

New Mexico Perspective on the 2008 Rio Grande Project Operations Agreement

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Last year, at this same Law of the Rio Grande conference, I participated in a panel discussion regarding the Rio Grande Project Operating Agreement. At that time I expressed support for the new spirit of cooperation between the two Rio Grande Project irrigation districts, Elephant Butte Irrigation District (EBID) and El Paso County Improvement District No. 1 (EP1) as a result of the Operating Agreement, but also noted that I had significant reservations regarding several of its specific provisions. Specifically, I noted the substantial reallocation of water from EBID to EP1 when compared to similar pre-Operating Agreement years. I noted concerns that I felt needed to be addressed if the Agreement were to be sustainable. In particular, I pointed out that:

- Texas groundwater pumping needs to be offset by Texas, not EBID;
- Annual diversions need reasonable caps;
- The project allocation methodology must reflect actual system efficiencies;
- Better documentation and more transparency are needed for Project operations.

Now, another year later, while there has been some tinkering around the edges of the agreement, all these issues remain unresolved. The State has now conducted a review of the first three years (2008-2010) of operations under the Operating Agreement and Manual and we conclude that the operations are neither fair to New Mexicans nor sustainable. Information, data, spreadsheets, and reports developed and supplied by Reclamation were used to conduct the evaluation. In summary, New Mexico's review concluded that:

- Allocation of Rio Grande Project water under the Operating Agreement has been significantly different than allocation in previous years (before the Operating Agreement) with similar Project water supplies. A comparison of allocations for the period of 2008-2010 to previous years with similar Project supply shows that:
 - Annual Rio Grande Project allocations to EBID have decreased in the range of 149,160 up to 189,110 acre-feet/year, or 30.1% to 38.2% less than EBID's historical allocation.
 - On the other hand, annual Rio Grande Project allocations to EP1 have increased in the range of 140,590 to 176,170 acre-feet/year, or 37.3% to 46.7% more than its historical allocation, which is also in excess of the amount that has been considered to be necessary for a full water supply to the District.

The decrease in EBID's allocation described above for EBID reflects operations that occurred during the past three years as accounted by Reclamation. EBID's allocation would have been even lower had EP1 taken delivery of a larger part of its allocation each year (thus reducing the transfer of excess Carryover Water to EBID), or if the State of New Mexico had not agreed to relinquish accrued Rio Grande Compact Credit water during this period (thus increasing Project Supply).

In addition to the reduced allocation to EBID in each of the last three years, the Operating Agreement's carryover provision has resulted in an even more lopsided initial allocation for 2011. As of the end of October 2010, EP1 had accrued a carryover credit balance of approximately 224,000 acre-feet. At the same time, EBID's carryover credit account was approximately 20,000 acre-feet. Yet, the reservoir did not contain sufficient Usable Water to fill those carryover accounts until late January 2011. In other words, over 90% of the Usable Water initially available in 2011 will go to EP1. This, combined with the poor snowmelt runoff forecast for this year, could leave EBID farmers with only minimal allocations of surface water, watching as the river flows past to water EP1 lands.

In summary, the 2008 Operating Agreement has dramatically changed the proportion of water delivered to the two districts. Between 1951 and 2005, on average, 57% of the Project deliveries charged to the districts went to EBID and 43% went to EP1. This distribution was proportional to Project lands in each District. However, from 2008 through 2010 the allocation of Project Water was split approximately 38/62 in favor of EP1, while actual deliveries were split 50/50 between the districts since EP1 did not call for all of its allocated water. In low supply years, such as 2011, it is expected that EBID will receive even less than that.

New Mexico believes that much of the reallocation of Project Water under the Operating Agreement is not in line with any physical changes in the system caused by New Mexicans, rather it is due to changes in measurement methods, natural variability, changes in the allocation procedures, groundwater pumping by Texas, and Reclamation's system of credits.

New Mexico is more convinced than ever that the Operating Agreement is not sustainable or appropriate. Further, as it stands, this agreement will do nothing to foster a continued spirit of cooperation. Rather, it is so lopsided that it will lead to conflict. The districts and Reclamation should take immediate steps to return Project allocations to the intended equal allocation per Project acre per year.