



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

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State Engineer

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March 4, 2010

Mr. Mike Connor
Commissioner
U.S. Bureau of Reclamation
1849 C Street, N.W.
Washington, DC 20240

RE: 2008 Rio Grande Project Operating Agreement and Operations Manual

Dear ^{Mike}Mr. Connor:

In November 2009, Reclamation asked the State of New Mexico to evaluate the 2008 Rio Grande Project Operating Agreement ("Agreement") and Operations Manual ("Manual"). I am writing this letter to address New Mexico's key concerns about the Agreement and Manual.

First, I would like to express my appreciation for your staff's cooperation with my staff. The meetings and dialogue between Reclamation and the State of New Mexico have been very useful, and have allowed my staff to increase their understanding of current Project operations.

Additionally, in September 2009, the States of New Mexico and Texas jointly submitted a list of questions and concerns about the Agreement and Manual to Reclamation. (See Attachment 1 to this letter.) From my discussions with Reclamation staff, the Texas Rio Grande Compact Commissioner, Elephant Butte Irrigation District ("EBID") and El Paso County Water Improvement District #1 ("EPCWID"), it is my understanding that some of these questions and concerns are now being addressed by Reclamation, EBID and EPCWID. Hopefully, the next version of the Manual will resolve many of the issues raised in Attachment 1, and my staff and I look forward to reviewing the updated Manual and assessing the revisions. Nevertheless, the updated Manual will not address the following:

1. The effects of Texas groundwater pumping on the Project are not properly calculated and offset. Consequently, EBID pays for reductions in the efficiency of the Project due to Texas' pumping.
2. The method by which Reclamation currently calculates the "Diversion Ratio" does not accurately reflect Project efficiency in the Rio Grande Project, and consistently results in a Diversion Ratio that is less than true Project efficiency. As a result, EBID's allocation of Project water was substantially reduced in 2009, and will continue to be reduced until the method for calculating the Diversion Ratio is revised.

3. Our analysis of Project operations indicates that, if EPCWID or other Texas Project diversions rise above current levels, the 2008 Agreement and Manual cannot work fairly, equitably or practically. Additionally, Project operations under the 2008 Agreement and Manual could substantially affect the Rio Grande Compact to the detriment of both New Mexico and Colorado.
4. Many aspects of Project operations under the Agreement and Manual are not fully documented, so Project operations are not always transparent and are often uncertain. New Mexico believes that all Project operations must be fully documented and all agreements amongst the parties must be committed to writing.

I will outline these specific questions and concerns in more detail below. But, I wanted to point out here that, as a result of new operations under the Agreement and Manual, EBID's Project allocations in 2008 and 2009 were about 150,000 acre feet less than EBID's allocations in 2001 and 2002, which were years with similar levels of Project Water supply. We are therefore concerned about the sustainability of the Agreement, and believe that the Agreement and current version of the Manual may have been based on historically flawed data.

Additionally, with regard to the above, we are concerned that current operations under the Agreement do not reflect the intent of the parties. From our discussions with your staff, EPCWID, EBID and representatives of Texas, we understand that the Agreement and Manual are intended to maintain the previous D1/D2 relationship amongst the parties. As you know, the previous D1/D2 relationship incorporated the effects of groundwater pumping throughout the Project during the years 1951-1978, and established certain allocations for EPCWID and EBID in full-supply and less-than-full-supply years. Although New Mexico's groundwater pumping may have increased since 1978, any such increase is incremental, and is not sufficient to explain or justify a 150,000 acre foot decrease in EBID's allocation in both 2008 and 2009. This substantial decrease in allocation was not expected or intended by any of the parties to the Agreement, and we believe that these decreases can be balanced by properly offsetting the effects of Texas groundwater pumping on the Project, changing the method by which the Diversion Ratio is calculated, and other operation changes within the confines of the Agreement and Manual.

I. Texas Groundwater Pumping

The 2008 Agreement and Manual reduce EBID's allocation of Project water in response to any and all reductions in the delivery efficiency of the Project. EPCWID's allocation is not similarly reduced. Thus, all reductions in Project efficiency come out of EBID's allocation, including reductions that are due to groundwater pumping in Texas.

The largest part of Texas' groundwater pumping in the Mesilla Basin comes from the Cañutillo well field, which diverts about 25,000 acre-feet per year. The effects of Cañutillo well field pumping are supposed to be calculated and offset in accordance with a 3rd party contract between Reclamation and El Paso Utilities (Contract No. 01-WC-40-6760 (2001)). However, the terms of that Contract have not been consistently enforced and Reclamation has not provided the documentation required by provision 5.4 in

the Manual. New Mexico irrigators have therefore given up approximately 50,000 to 70,000 acre feet of water in the last three years due to Texas Cañutillo pumping.

Even when properly enforced, the terms of Contract No. 01-WC-40-6760 (2001) may be detrimental to the water service for the Project, and may be inadequate to properly account for all Texas pumping in the Cañutillo well field. For example, the Contract addresses pumping effects on the Rio Grande mainstem only, and does not address pumping effects to the drains that contribute to downstream Project surface water. Finally, the Contract allows for these effects to be offset by way of wastewater return flow credits, which may not be appropriate.

In our meetings with your staff, EPCWID and EBID, there was general agreement that, at a minimum, Contract No. 01-WC-40-6760 (2001) must be fully implemented and enforced. Additionally, New Mexico believes that the Contract must be re-evaluated and, if necessary, revised, to ensure that New Mexico irrigators are not adversely impacted by operations under that Contract. Finally, New Mexico believes that all Texas pumping in the Cañutillo well field must be independently evaluated by Reclamation, and fully calculated and offset, whether or not the Contract specifically addresses such pumping.

In addition to Texas groundwater pumping in the Cañutillo well field, there are other groundwater diversions in the Texas part of the Project, including other parts of the Mesilla Basin and the Hueco Basin. Currently, Reclamation does not calculate or offset additional Texas groundwater diversions from the Mesilla Basin, and does not calculate or offset any Texas groundwater diversions from the Hueco Basin. Since EBID alone pays for Texas groundwater pumping that is not offset, other groundwater diversions in the Texas part of the Mesilla Basin must be explicitly determined and offset. Additionally, Texas pumping in the Hueco Basin should be studied to ensure that any effects that pumping has had on the operations of the Project are properly accounted for and offset.

II. Diversion Ratio Calculations

Under the 2008 Agreement and Manual, Reclamation determines allocations of Project water to Texas and Mexico based on the D1/D2 curves. Thus, allocations to Texas and Mexico are based on past D2 delivery efficiency conditions.

In contrast, EBID's allocation is based on a new "Diversion Ratio". Any factor that reduces this Diversion Ratio below the D2 delivery efficiency level also acts to reduce EBID's allocation of Project water. This is a major change from the D2 curve, and previous D1/D2 operations.

In 2008 and 2009, the Diversion Ratios calculated by Reclamation for allocations to EBID were extremely low. There were several reasons for this, including but not limited to natural deviations from the D2 curve, changes in measurements and methodologies in Project operations, and the effects of groundwater pumping throughout the Rio Grande Project area. However, another reason for the low Diversion Ratios was the method used by Reclamation to calculate them.

Currently, Reclamation calculates the Diversion Ratio as the ratio of Charges and Reservoir Releases. This is inconsistent with the D1/D2 curve, which was derived as the ratio of Diversions (not Charges) and

Reservoir Releases from 1951 to 1978. Charges are less than Diversions, due to relatively new Project accounting credits that were not part of the accounting in the 1951 to 1978 period. The inclusion of these accounting credits in the calculation of the Diversion Ratio results in artificially low allocations to EBID.

Thus, under the 2008 Agreement and Manual, Reclamation uses the D2 delivery efficiency to determine Project allocations for EPCWID, but uses a different type of quantity, the Diversion Ratio, to determine Project allocations for EBID. We do not believe this is equitable.

In 2009, based on Diversion Ratios calculated in the manner described above, Reclamation allocated 346,000 acre feet of Project water to EBID (after transfer of carryover). If Reclamation had used diversion efficiency ratios, unadjusted for credits, we estimate that EBID would have received an additional 54,000 acre feet of Project water in 2009. This amount of water is substantial, and EBID's allocation of a lower amount, based on a Diversion Ratio that does not accurately reflect the true delivery efficiency of the Project, is an issue that must be corrected and resolved.

III. Texas Diversions of Project Surface Water

Under recent Project operations, EPCWID's allocation account has, at times, grown to over 500,000 acre-feet. However, the actual surface water diversions by Texas entities (including EPCWID and El Paso Water Utilities) have averaged about 300,000 acre-feet in full supply years.

My staff has modeled Project operations under the 2008 Agreement and Manual, and has found that a key factor in the success of future operations is the amount of Project water diverted by Texas entities. If the Project water diversions by Texas entities remain near current levels (approximately 300,000 acre-feet per year of charged diversions for full-supply conditions), the carryover provisions of the 2008 Operating Agreement may work over the long term. If Texas entities divert substantially more than 300,000 acre-feet per year the reservoir could be drawn down too quickly in any given year or series of years. This could severely impact Project operations, as well as other operations under the Rio Grande Compact.

In the last two years, operations under the Agreement and Manual have depended upon Texas diversions of approximately 300,000 acre feet. For example, in 2009, the Project had a full surface water supply but, because of the other issues discussed in this letter, EBID received a reduced allocation rather than a full supply allocation. EPCWID, on the other hand, received a full supply allocation plus 2008 carryover amounts, for a total 2009 allocation of 600,000 acre-feet (August Allocation).

By August of 2009, EBID had run out of its reduced allocation. Reclamation and EPCWID then agreed to transfer 20,000 acre feet of projected excess carryover from EPCWID's account to EBID, to get EBID farmers through the 2009 irrigation season. If EPCWID or El Paso Water Utilities had diverted a larger part of the EPCWID allocation in 2009, this transfer would not have been possible. Without this transfer, EBID would not have had any surface water for a crucial part of the irrigation season, even though 2009 was a full supply year. EBID would also have had much less water for the already reduced initial 2010 allotment.

Additionally and most significantly, larger Texas surface water diversions could have Rio Grande Compact implications. A change in the timing or magnitude of Project releases, or systematic reductions

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in reservoir storage, could implicate Article VII of the Compact, and significantly affect storage upstream. Both New Mexico and Colorado could be severely impacted by such a major change in Project operations.

Finally, it is our understanding from discussions with Reclamation staff, the Texas Rio Grande Compact Commissioner, EPCWID and EBID that, when the parties negotiated the carryover accounts in the 2008 Agreement, the parties intended for both EPCWID and EBID to benefit from carryover. From our modeling efforts, it is clear that the benefits to EBID from the carryover agreement decrease substantially, and quickly become non-existent, if the Texas entities divert much more than 300,000 acre feet per year.

My staff discussed this issue with your staff, EPCWID and EBID at our recent meeting on January 11, 2010. Representatives of EPCWID indicated that: 1) EPCWID does not intend to increase yearly diversions above their current levels of approximately 300,000 acre feet; 2) diversions of 300,000 acre-feet are, in fact, EPCWID's yearly targets; and 3) yearly diversions of 300,000 acre-feet are embedded in Texas' State Water Plan. I am encouraged to hear this, but something more formal than oral statements from EPCWID is required to resolve such an important issue.

IV. Documentation and Transparency Issues

We are still concerned about full documentation of the 2008 Operating Agreement and Manual, full documentation of new Project accounting, and transparency of river and reservoir gaging data. Attachment 2 to this letter describes these issues in detail.

Comprehensive documentation of all operations under the 2008 Agreement and Manual, and full availability of Project data, is essential to evaluate the potential equities of current and future Project operations, and ensure that Project operations continue as intended when personnel change in the future. I am hopeful that the anticipated update to the Manual can and will document the details of all operations under the Agreement and Manual.

V. Summary

Recently, Reclamation asked the State of New Mexico to incorporate the terms of the 2008 Agreement into the Project Offer of Judgment in the ongoing Lower Rio Grande Adjudication. Until the issues outlined in this letter are satisfactorily resolved, New Mexico cannot consider such a request.

New Mexico believes that the 2008 Agreement and Manual represent great progress toward increasing cooperation between EPCWID and EBID and reducing unnecessary litigation, and hopes that the Agreement and Manual will be successful. However, for the Agreement and Manual to work in the long term, they must be fair and transparent. At present, the 2008 Agreement, as implemented through the Manual, does not appear to be fair or sustainable. EBID alone pays for any reductions in Project efficiency, regardless of the cause. Most specifically, New Mexico objects to the reductions that are borne by New Mexico irrigators due to Texas groundwater pumping and the new method of calculating the Diversion Ratio.

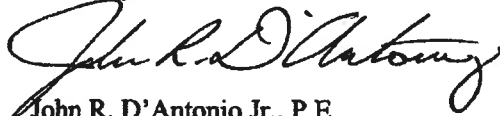
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Additionally, the sustainability of the 2008 Agreement is imperiled by a lack of formal constraint on the diversion of Project water by Texas entities. Due to the new carryover provisions, EPCWID's allocation can far exceed present demands. If these demands and diversions increase, the operations of the Project will be materially changed, to the detriment of New Mexico irrigators and to the Rio Grande Compact.

Finally, the operational procedures of the 2008 Agreement and Manual must be fully documented so that all operations are predictable and transparent.

I look forward to further discussions with you and you staff to resolve these important issues.

Sincerely,



John R. D'Antonio Jr., P.E.
New Mexico State Engineer

JRD/ke

Attachments

cc: Larry Walkoviak, USBOR, Regional Director
Lisa Croft, USBOR, Acting Area Manager
Estevan Lopez, NMISC, Director
Dick Wolfe, Colorado State Engineer
Gary Esslinger, Manager, Elephant Butte Irrigation District
Patrick Gordon, Rio Grande Compact Commissioner for the State of Texas

Attachment 1: Concerns and Questions on the Rio Grande Project Operating Agreement and Operations Manual

Originally Provided in September 2009

The Texas and New Mexico Rio Grande Compact Commissioners and staff have met periodically during the past year to discuss the 2008 Rio Grande Project Operating Agreement (Agreement) and Operations Manual developed by Reclamation, EBID, and EPWCID and associated operations. Because of Project Operations in 2009, we feel it is important to raise concerns about the Agreement and Operation Manual now. Therefore, keep in mind that this letter reflects our understanding of the Agreement and 2008 version of the Operations Manual.

The concerns include, but are not necessarily limited to, the following topics:

- Delivery of surface water to EPCWID when EBID has no surface water allocation.
- Carryover diversion allocation.
- Potential salinity impacts of the Agreement.
- Possible Implications of the D3 Reallocation of Surface Water From EBID to Cover All Shortfalls From the D2 Curve.
- Possible Implications of the City of El Paso's Groundwater Withdrawals on the Rio Grande Project Supply.
- Reclamation's terminology regarding the 2009 allotment.

Our concerns relative to these topics are described in more detail below.

I. Delivery of Surface Water to EPCWID When EBID Has No Surface Water Allocation.

On several occasions, the New Mexico and Texas Engineer Advisers have spoken to the Texas Rio Grande Compact Commissioner, Reclamation, EBID and EPCWID about Rio Grande Project deliveries when EBID has no Rio Grande Project surface water allocation. The Engineer Advisers consistently have been told that if EBID has no surface water allocation and EPWCID requests water, EPWCID will be charged with the amount of water actually released from the reservoir to meet its diversion order. However, to our knowledge, neither the Agreement nor Operations Manual adequately reflects that understanding.

Since EPWCID and Mexico will continue ordering surface water until October 2009 this issue could come to a head, unless it has been resolved in the Operations Manual update. We believe the understanding of the parties on this issue should be

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documented in writing to ensure that Reclamation's accounting reflects that EBID will not incur allocation charges for any portion of water released from storage at the call of EPCWID when EBID has no surface water allocation or runs out of its allocation at any time during the year.

II. Carryover Diversion Allocation

New Mexico, not having been involved in the negotiations, is concerned about the carryover diversion allocation ("carryover"), how carryover provisions in the Agreement will be implemented, and how the carryover may conflict with Rio Grande Compact accounting.

As Reclamation knows, neither the parties to the Agreement nor the District Court have the power to amend the Compact nor the accounting rules imposed by the Compact. Thus, nothing in the Agreement or the Operations Manual can affect or amend Compact accounting and all Rio Grande Project operations must be consistent with that accounting. If accounting or operations contemplated by the Agreement conflict with the Compact, they must be identified and modified to resolve those conflicts.

The carryover accounting process is new and it appears to New Mexico that the process may have a significant effect on the surface water supplies available to EBID, EPCWID, and Mexico. Reclamation issued a Finding of No Significant Impact on an early version of the Agreement but did not conduct a National Environmental Policy Act (NEPA) evaluation on the final Agreement and Operations Manual. Based upon the outcomes of the 2009 Rio Grande Project allocation, New Mexico believes a NEPA evaluation of the Agreement and Operations Manual appears warranted. Additionally, many of the details of the Agreement and Operations Manual remain unknown and undefined, and we understand that some may be evolving as the signatory parties continue to review and modify the documents.

Based upon the information available to us, the provisions in the Agreement and Operations Manual relating to carryover accounting are not comprehensive or specific enough to cover all situations likely to arise. These situations include, but are not limited to:

- The definition of carryover balance(s).
- Carryover availability.
- The nature of carryover water.

The Definition of Carryover Balance

On page 6 of the Agreement, lines 13 and 14 mention "EBID Estimated Allocation Balance (End of Year)", and "EPCWID Estimated Allocation Balance (End of Year)". However, the term "Estimated Allocation Balance" is not defined in the

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Agreement or Operations Manual. The manner in which the "Estimated Allocation Balance" is calculated and implemented could conflict with Rio Grande Compact accounting and required treaty deliveries to Mexico. Therefore, the process of accounting for carryover should be more specifically defined and should clarify how carryover quantities are determined; when the determinations are made; whether later modifications of the carryover amounts are allowed; whether transfers are allowed; and, whether other limitations apply.

Carryover Availability

It appears possible that carryover calculated in high water years may not be available as "wet water" in Rio Grande Project Storage during subsequent drought conditions. For example, a diversion allocation calculated during a wet year with a high river efficiency may be greater in quantity than the associated water in reservoir storage. In a subsequent drought year, the river efficiency will be lower, and the same amount of reservoir storage will not be capable of getting an equal amount of water to the river headings for diversion. In these circumstances even more water would have to be released, if it is present in reservoir storage, to actually deliver the carryover allocation. Basically, the right to use carryover could become a purely "paper right." Clarification and documentation of this issue should be completed before the circumstance arises.

The Nature of Carryover Water

It is our understanding that per the agreement carryover water is not reduced to account for any losses, including reservoir evaporation. Also, it is our understanding that all carryover water is considered Usable Water. Additionally, Rio Grande Project accounting still allows for credits: some water released from the reservoir for diversion is not charged as a release. These factors could create a condition where a District has a carryover allocation, but there is insufficient water in the reservoir to deliver it. Additionally, it could lead to a situation where one District receives a full diversion allocation for one year and has carryover for the next calendar year. For instance, this year, EPWICD has allocated and apparently will deliver a full supply of water to its farmers, but will still have carryover water. These situations, if and when they occur, would be a substantial change from the previous manner in which the Rio Grande Project was operated. The Agreement and the Operations Manual do not address these situations.

The parties to the Agreement have mentioned that in a situation where carryover credit exceeds water available for delivery, the District with carryover would not be allowed to order it. Instead, the carryover credit would be held until such time as the reservoir had sufficient water to allow the District to order it. If so, New Mexico remains concerned because new water flowing into the reservoir (i.e., water that was not actually carried over), would not be available for allocation to both Districts and Mexico. Instead, substantial amounts of the inflow to the reservoir could disappear directly into a carryover account, or be used as push, or make-up water, to facilitate delivery of one

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District's carryover. Because this is a potentially contentious issue, we believe its resolution should be clarified in writing before such a condition occurs.

Additionally, the Agreement does not address what happens to carryover in the event of a spill from Elephant Butte Reservoir. As you know, under the Rio Grande Compact, any accrued New Mexico or Colorado Compact credits are proportionally reduced by the actual amount of the spill. The Operations Manual should clarify how carryover will be reduced in the event of a spill.

Finally, the Texas Engineer Adviser has indicated that operations under the Agreement may result in more water remaining in Rio Grande Project Storage as Usable Water than otherwise would have occurred, thus potentially changing the timing of Article VII storage restrictions under the Rio Grande Compact. The New Mexico and Texas Engineer Advisers are continuing work to technically evaluate this proposition as we continue to study the carryover provisions and their potential effects on Rio Grande Project operations and Rio Grande Compact accounting. We hope to have a greater understanding of the possible effects of carryover later this year, and look forward to discussing these issues with you further at that time.

III. Potential Salinity Impacts of the Agreement

At this time, we are uncertain whether the new operations conducted under the Agreement will affect salinity in the Rio Grande. If the efficiency of the Rio Grande Project is affected by the Agreement and Operations Manual, salinity may be affected as well.

IV. Possible Implications of the D3 Reallocation of Surface Water From EBID to Cover All Shortfalls From the D2 Curve

From New Mexico's review of the Agreement and Operations Manual, it appears that EBID's allocation will be reduced as a result of any annual D2 shortfalls, regardless of the cause of the shortfall or deviation. This could mean that EBID's allocation would be reduced because of groundwater pumping in Texas or Mexico, or by natural losses to the system. Given the increased pumping in the Texas and Mexico portions of the Hueco and Mesilla Basins (including as described in number 5, below) New Mexico is concerned that the pumping will have a deleterious effect on future Rio Grande Project operations.

If implementation of the Agreement and Operations Manual requires a reduction in EBID's allocation when deviation from the D2 curve is caused by events or actions beyond EBID's control and EBID does not receive benefits in other years, New Mexico does not believe that such a result is warranted. Additionally, such a result would be a substantial change from the previous manner in which the Rio Grande Project was operated. We will continue to study this potential circumstance.

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V. Possible Implications of the City of El Paso's Groundwater Withdrawals on the Rio Grande Project Supply

Provision 5.2 of the Operations Manual states that "Reclamation shall, by January 15 of each year, provide to all parties documentation of compliance, during the previous year, by the City of El Paso with terms of "Exhibit C - Determination of Underflow of the Rio Grande Captured by the City of El Paso's Groundwater withdrawals" of the contract of the City of El Paso, EPCWID, the United States numbered 01-WC-40-6760 (2001 Implementing Contract)."

Under the 2001 Implementing Contract, only the depletions of the underflow of the mainstem of the Rio Grande are calculated and the net effect upon the surface water of the Rio Grande Project is not. But, under the Agreement and Operations Manual, EBID's surface water supply is reduced to compensate for all influences that cause Rio Grande Project supply to decline below D2 levels. As a result, EBID must "pay" for any effects of the City of El Paso's groundwater withdrawals that are not fully addressed elsewhere.

In addition, it is New Mexico's understanding that under the 2001 Implementing Contract the City of El Paso is deemed to offset the calculated impacts of its groundwater withdrawals if it provides sufficient return flow to EPCWID. It is not clear whether this procedure adequately accounts for or protects Rio Grande Project supply.

New Mexico believes that the provisions of the 2001 Implementing Contract as applied in the Agreement and Operations Manual may not be sufficient to protect the operations of the Rio Grande Project against the surface depletions caused by the City of El Paso's groundwater withdrawal.

In addition to the concerns outlined above, New Mexico and Texas are studying other issues, such as the change in the Agreement from an Irrigation Release Season to a Calendar Release Season. If this change affects Rio Grande Project operations, we may be able to deal with the change as a Compact accounting issue.

Attachment 2: Additional Issues Associated with the 2008 Rio Grande Project Operating Agreement and Manual

As outlined in the letter, the State of New Mexico continues to have concerns about full documentation of Project operations, transparency of river and reservoir diversion and release information, and Project accounting. Attachment 1, "Concerns and Questions on the Rio Grande Project Operating Agreement and Operations Manual, dated September 2009" outlines many of them. This attachment outlines additional issues that arose and were discussed at various meetings during the fall of 2009. Our understanding is that the anticipated update to the Manual can and will address these issues and we provide them here to aid in the update.

1. **Documentation of Monthly Meeting Procedures** --We understand that important decisions regarding Project operations and allocations are made at the monthly meetings of the Districts and Reclamation during the irrigation season. Yet, the standard procedures, roles and responsibilities of each party prior to and at the monthly meetings, and products of the meetings are not well defined in the Manual. While the individuals currently involved in the monthly meetings understand what is done and by whom, given the potential 50-year life of the 2008 Operating Agreement, additional written detail on the monthly process and products is needed.
2. **Changes During a Calendar Year** --Some of the operational procedures that occurred during 2009 are new and undocumented. The 2008 Operating Agreement and Manual do not contemplate changes in operations during a calendar year. Since such changes are occurring, the Manual should contain a section describing how such changes are proposed and agreed upon, and also how extensive in nature (comprising how much water) such changes can be. The changes we are aware of during 2009 include:
 - a. The October 31 date for determination of the final annual allocation to both Districts and Mexico.
 - b. Transferring carryover from one District to another during the calendar year.
 - c. Changes to the formulas in the Allocation Spreadsheet
3. **Availability of Project Data** ---Data describing actual releases, river diversions, and charges is not readily available to parties other than Reclamation, EBID, and EPCWID. To improve transparency, the parties to the agreement should develop and implement a page on Reclamation's website that provides the above information on both real-time and corrected bases.
4. **We reiterate New Mexico's concern that the 2008 Operating Agreement and Manual need to be more fully documented.** The current documents are not comprehensive, and it appears that there are undocumented agreements and understandings among the Districts and the Reclamation as to how things are to work. For example, all parties seem to agree, verbally, on the accounting that should occur when one District runs out of its annual allotment, but this is not yet in writing. Comprehensive (fuller) documentation of operations is needed in order to evaluate the potential equities and so that, when new technical representatives come into the picture, operations can continue as intended without unnecessary conflict.



April 15, 2010

CC Estevan Lopez
Rolf Schmidt-Petersen
DL Sanders

EL PASO COUNTY WATER IMPROVEMENT DISTRICT No.1

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APR 19 2010

OFFICE OF THE STATE ENGINEER

Commissioner Michael L. Conner
Bureau of Reclamation
United States Department of Interior
1849 C Street NW
Washington, DC 20240-0001

RE: Letter Dated March 4, 2010 Regarding Rio Grande Project Operating Agreement

Dear Commissioner Conner:

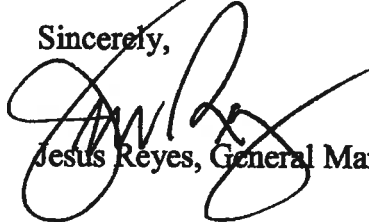
We are in receipt of a copy of a letter dated March 4, 2010 from John D'Antonio, New Mexico's State Engineer addressed to you in regards to the Rio Grande Operating Agreement (Agreement). We strongly disagree with the allegations made by Mr. D'Antonio in his letter. Since Mr. D'Antonio sent his letter to you, engineers and advisors to El Paso County Water Improvement District No. 1 (EPCWID), Elephant Butte Irrigation District (EBID), and Reclamation staff have met with Mr. D'Antonio's staff to address the concerns raised in his letter. Subsequently, at the Annual Rio Grande Compact meeting in Alamosa, Colorado on March 26, 2010, Commissioner D'Antonio voiced his support for the Agreement.

The Agreement was developed over a time period of many years and Reclamation has had several public meetings and received public comments over the course of the two years in which the required NEPA work was performed. During this entire time period Reclamation made draft copies of the Agreement available to the public. No concerns or comments were raised by the NM OSE during this time period. Currently, all parties to the Agreement are working rigorously towards addressing any depletions of Rio Grande Project water caused by groundwater pumping in Texas.

We see no need for Reclamation to take any of the actions requested in Mr. D'Antonio's letter other than to continue to work with the EBID and EPCWID to resolve issues related to groundwater pumping in Texas and New Mexico. The Agreement is a model

document that resolved long standing inequities and prevented costly litigation between New Mexico and Texas. The Agreement promotes conservation, provides for active management of the Rio Grande Project, and has been well received by all. We greatly appreciate Reclamation's work towards development and implementation of the Agreement, and look forward to working with Reclamation and Mr. D'Antonio's staff to resolve any issues.

Sincerely,



Jesus Reyes, General Manager

CC: Pat Gordon, Rio Grande Compact Commissioner
John D'Antonio, New Mexico State Engineer
Filiberto Cortez, Area Manager for US Bureau of Reclamation



IN REPLY REFER TO:

United States Department of the Interior

2013 BUREAU OF RECLAMATION
Washington, D.C. 20240

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Rolf Schmidt
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APR 30 2010

OFFICE OF THE STATE ENGINEER

28 APR 2010

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WTR-4.00

Mr. John R. D'Antonio, Jr. P.E.
New Mexico State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102

Dear Mr. D'Antonio:

I am responding to your letter dated March 4, 2010, regarding the State of New Mexico's evaluation of the 2008 Rio Grande Project Operating Agreement and Manual (Agreement and Manual). I am pleased that our respective staffs continue to work diligently and cooperatively to better understand each others' views on the status and process in implementing the Agreement and Manual, and to determine how to improve the Manual to benefit all parties involved. Your letter outlining your remaining concerns is most informative in helping to frame the issues that the State of New Mexico believes need further attention. I am also pleased to learn that you see that there has been measurable progress toward resolving some of the questions the States of New Mexico and Texas have with the Agreement and Manual outlined in Attachment 1 to your letter.

As you are aware, the development of the Agreement and Manual was a requirement established by the contracts that transferred the ownership and operation and maintenance of the Rio Grande Project irrigation and drainage facilities to the Elephant Butte Irrigation District (EBID) and the El Paso County Water Improvement District No.1 (EP#1) in their respective states. Prior to this transfer, the Bureau of Reclamation operated the project from Elephant Butte and Caballo reservoirs in New Mexico to Hudspeth and El Paso county lines in Texas. During the years that Reclamation operated the project, allocations of project water were made directly to the lands in the United States on an acre-foot per acre basis and to Mexico on a bulk acre-foot basis.

After the transfer of operation and maintenance to the EBID and EP#1, the allocation of project water was made to each district on a bulk acre-foot basis relative to the acreage in each district. This change was made in recognition that each district was responsible for the operations within their district and that each was accepting responsibility for any improvements or deterioration within their systems and methods of operations. The total amount of project water that is allocated on a calendar year basis remains the same and is based on the amount of project water in storage. The amount of water that is released for irrigation has been consistent throughout historical project operations. The maximum allowable acreage irrigated within the project is set

by project authorization and the relative acreage within each district is set by contract and shall not vary.

As the districts became more experienced in the operation of their respective systems, they determined that it would be beneficial to manage their respective water supplies on a long term basis rather than on an annual basis. Previously, any unused or saved water allocation by either district could not be carried over to the next irrigation season which caused much uncertainty from one year to the next for cropping pattern planning and other needs of their respective water users. It also provided limited incentives for conserving water. As you know, one of the major components of the Agreement provides for both districts to carryover conserved water to be utilized in water short years. However, both districts and Reclamation are intently aware that the total amount of water that is used by the project in any calendar year must comply with Rio Grande Compact requirements that limits Rio Grande Project releases to 790,000 acre-feet per year average and the use of carryover water by each district remains accounted as project water in the year in which it is used. The Agreement and Manual addresses the intent of each district to utilize carryover water only in years of less than a full allocation and that the Rio Grande Project will be operated in full compliance with the requirements of the Rio Grande Compact.

In regard to the recent changes made to the Agreement and Manual, the two irrigation districts and Reclamation have made refinements to the documents as they encounter situations in operations that require further analysis. These refinements are all within the full intent of the Agreement and Manual and in accordance with the requirements of the Compact and only provide additional explanatory language. The latest version of the Agreement and Manual will be transmitted to you by the Albuquerque Area Office when it is complete. These documents will also include additions which address the effects on project operations at times when only a single district has water available for delivery and how charges to their account will be made.

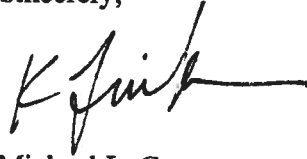
It is my understanding that many of the technical questions and concerns you have raised in your letter are in the process of being addressed collaboratively with the two districts, the Rio Grande Compact States, and Reclamation. This effort is being led by the Albuquerque Area Office through the El Paso Field Division and is an effort to assure that the Manual sufficiently describes the operational and accounting procedures that meet the full intent of the Agreement. I take this opportunity to inform you that Mike Hamman, the new Area Manager for the Albuquerque Area Office, views this effort as one of his top priorities in the coming months, particularly addressing the concerns regarding proper documentation of all operational and accounting procedures; transparency of all agreements between the operating entities; enforcement of existing agreements; and timely reporting of monthly data and procedural changes that may occur during the irrigation season.

In summary, Reclamation is committed to continuing to work closely with your office, the two districts and the States of New Mexico and Texas to refine the Agreement and Manual to the satisfaction of all the entities involved. I am sure you would join me in the belief that this Agreement is a breakthrough in developing a sound water management strategy for the lower Rio Grande and will likely play a significant role in assisting with your efforts to adjudicate water rights in the region which is of intense interest to the United States. Reclamation

understands the tremendous achievement made to date and the future potential that proper implementation of the Agreement and Manual will have in resolving long-standing disputes in the region. Reclamation has made a strong commitment toward this effort to date and I believe has played a pivotal role in the development of the Agreement and Manual. We realize, however, that we have yet to meet all of the commitments and timelines that were established for proper implementation of the Agreement, but I am heartened by the knowledge that there is tangible progress and that all parties are working together in order to improve the process.

I am hopeful that as you review the revised Agreement and Manual and complete discussions on these important points, our combined efforts will yield continued progress. If you have any questions please feel free to contact Mr. Mike Hamman at 505-462-3614.

Sincerely,



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