

**WATER
CHALLENGES
ON THE
LOWER RIO
GRANDE**

The Rio Grande
Compact: Law
of the River



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Law of the River**

Panelists: (from left) Hal Simpson, Colorado State Engineer; Jack Hammond, Texas Rio Grande Compact Commissioner; Chuck DuMars, attorney; Thomas C. Turney, New Mexico State Engineer

**Moderator:
Chuck DuMars
UNM School of Law**

It certainly is a privilege to talk to water conference participants about the Rio Grande Compact. Last week I was in Salt Lake City talking to a group of fish and wildlife and state engineer employees about the Endangered Species Act, takings issues, and constitutional law. I was struck by the absence of humor in the room. I read a new case where the Eleventh Circuit granted loggerhead turtles standing to sue in and of themselves. The whole opinion is written like, "the loggerhead turtles argue that. . . ." The part I found most entertaining was when the descent said, "The loggerhead turtles jumped to the conclusion that this is true." I am glad to say that there is a much better feeling here among this group.

I want to make some brief comments about the Rio Grande Compact, things that we need to refresh our recollection about. Compacts themselves are incredibly significant documents. When a compact is passed and approved under the compact clause, it means that each state is entitled in perpetuity to a quantity of water which it can count on for that state's future that is outside the Commerce Clause, that is—outside the *Sporhase* case or the free market interstate for water. It means that amount of water at least is

secure. That is a very significant notion. Fortunately, Steve Reynolds and his predecessors and others in our sister states had the wisdom to enter into compacts on virtually all of our interstate streams in New Mexico. We should all thank them for that daily.

The other point about compacts is the following. They are not all the same; they are quite different. Compacts vary as to their allocation mechanism. The compacts that always get you into lawsuits are those that say the upstream state shall not consume more than "x," because there will always be an argument about what constitutes "x." Virtually every compact that includes such language, such as the Pecos, Republican, North Platte and South Platte rivers, is in litigation. Fortunately, the Rio Grande Compact does not contain that kind of provision.

The Rio Grande Compact really does two things that are fascinating. It allocates the water among the three states, and in the case of the downstream state of Texas, includes within it that part of the Rio Grande Project in New Mexico by a set of indexing stations that say when "x" quantity of water passes this point, then "y" must reach the lower point, but it does not talk about how that happens. It does not restrict consumption and it presumes, based on calculations performed in the 1938 study, that existing conditions in 1929, codified and clarified in 1938, that those

quantities that people in those states consumed will be met. That provision has served us well and the fact that unlike the Pecos River Compact, the Rio Grande Compact acknowledges the variability of the hydrograph, and it allows credits and debits, meaning you can get behind a little bit but not too far behind. That is helpful to the upstream states. At the same time, it protects the downstream states because there are maximums on the debits and it has a security interest provision that states if you are going to get a little behind in your delivery to the downstream state, by God you better have enough water in storage, in security, to get the water down.

So think of the Rio Grande Compact as this wonderful document, while fraught with problems as all compacts are because you never fully anticipate the future, as a document which allocates and commits each state to respect the existing uses, the status quo. It treats Elephant Butte Reservoir kind of like an escrow account to accommodate upstream needs in short periods and protect downstream users. Finally, think about the fact that it has stood us well because it contains within its body, in its brief language, flexibility to alter it to adjust to different things, like anticipated flows into the Rio Grande from the San Juan River. The Compact anticipates closed-basin projects and different kinds of hydrologic changes that can make it work.

A very important part of the Compact that most people do not look at is a provision that provides as follows: "Nothing in this Compact shall be construed as affecting the obligations of the United States to Indian tribes." This provision appears to state that nothing in the Compact affects the United States' obligations to tribes under the reserved water rights doctrine. That is significant. It has never been construed in the context of either federal water rights for tribes or for Indian pueblos who have pueblo Indian water rights, but because we are a prior appropriation system, it would be clear that those tribes and those pueblos will be players in the future in this process.

Thomas C. Turney New Mexico State Engineer

Steve Reynolds said 30 years ago that the Rio Grande Compact had been pretty thoroughly maligned. Times have not changed—in fact the Compact is being assaulted from new directions probably not even remotely envisioned at the time of the original signing of the Compact.

For 60 years, the Compact has been hammered—from natural flooding disasters, Indian claims, federal laws including the Endangered Species Act and the Clean Water Act, and lack of state adjudications which define who owns how much water. Yet the importance of the Compact to the state of New Mexico cannot be understated. Without it, existing and future water uses would be in substantial jeopardy. The Rio Grande Compact must be kept intact, because without it, all uses of water along the river will suffer.

History

In the early 1890s, water shortages in the Mesilla and El Paso valleys led farmers near Juárez, Mexico, to complain to their government. Mexico registered a formal complaint with the United States Department of State and advanced claims for damages in excess of \$30 million, alleging that the Mexican shortages were due to diversions from the river in Colorado and New Mexico.

One of the products of this claim was the Mexican Treaty of 1906. Both to insure fulfillment of the Mexican Treaty and to develop an interstate reclamation project (which was ultimately called the Rio Grande Project), the United States, in 1907, authorized construction of Elephant Butte Dam.

With competition for use of the river's flow among users in Texas, New Mexico, and Colorado, increasing sentiment developed in favor of attempting to negotiate an interstate compact which would apportion the river's water among users in the three states.

In 1929, a temporary agreement was reached. Its essence was to preserve the status quo until a permanent compact could be entered to apportion the water. Ultimately, negotiations stalled on a permanent compact.

In 1935, the State of Texas brought suit in the Supreme Court of the United States to enjoin the Middle Rio Grande Conservancy District and the state of New Mexico from the alleged depletion of the water supply of the Rio Grande Project, charging violation of the temporary compact. As a consequence of this suit, Congress ordered a report on the river. The study was one of the most comprehensive and detailed investigations ever made of a river basin in the West. The extremely detailed data provided a basis for further negotiation, and led to the signing of the Rio Grande Compact in 1938.

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The original Compact schedules set New Mexico's delivery point to the Rio Grande at the San Marcial gage, just above Elephant Butte Reservoir. In the early 1940s, flood flows rushed down the river, obliterating the river channel from the Bosque del Apache to the narrows, a distance of about 30 miles. Because there was no longer a river bed, the water flowing in the Rio Grande simply spread out and disappeared into the ground. Elephant Butte Reservoir began to dry up. This led to the construction of what is called "the low flow channel" through the heavily silted-over area. This channel allowed water to flow through the area and deliver water into the Reservoir.

In 1948, as a result of the earlier flooding, the Compact delivery point was moved to the gage below Elephant Butte Dam. An important effect of this change in delivery point was to make evaporation from Elephant Butte Reservoir a liability of the water users above Elephant Butte. However, the new schedule supposedly adjusted the inflow-outflow relationship so that New Mexico's delivery obligation was not substantially altered by this shift in liability or by the accounting of the flows for 12 months instead of the original nine months.

A fact often unappreciated is that under the Compact, a little more than half the water released from Elephant Butte Reservoir is used in New Mexico below Elephant Butte Reservoir on about 90,000 acres of the state's finest agricultural lands. That is, the Compact allocates river waters between water users in New Mexico above Elephant Butte on the one hand and water users in New Mexico and Texas below Elephant Butte on the other.

Low Flow Channel

Nature is again reasserting itself and challenging the administration of the Compact. Because of a series of wet years, Elephant Butte Reservoir levels have been high. Operation of the low flow channel for its original purpose has ceased. Water is no longer diverted into the channel. Instead the channel acts as a drain to the nearby perched Rio Grande river bed.

Recent studies indicate that shortly after construction of the channel, the average surface flow depletion between San Acacia and San Marcial was reduced by about 40,000 acre-feet per year (afy). Since water diversion has ceased, depletions across the area have been gradually increasing.

If nature follows its past trends, ultimately the wet years for New Mexico will end. To meet its water delivery obligations into Elephant Butte under average or drought conditions, such as have occurred in the past, it is imperative that the ongoing process to

reevaluate the low flow channel continue. If the process should cease, serious repercussions to water users will follow.

Indian Claims

The Compact is being challenged by Indian claims. Article 16 of the Compact states:

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties, or to the Indian tribes, or as impairing the rights of the Indian tribes.

I will discuss briefly two claims which, based on this article, challenge the Compact.

The state engineer has been informally approached by the attorney from one middle Rio Grande Indian pueblo about the reopening of the Compact to provide additional depletions beyond what was allowed to the middle Rio Grande Valley in New Mexico under the Compact. The Indians are claiming that because there is specific exclusionary language in the Compact, the water they need for existing and future growth is outside the Compact. They wish for water to be taken from the states of Colorado and the Rio Grande Project in Texas and New Mexico to satisfy their needs.

In December 1997, Ysleta del Sur, an Indian pueblo in El Paso County, Texas, filed papers with the United States District Court, contending that it owns a right to the use of the waters of the Rio Grande superior to the rights of any other person below San Marcial. This right is a minimum instream flow, to be used for the pueblo's present and future use, and further, the pueblo owns a right to use all water of the Rio Grande Project attributable to its aboriginal lands, an area containing about two leagues.

Environmental Issues

The Compact is being challenged that it does not comply with federal environmental laws. The Compact is thought of as a sleepy dinosaur that needs a bucket of water thrown in its face so that it will wake up to reality.

On May 6, 1998, a notice of intent to sue was received from the Forest Guardians. The purpose of the notice was to enforce provisions of the federal Clean Water Act, the Endangered Species Act, and the National Environmental Protection Act on activities being implemented under the Rio Grande Compact.

The suit stated that the intended suit could be averted if the following actions were taken:

- initiate preparation of environmental impact statements of the Compact and each of its implementation programs;
- initiate a process to reopen the Compact so that it will provide a specific water allocation to ensure compliance with the Clean Water Act and the Endangered Species Act;
- obtain certification from the states or EPA that compact-related water management decisions fully comply with each state's water quality standards;
- and finally, initiate formal consultation with the U.S. Fish and Wildlife Service on the effects of the compacts and ongoing compact implementation decisions on threatened and endangered species.

Mexico Treaty of 1906

A treaty was entered into between the United States and Mexico in 1906. This treaty requires the United States to deliver annually to Mexico generally 60,000 acre-feet of water.

In 1996, the EPA published a document entitled *Border 21 - Frame Work Document*. Border 21 is an innovative effort which brings us together with Mexican federal entities responsible for the shared border environment to work cooperatively toward proper management of natural resources in both countries.

The document states that the laws of the border states are significantly outdated and speaks of revising existing legislation. This bold assertion could possibly be interpreted to mean that the EPA is in support of revisiting the 1906 treaty to provide additional waters for Juárez. A change to the delivery obligations under the 1906 treaty would most definitely impact the Compact.

Endangered Species Act

The silvery minnow, an endangered species, has been identified to live between Elephant Butte Dam and Cochiti Dam. To provide an appropriate habitat for the minnow, water must flow in the river. Two years ago, irrigation diversions from the Rio Grande left a portion of the river dry, resulting in the loss of habitat. A notice of intent to sue over failure to provide an adequate habitat for the silvery minnow was subsequently received.

Various temporary strategies since then have been provided to insure the river is kept wet. But long-term solutions will ultimately have to follow so there will be permanent flow of water to insure there will be no further taking of the minnow.

Flows are now being provided by generally allowing the Middle Rio Grande Conservancy District to divert San Juan-Chama water and Middle Rio

Grande Conservancy District water. The Conservancy District is allowing their native water to flow down the river to provide for protection of the minnow. Ultimately, as San Juan-Chama contract holders begin actually utilizing their waters, a new source of water will have to be found.

The Conservancy District is making serious efforts to provide for protection for the minnow. They have installed a real-time meter on the river and are monitoring diversions and return flow. On a computer at their District office, you can see the level of the Cochiti Reservoir, the flow past Otowi, through the middle of Albuquerque, and how much water is being diverted into each canal at their San Isidro diversion dam.

A lot of work must take place to ensure that flows in the Rio Grande are maintained in the silvery minnow critical habitat area. If the habitat is not provided, serious consequences could result.

Lack of Adjudications

State law requires the state engineer to make hydrographic surveys of each stream system in the state, beginning with those most used for irrigation. To date, neither the Middle Rio Grande nor the Lower Rio Grande in New Mexico have been adjudicated. Without an adjudication, it is difficult for the state engineer to manage the state's waters as he is charged by state statute to do.

The adjudication of the Lower Rio Grande was begun in earnest 18 months ago when the legislature authorized the sale of bonds against two trust funds administered by the Interstate Stream Commission. These funds currently are being used to complete a \$6 million hydrographic survey.

Ultimately, state court adjudications must be completed not only in the Lower Rio Grande area, but also undertaken in the Rio Grande Valley above Elephant Butte Reservoir.

The Compact Must Withstand the Assaults

The purpose of the Rio Grande Compact was to remove all causes of present and future controversy between the states of Colorado, New Mexico, and Texas with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas. The Compact must be allowed to do what it was intended to do. Yes, it is going to take new approaches to satisfy its many challenges. The assaults we see today on the Compact

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Tom Turney

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could not have possibly been envisioned when it was signed 60 years ago.

In the future, new assaults on the Compact will no doubt continue to happen. However, without it, existing and future water uses will be in substantial jeopardy. The Rio Grande Compact must be kept intact, because without it, all uses of water along the river could suffer.

**Hal D. Simpson
Colorado State Engineer**

I want to thank the Water Resources Research Institute for convening this particular conference because I think the topic is timely and the issues are complex and not easy to resolve. However, I think we have a document, the Rio Grande Compact, that provides a framework for water uses and deliveries in the Basin. The Compact provides certainty as Chuck DuMars indicated. It is important to take a moment to

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Hal D. Simpson

look at the benefits Colorado received when it signed the Rio Grande Compact and how these benefits would be impacted by changes in the lower Basin.

If you read the historical writings, you will note that Rio Grande Compact negotiators from Colorado felt one benefit from their perspective was that

the Compact removed a federal moratorium on additional reservoir development in the upper Basin. As a result, Platoro Reservoir was constructed in the late 1940s and early 1950s with about a 50,000 acre-foot capacity. It permitted additional construction of post-Compact reservoirs and operation if the water consumed was water that would have spilled from Elephant Butte, thereby protecting the lower Basin.

There were high expectations of spills. Historical documents indicate that it was believed that the debit water would be held in the upper Basin in the post-Compact reservoirs and project water spilled on a fairly regular basis. But as we know, that did not happen primarily because of climatology changes in the late 1940s and early 1950s.

The Compact protects existing levels of uses. Based on the joint investigation study from 1928 to

1937, uses were identified. Negotiators used the inflow-outflow method to make sure those levels of consumption were sufficient to continue into the future. Those levels were brought into the delivery schedules for both Colorado and New Mexico.

Article VI of the Compact contains some interesting paragraphs we often hear quoted, which provide benefits to both Colorado and New Mexico. Colorado is allowed to accrue annual debits or accumulated debits of up to 200,000 acre-feet per year. Why is that? Colorado did not have many reservoirs to regulate its runoff so it needed protection from variations in the weather. Article VI provides that in a year of actual spill of any type of water, there will be no computation of debits or credits for that year. In other words, Colorado does not have a delivery obligation if there is a spill of any type of water from Elephant Butte. Article VI also provides that in a year of spill of usable water, all accrued debits are canceled. That situation occurred in 1985 with what we call the first spill of Elephant Butte since 1942. As a result, a large debt accumulated by Colorado was canceled. We had spills three consecutive years after that and again in 1994 and 1995. We are seeing a change in the system again due to the climatology. We hope it continues and that conditions do not return to what it was like during the 1950s and 1960s when the system was so dry.

Another provision of Article VI is that if a state has an accumulated debt, and Project storage comes up to a point where the unfilled storage is less than the accumulated debt, the accumulated debt is then reduced to the amount of that unfilled Project capacity. For a number of years, we have been debating what that number is, but we passed a resolution at a special Compact meeting this year in September where we agreed to what Project storage would be for each month of the year. Now we can make that computation if necessary under Article VI of the Compact.

Article IV of the Compact describes the Closed Basin Project. If the Project were constructed, and it was, starting in the early 1970s, Colorado could deliver Project water to the state line if it met certain water quality criteria, and it has. The Project has been operating for a number of years. It allows Colorado to consume or deplete the system by the amount of water added. It was the only way recognized by Raymond Hill, the Texas Engineer advisor, and M.C. Henderlighter, the Colorado Engineer advisor—who were in those roles when the Compact was negotiated—that before additional depletions could occur in New Mexico or Colorado, there had to be drainage projects, such as the Closed Basin Project, that added water to the system—water that

was not already there. That additional water is used by Colorado to assist in making our Compact deliveries.

It is a very important project, but we have some concerns about its ongoing viability. You may be aware that there have been some problems with certain types of bacteria. The term they use now is biofouling. Bacteria have been plugging the screens of certain Project wells affecting production. It is not just iron bacteria, but a number of different bacteria. The Project's designed production is somewhere around 100,000 acre-feet per year. Currently it is a real challenge to produce above 40,000 acre-feet a year. This is an issue on which I hope the Bureau of Reclamation will continue to focus. Commissioner Martinez has provided funds to conduct research on how to treat these wells, or whether they have to be redesigned and reconstructed to eliminate the biofouling.

Another very recent issue is the lawsuit filed in federal court by an adjacent landowner alleging injury from the operation of the Closed Basin Project. That certainly could have far ranging impacts on the Project's viability and is of serious concern to us in the state of Colorado.

I want to talk about a couple other issues and then pass the baton. Colorado has used technology to assist us in our Compact deliveries. We have 16 stream gaging stations in the San Luis Valley equipped with data collection platforms allowing streamflow data to be transmitted via satellite to our office in Denver and to Steve Vandiver's office in Alamosa. We have near real-time administration capabilities on the Rio Grande and its conveyance systems, and we are expanding those systems. During the past session, the Colorado legislature authorized the initiation of the Rio Grande Decision Support System, which is a three-year project to produce models and better data to assist us in making important decisions about the future. The cost of the System would be somewhere around \$6 million, but the legislature—through the Colorado Water Conservation Board, which is the funding and planning agency in Colorado—is moving ahead with cooperation from my office in beginning to develop the Rio Grande Decision Support System. This effort is going to improve our capability to manage our precious water resources in Colorado.

One issue concerning us in the Lower Rio Grande is the desire, as we heard from Mayor Smith this morning, of year-round municipal releases. Based on what I told you about Article VI of the Compact, you can understand that if the Project's capacity is lower at the time of peak runoff, and it could be if releases are greater in January and February due to municipal use, the Project's capacity will be less than under historical operation as negotiated back in 1938. That reduced capacity could affect the benefits Colorado

negotiated under the Compact, such as, timing of a spill or even if there is to be a spill, and determining the minimum unfilled capacity.

There also is a provision in Article VIII of the Compact that requires that if the content of Elephant Butte or Project storage is less than 600,000 acre-feet on March 1 and there is debit water in an upstream reservoir, it has to be released to bring Project storage up to 600,000 acre-feet by April 30. If the Project capacity is less because of municipal releases—when the traditional releases in January and February were very minimal—that could cause another impact upon Colorado.

Colorado has offered a way to resolve this problem. We have offered resolutions at previous Rio Grande Compact meetings to account for that early release of water, adding it back in, and determining if a spill would have occurred under the historical operation as the Compact was negotiated. We feel there are ways to resolve this issue if we can sit down as a Compact Commission and work on such a resolution.

Finally, there is a water quality issue in the Lower Rio Grande that drives some of these issues. There is a desire to have better water quality year-round. Our concern is that it does not appear to us that the water quality has worsened in the past 18 years, and in fact it probably has improved if you look at total dissolved solids. The need to meet municipal water quality criteria or purposes is at issue. That too has to be part of any future discussions and decisions. I noticed on the agenda that a number of speakers are going to talk about water quality today. I will be here and I look forward to hearing their comments. Thank you.

Jack Hammond

Rio Grande Compact Commission

Let me begin by thanking Tom Bahr and the Water Resources Research Institute for inviting us here today. It is always nice to get together with my colleagues on the Commission for a periodic show-and-tell. I am not going to elaborate on what Tom Turney and Hal Simpson have spoken about in terms of the issues facing the Compact. I do not disagree with any of those issues, although some of them I view as opportunities. I am uniquely tired of giving my perspective of not being an engineer and not being an attorney, and hearing all these threats of woe relative to the issues facing the Compact. Most western states are going through this same process.

I want to thank Commissioner Martinez for his comments. I had the pleasure of serving with the Commissioner when he was on the Rio Grande

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Compact Commission. I would only disagree with one statement that he made this morning, and I think in reflection he might even agree with me. I do not believe that the federal government or the Bureau of Reclamation provides water to anyone. I believe God and nature, depending on your point of view, is the entity that provides the water. The Bureau provides the mechanism for the delivery in conjunction and cooperation with the states. The Bureau spends no money in producing water in the lower Rio Grande Basin. They spend money in terms of how to get it where it is needed. But that is the problem.

To me, the dangers facing the compacts in western water and our project in general are very simple. Who owns the water? I think that was decided many years ago when these projects were established. A mechanism was set up to collect the water, a

mechanism was set up to decide how the water would be distributed, and then a mechanism was decided on how that water would be used within those regions, that is, Colorado, the middle Rio Grande Valley, New Mexico, and below Elephant Butte in our part of the

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world. The entities that had actually contracted for the water would decide how that water would be used. I do not think that concept has gone away.

I do believe it is a little disingenuous to say that federal agencies who are contesting and trying to clarify the quiet title issue are ignoring the obvious. If you do not want to be outside the state law, then get involved in the adjudication process that was set up in each state and process the issues. I will tell you that the reason we are in these entities' discussions is because the federal entities involved do not like being in state court because they are afraid they will not get a fair hearing. That is an obvious concern and if I were a federal official, I might look at it the same way. However, I do not agree and the federal entities are clouding the issue.

There are real issues out there. Indian water rights is a real issue. Groundwater treatment and additional surface water in New Mexico are real issues. But it is beyond me to believe that the one main issue we all share is who is going to own the water within their respective boundaries. Owners

must be sure that the water quality is not significantly diminished, that water gets to its destination when it is supposed to, that it comes in sufficient quantity, and that it does not violate any previous agreement.

Texas expects to get its water every year from Colorado and New Mexico. To their credit, for the last 20 years or so, Colorado and New Mexico have done a very good job of making sure the water deliveries envisioned by the framers of the Compact are received. That is not by accident; it takes a lot of hard work. It requires Colorado cutting off farmers in different periods of flow to make sure Texas gets their deliveries. It takes New Mexico to control the amount of water it uses to make sure Texas gets their water.

When the low-flow channel was built, New Mexico started meeting its delivery obligations. The reason was simple. There finally was a mechanism to act as a drain to get excess water down to Elephant Butte. Prior to that, New Mexico had a very difficult time making their delivery obligations. You cannot tell me that no one in the federal government and in all the state entities involved in framing the low-flow channel had ever dreamed that it might need maintenance—that you might need to keep the thing cleaned out. But no, we have to wait for a dry year to get it cleaned out. If they did that on the Mississippi River, you would have water everywhere. I am suggesting that before you abandon the low-flow channel, you go back and look at why it was built. It was built so the upper two states could meet their delivery obligations every year. Yes, the channel will have to be cleaned out periodically. If there is an added cost to do this, I am sure Texas will assist in making sure it provides its fair share of the funding.

Another issue is the planned obsolescence of Elephant Butte Reservoir. I heard a gentleman say a few months ago that Elephant Butte is proceeding right on schedule. We had originally planned for it to be out of business in 100 years, but because we have built other reservoirs, it might be 200-300 years before it's out of business. Well that is all fine and dandy. The pure fact of the matter is that the more silt and sediment going into Elephant Butte Reservoir, the greater the likelihood for a spill and the greater the likelihood for water going through the system down past Fort Quitman and out of the Project area because we are not doing any planning. The fact is we have 20-30 percent less space available in the system than when it was built. It was completed in 1916 and since then we have lost 20 percent of its space in 82 years and we'll lose another 20 percent in the next 82 years. Every year that we lose additional space, there is an increased likelihood for a spill, a better likelihood for no accounting upriver, and a better likelihood that we will not be able to protect life and property below the

Reservoir because some of those areas simply cannot handle the water. That is a big issue in Texas. We want restored capacity to the original 2.6 million that was authorized for the Project. We will fight tooth and nail to make sure that happens. We do not think it is fair to the water users below the reservoirs or to the folks who count on it for the future. Restored capacity to 2.6 million would provide a three-year water supply to withstand the droughts that are sure to come.

We are asking our fearless leaders in the federal system to include states in planning and not expect us to be “yes” people and not be upset when we are not. Our job is to plan for the future. When farmers get water for a full year, the pat on the back lasts for about 30 seconds and then they are back to wondering about their water for next year. We are the same way. We must be sure we have a system that is intact and works for the future. I do not want to pay extra for the privilege. The federal entities are doing their job when they plan for the future. They are doing what they were hired to do. They may get frustrated and upset when we get concerned during a public meeting about an issue vital to our area on which we have not been consulted, but that is what we are being paid to do. We need to know every step of the way what is going on regarding the river. So do my counterparts in New Mexico and Colorado.

If we plan to spend \$6.5 million over the next 4-5 years to protect a little minnow that only lives for 12-14 months—and has somehow managed to survive in some parts of this river even though the river was dry every year—we can devote at least that much to opening up the low-flow channel, providing more capacity to the system, and quit arguing about who owns the water. If the Bureau of Reclamation and the Corps of Engineers want to go out and build a reverse osmosis system and put the production costs into the cost of water, charge us for it. But quit telling me you have to charge me because it happens to snow or rain like it has been doing since the beginning of time.

Let’s find a way to work together. Quit telling us that you cannot talk to the states. If you believe the government encouraged irrigation in the West to develop the West, and you believe folks who used the irrigation system paid not only operation and maintenance on the project, and not only fees to help repay the system, but also paid dumb things like federal income taxes, state income taxes, and excise taxes, then you must believe that most of these systems have been paid for many times over. If you can get past that issue and you realize the compacts and the various different agreements in the West monitor how much streamflow comes through a particular area, then you must let individual state entities work within their

state laws to solve these problems of future use. Unfortunately, federal agency staffs who are working today will be gone tomorrow. It does not matter what they say today if their counterparts who follow them do not think the same way. We will be forced to struggle with the same issues again. Let the states do what they are supposed to do. Let the entities do what they are supposed to do to determine future use. If you want to get to the bottom line quickly, get involved in the state adjudication process because that ultimately is where it is all going to settle out. Thank you.

We [Texas] want restored capacity to the original 2.6 million that was authorized for the Project. We will fight tooth and nail to make sure that happens.

Jack Hammond