by each.

The Rio Grande Compact of 1939 has been operated for about 45 years. In that time, the Compact Commission probably has met more than 60 times. The records of the compact meetings are available in the office of the secretary at Santa Fe, New Mexico. The USGS serves as secretary to the Compact Commission.

The three states all have had some rough sledding during the 45 years. There have been strong conflicting positions and opinions taken on many occasions. In the large majority of the discussions, the three compact commissioners have been able to resolve differences in a manner satisfactory to all, or through compromise.

The Rio Grande Compact, as now written, is here to stay. The compact has survived droughts, floods, population explosions, rapid growth of industry, change in demand and prices for agricultural commodities, increase costs for production of agricultural commodities, changing techniques in agriculture, wars, depressions, and strong personalities.

The day must come when we citizens of the Rio Grande learn to live together in trust and respect. Then we will all reap optimum benefits from our precious river's waters. I hope the Water Resources Research Institute will have another report on the Rio Grande Compact this century.