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The History of the Rio Grande Compact of 1938

Good morning. I thought I'd start this off on an upbeat note with the following historical commentary:

“Mentally and morally depraved.” “A cynical contempt for the canons of public and official decency.” These were the angry words of Nathan E. Boyd, president of the Rio Grande Dam and Irrigation Company, shortly after the turn of the century when he discovered that Arthur Powell Davis, assistant chief engineer of the newly formed U.S. Reclamation Service, had issued a blunt report heavily critical of the company's plans to build a dam at Elephant Butte on the Rio Grande and to provide irrigation water to lands along that river, especially to New Mexico's fertile Mesilla Valley. “One is almost driven to

account for its extraordinary irrelevancy,” Boyd charged, “by concluding that it was written by a congenital idiot, borrowed for such purpose from the nearest asylum for the insane.”

Boyd's remarks may have been intemperate, but nevertheless, they amply illustrate how heated the struggle for the river's water supplies had become even as early as the turn of the century. And Boyd's outrage stemmed only from battles over water on the limited reach of the Rio Grande extending just from southern New Mexico's Mesilla Valley to areas further downstream near El Paso, Texas, and Juarez, Mexico. Similar passions—although perhaps less colorful—three decades later underlay the broader conflicts among Colorado, New Mexico, and Texas that led up to the approval of the 1938 Rio Grande Compact.

Yet even that accord has not ended the controversies over the river's water supplies, and one of the reasons why, I believe, is a lack of knowledge about the Compact's history. It is this lack of understanding that has precipitated one of the enduring mysteries about the Compact. That puzzle is the question of why the 1938 Rio

Grande Compact's negotiators provided for deliveries of the river's waters by Colorado at the Colorado-New Mexico state line yet no similar delivery point was established at the New Mexico-Texas border. Instead, New Mexico's delivery obligation is made, according to the Rio Grande Compact, at San Marcial, New Mexico, just above Elephant Butte Reservoir. This delivery point is over a hundred miles upstream from Texas. Why, then, was this delivery point specified instead of some place nearer the New Mexico-Texas border?

The San Marcial delivery location has caused years of confusion (and, in fact, still perplexes some people). Moreover, at times the San Marcial delivery location has placed Texas authorities in the awkward position of aligning themselves with southern New Mexico water users against New Mexico water users above Elephant Butte in order to protect Texas's supplies of Rio Grande waters.

The reality of the matter, however, is that there is an allocation of Rio Grande waters at the New Mexico-Texas border. This apportionment was legislated by Congress in 1905 when federal lawmakers authorized the construction of the Rio Grande Project in southern New Mexico and western Texas by the U.S. Reclamation Service (today, the Bureau of Reclamation). The allocation mandated by Congress was that the Reclamation Service would divide the waters within the Rio Grande Project based on surveys of irrigable lands in New Mexico and Texas. Following those studies, the Reclamation Service established that the equitable apportionment of Rio Grande waters within the Rio Grande Project would be supplies sufficient for 88,000 acres in southern New Mexico and 67,000 acres in western Texas.

How that apportionment was intended to be incorporated into the broader allocation under the 1938 Rio Grande Compact is the focus of the remainder of my remarks today. To understand fully the relationship between the Rio Grande Project's allocations and those made under the 1938 Rio Grande Compact, one needs to delve into the histories of both the Project and the 1938 Compact.

First, a little of the history of the Rio Grande Project.

In November 1904, glowing accounts began to appear in newspaper articles in the western United States that an important compromise had

been reached at the 1904 National Irrigation Congress—a meeting held annually for engineers, government officials, and parties prominent in the field of reclamation. This compromise, the press reported, would end a long and bitter dispute over the apportionment of the waters of the Rio Grande. The decade-long controversy at that point in time pitted irrigators in southern New Mexico's Mesilla Valley against those slightly downstream around El Paso, Texas, and Juarez, Mexico.

Typifying the enthusiastic accounts of the resolution of the strife, the *Houston Post* announced that after “fighting for the past ten years, El Paso, New Mexico and Mexico came together today, buried the hatchet and will pull as one man for a great storage dam across the Rio Grande for the reclamation of arid lands in this section.” The *Post* added the further optimistic judgment that the success of this project meant “more for El Paso than can be told.”

Closer to the struggle in western Texas and southern New Mexico, the newspaper reports were even more effusive about the successful end to the Rio Grande's conflicts. One of Las Cruces, New Mexico's newspapers, the *Rio Grande Republican*, for example, trumpeted that the National Irrigation Congress's effects would be long-lasting, especially in New Mexico. “All seemed to be working for the reclamation of the arid lands,” the *Republican* gushed, “that our citizens might have palacial [sic] homes surrounded with life's comforts, instead of poverty.”

Downstream in Texas, the *El Paso Herald's* large headline boldly proclaimed “Unanimity,” and the paper was filled with laudatory narratives of how a consensus, “absolute, firm as a rock,” had been reached “in sentiment and purpose, among representatives from the Rio Grande valley of New Mexico, Texas, and Mexico, with reference to plans for reclaiming the valley.”

The need to resolve how to allocate Rio Grande water supplies in southern New Mexico and around El Paso and Juarez had become increasingly important in the two decades preceding the 1904 National Irrigation Congress. During this period, water supplies had dwindled in the Mesilla and El Paso valleys as settlement had grown in the upper part of the basin in Colorado's San Luis Valley. The increased population in the San Luis Valley had resulted in a dramatic decline of the non-flood flows of the Rio Grande that

formerly had reached the Mesilla and El Paso valleys. As the river had become drier and drier prior to 1904, residents of the two valleys had developed two ambitious but competing plans to compensate for the reduced flows.

Mesilla Valley residents had backed a solution to their water shortage problems by supporting the proposal by Nathan Boyd's Rio Grande Dam and Irrigation Company to build a reservoir at Elephant Butte, where the U.S. Bureau of Reclamation's Elephant Butte Reservoir presently exists. The company's planned Elephant Butte Reservoir was to store spring flood waters. The company would then supply irrigation water to several New Mexico valleys along the Rio Grande, including the Mesilla Valley. Of course, Boyd and his supporters hoped to benefit financially from the success of his company, and they also anticipated that the reservoir would increase settlement on the lower river and help win statehood for New Mexico, which remained a territory until 1912.

Simultaneous to the plans of the Rio Grande Dam and Irrigation Company, residents downstream around El Paso and Juarez endorsed a proposal for an international dam just above those two towns. Like the proposal for the Rio Grande Dam and Irrigation Company's Elephant Butte Dam, the international reservoir was to capture spring snowmelt flows for later use. The international reservoir idea, which had been developed by early prominent El Paso resident Colonel Anson Mills, would satisfy parched lands on both sides of the U.S. and Mexican border. Not by coincidence, a large body of these lands on both sides of the border were owned by Anson Mills and his brother, William, and thus, like Nathan Boyd in relation to the Elephant Butte plan, the two Mills brothers stood to benefit directly if the international dam were constructed.

Understandably, El Paso and Juarez settlers believed that the proposed Elephant Butte structure would interfere with spring flood flows that would be stored at the international dam, and claiming their water uses had prior rights to those of the Mesilla Valley, residents of El Paso and Juarez fiercely opposed the Rio Grande Dam and Irrigation Company's venture. Similarly, backers of the company strenuously fought the international dam scheme believing that there was insufficient water for both that reservoir and the

one at Elephant Butte. In addition, proponents of the Elephant Butte plan resisted the international dam because they understood it would flood a large part of southern New Mexico.

The conflict over these opposing propositions had raged for many years by the time the 1904 National Irrigation Congress convened, and the struggle had become so fierce that it had involved the highest levels of the U.S. State Department after increasingly vehement demands by Mexico—which were supported by Texans—that Americans cease interfering with Rio Grande water destined for farms around Juarez and El Paso. Because of these diplomatic troubles, the contest between the Elephant Butte Dam and the reservoir just above El Paso also had included a nearly decade-long lawsuit by the United States Government to block the efforts of the Rio Grande Dam and Irrigation Company in order to find some means of satisfying Mexico's demands for water. The controversy over which dam would be built also had been the focus of intense debate in Congress, when Texas's Congressional delegation repeatedly introduced bills over several years to authorize the international dam at El Paso. Named the Culberson-Stevens bills after the Texas senator and El Paso-area congressman who introduced them year after year on both sides of Capitol Hill, these measures had the endorsement of Anson Mills, Texans, and the Mexicans, but they had been hotly contested by backers of the Rio Grande Dam and Irrigation Company.

The diplomatic squabbling, the lawsuit against the Rio Grande Dam and Irrigation Company, and the Culberson-Stevens bills indicated how difficult the struggle over Rio Grande waters had become in the Mesilla and El Paso valleys and how great the stakes were to both regions by the time of the 1904 National Irrigation Congress. It was at that gathering, which was held in El Paso, that the U.S. Reclamation Service, which had been formed only two years earlier, announced its studies of the river had resulted in a plan to end the water struggles. After hearing the details, delegates subsequently endorsed the Reclamation Service's plan as a satisfactory compromise to end the Rio Grande apportionment fight.

The Reclamation Service proposal involved the construction of a Government reservoir on the Rio Grande at Elephant Butte instead of the

private structure proposed for that location by Nathan Boyd's company. Waters stored behind the Government Elephant Butte structure were to serve lands in New Mexico and Texas through a distribution system that would be known as the Rio Grande Project. The amount of acreage in New Mexico and Texas to receive project water supplies, according to the compromise approved by the delegates to the 1904 National Irrigation Congress, was to be determined by Reclamation Service surveys. Like the dam itself at Elephant Butte, the Rio Grande Project distribution system would be built and operated by the Reclamation Service, and the farmers who received water from the project were to repay the Government the cost of building the irrigation system. In addition to storing water for the Rio Grande Project, the Reclamation Service's compromise proposal called for Elephant Butte Reservoir to provide 60,000 acre-feet of water annually to Mexico to satisfy that country's demands, assuming a treaty could be negotiated covering this point. That figure had been determined by an earlier international commission to be the amount of water that had been denied Mexico due to increasing American diversions.

Ultimately, because of the endorsement of the Reclamation Service's plan by the 1904 National Irrigation Congress, the U.S. Congress enacted legislation in 1905 extending the 1902 Reclamation Act to the El Paso Valley in Texas. That state had not been covered by the original Reclamation Act because Texas, having been an independent nation before it joined the Union in 1845, had no federal public domain lands, the sale of which were to help offset the costs of Reclamation Service projects. Importantly, the 1905 law—as was clearly shown in Congressional debates before its enactment—also authorized the Reclamation Service to build Elephant Butte Dam and Reservoir and to apportion waters stored there among water users in the Rio Grande Project according to the Reclamation Service's surveys.

In effect, therefore, this 1905 law became the first Congressionally directed allocation of an interstate river. This was 23 years before the Boulder Canyon Act of 1928 apportioned the Colorado River—a law the U.S. Supreme Court in *Arizona v. California* (1963) mistakenly characterized as the first interstate river division accomplished by federal legislation.

Following the 1905 law, the international part of the 1904 National Irrigation Congress compromise was carried out when Congress ratified a treaty in 1906 providing for the delivery of 60,000 acre-feet of Rio Grande waters to Mexico each year. Thus, by 1906 the Rio Grande below Elephant Butte Dam was in the process of being apportioned among water users in New Mexico, Texas, and Mexico. Part of this allocation had been carried out through legislation and part of it by treaty with Mexico. The important point, however, is that this interstate and international division of the Rio Grande's waters was accomplished long before compact negotiations began on a broader allocation of the river's waters among Colorado, New Mexico, and Texas. How the Rio Grande Project's allocation made its way into the 1938 Compact in intent can be seen in the history of the Compact.

Over the years following the interstate apportionment within the Rio Grande Project, a variety of events took place that ultimately made an interstate compact among Colorado, New Mexico, and Texas necessary. First, Elephant Butte Dam was completed in 1916. Subsequently, the Reclamation Service finished studies of soils, drainage, and other factors and determined that the final Rio Grande Project would serve 88,000 acres in New Mexico and 67,000 acres in Texas. These allotments, which were subsequently endorsed twice by water users in both states, fulfilled the Congressional directive under the 1905 law extending the Reclamation Act to Texas that the Reclamation Service would apportion the river's waters based on the agency's studies.

While the allocations within the Rio Grande Project were being determined, water users under the project formed two organizations to work with the Government in operating the project and to coordinate payments for construction and operation and maintenance. Initially, these organizations were water users' associations, but the water users later formed irrigation districts to allow taxes to be levied for payments to the Government. The districts were the Elephant Butte Irrigation District in New Mexico and the El Paso County Water Improvement District No. 1 in Texas, and they signed contracts with the U.S. Government to pay expenses in the same 88/67 ratio as their respective acreage allocations.

As these events were transpiring, concern began growing by the early 1920s that the expansion of irrigation in the Middle Rio Grande Valley above Elephant Butte and in Colorado's San Luis Valley might undermine the apportionment within the Rio Grande Project by diminishing water supplies available to Elephant Butte Reservoir. It was partly this problem that prompted the beginning of compact discussions in order to protect the allocations within the project as well as to guard upstream uses from litigious assaults by Rio Grande Project water users.

The direct cause for beginning interstate compact talks centered on what was known as the Rio Grande "embargo." The embargo was a limitation on developing the river's water supplies anywhere on the public domain in New Mexico or Colorado that had been imposed in the late nineteenth century as the debate over whether the private Elephant Butte dam or the international dam would be built. First instituted in 1896 by Secretary of the Interior David R. Francis, the embargo had been left in place even after the 1904 National Irrigation Congress had endorsed the Reclamation Service's solution to the Rio Grande's problems to protect water supplies that eventually were to be stored at Elephant Butte Reservoir.

By the early 1920s, the embargo was still in effect, and regions above Elephant Butte chafed at the restriction. Residents of the Middle Rio Grande Valley near Albuquerque and in Colorado's San Luis Valley had tried in vain for years to have the embargo lifted, and when an interstate compact was proposed to settle allocations for the Colorado River, the suggestion was made that a similar negotiated compact could be used to apportion Rio Grande waters among Texas, New Mexico, and Colorado. With such an agreement in place, the theory went, the hated Rio Grande embargo could be lifted permanently.

With the successful signing of the Colorado River Compact in 1922, New Mexico and Colorado—both of which had taken part in the Colorado River's talks—quickly named commissioners to negotiate a similar agreement for the Rio Grande. Talks broke down, however, over a variety of issues including whether Texas should take part, and it was not until December 19, 1928, that compact deliberations got under way in earnest. As discussions began at the December

19th meeting, New Mexico's Compact Commissioner, Francis C. Wilson, defined his state's position first. Arguing that since neither New Mexico nor Texas asked for any new Rio Grande water supplies from Colorado but both sought to prevent further Colorado diversions, Wilson insisted on delivery of a specific amount of water at the Colorado-New Mexico state line. Wilson recognized Colorado's desire to increase development in the San Luis Valley, but he thought this could be accomplished by draining the waterlogged part of the valley that was commonly known as the "dead" or "sump" area and more formally termed the Closed Basin. This recovered water, Wilson believed, could be used elsewhere in Colorado with no detrimental effects below the state line. Wilson pointed out, however, that without such drainage any new dams in the Colorado part of the Rio Grande Basin would be a direct threat to Rio Grande Project water rights—which had been filed for by the Reclamation Service in 1906 and 1908—because those new structures in Colorado would impound existing flows coming out of the San Luis Valley.

Richard Burges, a highly respected water law attorney from El Paso who was attending the meeting as a Texas observer, spoke next on behalf of his state. Burges told the compact commissioners that Texas relied upon its rights as established by allocations within the Rio Grande Project. Moreover, Burges asserted that Texas held senior water rights for 20,000 acres under the ditch above Fort Quitman, Texas, but below the end of the Rio Grande Project. Most of this land, Burges pointed out, was being served by project return flows. In addition, Burges said he had been asked to "lay before the commission the claims of the City of El Paso to a municipal water supply from the waters of the Rio Grande," but he did not elaborate on this point.

With the New Mexico and Texas positions established, Colorado Lieutenant Governor George M. Corlett, who spoke for San Luis Valley irrigators, outlined the history of the Rio Grande embargo and described how that restriction had been a grave injustice to Colorado water users. Corlett offered two reasons why additional storage of Rio Grande waters in Colorado would not hurt water supplies downriver. First, he contended that return flows from San Luis Valley irrigation would offset any supplemental Colorado

diversions. Second, Corlett asserted that any Rio Grande water flowing into New Mexico was wasted by evaporation in the desert heat long before it could reach Elephant Butte Reservoir.

For these reasons, Corlett stated that additional storage in Colorado would not adversely affect irrigators below the state line, and he suggested that such new reservoirs might even benefit farmers in northern New Mexico and in the Middle Rio Grande Valley by acting as storage for them as well as for Colorado interests. Corlett concluded that while he was unwilling to abandon plans for further Rio Grande reservoirs in Colorado, he was willing to work with New Mexico and Texas representatives to secure federal aid for drainage of the San Luis Valley Closed Basin and to provide related storage works on the upper Rio Grande and on the Conejos River, a tributary of the Rio Grande.

By mid-February 1929, the commissioners realized that no final agreement could be reached, and because the three states' legislatures met only once every two years and currently were in session, it became imperative that a temporary agreement be realized to avoid expensive litigation in the U.S. Supreme Court. With the desire to keep the Rio Grande issues out of a lawsuit, on February 12, 1929, the three states' commissioners signed a temporary compact that in essence established the status quo as a basis for apportioning the river's waters among Colorado, New Mexico, and Texas until a permanent accord could be achieved.

The temporary 1929 Rio Grande Compact requested that the United States construct a drain for the San Luis Valley's Closed Basin and a reservoir in Colorado near the state line to impound the increased river flow from the drainage works. These new reclamation features were to benefit all three states. Once the Closed Basin Drain and State Line Reservoir were completed, the 1929 Compact provided that the three states would meet again to work out a permanent agreement based on river flow measurements with these facilities in place.

Tied to the request that the federal government build the Closed Basin Drain and the reservoir at the Colorado-New Mexico state line was the central point of the temporary compact. Until the drain and reservoir were constructed, Colorado agreed not to increase diversions, build

more storage facilities, or impair the flow of the Rio Grande as it then existed. The idea, of course, was to assure federal authorities that U.S. aid for the proposed projects could go forward unimpeded by the interstate quarrel.

The negotiators of the 1929 Rio Grande Compact could not have anticipated that less than nine months after they had signed the accord, the stock market crash of that year would trigger the worst economic crisis the United States had ever experienced. With the Great Depression making Congress and President Herbert Hoover reluctant to approve major expenditure bills, projects like the Closed Basin Drain and the State Line Reservoir were temporarily shelved. The Depression also delayed the resumption of Rio Grande Compact talks until December 1934 because authorities had other, bigger, problems to address due to the economic emergency.

When negotiations for a permanent Rio Grande Compact finally resumed, among the first to speak was George Corlett, who, as in 1929, once again represented San Luis Valley interests. Corlett demanded that Colorado be placed upon what he termed a "parity with New Mexico and Texas insofar as our present requirements are concerned." To Corlett and San Luis Valley water users, this meant having the right to build new storage reservoirs in Colorado's part of the Rio Grande Basin regardless of whether the Closed Basin Drain and the State Line Reservoir were constructed.

In response, Richard Burges, who had come to the meeting this time as a legal adviser to Texas's commissioner, T.H. McGregor, insisted that Texas was unwilling to allow Colorado to have more storage until the extent of flows from the Closed Basin Drain was known. New Mexico's representatives supported Burges's position, recognizing that without the Closed Basin Drain information, Colorado's upstream position could allow San Luis Valley water users to take ever-larger amounts of the Rio Grande's flow. With more debate amply demonstrating that none of the negotiators would retreat from their positions, the commissioners realized that no quick agreement was likely, and the session adjourned for the time being.

With negotiations at an impasse, in October 1935 Texas filed a lawsuit in the U.S. Supreme Court against New Mexico and the Middle Rio

Grande Conservancy District—which had been organized for lands near Albuquerque—to protect Rio Grande Project water supplies. Another purpose of the lawsuit also was to keep compact talks moving forward. Almost simultaneously, Franklin D. Roosevelt, who had been sworn in as President in 1933, directed the National Resources Committee, an agency created to coordinate resource development throughout the United States, to act as a clearinghouse on all Rio Grande water proposals and to help settle the river's apportionment dispute. The result was the creation of the Rio Grande Joint Investigation, a series of studies by state and federal authorities on water supplies, needs, and other information on which a compact could be based. In the meantime, *Texas v. New Mexico and the Middle Rio Grande Conservancy District* was postponed by Special Master Charles Warren, who had been appointed by the Supreme Court to hear the case.

By December 1937, with the fruit of the Rio Grande Joint Investigation in hand, the Rio Grande Compact Commission's engineering advisers developed a proposed schedule of deliveries to form the basis of a permanent compact. Deliveries were to be made by Colorado at the Colorado-New Mexico state line and by New Mexico at San Marcial, near the head of Elephant Butte Reservoir. No delivery schedule was called for at the Texas-New Mexico state line. The following March, the Rio Grande Compact Commission unanimously adopted schedules of delivery at those locations when they signed the Rio Grande Compact. Again, no schedule of deliveries was established at the New Mexico-Texas state line.

I do not plan to go into the details of the provisions of the 1938 Rio Grande Compact, because my purpose is to illustrate the relationship between the allocations within the Rio Grande Project made under the 1905 Congressional legislation and those made under the 1938 Compact. The history of the ratification struggles will make that connection between the two apportionments clear. In general, however, the 1938 Compact's provisions were:

1. The creation of a permanent compact commission to oversee the operations of the Compact.
2. The establishment of gaging stations along the river to ensure deliveries by Colorado at the

Colorado-New Mexico state line and deliveries by New Mexico to Elephant Butte Reservoir.

3. The creation of a system of debits and credits to accommodate variations from agreed-upon schedules.

With the signing of the 1938 Rio Grande Compact, the commissioners returned to their home states to lobby for quick ratification by their respective state legislatures when they reconvened in early 1939. Having overcome such formidable disagreements to reach a final pact, however, little could the commissioners have imagined that ratification would become an almost insurmountable obstacle in Texas because of a major dispute about how the Compact's terms affected that state.

The 1938 Compact's lack of mention of specific deliveries at the New Mexico-Texas state line triggered the ratification problem in Texas. The Rio Grande Compact Commissioners' reasons for rejecting a schedule of deliveries at the New Mexico-Texas state line had never been made clear to Texans on the lower Rio Grande between Fort Quitman and the Gulf of Mexico. As a result, many of these water users thought that because the Compact only provided for water deliveries at Elephant Butte Reservoir and not at the New Mexico-Texas state line, Texas had no solid guarantee of any Rio Grande water.

To residents on the lower Rio Grande, the supposed lack of an apportionment at the New Mexico-Texas state line appeared to be a sell-out of the majority of Texas's interests in favor of a handful of Rio Grande Project farmers in the El Paso Valley—irrigators who already enjoyed the benefits of Elephant Butte Dam and federally constructed canals. Even more galling to lower Rio Grande water users, the abandonment of their needs had taken place during the severe drought of the 1930s.

Acting on these beliefs, water users in Texas below Fort Quitman demanded a guarantee of 200,000 acre-feet per year of Rio Grande waters. Threatening to go to the Texas legislature to fight against ratification of the Compact, these lower river water users also retained a law firm by the name of Smith and Hall to intervene in the still-pending Supreme Court case of *Texas v. New Mexico and the Middle Rio Grande Conservancy District*.

Before developing a legal strategy for the intervention, however, Sawnie Smith of Smith and Hall realized that he needed to know whether the Rio Grande Compact Commissioners deliberately had **not** provided for a specific amount of water to go to Texas, and if so, why. Writing to Frank Clayton (who had replaced T.H. McGregor as Texas's Rio Grande Compact Commissioner), Smith noted that there had been considerable comment on the fact that the new Rio Grande Compact made, as Smith wrote, "no provision for the division of waters below Elephant Butte between the States of New Mexico and Texas and makes no provision concerning the amount of water to which Texas is entitled." This apparent omission, to Smith, was puzzling, and he told Clayton it was "too obvious to have been inadvertent, and, therefore, unquestionably, the commissioners had what they considered valid reasons for it." Smith wanted an explanation, therefore, of "why the respective rights of Texas and New Mexico to those waters were not defined and provided for in the compact in express terms."

In reply, Clayton wrote that the negotiators of the new Rio Grande Compact had recognized an existing apportionment of the river's waters between New Mexico and Texas below Elephant Butte Dam through the allocations made by the Bureau of Reclamation and the operation of the Rio Grande Project. As Clayton explained, "the question of the division of the water released from Elephant Butte reservoir is taken care of by contracts between the districts under the Rio Grande Project and the Bureau of Reclamation." Observing that these contracts provided that the lands within the project would all have the same rights, Clayton confirmed that the water was allocated according to the respective areas involved in the two states—areas defined by the Bureau of Reclamation under the terms of the 1905 federal legislation sanctioning the 1904 apportionment compromise.

Clayton continued, "the total area is 'frozen' at the figure representing the acreage now actually in cultivation: approximately 88,000 acres for the Elephant Butte Irrigation District, and 67,000 for the El Paso County Water Improvement District No. 1, with a 'cushion' of three per cent for each figure." Adding that he believed "there will never be any difficulty about the allocation of this

water,"—a perhaps overly optimistic assumption—Clayton told Smith he hoped his answer would satisfy lower Rio Grande water users.

Because of the evident misunderstanding about the Rio Grande Compact Commissioners' intentions, Clayton sent explanatory letters similar to his reply to Smith to all the incoming Texas state legislators. He also went in person to the lower Rio Grande Valley in early October 1938—armed with copies of the Compact and histories of the Rio Grande controversy—to explain the Rio Grande Compact Commissioners' aim. The campaign to clarify the Compact's intent quickly paid off, and Clayton won the support of lower Rio Grande water users for the Compact's ratification.

With most sources of controversy now resolved, the legislatures of Colorado, New Mexico, and Texas soon approved the Rio Grande Compact. On February 21, 1939, Colorado Governor Ralph L. Carr signed his state's ratification bill. Texas Governor W. Lee O'Daniel, also known as "Pappy" executed his state's approval measure on March 1, 1939. New Mexico Governor John E. Miles followed suit the next day. When President Roosevelt signed Congress's consent on May 31, 1939, the Rio Grande Compact took effect.

Thus, as this history of the Rio Grande Project and the 1938 Rio Grande Compact illustrates, there actually **is** an interstate apportionment of Rio Grande waters at the New Mexico-Texas border—one that was authorized by Congress in 1905 when the federal lawmakers approved the construction of the Rio Grande Project and directed the Reclamation Service to allocate waters within that project. That apportionment was then intended to be incorporated into the 1938 Rio Grande Compact, as Texas Compact Commissioner Clayton explained to lower Rio Grande water users and to the Texas legislators who ratified the accord.