

Texas v New Mexico and Colorado, No. 141

Settlement and Implementation



NM Office of the State Engineer/ NM Interstate Stream Commission / NM Department of Justice
Water and Natural Resources Committee
September 12, 2025

Presentation Outline



A. Background

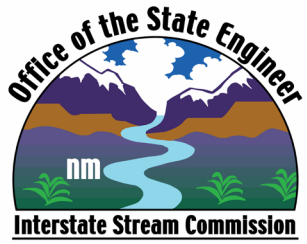
- Review geography/project location
- Review technical and legal background

B. Elements of Settlement Agreement

- NM's implementation requirements
- Why the Settlement is good for NM

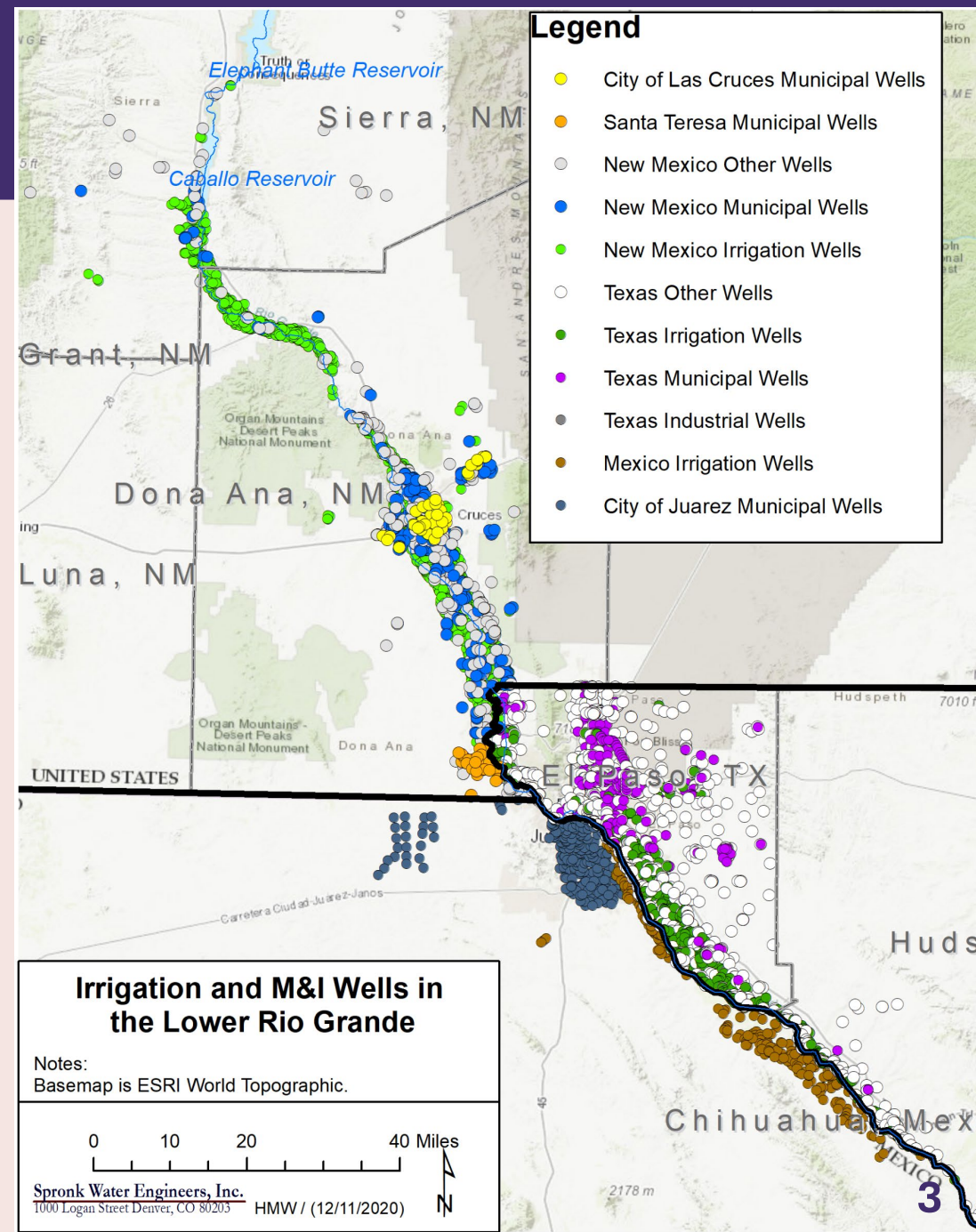
C. Major Activities Already Underway in the Lower and Middle Rio Grande - Holistic Management

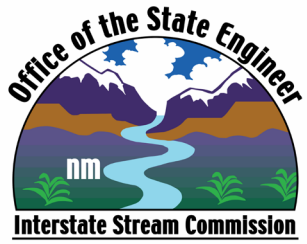
A Settlement package will be presented to the U.S. Supreme Court Special Master on August 29 – hearing in Philadelphia on September 29 – recommendation by Special Master and final determination from the Court to follow



Background issues that led to court cases

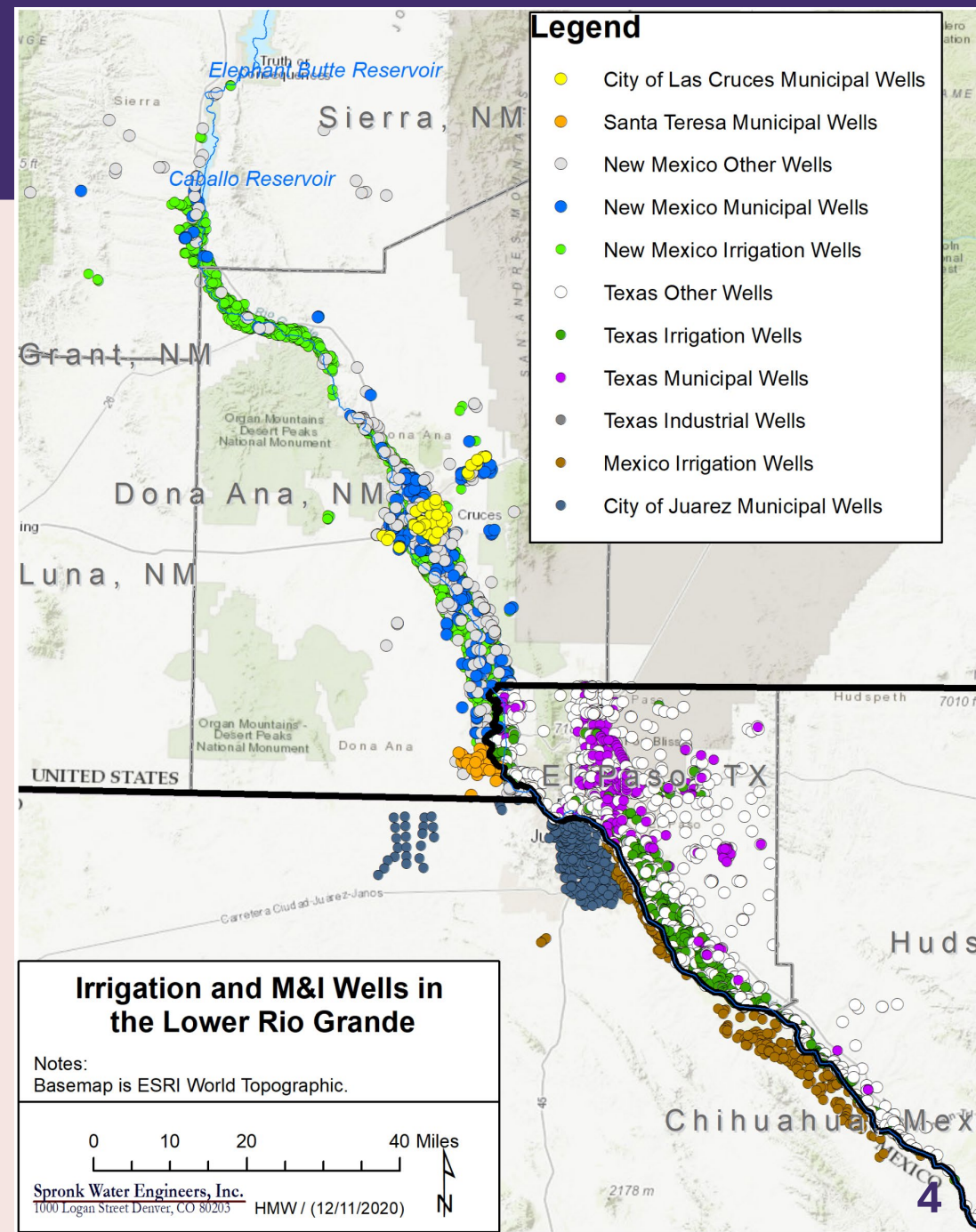
- Rio Grande Project was authorized by Congress in 1905 to provide surface water to lands in New Mexico (57%) and Texas (43%) – operated by US Bureau of Reclamation
- Rio Grande Compact was entered in 1938 to govern apportionment of water between CO, NM and TX
 - Compact is silent regarding groundwater uses and distribution of water below Elephant Butte
- Groundwater pumping increased in both states since 1950s – with resulting impacts on surface water flows
 - During "D2 Period" (1951-1978), despite increased pumping, all Project surface water users were able to receive full supply
 - After D2 period, increased pumping throughout the basin, and Project operational changes, led to decreased Project water delivery efficiency

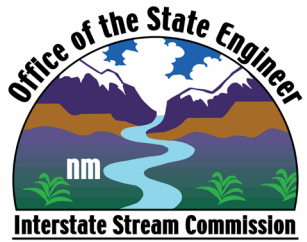




Background issues that led to court cases

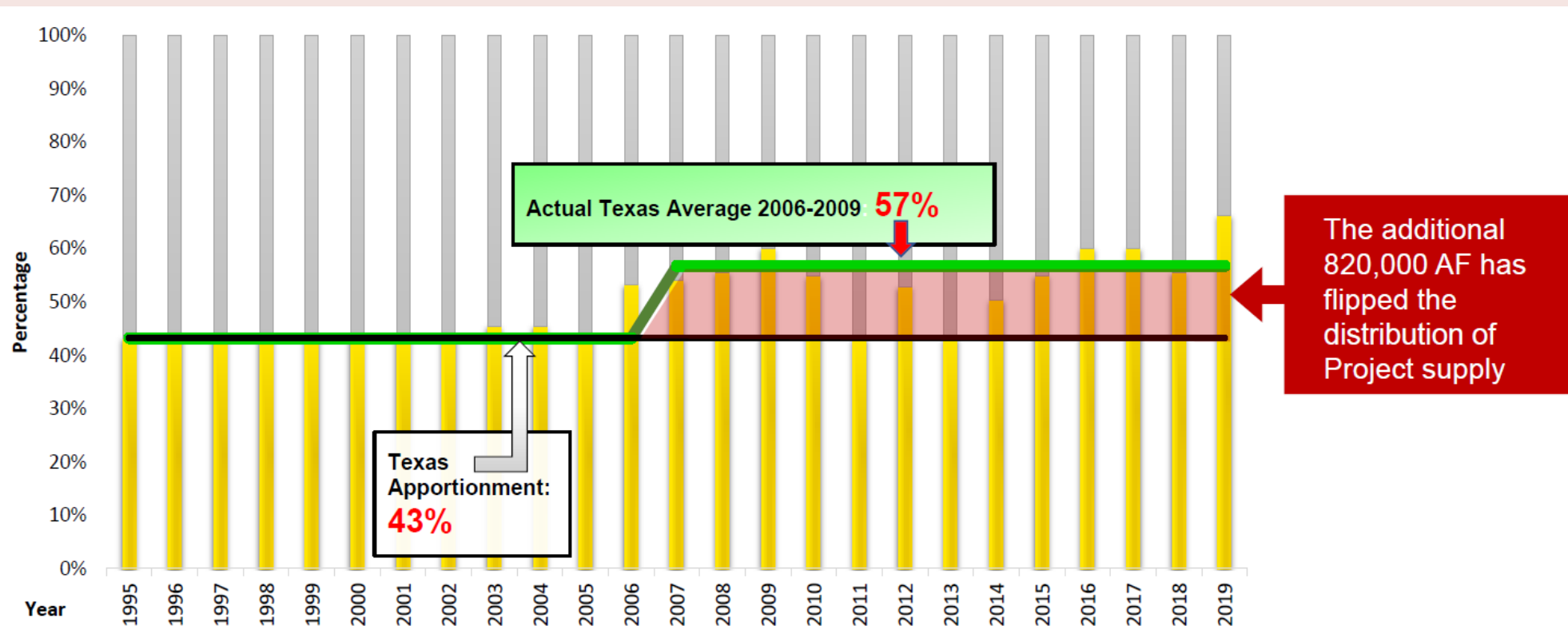
- 2008 Operating Agreement between EBID, EP No 1 and the US did not include participation by NM or TX
 - NM sued US in NM Federal Court in 2011 alleging harm from the Operating Agreement
- TX sued NM in U.S. Supreme Court in 2013 alleging Rio Grande Compact violations
 - If successful, Texas's claims would have greatly reduced groundwater pumping in NM (to 1938 levels) and resulted in estimated damages owed to Texas in excess of \$1 billion
- The US did not support a previous version of the Settlement which was then not approved by the Supreme Court – the US is now aligned with the Compact States on the Settlement package to resolve all pending litigation





Settlement resolves New Mexico's claims against the US (and counter claims against Texas)

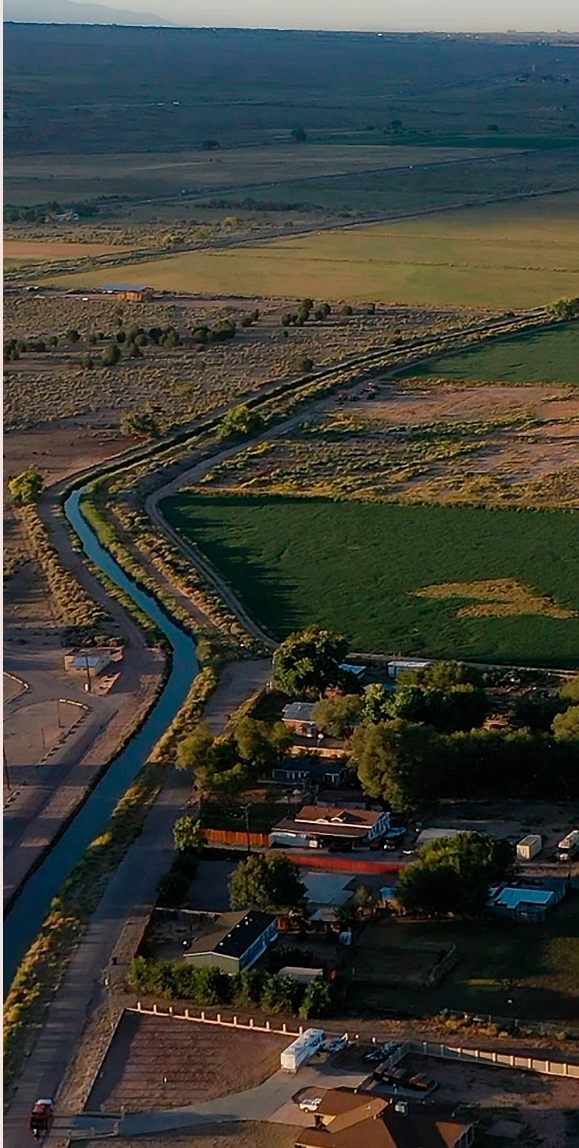
Prior to the Settlement, under the 2008 Operating Agreement, **Texas received over 820,000 acre-feet more surface water** than under historical operations.



Current-Year Allocations, do not include any Allocation carried over from one year to the next

■ EPCWID (Including ACE Credit) ■ EBID

Overview of the Settlement Elements – Benefits to New Mexico



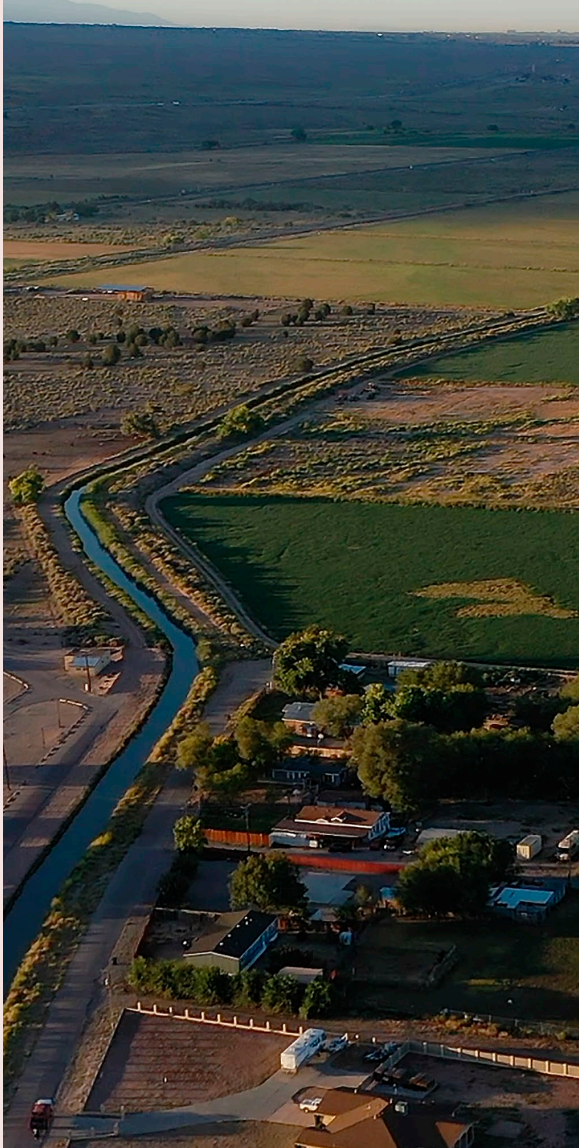
Resolving the disputes requires several related agreements:

1. Compact Decree in U.S. Supreme Court

- *Parties: CO, NM, TX*
 - resolves pending litigation
 - establishes equitable apportionment below Elephant Butte Reservoir
 - allows for a reasonable level of continued groundwater pumping in both NM and TX
 - establishes a framework for water accounting, including a state line index obligation and allowable positive and negative departures



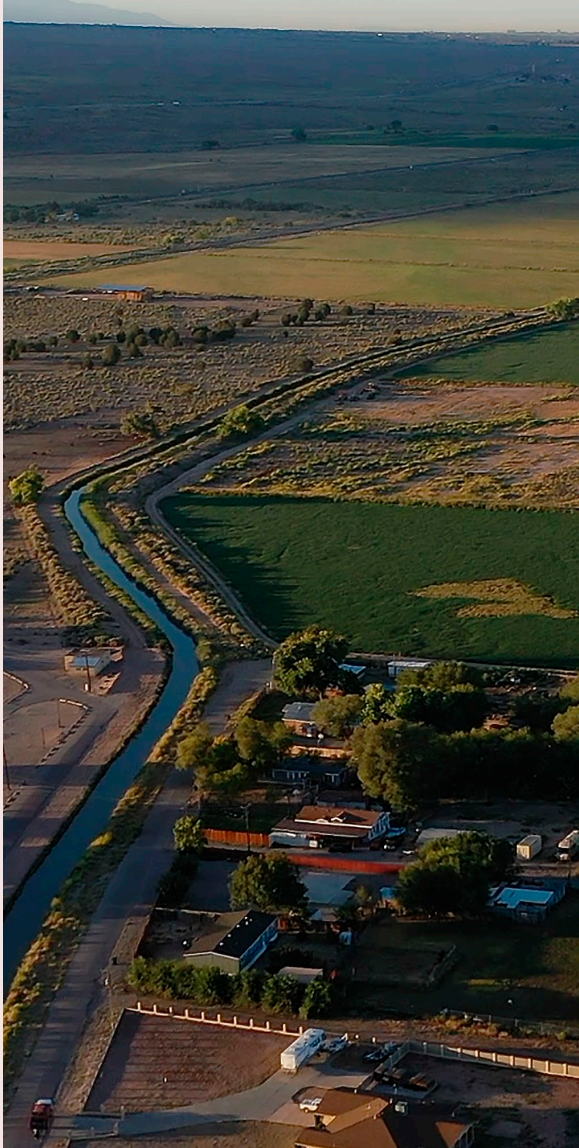
Overview of the Settlement Elements – Benefits to New Mexico



2. Project Operations Settlement Agreement

- *Parties: NM, US, EBID, EP No. 1*
 - resolves outstanding disputes regarding Rio Grande Project operations and accounting
 - ensures alignment of Project operations with accounting framework established in the Compact Decree
 - includes tools such as transfers between the two irrigation districts under certain conditions to ensure Compact compliance
 - resolves outstanding issues regarding priority dates for supplemental groundwater rights within EBID
 - provides a framework for a negotiated resolution of other outstanding issues in the Lower Rio Grande Adjudication

Overview of the Settlement Elements – Benefits to New Mexico

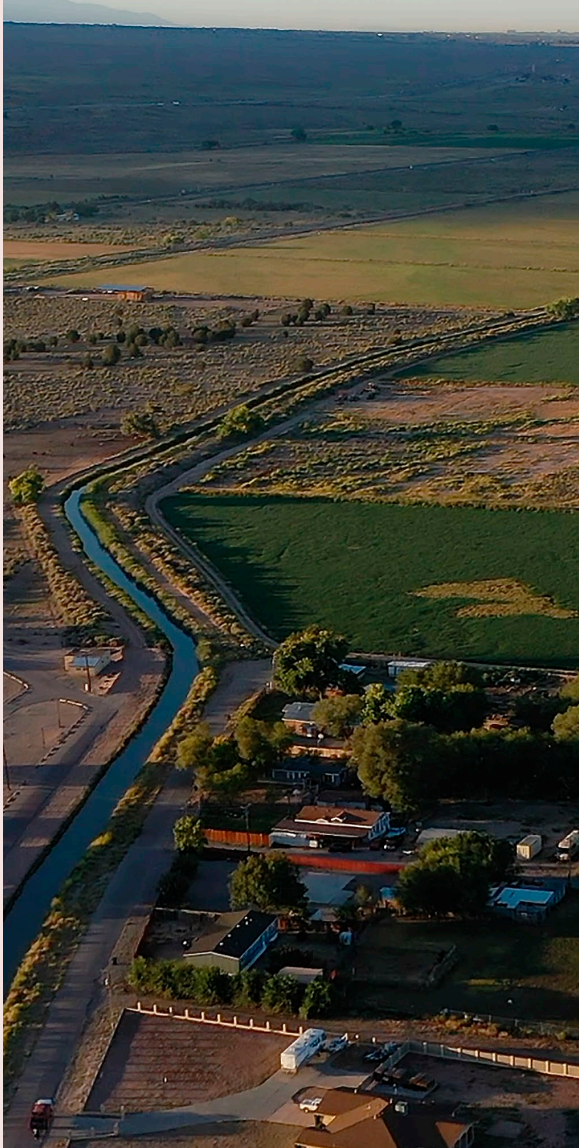


3. Groundwater Settlement Agreement

- *Parties: NM, US*
 - resolves US claims of Rio Grande Project interference related to groundwater pumping in NM
 - requires groundwater depletion reduction in NM of 18,200 acre/feet per year
 - establishes a process for consultation regarding Project efficiency and aquifer decline
 - requires NM to adopt a Lower Rio Grande (LRG) Plan to manage and administer groundwater within two years of the agreement effective date
 - LRG Plan will include stakeholder input and will allow for a reasonable level of continued groundwater pumping in NM



Overview of the Settlement Elements – Benefits to New Mexico



4. Miscellaneous Purposes Act Contract

- *Parties: US, EBID*
 - allows Rio Grande Project water to be used for purposes other than irrigation within the Project, provides for:

5. Third-Party Implementing Contract

- *Parties: NM and EBID*
 - ensures mechanism for NM to compensate EBID for water used to meet Compact obligations, including:
 - Base Allotment – annual allotment for any state-owned EBID water rights
 - Converted Water Credits – accumulated credit from unused state-owned allotments
 - Leased Allotment – annual leasing by the state from other EBID members
 - Allocation Forbearance - as a last resort, the state can pay EBID fair market value for a portion of EBID’s annual allocation to meet compact obligations
 - within agreed upon constraints
 - State retains ability to administer

New Mexico's Implementation Requirements



Depletions Reductions

- NM is required to reduce groundwater pumping by a total of 18,200 AF/yr
 - Approximately 5-7% of current groundwater pumping in LRG
 - Brings groundwater use back to “D2 level” (1951-1978)
- NM has flexibility to determine how to comply within ten years
- Options include:
 - permanent retirement of agricultural water rights based on agreed-upon calculations:
 - Groundwater-Only = 2.6 AF/acre
 - Groundwater/Surface Water Combined = 1.97 AF/acre
 - If the full 18,200 AF reduction obligation is met by retiring lands within EBID, the acreage would be 9,240 acres
 - permanent retirement of groundwater rights from domestic, commercial, municipal, and industrial rights
- Provisions to support weed and dust control practices

New Mexico's Implementation Requirements



Lower Rio Grande Plan

- Requires the State to develop a long-term groundwater management plan within two years
 - Intended to provide for sustainable groundwater use in the LRG
 - Commitment to work with local water users

Cost

- Funding *in excess of \$150 million* will be required to implement the settlement – can be appropriated over time
 - Federal funding already leveraged to support this effort
 - Funding supports projects that make water management sense for NM and complement ongoing State and local actions
- Settlement will allow continued economic activities within NM - farming, industry, municipal uses
 - Economic benefits exceed settlement costs

Benefits to New Mexico from the Settlement



- Settlement **protects a significant amount of NM groundwater pumping**, and allows time to implement the necessary reductions
- Settlement adjusts Rio Grande Project operations to provide **more surface water to NM** (consistent with the original 57/43 allocation split)
- **NM retains discretion to administer** water and obtains increased flexibility and tools to ensure Compact compliance
- Includes a **transition period** to help improve aquifer conditions and allow for the State to work with water users on long-term management plans
- New measuring index provides **certainty** about how water is distributed below Elephant Butte
- Related **Court cases** will be **dismissed**
- Funding to implement the settlement requirements and other LRG activities are **long-term investments** in NM communities