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Texas v. New Mexico Settlement

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History and Layout

The Office of the State Engineer (OSE) and the Interstate Stream Commission (ISC) filed documents to end the state's long standing Rio Grande Compact litigation. The state still must wait for the U.S. Supreme Court to issue a final ruling. The City of Las Cruces did not sign the amicus curiae brief, though negotiators remained confident a resolution could be reached. Additionally, two of the regional irrigation districts - Elephant Butte Irrigation District and El Paso County Water Improvement District No.1 - both signed off on the recent settlement documents. Once the settlement is finalized, discussion on implementation will begin to take shape.

The settlement is broken up into four parts:

- A **U.S. Supreme Court Compact Decree**, which resolves pending litigation, establishes apportionment of surface water between New Mexico and Texas below Elephant Butte Reservoir, and establishes a framework and state line index for permissible positive and negative deliveries.
- An **Operations Settlement Agreement**, which resolves Rio Grande project operations and accounting and alignment between Rio Grande Compact and Project and allows for flexibility within how New Mexico can ensure compact compliance and a framework for resolution of additional issues regarding Lower Rio Grande adjudication.
- A **Groundwater Settlement Agreement**, which requires New Mexico to decrease groundwater usage in the Elephant Butte Irrigation District (EBID) by 18,200 acre-feet over 10 years, with some flexibility as to how to attain the required depletions.
- And a **Miscellaneous Purposes Act Contract**, which allows Rio Grande Project water to be used beyond irrigation and creates a third party implementing contract between the state and EBID which then gives the state increased flexibility for how to purchase and use EBID water to get within compact compliance.

For FY27 OSE has requested \$75 million (split between nonrecurring and capital outlay) to begin a depletion program in the lower Rio Grande, which mainly will take the shape of a water rights purchase program. These acquisitions can take multiple years and as the market begins to take shape prices per-acre-foot will begin to increase. The agency has estimated the depletion program could cost up to \$150 million over 10 years. The agency has roughly \$4 million remaining in a nonrecurring appropriation for strategic water reserve purchases, which could be used to begin a depletion program.

Funding

The litigation of the *Texas v. New Mexico* case has been funded through a mixture of the State Engineer's (OSE) recurring and nonrecurring budget, as well as within the New Mexico Attorney General's recurring budget. As recently as the FY25 legislative session OSE received \$5 million in nonrecurring funding for continued litigation work and during the 2023 legislative session received \$35 million for Rio Grande water supply augmentation, with the ability also to use the nonrecurring appropriation for litigation of the Rio Grande Compact. Since the start of the litigation in 2011 OSE's recurring budget has increased by roughly \$21 million, or 128 percent. The attorney general's general fund recurring budget has increased by only \$1.8 million since 2011, though its overall budget has increased by \$40 million (through increased utilization of the consumer settlement fund, increased federal funding, and increased transfer authority).