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A Pueblo Perspective on the Rio Grande Compact

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### Rio Grande Compact

1. The Compact allocates surface waters of the Rio Grande, first to Colorado, second to the Lower Rio Grande, below Elephant Butte Reservoir (San Marcial Gauge) based on flows at Otowi Gauge, located within the Pueblo of San Ildefonso. The Lower Rio Grande, commonly referred to as “Texas” for compact administration purposes, includes one irrigation district in New Mexico and one in Texas. Note that New Mexico’s southern boundary for compact administration differs by 165 miles from the New Mexico state border with Texas. See El Paso v. Reynolds, 563 F.Supp. 379 (D.N.M. 1983)
2. The Middle Rio Grande (between Otowi and San Marcial Gauges) is entitled to native waters, according to Compact Article IV (4), plus storage from El Vado Dam. The Middle Rio Grande

includes about 160 miles of the mainstem, beginning at San Ildefonso Pueblo (Otowi Gauge) and ending around Socorro (San Marcial Gauge). This is “New Mexico” for compact administration purposes.

3. New Mexico obligations under the Compact are described in Article IV. That article requires uses of flow measurements at the Otowi Gauge as the basis for determining the delivery requirements at Elephant Butte Reservoir, “except for July, August, and September.” Groundwater is not mentioned in the Compact.
4. Article XVI (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.

### Indian Water Rights

1. “Indian tribes” referred to in the Rio Grande Compact include the Pueblos of New Mexico. These six Pueblos (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta) are all on the

mainstem and within the Middle Rio Grande Conservancy District (MRGCD) service area.

2. Pueblo water law (“the ancient law of the Indians”) is the basis for New Mexico’s prior appropriation doctrine. See discussion in the State v. Red River Valley Co., 51 N. M. 207, 221;182 P.2d 421 (1947).
3. Congress recognized and protected Pueblo water rights in the Middle Rio Grande Conservancy District Act of March 13, 1928, Chapter 219, 45 Stat. 312. These include “prior and paramount” rights for irrigation and for domestic and livestock purposes. For irrigation, the six Pueblos have “prior and paramount” rights to irrigate 8, 847 acres, and co-equal priority with the MRGCD for “newly reclaimed” lands. These rights together total enough water to irrigate over 20,000 acres for the six pueblos.
4. Only the Pueblos have an entitlement to receive Rio Grande surface water. The State of New Mexico’s share of the water under the Compact depends on the amount of flow in the river. See Article IV of the Compact.
  - In dry or low-flow years, Pueblo water rights become a larger proportion of the total surface water available for irrigation in New Mexico.
  - In 1980 surface water depletions in the Middle Rio Grande were 125,630 acre-feet.
5. Pueblo involvement with Middle Rio Grande Conservancy District includes having members of the MRGCD board of directors from Isleta and San Felipe Pueblos, at present and for recent decades.

### **Contract Rights**

1. The contract between the federal Bureau of Reclamation (BOR) and the MRGCD for operation and maintenance (O & M contract) expires December 31, 1999.
2. The six Middle Rio Grande Pueblos Coalition has requested new terms in the O & M contract that will have the Pueblos, through the coalition, having a “seat at the table” with BOR and MRGCD for

negotiating a new O & M contract.

3. The six Pueblos Coalition has also asked BOR for a separate contract for administration of the storage water in El Vado Reservoir for the Pueblos’ “prior and paramount” rights.

### **Twenty-First Century Water Law**

1. Twenty-first century water administration of the Rio Grande Compact will see greater Pueblo involvement and attention to senior Pueblo priority and water delivery requirements.
2. Challenge for 21<sup>st</sup> century for lawyers and other water people to arrive at solutions that are fair and appropriately respectful of Indian Pueblo water rights and social needs.

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