

An aerial photograph of a large reservoir in a desert landscape. The water is a light blue color, and the surrounding land is brown and arid. In the background, there are mountains under a clear sky. The text is overlaid on the image.

Litigation on the Lower Rio Grande

Water & Nat. Res. Comm.

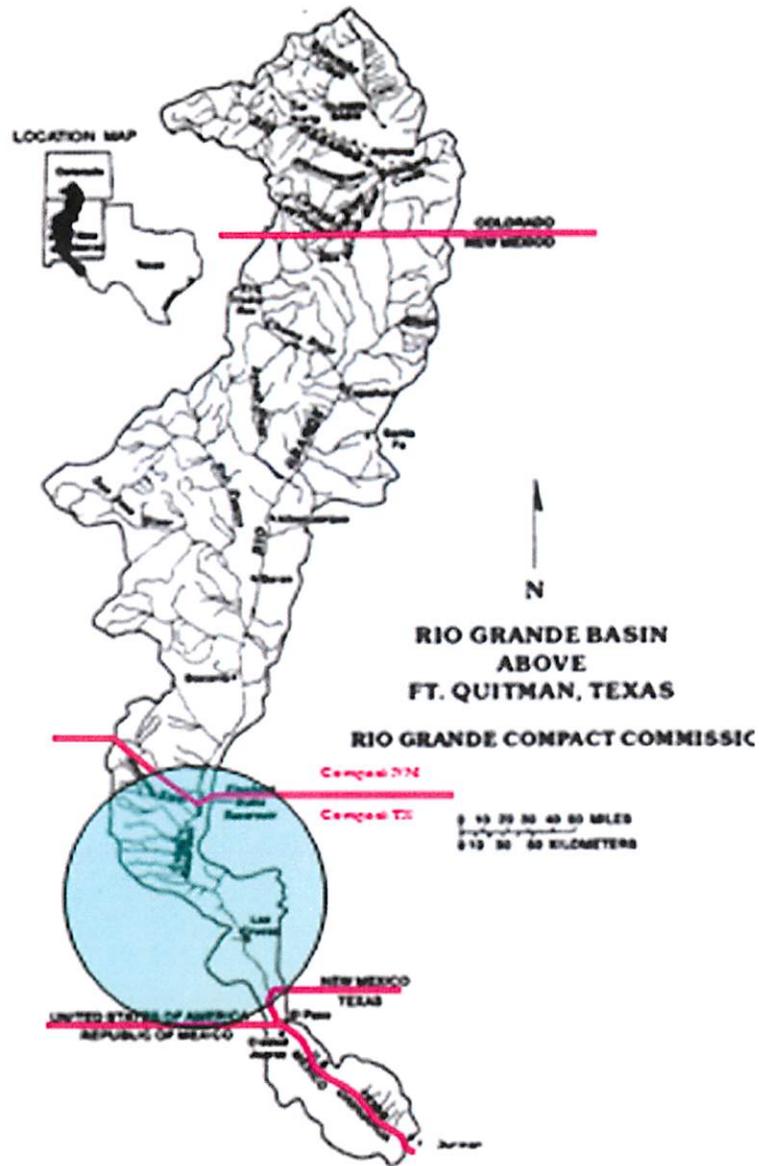
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## 1929-1938: The Rio Grande Compact

- Interstate Compact among CO, NM, and TX
- Colorado delivery to New Mexico
- New Mexico Delivery to Texas
- No man's land: EBID



# Compact Texas and Geographic NM Elephant Butte Reservoir at 2% of 2,638,000 AF of Storage

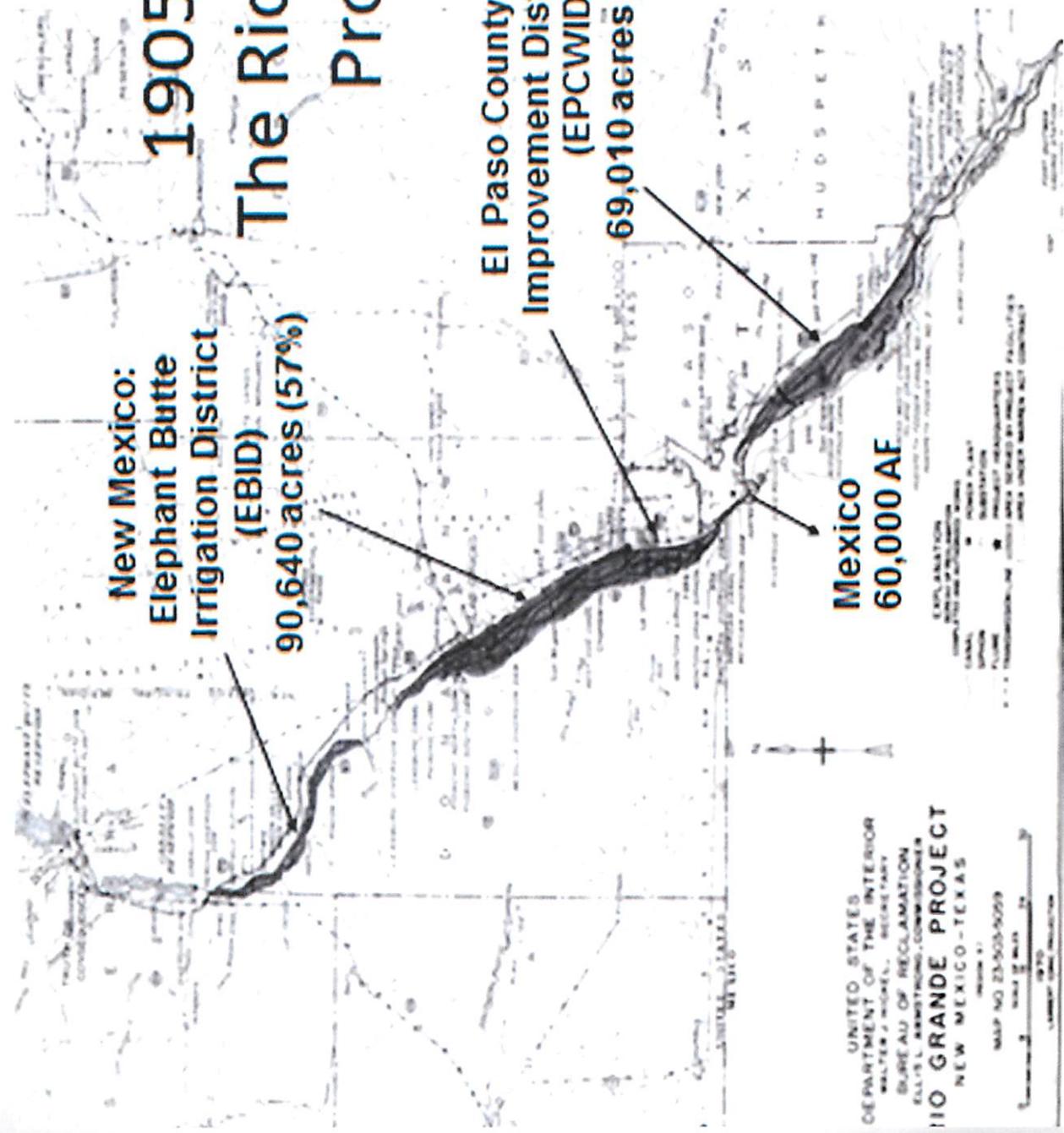


# 1905-1916 The Rio Grande Project

New Mexico:  
Elephant Butte  
Irrigation District  
(EBID)  
90,640 acres (57%)

El Paso County Water  
Improvement District No. 1  
(EPCWID)  
69,010 acres (43%)

Mexico  
60,000 AF



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
WALTER J. WICKEL, SECRETARY  
BUREAU OF RECLAMATION  
E. L. L. ARMSTRONG, COMMISSIONER  
**RIO GRANDE PROJECT**  
NEW MEXICO - TEXAS  
MAP NO. 23-503-5029  
SCALE: 1" = 10 MILES  
LAMBERT PROJECTION

EXPLANATION  
COMPLETE RECLAMATION  
CONTRACT RECLAMATION  
LAND RECLAMATION  
FLUME  
\* \* \* TRANSMISSION LINE  
\* \* \* PROJECT HEADQUARTERS  
\* \* \* UNDER MANNING CONTRACT

# Rio Grande Project Timeline

- 1979-1980 Districts pay off Project Construction Costs and takeover contract requires districts and US to agree on allocation scheme for Project Supply for 2 units.
- 1979-2002 Full water allocations to districts and Mexico.
- 1997-2001 US files quiet title suit to rights in the Project and EPCWID#1 raises claim over US method of allocating water to the districts not accounting for NM GW pumping. Mediation fails and suit dismissed in 2001 so parties can proceed to argue in the state stream adjudication.
- 2003 – After 24 years of full supply, drought returns.
- 2003 Texas threatens lawsuit in Supreme Court. Both states ramp up with war chests.
- 2003-2006 Reclamation employs “ad hoc” allocation method.
- 2007 both districts file suit in respective federal courts in NM and Texas because neither district agrees with allocation.
- Mandatory Mediation in Texas litigation leads to Operating Agreement Settlement outlining allocation method of Project Supply between the 2 districts.

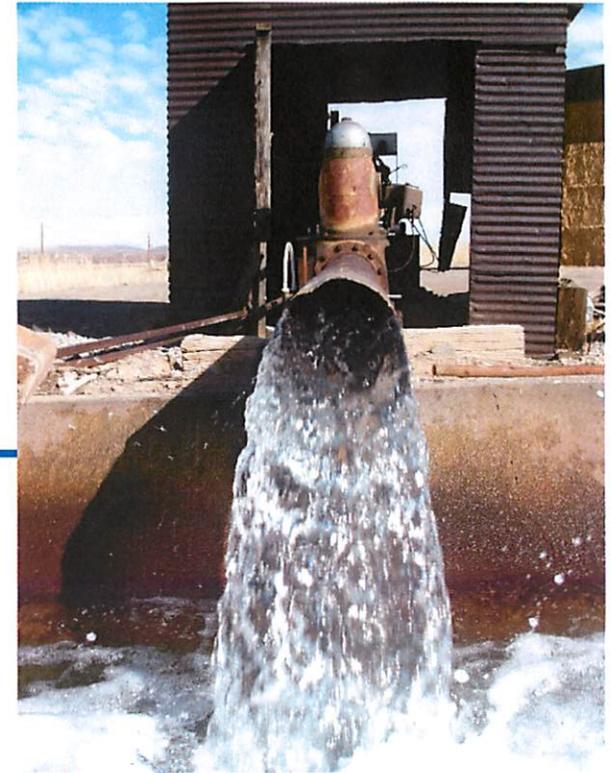
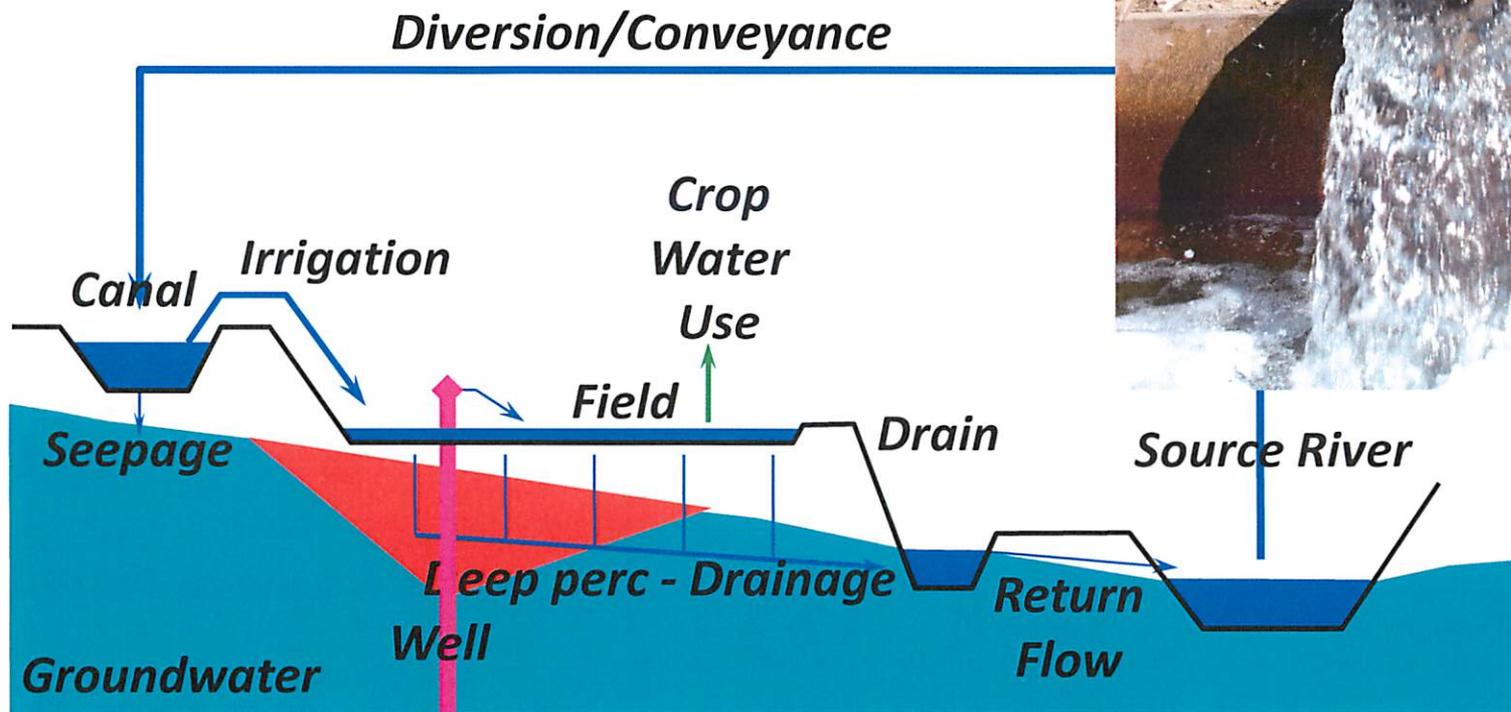
# OA Litigation Settlement

- Describes how the BOR will handle the allocation of Project Water accounting for both districts.
- Allocation insures that EPCWID#1 gets the water they have ordered from reservoirs in NM.
- EPCWID#1 abandons its claim that all pumping in NM after Compact must be accounted for and grandfathers in **all** ground water pumping in NM from 1951-1978.
- Carryover accounts set up for both districts encouraging conservation.
- Districts now control releases from reservoirs for maximum conservation in delivery and EBID can utilize flood flows without delivery obligation to Texas.
- Annual Operating Manual Review allows parties to address unforeseen issues.
- Texas threat to file in USSC removed.

## *NM v. EBID, et al., 96 CV-888 (1986)*

- *Stream Adjudication of Rio Grande Project Right.*
- SS-97-104 What is the source or sources of water for the US's Rio Grande Project Right?
- August 2012 court grants state motion that US has no claim to groundwater as a source of water for the Project, only surface releases.
- However, the Court recognizes that from a release of 790,000 AF of water from reservoirs, 930,000 AF of water is delivered to farmers.
- Court leaves open issue of status and quantity of return flows captured in 457 miles of EBID drains for Administrative hearings in front of SE.
- Priority date issue set for October 24 hearing.

# Cross-Section of shallow alluvium Surface water-groundwater – Drain return interaction.



# NM v. United States, EBID, EPWCID#1

## D.N.M. 11-CV-691 (2011)

- NM claims US erred in Compact accounting that gave more water to Texas (including EBID).
- NM claims 2008 Operating Agreement has changed allocation of Project water to favor Texas (not including EBID).
- EBID Cross Claim against US for releases by IBWC to Mexico in violation of Mexican Treaty of 1906 which costs districts 25,000AF of Project Supply.
- Motions to dismiss filed by major parties and argued November 2012.
- No decision on motions, instead action stayed by Judge Browning awaiting outcome of Texas v NM.

# Texas v. New Mexico and Colorado,

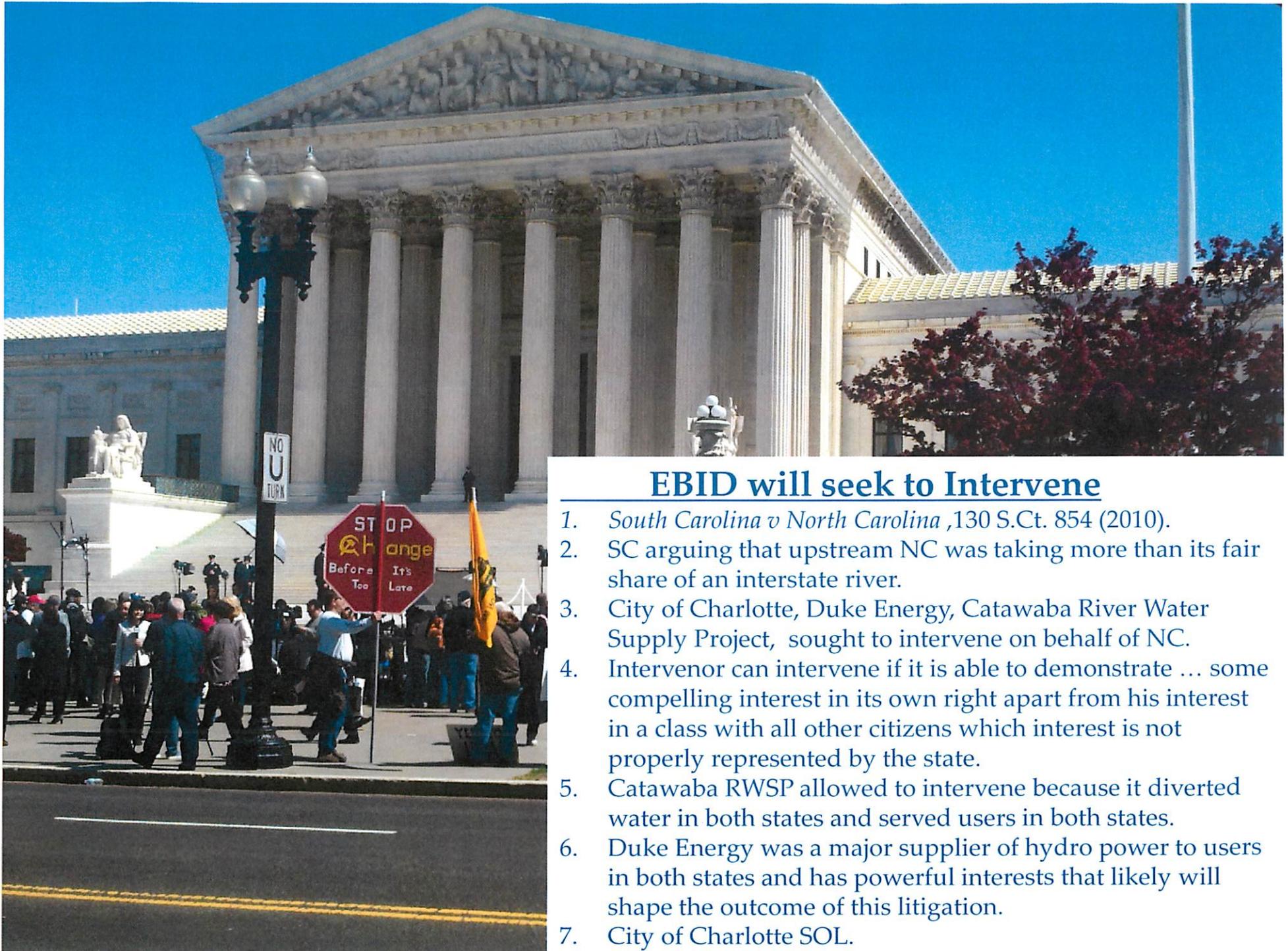
## No. CV No. 220141 (U.S. Jan. 8, 2013)

- Texas complains that as a result of NM's actions, Texas does not receive its share of water apportioned by the Compact and allocated by the Rio Grande Project.
- 1. Ruling by adjudication court not recognizing return flows as being part of the United State's right in water that composes Project Supply and instead leaves that decision to an administrative hearing before the NM state engineer.
- 2. AG lawsuit to overturn the Operating Agreement Settlement.
- Texas now goes back to previous position before Operating Agreement claiming all groundwater pumping after Compact must be accounted for.
- **NM, and CO, file responses. CLC, EPCWID#1, El Paso, Hudspeth ID** file amicus briefs. **EBID** does not file anything.
- Supreme Court asks US for their position on taking the case.
- US will be filing their position this month.

## IF TEXAS PREVAILS: THE LOSERS

- ▶ Damage claim by Texas probably over half a billion dollars. (state)
- ▶ Damage claim by Texas could also include penalty water to be delivered to Elephant Butte from upstream Rio Grande. (Middle and Upper Rio Grande)
- ▶ SE will face decisions to ensure downstream delivery to EPCWID#1 through AWRM/priority call options against EBID members, and all GW pumpers including domestic wells, mutual domestics, dairies, border development.





## EBID will seek to Intervene

1. *South Carolina v North Carolina* ,130 S.Ct. 854 (2010).
2. SC arguing that upstream NC was taking more than its fair share of an interstate river.
3. City of Charlotte, Duke Energy, Catawaba River Water Supply Project, sought to intervene on behalf of NC.
4. Intervenor can intervene if it is able to demonstrate ... some compelling interest in its own right apart from his interest in a class with all other citizens which interest is not properly represented by the state.
5. Catawaba RWSP allowed to intervene because it diverted water in both states and served users in both states.
6. Duke Energy was a major supplier of hydro power to users in both states and has powerful interests that likely will shape the outcome of this litigation.
7. City of Charlotte SOL.