

**STATE OF NEW MEXICO
THIRD JUDICIAL DISTRICT COURT
COUNTY OF DOÑA ANA**

**STATE OF NEW MEXICO ex rel.
OFFICE OF THE STATE ENGINEER,**

Plaintiff,

v.

**ELEPHANT BUTTE IRRIGATION
DISTRICT et al.,**

Defendants.

FILED

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DISTRICT COURT
DOÑA ANA COUNTY, NM

**No. CV 96-888
Hon. James J. Wechsler
Presiding Judge**

**Stream System Issue
SS-97-104
United States' Interests**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

This matter came before the Court pursuant to the Court's August 17, 2012 Order requesting a statement of issues regarding the United States' Rio Grande Project (the Rio Grande Project). Following comments submitted by the parties and a hearing on the matter on October 10, 2012, the Court designated that the next issues to be litigated in Stream System Issue SS-97-104 (SS-104), determining the United States' interests deriving from the establishment of the Rio Grande Project, were (1) the amount(s) of water, and (2) the priority date(s) of the United States' rights in the Rio Grande Project. On dispositive motions, the issues were reduced to one, namely, determining the priority date of the United States' rights regarding the Rio Grande Project.

A nine-day trial was held in Las Cruces, New Mexico from August 31 to September 11, 2015. After trial on the issue, and after considering the parties' proposed findings of fact and conclusions of law and post-trial briefs, the Court concludes that the United States has a priority of March 1, 1903 regarding its rights to the Rio Grande Project.

II. NATURE OF THIS PROCEEDING AND PROCEDURAL HISTORY

This is an expedited *inter se* proceeding under Rule 1-071.2 NMRA to determine the priority date of the United States' water rights deriving from the establishment of the Rio Grande Project. The need for this proceeding stems from previous activity in the adjudication of water rights on the Lower Rio Grande, and a brief description of the background of this proceeding is helpful to the Court's analysis.

The Court commenced this proceeding on January 8, 2010 with its Order Designating Stream System Issue/Expedited *Inter Se* Proceeding No. 104 the United States' Interests in the Stream System.¹ In order that the parties might resolve among themselves certain outstanding issues prior to litigation, the Court stayed

¹Order Designating Stream System Issue/Expedited *Inter Se* Proceeding No. 104 the United States' Interests in the Stream System, CV-96-888, SS-104 (entered 6/8/10). Note: titles to documents in the footnotes are taken from the Lower Rio Grande Adjudication, SS-97-104, US Interest (Reverse chronological order), <https://lrgadjudication.nmcourts.gov/ss-97-104-us-interest-reverse-chronological-order.aspx> (last visited Apr. 17, 2017).

proceedings.² On August 4, 2010, the stay was partially lifted, allowing parties to file respective claims of interest and legal positions regarding SS-104 and objections. The stay remained in effect with regard to motion practice and trial preparation.³

The parties filed their respective claims of interest and legal positions on August 30, 2010.⁴ In its statement of claim, the United States asserted a right, pursuant to federal statute and treaty, to “divert to storage, impound, and store the surface waters of the Rio Grande” behind the Elephant Butte and Caballo Dams in

²See Stahmann’s, NMSU’s, City of Las Cruces’ and NMPG’s Joint Motion for Order Lifting Stay of Stream System Issue No. 104 (filed 5/18/10); State of New Mexico’s Response to Stahmann’s, NMSU’s, City of Las Cruces’ and NMPG’s Joint Motion for Order Lifting Stay of Stream System Issue No. 104 (filed 6/7/10); Response of United States, Elephant Butte Irrigation District, and El Paso County Water Improvement District No. 1 to Motion for Order Lifting Stay of Stream System Issue No. 104 (filed 6/9/10); Stahmann’s, NMSU’s, City of Las Cruces’ and NMPG’s Joint Reply to United States’ et al.’s Response to Joint Motion for Order Lifting Stay of Stream System Issue No. 104 (filed 6/21/10).

³Scheduling Order for Motions SS-97-104 United States’ Interests (entered 8/4/10).

⁴City of El Paso’s Claim of Interest and Legal Position, CV-96-888, SS-104 (filed 8/30/10); Statement on Stream System Issues by MSPM Associates LP, CV-96-888, SS-104 (filed 8/30/10); Statement of Claims of Interest in Stream System Issue No. 104 (Triple A Farms, LLC, et al) CV-96-888, SS-104 (filed 8/30/10); Claims of Interest and Position Regarding Stream System Issue SS-97-104 (James Scott Boyd, et al) CV-96-888, SS-104 (filed 8/30/10); NMSU’s Claim of Interest and Legal Position Regarding Stream System Issue No. 104, CV-96-888, SS-104 (filed 8/30/10); Stahmann Inc.’s Claim of Interest, CV-96-888, SS-104 (filed 8/30/10); City of Las Cruces’ Statement of Interest in Stream System Issue No. 104, CV-96-888, SS-104 (filed 8/30/10); and Verde’s Statement of Interest and Legal Position (Verde Santa Teresa, LLC, et al.), CV-96-888, SS-104 (filed 8/30/10).

Sierra and Socorro Counties, New Mexico.⁵ In addition, the United States asserted an entitlement to store (1) 2,638,860 acre-feet in the Elephant Butte Reservoir with a right to continuously fill and refill, and (2) 343,990 acre-feet in the Caballo Reservoir with a right to continuously fill and refill.⁶ Lastly, the United States claimed an entitlement “to release from storage the amount of water required to meet irrigation demands for the [Rio Grande] Project and deliveries to Mexico” and other uses authorized under the Reclamation Act.⁷ The United States filed a response to the legal positions of other parties on September 17, 2010, in which it argued that issues tried in SS-104 should be limited to the elements of the United States’ claimed interest in the Rio Grande Project and not the interests of the other parties.⁸

The Court lifted the stay on all proceedings in SS-104 on November 29, 2011.⁹ The United States rejected an offer of judgment from the State to settle the United States’ water rights claims, and the Court set a briefing schedule and ordered that the

⁵United States’ Statement of Claim for Water for the Rio Grande Project, 1-2 (filed 9/15/10).

⁶*Id.* at 2.

⁷*Id.*

⁸United States’ Response to Parties Statements on Issues in Stream System Issue No. 4 (filed 9/17/10).

⁹Order Denying Motion to Continue Stay and Setting Initial Schedule of Proceedings in SSI No. 104 (entered 11/29/11).

first issue to be addressed in SS-104 would be to determine the source or sources of water for the Rio Grande Project.¹⁰

On May 18, 2012, various parties filed respective motions to dismiss the United States' claims to groundwater rights and the United States claims to Rio Grande Project rights.¹¹ Also on May 18, 2012, the United States moved the Court for summary judgment declaring that the source of Rio Grande Project water is "(1) all the surface water in the Lower Rio Grande, and (2) water in the ground hydrologically connected to surface waters in the Lower Rio Grande."¹² The Court heard oral arguments on the motions to dismiss and motion for summary judgment

¹⁰See Subfile Offer of Judgment to Settle the United States of America's Rio Grande Project Rights (filed 8/29/11); United States' Response to States Offer of Judgment to Settle the United States' Rio Grande Project Water Rights (filed 1/5/12); Order Setting Briefing Schedule for Dispositive Motions Regarding the Source or Sources of Water for the United States' Rio Grande Project (entered 4/13/12).

¹¹Verde's Motion to Dismiss the United States' Claims to Groundwater as a Source of Water for the Rio Grande Project Right (filed 5/18/12); NMSU's Motion to Dismiss the United States' Claim to Ownership of Groundwater (filed 5/18/12); SNM's Motion to Dismiss the United States' Claims to Groundwater as a Source of Water for the Rio Grande Project Right (filed 5/18/12); City of Las Cruces' Motion to Dismiss and Limit Claims of the United States (filed 5/18/12); Sammie Singh, Sr., Sammie Singh, Jr., Ed Provencio, Jonny Diaz, and John Fleming as Pre-1906 Claimants' Motion to Dismiss all Claims by the United States (filed 5/18/12); SRGDCFA Motion to Dismiss United States' Claim to Rio Grande Project Water Rights (filed 5/18/12); NMPG's Motion to Dismiss the United States' Claim to Groundwater Rights in the Lower Rio Grande and Its Brief in Support (filed 5/18/12); EPNG's Motion to Dismiss United States' Claims to Groundwater as a Source of Water (filed 5/18/12).

¹²United States' Motion for Summary Judgment 1 (filed 5/18/12).

on August 1, 2012 and subsequently issued an order (1) granting the State's motion to dismiss the United States' claims to groundwater as a source of water for the Rio Grande Project right, and (2) denying the United States' motion for summary judgment requesting recognition of groundwater as a source of water for the Rio Grande Project right.¹³

On or around August 12, 2012, a separate motion for summary judgment was filed by the Pre-1906 Claimants, asking the Court to conclude as a matter of law that the United States' claims in SS-104 do not include certain rights alleged to have been vested prior to the advent of the Rio Grande Project and requesting that the Court designate a separate expedited *inter se* proceeding.¹⁴ The Court denied the motion.¹⁵

On August 16, 2012, the Court requested that the United States and the State confer with the other parties and report to the Court on the next issue or set of issues to be addressed in SS-104.¹⁶ Following comments submitted by the parties and a

¹³Order Granting the State's Motion to Dismiss the United States' Claims to Groundwater and Denying the United States' Motion for Summary Judgment (entered 8/16/12).

¹⁴Pre-1906 Claimants' Memorandum in Support of Summary Judgment (filed 8/22/12); Statement of Undisputed Facts in Support of Pre-1906 Claimants' Motion for Summary Judgment (filed 8/22/12); Pre-1906 Claimants' Memorandum in Support of Summary Judgment (filed 8/22/12).

¹⁵Order Denying Pre-1906 Claimants' Motion for Summary Judgment (entered 1/15/13).

¹⁶Request for Statement of Issues Regarding the United States' Rio Grande Project (filed 8/16/12).

hearing on the matter on October 10, 2012, the Court designated that the next issues to be litigated in SS-104 were (1) the amount(s) of water, and (2) the priority date(s) of the United States' rights in the Rio Grande Project.¹⁷

Parties submitted motions on April 19, 2013 for summary judgment regarding the United States' claims as to the amount(s) of water and priority date(s) for the Rio Grande Project.¹⁸ The Court held a hearing on November 20, 2013 and issued an order that, as a matter of law, (1) the United States was entitled to a project storage right of a maximum storage capacity of 2,638,860 acre-feet with the right to continuously fill and refill the Elephant Butte Reservoir and all other reservoirs below; (2) the United States was entitled to a right of normal annual release of 790,000 acre-feet per year from Rio Grande Project storage; and (3) the United States has a right to divert Rio Grande Project water from the Rio Grande, without limitation on the diversion amounts, at the Percha, Leasburg, and Mesilla diversion dams.¹⁹ The

¹⁷Order On Next Issues and Schedule for Litigation Regarding the United States' Rio Grande Project (entered 10/12/12).

¹⁸SNMs Motion for Summary Judgment on the Amounts of Water and Priority Dates for the United States' Rio Grande Project Right (filed 4/19/13); City of Las Cruces' Motion for Summary Judgment on Priority Date and Amounts of Water for the United States' Rio Grande Project Right (filed 4/29/13); United States' Motion for Summary Judgment (filed 4/24/13).

¹⁹Order (1) Granting Summary Judgment Regarding the Amounts of Water; (2) Denying Summary Judgment Regarding Priority Date; (3) Denying Summary Judgment to the Pre-1906 Claimants; and (4) Setting a Scheduling Conference (entered 2/17/14).

Court also found that issues of material fact remained regarding the priority of the United States' interest in the Rio Grande Project and initiated a schedule for proceedings to determine the priority.²⁰

In February 2014, the Pre-1906 Claimants again moved to stay proceedings in SS-104 until the issue of ownership rights in the Rio Grande Project could be determined.²¹ The Court denied the motion to stay on the grounds that (1) the purpose of SS-104 was to determine the rights of the United States in the Rio Grande Project, and (2) the Pre-1906 Claimants' ownership and water rights claims would be addressed in this adjudication.²² The Pre-1906 Claimants' claims to ownership of the Rio Grande Project were addressed in an expedited *inter se* proceeding beginning in 2015.²³ The Court dismissed the Pre-1906 Claimants' ownership claims to the Rio

²⁰*Id.*

²¹Pre-1906 Claimants' Motion to Stay Further Proceedings in SSI-97-104 (filed 2/28/17).

²²Order Denying Pre-1906 Claimants' Motion to Stay Further Proceedings in SS-97-104 (entered 6/18/14).

²³Order Commencing Expedited *Inter Se* Proceeding to Determine the Claims of the Pre-1906 Claimants' Designated Representatives to Ownership of Rights Derivative of the Rio Grande Dam and Irrigation Company and Setting a Scheduling Order; 8-28-15, No. CV-96-888 (Claims to Rights Derivative of the Rio Grande Dam and Irrigation Company), Subfile Nos. LRN28-002-0185A; LRN-28-002-0185B; LRN-28-005-0007; LRN-28-006-0203A; LRN-28-006-0203B; LRN-28-005-0034; LRN-2828-014-8002 (entered 8/28/15).

Grande Project in October 2016.²⁴ Water rights claims on the Lower Rio Grande that pre-date the Rio Grande Project are currently being addressed in a separate Stream System Issue, No. SS-107.²⁵

In April 2014, the City of El Paso and *amicus curiae* El Paso County Water Improvement District No. 1 filed a joint motion to stay proceedings in SS-104 pending the outcome of *Texas v. New Mexico & Colorado*, No. 220141 ORG, an original action filed in the United States Supreme Court regarding interpretation of the Rio Grande Compact, an interstate water compact.²⁶ The City of El Paso and the Water Improvement District argued that SS-104 should be stayed because the United States Supreme Court's interpretation of the Rio Grande Compact may have an affect on this Court's determination of (1) the source of water for the Rio Grande Project, (2) the amount of water for the Rio Grande Project, and (3) the priority of the Rio

²⁴Memorandum Order Granting the Joint Motion to Dismiss the Claims to Rights Derivative of the Rio Grande Dam and Irrigation Company; Memorandum Order Granting the Joint Motion to Dismiss the Claims to Rights Derivative of the Rio Grande Dam and Irrigation Company, No. CV-96-888 (Claims to Rights Derivative of the Rio Grande Dam and Irrigation Company), Subfile Nos. LRN28-002-0185A; LRN-28-002-0185B; LRN-28-005-0007; LRN-28-006-0203A; LRN-28-006-0203B; LRN-28-005-0034; LRN-2828-014-8002 (entered on 10/19/16).

²⁵Order Designating Stream System Issue No. 107 Regarding Surface Water Rights Developed Before the Rio Grande Project, No. D-307-CV-96-888, SS9700107 (entered 7/6/16).

²⁶Joint Motion to Stay Proceedings and Brief in Support, No. CV-96-888, SS-104 (filed 4/17/14).

Grande Project. The Court denied the joint motion to stay on the grounds that there were no apparent conflicts between the issues before the United States Supreme Court and the issues to be determined in SS-104.²⁷

The State and the City of Las Cruces subsequently filed a joint motion for summary judgment requesting three priority dates as a matter of law, and the United States countered with a separate motion for partial summary judgment as to whether the United States was barred as a matter of law from asserting a priority of 1903.²⁸ The City of Las Cruces filed a separate motion for summary judgment asserting that the United States was estopped from seeking a priority prior to 1906. The Court issued an order on August 20, 2015 on all three motions, ruling that (1) the record did not support estopping the United States from seeking a priority prior to 1906, (2) the United States was not barred either by statute or by prior assertions from claiming a priority date of 1903, and (3) the United States was not barred by statute from obtaining a priority of 1903.²⁹

²⁷Order Denying Joint Motion to Stay Proceedings in Stream System Issue 104 (entered 6/19/14).

²⁸Renewed Motion of the SNM and the CLC for Summary Judgment on the Priority Dates of the United States Rio Grande Project Right (filed 6/29/15); United States' Motion for Partial Summary Judgment and Memorandum in Support (filed 6/29/15).

²⁹Memorandum Opinion and Order Addressing Pretrial Motions in SS-97-104 (entered 8/20/15).

In October 2015, the Pre-1906 Claimants renewed their motion to stay proceedings in SS-104 pending a decision by the Tenth Circuit Court of Appeals in *James Scott Boyd, et al. v. United States, et al.*, No. 15-002, regarding their claims to ownership and water rights deriving from the historic Rio Grande Dam and Irrigation Company (the RGD&IC).³⁰ The Court denied the motion on the ground that a stay in SS-104 would not promote the efficient adjudication of water rights in this matter.³¹

The Court set the trial to determine the priority for the right of the United States to water for the Rio Grande Project for August 31, 2015, at Las Cruces.³² At the Court's request, the parties submitted proposed findings of fact and conclusions of law and post-trial briefs on May 9, 2016.³³ Oral argument on the parties' proposed findings and conclusions was held in Las Cruces on September 1, 2016.

On August 29, 2016, the City of El Paso and *amicus curiae* El Paso County Water Improvement District No. 1 filed a renewed joint motion to stay proceedings

³⁰The Pre-1906 Claimants' Renewed Motion to Stay Proceedings in SSI-104 (filed 10/9/15).

³¹Order Denying Pre-1906 Claimants' Motion to Stay Expedited *Inter Se* Proceeding Pending a Tenth Circuit Decision in *James Scott Boyd, et al. v. United States, et al.*, Case No. 15-002 (entered 12/9/15).

³²Final Pretrial Order (entered 8/28/15).

³³Order Setting a Deadline for the Filing of Proposed Findings of Fact and Conclusions of Law (entered 1/5/16); Order on United States' Motion for Extension of the Deadline to File Proposed Findings of Fact, Conclusions of Law, and Post-Trial Briefs (entered 4/28/16).

in SS-104, again arguing that the original action, *Texas v. New Mexico & Colorado*, No. 220141 ORG, may conflict with any substantive decision issued by this Court in SS-104.³⁴ After a hearing on November 30, 2016 in Las Cruces, the Court denied the renewed joint motion.³⁵

With this background, the Court enters the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

Historical Background

1. By the middle of the nineteenth century, the Lower Rio Grande Valley had significant agricultural development. [9/3/15 Tr. 57-59]³⁶
2. In the late nineteenth century, use of water from the Lower Rio Grande became a source of conflict in southern New Mexico and along the international boundary where the river formed a border between the United States and the Republic of Mexico. [9/3/15 Tr. 57-59]

³⁴Renewed Joint Motion to Stay Proceedings and Brief in Support (filed 8/29/16).

³⁵Order Denying Renewed Joint Motion to Stay Proceedings (entered 12/16/16).

³⁶ The citations to transcripts in these findings of fact and conclusions of law adhere to the following format: [mm/dd/yy Tr. page:line].

3. In the last half of the 1880s, declines in the flow of the Rio Grande were reported in southern New Mexico and near El Paso, Texas due to upstream diversions in Colorado's San Luis Valley. In addition, natural factors led to cycles of flooding and water shortages. [8/31/15 Tr. 123-125] [9/3/15 Tr. 57-59, 71]

4. Prior to the mid-1890s, the United States pursued a policy of encouraging the development of water projects by private interests. [9/3/15 Tr. 76-77]

5. By the final decades of the nineteenth century, three United States agencies were directly involved in water resource development: the State Department, the War Department, and the Department of the Interior. The State Department was involved because the Rio Grande formed a portion of the international border between the United States and the Republic of Mexico and supplied water to the Republic of Mexico. The War Department operated the United States Army Corps of Engineers (Corps of Engineers), which was engaged in the development and construction of federal water projects. The Department of the Interior housed the United States Geological Survey (USGS), which conducted surveys and other investigations of dam sites and river irrigation. [9/3/15 Tr. 61, 68-72, 75-77]

6. In response to concerns over diminishing water resources in New Mexico and other western territories and states, Congress appropriated funds for hydrographic surveys in the western United States, to be conducted by the USGS. The surveys took measure of river flows, determined potential reservoir sites, and studied the condition

of irrigation agriculture in the West in order to develop improvements in irrigation.

[9/3/15 Tr. 60:16-61:5; 61:8-20] [8/31/15 Tr. 126:2-127:13] [9/3/15 Tr. 60:3-20]

7. In 1888, the USGS undertook a large-scale investigation of the water resources in the western United States, including New Mexico (the Powell Survey). [8/31/15 Tr. 127:3-128:19] [9/3/15 Tr. 60] [NMLC-278]

8. After the USGS surveys, John Wesley Powell, Director of the USGS, concluded that because of international and interstate conflicts over the waters of the Rio Grande, federal intervention in water resource management was necessary. [8/31/15 Tr. 129:5-24] [NMLC-278].

Federal Surveys for Dam Sites

9. In its Twelfth Annual Report, submitted in 1891 to the Secretary of the Interior for the years 1890-1891, the USGS identified thirty-nine potential sites for reservoirs in western states, including New Mexico. The USGS identified two potential reservoir sites on the Lower Rio Grande, Site Nos. 38 and 39, between which the present Elephant Butte Dam is located. [8/31/15 Tr. 127:3-128:11] [NMLC-278]

10. The 1891 Twelfth Annual Report included detailed maps for both potential reservoir sites, and site descriptions were written that included the exact location and shape of each reservoir and the heights of the respective proposed dams. [NMLC-278]

11. The proposed reservoir identified in the 1891 Twelfth Annual Report as Site No. 38, located below San Marcial, New Mexico, was an estimated 6,380 acres of land, holding 175,000 acre-feet of water behind an eighty-foot high dam. The downstream Site No. 39 was described as encompassing 6,380 acres of land, holding 102,000 acre-feet of water behind a forty-foot high dam. Both descriptions were accompanied by detailed maps that included exact siting information and drawings of the shape of each proposed reservoir. [NMLC-278 at 40, 47]

Actions Taken By the New Mexico Territorial Legislature

12. In the last decade of the nineteenth century, many of the western states and territories began enacting legislation to better define the manner in which state water resources would be allocated. New Mexico passed the 1891 Notice Act, N.M. Laws 1891, Chapter LXXI, that provided a method for establishing the right to appropriate water by filing an application with the county probate clerk. The 1891 Notice Act was similar to laws enacted in other western states that were designed to cut back on conflicts arising among water rights claimants, by providing a systematic way of recording claims so that appropriations could be identified by any subsequent claimant. [NMLC-13]

13. The 1891 Notice Act required that, in order to obtain an appropriative water right, any non-exempt person or organization constructing or enlarging any ditch, canal, or feeder for any reservoir, and taking water from any natural stream, must file

and record a sworn statement in the office of the probate clerk within ninety days after the commencement of construction. The 1891 Notice Act required a sworn statement providing information on the type of construction or enlargement project, the location, and the size of the project, as well as other information. [NMLC-055].

14. Also in 1891, the United States passed legislation allowing private irrigation companies to gain rights of way over United States public lands in order to construct dam and irrigation works (the 1891 Right-of-Way Act). 26 Stat. 1095, 1101-1102 (1891) (“An act to repeal timber-culture laws, and for other purposes.”). [USA-39]

15. The United States made two filings with the Chaves County probate clerk under the 1891 Notice Act concerning the Pecos River and the Rio Hondo; the United States did not file under the 1891 Notice Act for the Rio Grande Project. [NMLC-002 at 84, 92, 104]

16. Pursuant to the 1891 Right-of-Way Act, the RGD&IC filed articles of incorporation in Doña Ana County under New Mexico law on September 6, 1893 for the purpose of constructing dams and irrigation works to benefit waters users in New Mexico, Texas, and Mexico. The RGD&IC then filed a sworn statement under the 1891 Notice Act on January 11, 1894, stating its intent to build dam and irrigation works on the Lower Rio Grande near the Elephant Butte site to store 253,368 acre-feet of water. In 1895, the Department of the Interior approved the RGD&IC’s application for a right-of-way. [9/3/15 Tr. 79:3-23] [Pre-7, Pre-10] [NMLC-15]

17. In 1899, the Territorial Legislature issued a joint memorial calling for federal reclamation of "about thirty million acres" of arid government land. In clear terms, the Territorial Legislature asserted that

the construction of th[e] reservoirs and canals is beyond the power or possibility of the capital of any single individual, or the aggregate means of a number of individuals, rendering it absolutely necessary for the government of the United States to spread its established policy of federal aid to internal improvements over 'Arid America.' The propositions are too large, and require too many millions of dollars of individual effort[.]

The members of the Territorial Legislature, as representatives of the people of New Mexico, declared that they

ask for and urge upon the Congress of the United States that they appropriate . . . the sum of five millions of dollars to be expended under and by direction of the Interior Department for the construction of storage reservoirs and the survey and construction of canals from said reservoirs for the purpose of storing and distributing the waters of the territory . . . and under such regulations and rules . . . established by the proper department of the federal government.

Joint Memorial 5, Acts of the Legislative Assembly of the Territory of New Mexico, 33rd Session 208.

18. By 1900, general public knowledge existed with regard to water shortages on the Lower Rio Grande. Also by that time, general public knowledge existed in the United States in general, and in New Mexico in particular, that a long-term solution to water shortages in the American West was the construction of large-scale dam and irrigation projects.

19. By 1900, general public knowledge existed in the western United States in general, and in New Mexico in particular, that the federal government was considering enacting legislation allowing federal agencies to plan and construct large-scale dam and irrigation projects in the arid western states and territories, including New Mexico.

20. By 1900, general public knowledge existed in New Mexico that the federal government was contemplating the construction of a federal dam and irrigation project on the Lower Rio Grande in New Mexico.

21. By 1900, general public knowledge existed in New Mexico that the United States Congress and the Territorial Legislature were passing legislation aimed at facilitating the construction of a federal dam and reservoir project on the Lower Rio Grande. [9/1/15 Tr. 90:3-92:11] [NMPG-10]

22. Federal and territorial laws and legislative memorials are public documents and would have been available to the people of New Mexico. [9/1/15 Tr. 90:3-92:11] [NMPG-10]

23. Newspaper articles published in New Mexico and El Paso, Texas in the years 1898-1899 reported on actions by federal and territorial authorities facilitating the siting and construction of a federal dam and irrigation project on the Lower Rio Grande. [9/1/15 Tr. 90:3-92:11] [NMPG-10]

The International Dam at El Paso

24. The Treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico formally ended the Mexican-American War, which was waged from 1846 to 1848. The treaty was signed on February 2, 1848. Article V of the treaty established the boundary between the two countries, and the United States acquired sovereignty over all of the waters within the United States. 9 Stat. 926-928 (1848).

25. The Gadsden Treaty was signed on December 30, 1853. Article I of the treaty altered the boundary between the United States and the Republic of Mexico as set forth in the Treaty of Guadalupe Hidalgo. 10 Stat. 1031-37 (1853).

26. In response to the private dam and irrigation project proposed by the RGD&IC, the Mexican government filed a formal protest in opposition to the RGD&IC project with the State Department in 1896. [8/31/15 Tr. 139:9-15] [NMLC-22 at 2]

27. (a) To address Mexico's concerns, a study, headed by International Boundary Commission (IBC) engineer W. W. Follett (the Follett Survey), was initiated to evaluate Mexico's claims that United States citizens were taking Mexico's water. [9/1/15 Tr. 127:2-129:17] [NMLC-22 at 1]

(b) The Follett Survey was also charged with assessing whether there was sufficient water in the Rio Grande to support the construction of a dam at El Paso, in part to ensure that Mexico was compensated for its alleged loss of water. [9/1/15 Tr. 127:2-129:17] [NMLC-22 at 1]

(c) In November 1896, Follett filed a report of the Follett Survey findings with Captain George McDerby of the Corps of Engineers. [9/1/15 Tr. 127:2-129:17]
[NMLC-22 at 1]

28. (a) According to Follett's report, there were several potential dam sites on the Lower Rio Grande, including the Elephant Butte and the El Paso sites. [NMLC-21 at 172, 175-176]

(b) Follett concluded that there was not sufficient water for both dams and that only one should be built. Follett also recommended that no private interests should be allowed to construct large reservoirs on the Lower Rio Grande so that the United States could ensure an equitable supply of water for Texas and Mexico. [NMLC-21 at 173, 178-79, 184-85, 188]

(c) Additionally, Follett expressed reservations regarding the viability of a dam at El Paso, since construction of a dam at that site would necessitate flooding of farmlands in the Mesilla Valley. [9/1/15 Tr. 122:22-123:24]

29. Follett, in partnership with Anson Mills, also published in 1896 "Reports on the Investigations and Survey for an International Dam and Reservoir," which included topographical survey maps showing two alternate sites for the International Dam. [NMLC-337 at 6-7]

30. Anson Mills was an officer in the Corps of Engineers and the leading proponent of the International Dam. Mills was a key figure in the founding of the City

of El Paso and had considerable political influence in Washington, D.C. [9/3/15 Tr. 62:1-64:16]

31. Mexican engineers prepared their own topographical maps in 1896 for two alternate sites for the International Dam, to be sited by old Fort Bliss, near El Paso; they also took boring samples at the dam sites to determine the sub-surface characteristics. [9/3/15 Tr. 136:10-141:15] [NMLC-338 at 211-215]

32. Proponents of the International Dam at El Paso, including Mills, also opposed the RGD&IC's project at Elephant Butte. [USA-7 at 1-5]

33. In November 1896, Mills complained to Secretary of State Richard Olney that the RGD&IC's proposed project would have a negative impact on the proposed International Dam at El Paso. Secretary Olney informed Secretary of the Interior D. R. Francis about the concerns raised by Mexico and the proponents of the International Dam in a letter dated November 30, 1896. In the letter, Olney requested that the Department of the Interior deny all future applications for rights of way for dam and reservoir construction on the Rio Grande under the 1891 Right-of-Way Act. Olney also suggested to Secretary Francis that the Department of the Interior consider whether there were any legal means to terminate the rights of way already obtained by the RGD&IC to build the RGD&IC's project. [8/31/15 Tr. 141:4-23] [USA-7 at 1-5]

34. In response to water conflicts between the United States and Mexico, the IBC was created in 1889 as a joint organization with United States and Mexican delegates charged with defining the exact location of the United States-Mexico border, which often shifted when the Rio Grande would meander. Mills was the United States delegate to the IBC. [NMLC-4 at 48]

35. During this period, the United States House of Representatives passed a resolution in favor of construction of a dam at El Paso, and the House and Senate passed a joint resolution in April 1890, requesting that the President of the United States enter into negotiations with Mexico to resolve conflicts over the waters of the Rio Grande. [8/31/15 Tr. 133:7-134:11] [USA-171 at 6]

36. Despite the efforts of Mills and other supporters, and despite the introduction of a number of Congressional bills for the purpose, Congress never passed legislation authorizing an international dam at El Paso, and no public lands were ever withdrawn for the international dam site. [8/31/15 Tr. 129:5-135:8] [9/3/15 Tr. 99:17-101:6]

The Embargo Order and Time Period

37. On December 5, 1896, Secretary Francis sent a letter to the Commissioner of the General Land Office ordering that the Land Office “suspend action on any and all applications for right-of-way through public lands for the purpose of irrigation” using the waters of the Rio Grande or its tributaries, either in New Mexico or Colorado until further notice. This letter articulated a policy that has come to be known as “the

Embargo” and effectively prevented the development and construction of any additional large-scale water storage and diversion on the Rio Grande in Colorado and New Mexico by private interests. [8/31/15 Tr. 140:16-144:5] [USA-7 at 1-7] [8/31/15 Tr. 145:1-6] [9/3/15 Tr. 93-94]

38. On January 13, 1897, Secretary Francis wrote a letter to the Commissioner of the General Land Office modifying the Embargo in order to limit its application to tributaries of the Rio Grande above the point where the river becomes the boundary between the United States and Mexico. [8/31/15 Tr. 140:16-144:5] [USA-7 at 1-7] [8/31/15 Tr. 145:1-6] [9/3/15 Tr. 93-94]

39. The Embargo had the effect of significantly restricting private irrigation development on the Rio Grande and extending federal control over the management of the Rio Grande and its tributaries. [8/31/15 Tr. 144:22-145:6]

40. In 1896, three years after the RGD&IC filed its articles of incorporation pursuant to the 1891 Right-of-Way Act, the United States Department of Justice filed a lawsuit in the New Mexico Territory’s Third Judicial District Court, seeking to enjoin the RGD&IC from building its proposed project. The lawsuit alleged that the RGD&IC’s project was impermissible because it would impair the navigability of the Rio Grande and that the RGD&IC did not receive the necessary approval from the United States War Department. [9/3/15 Tr. 94:18-95:19]

41. By the 1890s, the United States was experiencing social conflict, due in part to large-scale immigration that increased the desire to open lands in the American West for settlement and in part to an economic depression in 1893. With a growing demand for western lands came a need for reliable water supplies for irrigation. Policy makers began to have doubts about the ability of private companies to meet the growing demand for water. By the decade's end, there was a growing conviction among policy makers that only the federal government had the ability to build and maintain sufficient dam and reservoir projects through the application of federal resources and scientific expertise. By the turn of the twentieth century, the federal government was directly involved with water issues under at least three cabinet-level departments—the State Department, the War Department, and the Department of the Interior. [9/3/15 Tr. 103-104; 68-72]

42. In the meantime, the litigation against the RGD&IC had worked its way through the district court and the Supreme Court of New Mexico and into the Supreme Court of the United States, which issued *United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690 (1899), concluding that there was insufficient evidence to support a finding of non-navigability of the lower Rio Grande. The case was remanded to the district court for an additional inquiry as to whether the RGD&IC's dam would impede the river's navigability. 174 U.S. at 710. [NMLC-4 at 64-65]

43. The USGS sent Reclamation Service engineer Arthur Davis to the RGD&IC's proposed dam site in early 1902. Davis concluded that the RGD&IC's site was unsuitable for such a large-scale project and reported that a more suitable location existed a short distance downstream from the RGD&IC's proposed site. Davis requested that the USGS conduct a more comprehensive investigation of this proposed downstream site and the surrounding area. [9/9/15 Tr. 12:15-25; 14:7-23] [NMLC-4 at 90, 96-97]

44. Newspaper coverage of the United States' lawsuit against the RGD&IC was extensive throughout the southwestern United States, including New Mexico. By 1900, general public knowledge existed in New Mexico with regard to the United States' litigation against the RGD&IC. [9/1/15 Tr. 87:15-21; 88:1-89:18; 90:7-92:11] [NMPG-007; NMPG-010]

The Passage of the Reclamation Act of 1902

45. In recognition of the problems that private irrigation companies faced in supplying adequate water supplies for irrigation in the American West, Congress passed the Reclamation Act on June 17, 1902. 32 Stat. 388 (1902) (codified as amended at 43 U.S.C. §§ 371-573 (2012)). The Reclamation Act was landmark legislation that symbolized the conviction that the limitations of the physical environment could be overcome with massive financial resources and scientific expertise. [9/1/15 Tr. 31:2-32:1] [9/3/15 Tr. 103-04] [USA-112]

46. The Reclamation Act authorized the Secretary of the Interior to investigate and survey proposed irrigation projects, to withdraw public lands for irrigation projects, and to enter contracts for construction of such projects. 32 Stat. 388, §§ 2-3. These steps were to be taken sequentially, beginning with site studies, followed by land withdrawals, and then followed by construction. Under this process, irrigation projects proceeded from planning through the final application of water to beneficial use. *Id.* §§ 1-10. [9/1/15 Tr. 31:2-32:1] [9/3/15 Tr. 110:5-112:5] [USA-112]

47. The Reclamation Act also authorized the Secretary of the Interior to restore withdrawn public lands for homesteading or other uses, if in the Secretary's determination such withdrawals of public lands were no longer necessary to accomplish the development of an irrigation project. The Reclamation Act further authorized the Secretary of the Interior with authority to survey, investigate, and approve irrigation projects, and to report to Congress regarding such surveys. Approval of irrigation projects by the Secretary of the Interior was usually given in general terms, with more specific planning and implementation given to the chief engineer of the project. Congress provided that the Reclamation Act was not to be construed as interfering with the laws of any state or territory with regard to the control, appropriation, use, or distribution of water. [9/3/15 Tr. 110:5-115:14] [USA-112]

48. Upon the Secretary's determination that a particular irrigation project was practicable, and upon commencement of planning the development, construction, and funding of the project, the Reclamation Act required the Secretary to give public notice identifying the lands irrigable by the project and the irrigable acreage limits for each landowner. [9/3/15 Tr. 114:2-9] [USA-112]

49. The Reclamation Act did not apply to the state of Texas because Texas retained its public lands upon annexation to the United States in 1845. As a consequence, Texas did not have federal lands to which the Reclamation Act would apply. [9/3/15 Tr. 109:10-23]

50. In mid-1902, the Reclamation Service began to investigate the reservoir site near Elephant Butte that Davis identified. *See* Finding of Fact No. 43. After a series of studies, Reclamation Service Chief Engineer Frederick Newell charged consulting engineer Benjamin Hall to conduct further work and to write a project proposal for the site. [9/9/15 Tr. 27:2-14] [9/3/15 Tr. 115:16-117:19]

Actions Taken in 1903

51. In a letter dated January 28, 1903, Chief Engineer Newell asked Follett for "a confidential opinion as to whether water storage on the Rio Grande [was] feasible or desirable." On February 6, 1903, Follett wrote back to Newell that while Follett personally supported the El Paso site, "from an engineering standpoint," the best site for a dam on the Rio Grande was at the lower end of the Española Valley and that in

any case “there is not a sure water supply sufficient to serve more than one storage reservoir of magnitude in the valley of the Rio Grande.” [NMLC-25 at 4-5]

52. The New Mexico Irrigation Commission, which had the duty to investigate and select suitable sites for irrigation reservoirs, 1901 N.M. Laws, ch. LXIX, § 15 at 132-33, wrote to the Secretary of the Interior on February 21, 1903, recommending that the United States take legal action to obtain a forfeiture of the RGD&IC’s right-of-way. Shortly thereafter, in April 1903, the United States filed an amended complaint in the 1896 New Mexico district court proceeding, alleging that the RGD&IC failed to complete its proposed dam and irrigation project within the five years required by the 1891 Right-of-Way Act and that the RGD&IC’s right-of-way under the 1891 Right-of-Way Act had been forfeited. [9/9/15 Tr. 29:11-16] [9/3/15 Tr. 33:17-34:16] [PRE-29] [NMLC-4]

53. Prior to 1903, the litigation of the United States against the RGD&IC was centered on the United States’ allegations that the RGD&IC had failed to obtain the necessary permits to dam a navigable stream. By 1903, the litigation by the United States against the RGD&IC had been ongoing for six years and had reached the New Mexico Territorial Supreme Court on more than one occasion. [9/3/15 Tr. 153:9-14] [9/3/15 Tr. 152:17-154:25]

54. Due to a variety of factors, by 1903 it appeared unlikely that the International Dam at El Paso would ever be built. [9/8/15 Tr. 78:9-80:2]

55. On March 1, 1903, the Reclamation Service began a series of surveys for dam sites above Mesilla Valley under the supervision of J. A. French. The surveys focused on the location between Site Nos. 38 and 39 identified by Davis in 1902 near Engle, New Mexico (the Elephant Butte site). *See* Finding of Fact Nos. 9 and 43. [USA-10 at 6]

56. The series of Reclamation Service surveys beginning on March 1, 1903 were undertaken as part of the United States' policy, beginning around 1890, to construct federal dam and reservoir projects to address water shortages in the western United States, including New Mexico. [NMLC-278] [USA-4; USA-5; USA-8; USA-10 at 2-3, 6-8]

57. The Reclamation Service crews under the supervision of J. A. French continued to work on the Elephant Butte site through the summer of 1903. [USA-10 at 6-7]

58. The work undertaken by the Reclamation Service crews under the supervision of J. A. French consisted of taking detailed surveys and creating a topographical map of the Elephant Butte site. [USA-10 at 6]

59. The surveys undertaken by the Reclamation Service on March 1, 1903 were intended to locate a site suitable for a dam and reservoir with a capacity large enough to utilize the entire flow of the river drainage. [USA-10 at 2, 6-8]

60. The surveys undertaken by the Reclamation Service on March 1, 1903 were a physical "first step" that indicated a fixed purpose of acquiring a right to appropriate

water on the Lower Rio Grande through the construction of a federal dam and irrigation project.

61. The Reclamation Service surveys of the Elephant Butte site were completed in August 1903. [9/1/15 Tr. 48:9-20]

62. On September 4, 1903, the acting director of the Reclamation Service wrote a letter to the Secretary of the Interior providing a list of over 17,000 acres of land within the area of the later-constructed Elephant Butte dam and reservoir site that had been withdrawn from public entry. [9/1/15 Tr. 39:8-40:9]

63. In addition, Reclamation Service crews undertook topographic surveys in August 1903 at Fort Selden and downstream to identify irrigable acreage between the topographic survey sites and El Paso. The survey encompassed about one hundred square miles of irrigable acreage. [9/1/15 Tr. 48:17-20]

64. Engineers from the Reclamation Service took borings at the Elephant Butte site on October 26, 1903, in order to determine the depth and character of the bedrock. Photographs dated October 26, 1903 were taken of the borings from the Elephant Butte site and archived in Reclamation Service records at the National Archives. [9/3/15 Tr. 167:6-24] [NMLC-30 at 378-79] [USA-173; USA-174] [9/1/15 Tr. 41:4-17]

65. In October 1903, Reclamation Service engineers Hall and Davis prepared a report for the Secretary of the Interior on the Elephant Butte dam site. [9/3/15 Tr. 117:15-19] [NMLC-30 at 375]

66. The October 1903 report stated that the Elephant Butte site “has a much larger capacity than any other on the river, and is ample to store the floods of wet year, and to hold them to reinforce the supply in times of extreme drought. It is the only proposed reservoir with a capacity large enough to utilize the entire flow of the drainage.” The report included a topographical map of the site and information on the amount of water the dam could potentially capture. The topographical survey conducted by Reclamation Service crews under the supervision of J. A. French calculated that a dam could be built one hundred seventy feet high, creating a reservoir forty miles in length. [9/1/15 Tr. 38:7-20] [9/8/15 Tr. 20:7-21:1; 90:20-22][NMLC-30 at 379]

Public Information Concerning the Elephant Butte Dam Site

67. Activity related to the proposed federal dam and irrigation projects on the Lower Rio Grande was widely covered in newspapers across New Mexico and the United States beginning in the late nineteenth century and continuing through the period in which the Rio Grande Project developed, well after the completion of the Rio Grande Project in 1916. [9/9/15 Tr. 58:6-59:19] [NMLC-4 at 6]

68. On November 6, 1903, the Santa Fe New Mexican published a story titled "Site for Big Dam. Rio Grande Dam. 3,000 Acres Withdrawn from Entry for Reservoir at Elephant Butte." The article stated that "the acting commissioner of the Land Office instructed [the] register and receiver at Las Cruces, New Mexico, to withdraw from all forms of disposal whatsoever, 500 acres for the Elephant Butte Reservoir project." [9/1/15 Tr. 93:4-94:15] [NMPG-013]

69. On November 11, 1903, the Santa Fe New Mexican published a story titled "Elephant Butte Dam Investigation," stating that

J. A. French, engineer of the Geological Survey, is superintending a large force of men who are grading and building a road from Engle to the Elephant Butte Dam site. Over this road will be hauled the machinery and supplies necessary for drilling and excavating into the bedrock bed to ascertain its ability to support the immense superstructure which is to be erected to dam the waters of the Rio Grande, flood seepage, over and under flow for many miles. It will probably take the whole winter and most of the spring to complete the investigation.

[9/1/15 Tr. 95:1-25] [NMPG-014]

70. On November 13, 1903, the Santa Fe New Mexican published an article, stating that "[t]he latest work has been the construction of a road from Engle to the dam site and the installment of a boring plant to determine whether a rock foundation can be had and at what distance from the surface." [9/1/15 Tr. 53:8-24; 54:9-21] [NMLC-28]

71. On June 6, 1904, the Santa Fe New Mexican published a story, "Looks Favorable for the Elephant Butte Dam," reporting that construction on the dam was expected to start soon. [9/9/15 Tr. 35:25-37:5] [NMPG-019]

72. In addition, newspapers across the United States, particularly in New Mexico and other western states, gave considerable coverage to the Elephant Butte proposal. [9/9/15 Tr. 53:1-54:19] [NMLC-4 at 3, 5-6, 221 n.3]

73. In *Conflict on the Rio Grande: Water and the Law, 1879-1939*, Dr. Douglas R. Littlefield recounted how in the fall of 1904,

[The Reclamation Service's] Hall began a public relations drive, and this included going with fellow Reclamation Service engineers to visit the New Mexico towns of Las Vegas, Engle, and Las Cruces to obtain support for the construction of Elephant Butte Dam . . . Las Cruces was the most important [with the largest turnout] . . . Outlining their plans the engineers told the assembly that their presentation would form the basis for a formal recommendation to the Secretary of the Interior, who at that time held the sole authority to approve or reject Reclamation Service projects. The proposal received the meeting's strong support, and the assembled throng unanimously adopted resolutions in favor of the federal venture. Even those El Pasoans who attended the Las Cruces gathering were favorably impressed, so much so that the day after the event, the *El Paso Herald* prematurely trumpeted "El Paso Approves the Reclamation Plan."

[9/8/15 Tr. 103:2-105:3] [NMLC-4 at 103-04]

74. The Chief Engineer of the Reclamation Service submitted the Second Annual Report of the Reclamation Service to the Director of the USGS. The report was

submitted to the United States House of Representatives in December 1903, then published in 1904. [NMLC-30 at 1, 17, 19]

75. In the Second Annual Report, the Chief Engineer of the Reclamation Service offered the following comments on the status of dam and reservoir surveys on the Rio Grande in New Mexico:

Any project to store water on the Rio Grande must take cognizance of the claims of Mexico to certain uses of the water before conclusions can be reached as to what may be done toward reclamation. Extensive surveys must be made to ascertain the opportunities and costs of water storage. For this purpose reservoir sites have been surveyed on the main stream and the irrigable lands examined. The examinations have not progressed to a point where definite conclusions can be given, but they indicate that water storage may be feasible, provided suitable arrangements can be made with the claimants to water rights.

[NMLC-30 at 62]

76. Also included in the Second Annual Report was a section written by Davis addressing various water projects and surveys on the Rio Grande, Rio Hondo, and Pecos River. Davis identified six potential reservoir sites on the Rio Grande, including Site Nos. 38 and 39 from the Powell Survey and the Elephant Butte site.

[NMLC-30 at 375-77]

The National Irrigation Congress's 12th Annual Meeting

77. In November 1904, Hall presented the Reclamation Service's Rio Grande Project to the National Irrigation Congress (the NIC). [USA-12 at 213]

78. The NIC was a private organization dedicated to addressing issues regarding irrigation in the western United States. Membership in the NIC was broad-based and included individual farmers, elected officials, and public servants. [9/3/15 Tr. 183:21-188:6] [9/1/15 Tr. 29:1-14]

79. The NIC held its 12th annual meeting at El Paso, Texas in November 1904. A central topic of the NIC's 12th annual meeting was the question of the manner in which to best solve the challenges to irrigating lands on the Lower Rio Grande. [9/3/15 Tr. 183:21-188:6] [9/1/15 Tr. 29:1-14]

80. Four hundred sixty-eight delegates attended the NIC's 12th annual meeting, with representatives from New Mexico, Texas, and the Republic of Mexico. Fifty-eight delegates were from New Mexico, with twenty-three of them from the Lower Rio Grande Valley. A number of organizations sent delegates to the 12th annual meeting, including the Board of Trade, Las Cruces, New Mexico; New Mexico Chamber of Commerce of Las Cruces, New Mexico; Mesilla Community Ditch Association, Mesilla, New Mexico; the Horticultural Society, Mesilla, New Mexico; and the Community Ditch Association, Mesilla Park, New Mexico. [9/1/15 Tr. 56:5-17] [USA-175 at 82, 87]

81. At the NIC's 12th annual meeting there was a divide between delegates who supported siting a dam at Elephant Butte and delegates who supported the International Dam site at El Paso. [9/3/15 Tr. 184:18-185:10]

82. Hall gave a speech at the 12th annual meeting concerning the Reclamation Service's findings on the Elephant Butte Dam and recommended that the dam be built on the Elephant Butte site. Hall informed delegates that building a dam at El Paso would flood 25,565 acres of arable land and create approximately 15,000 additional acres of non-usable marsh lands, taking around 40,000 irrigable acres out of production. Hall also informed delegates that a necessary part of the process of building a dam at Elephant Butte included actions by the United States Congress and the Department of State, as well as the Reclamation Service. [9/1/15 Tr. 57:22-58:5] [USA-175 at 214-15] [NMLC-32 at 54-55]

83. Delegates from New Mexico, Texas, and the Republic of Mexico accepted the Reclamation Service plan that Hall presented for siting a dam at Elephant Butte. The delegates from New Mexico, Texas, and the Republic of Mexico issued a joint statement at the 12th annual meeting's general session on November 18, 1904, stating

We heartily approve the valuable work of the Reclamation Service under the Department of the Interior of Washington, whose officers of the Rio Grande have been in New Mexico and elsewhere and we heartily endorse and approve the proposal of building the Elephant Butte Dam as a happy solution of a vexed question that has embarrassed the parties interested in providing equitable distribution of the waters of the Rio Grande with due regard to the rights of New Mexico, Texas, and Mexico.

[9/1/15 Tr. 58:8-60:3] [USA-175 at 33]

84. The NIC as a whole unanimously endorsed the Reclamation Service's plan to site a dam at Elephant Butte. [9/1/15 Tr. 58:8-60:12] [USA-175 at 107]

85. NIC delegates were aware and acknowledged that the Rio Grande Project would require action by Congress in order to proceed. [9/1/15 Tr. 60:22-61:14] [USA-175 at 33]

86. The Reclamation Service report on the Rio Grande Project presented by Hall to the 12th annual meeting was printed nearly verbatim in local newspapers. [9/8/15 Tr. 106:21-107:9] [Douglas R. Littlefield, *Conflict on the Rio Grande* 112-13 (2008)]

87. National newspapers, particularly in the western states, reported that the unanimous adoption of the Elephant Butte plan by the NIC delegates resolved the conflict over the distribution of the waters of the Rio Grande. [9/9/15 Tr. 53:1-25] [NMLC-4 at 3, 5-6, 22]

88. After the 12th annual meeting, Hall wrote a letter to the Reclamation Service's Assistant Chief Engineer on November 19, 1904, stating that

[t]he delegates from Mexico, Texas, and New Mexico have all agreed to abandon the International Dam and accept . . . our Rio Grande Project. Their full agreement and endorsement of the Reclamation Service Plan was the crowning glory of the Irrigation Congress. . . . Hundreds of local people were in the audience and listened to our statements with intense interest.

[9/3/15 Tr. 195:17-25; 196:8-18] [NMLC-33]

89. After the conclusion of the 12th annual meeting, various parties, along with federal agencies and lawmakers, worked to put into place the necessary legal and administrative framework to move the Rio Grande Project forward. [9/4/15 Tr. 17-18]

90. Soon after the 12th annual meeting ended, Congressman William R. Smith of Texas introduced legislation titled "Rio Grande Reclamation Project Act" (the Smith Act). The Smith Act authorized the Reclamation Service to proceed with the Rio Grande Project and to extend it to lands in Texas that could be irrigated by the Rio Grande Project. [9/3/15 Tr. 209:10-210:22] [NMLC-40 at 2, 119-20]

The Formation of Water Users' Associations on the Lower Rio Grande

91. Before any irrigation project could begin full-scale construction, the Reclamation Service required that water users' associations be formed for the purpose of taking delivery of water from the Rio Grande Project. [9/4/15 Tr. 17-18]

92. The Elephant Butte Water Users' Association (the EBWUA) was formed on December 22, 1904. The EBWUA included a description of the Rio Grande Project in its articles of incorporation. [9/2/15 Tr. 171:16] [NMLC-40 at 116-17] [NMLC-305] [9/4/15 Tr. 17-18] [9/2/15 Tr. 172:3-7] [NMLC-232 at 8]

93. During this period, the El Paso Water Users' Association (the EPWUA) was also formed. [9/2/15 Tr. 171:16] [NMLC-40 at 116-17] [NMLC-305] [9/4/15 Tr. 17-18] [9/2/15 Tr. 172:3-7] [NMLC-232 at 8]

94. Both the EBWUA and the EPWUA were formed, in part, to repay the cost of construction as required by Section 8 of the 1902 Reclamation Act. [9/1/15 Tr. 64:15-24] [USA-112 at 76]

95. The EBWUA issued 11,000 stock subscriptions to irrigators in order to guarantee repayment of costs for the Rio Grande Project. Based on projections of Project costs and estimated shares of those costs, subscriptions were issued at forty dollars per share, with each share of stock representing one acre of arable land held by the shareholder. [NMLC-305 at 11-12]

96. The Elephant Butte Reservoir District consisted of all lands in the Lower Rio Grande Valley identified as irrigable by the Reclamation Service from Elephant Butte Dam to the Texas state line. [NMLC-305 at 11]

The Smith Act and the Inclusion of Texas

97. The Chief Engineer of the Reclamation Service, F. H. Newell, testified on January 24, 1905 at Congressional hearings regarding the Smith Act. Newell told a House committee that it was “possible to build at that [Elephant Butte] site a large reservoir holding the entire flow of the river.” Newell further added that it would “be possible to store all the flood waters of the Rio Grande, discharge them back into the river as needed, and divert them in the Mesilla Valley and upon the irrigated lands above and below El Paso, on both sides of the river.” [USA-115 at 6]

98. Congress passed the Smith Act on February 25, 1905. The Smith Act provides, in part, that

[t]he provisions of the reclamation act approved June seventeenth, nineteen hundred and two, shall be extended for the purposes of the act to the portion of the State of Texas bordering upon the Rio Grande which can be irrigated from a dam to be constructed near Engle, in the Territory of New Mexico, on the Rio Grande.

[9/10/15 Tr. 181:4-6] [9/1/15 Tr. 167:10-168:3] [NMLC-250] [9/3/15 Tr. 209:22-211:22]

The 1905 and the 1907 Water Codes

99. Following the passage of the Smith Act, the Territorial Legislature enacted the 1905 Water Code on March 16, 1905 that mandated new rules for appropriating water. The 1905 Water Code included Chapter 102, Section 22, which applied exclusively to the United States, allowing the United States to file notices of intent to use quantities of water for storage for irrigation that the Territory would then protect from further appropriation. [9/3/15 Tr. 214:18-23; 216:17-25; 217:1-6] [9/10/15 Tr. 244:22-24] [9/3/15 Tr. 213] [NMLC-42]

100. Section 22 stated:

Whenever the proper officers of the United States authorized by law to construct irrigation works, shall notify the territorial irrigation engineer that the United States intends to utilize specified waters, the waters so described, and unappropriated at the date of such notice, shall not be subject to further appropriations under the laws of New Mexico, and no adverse claims to the use of such waters, initiated subsequent to the date of such notice, shall be recognized under the laws of the territory, except

as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized.

[NMLC-42 at 17]

101. The 1905 Water Code differed from the 1891 Notice Act. Unlike the 1891 Notice Act, the 1905 Water Code did not require that irrigation projects be completed within five years. [NMLC-13] [NMLC-42 at 17]

102. The 1905 Water Code was enacted specifically to facilitate the construction of federal irrigation projects by the Reclamation Service in New Mexico. [9/3/15 Tr. 217]

103. The 1905 Water Code, including the provision requiring the United States to provide notice of its intent to appropriate water for an irrigation works project, provided that the relation back doctrine applied to all claims initiated before the statute's passage.

104. On January 23, 1906, B. M. Hall, Supervising Engineer of the Reclamation Service, wrote a letter to David White, New Mexico's Territorial Engineer, giving notice that the Reclamation Service intended to utilize the following described waters to wit:

A volume of water equivalent to 730,000 acre-feet per year requiring a maximum diversion or storage of 2,000,000 miner's inches, and said water to be diverted or stored from the Rio Grande River at a . . . [s]torage dam about 9 miles west of Engle New Mexico with a capacity of 2,000,000 acre-feet, and diversion dams in Palomas, Rincon, Mesilla

and El Paso Valleys in New Mexico and Texas. It is therefore requested that the water above described be withheld from further appropriation and that the rights and interests of the United States in the premises be otherwise protected as contemplated by the statute above cited.

[9/4/15 Tr. 30-32] [NMLC-232 at 1]

105. In 1907, the New Mexico Territorial Legislature adopted a more comprehensive water code, N.M. Laws 1907, Chapter 48, §§ 71-73 (1907 Water Code) that repealed the 1905 Water Code. Section 40 of the 1907 Water Code applied exclusively to the United States and provided that

[w]henver the proper officers of the United States, authorized by law to construct works for the utilization of waters within the Territory, shall notify the Territorial Engineer that the United States intends to utilize certain specified waters, the waters so described and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice, shall not be subject to a further appropriation under the laws of the Territory for a period of three years of said notice.

[9/4/15 Tr. 47-48] [NMLC-58 at 16-17]

106. Pursuant to the 1907 Water Code, on April 14, 1908, Louis Hill, Supervising Engineer with the Reclamation Service, wrote to Vernon L. Sullivan, the New Mexico Territorial Engineer, and gave notice that the United States reserved all the unappropriated water of the Rio Grande and its territories, rather than the 730,000 acre-feet per year reserved by the January 1906 notice. [9/9/15 Tr. 71:1-6] [NMLC-256]

Continued Surveys for the Rio Grande Project

107. In the spring and summer of 1905, surveys were completed for the construction of the Leasburg Diversion Dam, a structure designed to divert water into community ditches. [9/9/15 Tr. 116:2-5] [NMLC-232 at 5-6].

108. In December 1905, the Secretary of the Interior approved a \$200,000 request from the Reclamation Fund for construction of the Leasburg Diversion Dam. Work on the dam began in early 1906 and was completed in 1908. [9/4/15 Tr. 24-26].

109. In the spring of 1906, representatives of the United States and the Republic of Mexico signed a treaty titled "Convention between the United States and Mexico providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes" (the Treaty). The United States Senate recommended ratification of the Treaty on June 26, 1906, and President Theodore Roosevelt ratified the Treaty on December 26, 1906. The Republic of Mexico ratified the Treaty on January 5, 1907, and the Treaty was proclaimed on January 16, 1907. [9/4/15 Tr. 34-35] [NMLC-55]

110. Very soon after the proclamation of the Treaty, Congress appropriated \$1,000,000 for "construction of a dam for storing and delivering sixty thousand acre-feet of water annually, in the bed at the Rio Grande at the point where the headworks of the Acequia Madre now exist, above the city of Juarez, Mexico[.]" [9/4/15 Tr. 40-44] [NMLC-55]

111. On June 27, 1906, the EBWUA and the EPWUA entered into a construction contract with the Reclamation Service to build the Rio Grande Project. [NMLC-56]

Communications Among Federal Officials Regarding the Rio Grande Project

112. On May 20, 1905, Reclamation Service Director Newell sent a letter informing Reclamation Service Supervising Engineer Hall that preparatory work on the Rio Grande Project was complete and that the Reclamation Service was awaiting the final organization of water users' associations. [NMLC-301]

113. Reclamation Service Director Newell wrote to the Secretary of the Interior on April 22, 1907 and recommended that the United States recognize March 1, 1903 as the date that active operations on the Rio Grande Project began. Newell also recommended that the United States enforce its priority against any rights-of-way initiated after March 1, 1903, except storage and diversion projects of less than 1,000 acre-feet per annum. [9/2/15 Tr. 173-175] [USA-15]

114. Following Newell's recommendations, Interior Secretary Garfield issued a regulation on April 25, 1907 that modified the Embargo announced in 1896 in order to allow the granting of rights-of-way for "the right of the parties [that] were initiated prior to the beginning of active operations of the Reclamation Service for the Rio Grande Project, namely March 1, 1903," and for applications for less than 1,000 acre-feet per annum. [9/2/15 Tr. 175:10-176:1] [NMPPG-25]

115. Reclamation Service Supervising Engineer Hall, who was copied on Newell's recommendation letter to Interior Secretary Garfield, wrote to Newell on May 2, 1907 that he concurred with Newell's recommendation but preferred to enforce the United States' priority of December 5, 1896, rather than March 1, 1903. Hall, however, deferred to Newell's judgment and accepted March 1, 1903 as the most practicable priority for the Rio Grande Project. [9/4/15 Tr. 56] [USA-15 at 6-7]

116. B. E. Stoutemeyer, a Reclamation Service attorney, wrote to Reclamation Service New Mexico District Engineer W. M. Reed on November 8, 1907 regarding his concerns about the United States' January 23, 1906 notice to the Territorial Engineer. Stoutemeyer questioned the sufficiency of the amount of water stated in the notice, "730,000 acre feet per year" and recommended that the notice be amended to read "all the unappropriated water of the Rio Grande and its tributaries." [9/8/15 Tr. 60-62] [USA-15 at 8-17]

117. Reed forwarded Stoutemeyer's letter to Newell, and, on November 29, 1907, Newell wrote to Reed, agreeing with Stoutemeyer's recommendation. [9/4/15 Tr. 63-64] [USA-15 at 18]

Ongoing Funding, Construction, and Development of the Rio Grande Project

118. Construction of the Leasburg Diversion Dam and six-mile canal was completed in 1908, and contracts for the Leasburg water were executed on October 29, 1908. [9/9/15 Tr. 126:10-127:16] [USA-136]

119. In November 1907, construction began on the Leasburg unit of the Rio Grande Project. [USA-133 at 7]

120. In December 1907, Reclamation Service crews conducted additional surveys at the Elephant Butte site in order to determine the feasibility of building a higher dam. The surveys initiated on March 1, 1903 were conducted in contemplation of a 170-foot high dam and a forty-mile long reservoir. The Reclamation Service contemplated that raising the height of the dam would increase the capacity of the reservoir from 2,000,000 acre-feet to 2,600,000 acre-feet. [9/1/15 Tr. 38:8-20] [NMLC-30] [9/8/15 Tr. 94:12] [9/10/15 Tr. 259:3-7] [NMLC-232 at 9]

121. In March 1908, the Reclamation Service undertook surveys for the construction of a branch railroad to the dam construction site. The surveys were completed in May 1908 and revised in December 1908. [NMLC-232]

122. On May 1, 1908, the United States commenced condemnation proceedings against the Victoria Land and Cattle Company, as well as squatters, for lands within the Rio Grande Project area. Condemnation proceedings were completed in May 1910, allowing the United States to use portions of the land for the Rio Grande Project. [9/1/15 Tr. 68:18-71:12] [USA-133 at 6-7]

123. On October 17, 1908, Morris Bien, Acting Director of the Reclamation Service, wrote to the Rio Grande Project engineer informing him that, under a strict interpretation of the 1905 Water Code, the United States would not be required to file

plans for the Rio Grande Project with the Territory; Bien expressed his opinion, however, that it “would be a good idea that plans be filed nevertheless.” [NMLC-068 at 18]

124. Complete plans for the Leasburg unit of the Rio Grande Project were submitted to the Territorial Engineer on November 18, 1909. [NMLC-233 at 26]

125. Plan drawings of the Elephant Butte Dam were sent by the Reclamation Service to the Territorial Engineer on January 31, 1910. [NMLC-233 at 26]

126. In December 1909, the litigation between the United States and the RGD&IC was concluded with the opinion of the United States Supreme Court upholding the district court’s judgment that the RGD&IC had forfeited its federal right-of-way to build a dam near the Elephant Butte site. [9/4/15 Tr. 73-74]

127. Between 1907 and 1909, the Reclamation Service built roads and a railroad to the dam site and installed a 300,000 gallon water tank and delivery pipes to serve the construction camp. Construction of the dam itself was delayed while Reclamation Service officials researched land titles and court records regarding the dam site. [9/1/15 Tr. 69:7-20] [NMLC-232 at 13-15]

128. All land-title disputes and condemnation proceedings were completed by mid-May 1910. [9/3/15 Tr. 106:1-21] [NMLC-2 at 117]

129. The Secretary of the Interior authorized construction of Elephant Butte Dam on May 23, 1910. [9/3/15 Tr. 106:1-21] [NMLC-2 at 117]

130. Newell wrote to the Secretary of the Interior on April 29, 1910, noting that “[c]onsiderable preliminary investigations of the foundations for the dam site have been carried on but they are not completed.” Newell further noted that the Rio Grande Project was waiting for additional appropriations in order to put in the foundations of the dam in the summer of 1911. [9/3/15 Tr. 81-83] [NMLC-80]

Construction of Elephant Butte Dam and Caballo Dam and Reservoir

131. Construction of Elephant Butte Dam began in 1912. By January 1915, construction had progressed such that the dam and reservoir could begin storing water. [9/1/15 Tr. 71:14-72:14] [USA-134 at 2]

132. Deliveries of the stored water to downstream irrigators were made from February 12, 1915 to December 1, 1915. [9/1/15 Tr. 71:14-72:14] [USA-134 at 2]

133. Construction of Elephant Butte Dam, the Leasburg Extension, the Picacho Branch Canals, and the Mesilla Diversion Dam was completed by May 13, 1916. [9/1/15 Tr. 72:16] [NMLC-2 at 117]

134. The Reclamation Service reported in 1912 that the total planned size of the Elephant Butte Reservoir in 1907 was 2,600,000 acre-feet. [9/10/15 Tr. 259-262] [NMLC-323 at 4]

135. In 1926, the Bureau of Reclamation filed with the New Mexico State Engineer a “Protest Against an Application for a Permit to Appropriate Water from the Rio Grande,” stating that “[t]he Elephant Butte Storage Dam on the said project, with a

storage capacity of 2,638,860 acre-feet of water from said river was authorized by the Secretary of the Interior May 23, 1910, and completed May 13, 1916.” [9/4/15 Tr. 107:9-24] [NMLC-224]

136. Construction of Caballo Dam commenced in 1936, and it became part of the Rio Grande Project upon completion in 1938 as a flood control facility. [9/10/15 Tr. 172:19-21] [8/31/15 Tr. 122] [9/10/15 Tr. 172]

The Rio Grande Compact

137. On March 18, 1938, the states of New Mexico, Colorado, and Texas ratified the Rio Grande Compact, which divided the waters of the Rio Grande among the three states. The New Mexico Legislature approved the Compact on March 2, 1939. NMSA 1978, § 72-15-23 (1945). [9/10/15 Tr.170] [NMLC-257]

138. The Rio Grande Compact became law on May 31, 1939. [9/10/15 Tr. 170:16-21]

139. Article 1(k) of the Rio Grande Compact provides that reservoirs of the Rio Grande Compact shall not exceed 2,638,860 acre-feet, an amount that differs from the 2,000,000 acre-feet referenced in the United States notices of 1906 and 1908. [9/10/15 Tr. 171-172] [NMLC-257 at 2]

140. Articles 1(q), 7, and 8 of the Rio Grande Compact allow up to 790,000 acre-feet of water per year to be released from the Rio Grande Project reservoirs. [9/10/15 Tr. 174-176] [NMLC-257 at 2, 8]

IV. CONCLUSIONS OF LAW

1. The United States is the claimant in these proceedings and bears the burden of proof on issues related to its claim of a priority no later than March 1, 1903 for the Rio Grande Project. *State ex rel. Martinez v. McDermett*, 1995-NMCA-060, ¶ 7, 120 N.M. 327, 901 P.2d 745.
2. The Rio Grande Project is a federal irrigation project with rights established by the United States Reclamation Service under New Mexico Territorial and State law pursuant to Section 8 of the Reclamation Act of 1902. 32 Stat. 88 (1902).
3. “Beneficial use is the basis, the measure and the limit of the right to the use of water.” N.M. Const. art. XVI, § 3.
4. “Priority of appropriation shall give the better right.” N.M. Const. art. XVI, § 2.
5. Under the doctrine of relation back, the priority of a water right relates back to the “first step” undertaken by the prospective appropriator in initiating the appropriation with intent to appropriate water. *Farmers’ Dev. Co. v. Rayado Land & Irrigation Co.*, 1923-NMSC-004, ¶ 26, 28 N.M. 357, 213 P. 202.
6. “The ‘first step’ may be work in excavating ditches, necessary surveying, or any substantial act necessary to, and giving notice of, the building of the contemplated system for the irrigation of land.” *Id.* (citation omitted).
7. Activities constituting a “first step” under the doctrine of relation back must be sufficient to adequately communicate the scope of the project to interested persons.

See id. ¶ 25 (stating that a priority may relate back only if “the facts known were of such character as to put a reasonable person on notice that [the prospective appropriator] was beginning construction of an irrigation enterprise of the magnitude claimed”).

8. A person does not have to witness an overt act to be sufficiently notified of a “first step” in an appropriation.

9. The “first step” need only put a reasonably prudent person “on inquiry” regarding the prospective extent of the proposed use and the consequent demand upon the water supply involved. *Fruitland Irrigation Co. v. Kruemling*, 162 P. 161, 163 (Colo. 1916).

10. The “first step” must also evidence the bona fide intent of the prospective appropriator to appropriate water for beneficial use. *Farmers’*, 1923-NMSC-004, ¶¶ 25-26; *Millheiser v. Long*, 1900-NMSC-012, ¶¶ 16-32, 10 N.M. 99, 61 P. 111.

11. After the “first step,” a prospective appropriator must act with diligence in completing project works and applying water to beneficial use. *Farmers’*, 1923-NMSC-004, ¶¶ 25-26; *see also Rio Puerco Irrigation Co. v. Jastro*, 1914-NMSC-041, ¶ 5, 19 N.M. 149, 141 P. 874 (holding that the doctrine of relation back “does not apply, or protect the intending appropriator . . . unless he prosecutes his work of diversion with reasonable diligence”).

12. Evaluating whether the requisite diligence was consistently applied during the project requires a backward-looking review of the various construction and development activities necessary to complete the project.

13. By 1900, a reasonable person in New Mexico had notice that the United States planned to construct a dam and irrigation project to assure a more stable water supply, to promote agriculture, and to address the problem of water shortages in New Mexico's Lower Rio Grande Valley.

14. No later than March 1, 1903, press coverage, along with the scale and duration of the United States' survey work, provided inquiry notice that the United States intended to construct a large-scale dam and reservoir at the Elephant Butte site to store the waters of the Rio Grande for irrigation.

15. In addition to inquiry notice, a reasonable person in New Mexico had actual notice no later than November 18, 1904, the date that the National Irrigation Congress endorsed the Rio Grande Project.

16. The United States diligently prosecuted to completion its claim initiated on March 1, 1903. *See Farmers'*, 1923-NMSC-004, ¶ 25 (stating that when a claimant initiated a claim to a water right prior to the enactment of the 1907 Water Code, "then the right would relate back to the initiation of the claim upon the diligent prosecution to completion of necessary surveys and construction for the application of the water to a beneficial use"); *see also Rio Puerco*, 1914-NMSC-041, ¶ 5 (holding that "in the

absence of a statute, requiring notice, or other act, the right relates back to the time when the first step was taken. This doctrine does not apply, or protect the intending appropriator, however, unless he prosecutes his work of diversion with reasonable diligence”).

17. The initiation of the United States’ surveys undertaken on March 1, 1903 was a physical “first step” for purposes of the relation back doctrine.

18. The United States’ actions indicated a “fixed purpose” of acquiring a right to appropriate water on the Lower Rio Grande through the construction of a federal dam and irrigation project. *See Fruitland*, 162 P. at 163 (stating that “the first step demanded by the [doctrine of relation back] is nothing short of an open and notorious physical demonstration, conclusively indicating a fixed purpose to diligently pursue and within a reasonable time, ultimately acquire a right to the use of water, and as its primary function is to give notice to those subsequently desiring to initiate similar rights, it must necessarily be of such a character that they may fairly be said to be thereby charged with at least such notice as would reasonably be calculated to put them on inquiry of the prospective extent of the proposed use and consequent demand upon the water supply involved”).

19. The United States’ work on the Rio Grande Project between the years 1891 and 1905 was not governed by the 1891 Notice Act. *See* Memorandum Opinion and Order Addressing Pretrial Motions in SS-97-104 at 16-17 (entered 8/20/15) (concluding that

the 1891 Notice Act did not apply to the Rio Grande Project in the years between 1891 and 1905 because (1) the Rio Grande Project as contemplated between 1891 and 1905 did not fall within the scope of the 1891 Notice Act, and (2) the United States would have been unable to comply with the statute since the information required by the 1891 Notice Act was unavailable to the United States during this period).

20. The fact that the United States took appropriate action to conform with the notice provisions of New Mexico's 1905 and 1907 territorial water codes does not preclude the United States from claiming a priority that relates back to the initiation of the Rio Grande Project.

21. The fact that Congress had not granted formal approval for the Rio Grande Project on or before March 1, 1903 does not preclude the United States from claiming a priority that relates back to the initiation of the Rio Grande Project.

22. The various acts of Congress with regard to the Rio Grande Project, including holding hearings, passing legislation, and appropriating funding, were part of a series of actions demonstrating that the United States diligently prosecuted to completion its claim initiated on March 1, 1903.

23. The fact that Texas was not subject to the Reclamation Act of 1902 on March 1, 1903 does not preclude the United States from claiming a priority that relates back to the initiation of the Rio Grande Project.

24. The inclusion of Texas into the Rio Grande Project in 1905 was part of a series of actions demonstrating that the United States diligently prosecuted to completion its claim initiated on March 1, 1903.

25. The United States fulfilled the final requirement for a Rio Grande Project right with a priority of March 1, 1903 by storing and delivering water to farmers for beneficial use.


26. Under the doctrine of relation back there is no basis for split priority dates.

27. No party has demonstrated that it relied to its detriment on the United States' historical references that the priority for the Rio Grande Project was any date other than March 1, 1903.

28. The United States Rio Grande Project has a priority of March 1, 1903.

29. The priority of March 1, 1903 applies to all water stored and released by the Rio Grande Project.

30. The United States has a right to store 2,638,860 acre-feet with a priority of March 1, 1903.


James J. Wechsler
Presiding Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the above file stamped date, the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served by first class mail and/or email to those listed on the SS-97-104 Service listing. I further certify that on the above file stamped date the forgoing was posted on the Lower Rio Grande Website.

A handwritten signature in cursive script, appearing to read 'M Longwill', is written over a horizontal line.

Melody Longwill, Paralegal
Third Judicial District Court