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# The Rio Grande Compact of 1929: A Truce in an Interstate River War

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Decades before the 1890 U.S. census reported that the American frontier no longer existed due to the rapid growth of western settlement, a by-product of that demographic phenomenon had emerged: conflicts over water use and control. Localized disputes over the allocation of scant western water supplies had erupted as early as the 1850s, and such controversies had laid the groundwork for the creation of the legal doctrine of prior appropriation.<sup>1</sup> While this method of distributing water among users within states was eventually adopted in varying degrees throughout the West, it did nothing to calm disputes over interstate streams—conflicts that became increasingly common near the end of the nineteenth

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This article is part of a larger forthcoming work on the history of interstate apportionment struggles over the Rio Grande.

1. The doctrine of prior appropriation holds that whoever first puts the waters of a stream to beneficial use is entitled to continue to utilize that water as against subsequent claimants. On the early evolution of the doctrine in the American West, see Douglas R. Littlefield, "Water Rights during the California Gold Rush: Conflicts over Economic Points of View," *Western Historical Quarterly*, XIV (1983);, 415-434. For a more comprehensive study of water law, see Robert E. Clark, ed., *Waters and Water Rights: A Treatise on the Law of Waters and Allied Problems, Eastern, Western, Federal* (7 vols., Indianapolis, 1967; rev. ed., 1984). For a comprehensive review of water-resource history in the West, see Robert G. Dunbar, *Forging New Rights in Western Waters* (Lincoln, Neb., 1983); Marc Reisner and Sarah Bates, *Overtapped Oasis: Reform or Revolution for Western Water* (Washington, D.C., 1990).

century. There was virtually no precedent on how to deal with such problems. Prominent legal scholars of the day such as Albert E. Chandler, Henry P. Farnham, Clesson S. Kinney, Joseph R. Long, and Samuel C. Wiel all either ignored interstate apportionment issues in their studies or assumed litigation to be the only possible solution.<sup>2</sup> As Kinney concluded in the 1912 edition of his classic *Treatise on the Law of Irrigation*:

When the first edition of this work was published in 1893, there was no law upon the subject of the application of the Arid Region Doctrine of appropriation, either statutory or case, as specially applied to interstate rivers. In fact, nearly all the law upon the subject has been developed within the last ten years.<sup>3</sup>

And that law, Kinney noted, was case or court-made law, with the first interstate stream dispute having reached the federal court system in 1898 and the earliest U.S. Supreme Court pronouncement on the subject being issued nine years later in *Kansas v. Colorado*. In the latter decision, however, the court exacerbated rather than resolved the interstate allocation problem by holding that each state sharing a common river had a right to an “equitable apportionment,” a ruling that opened a floodgate of litigation as states battled with one another over the meaning of “equitable.”<sup>4</sup>

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2. Albert E. Chandler, *Elements of Western Water Law* (San Francisco, 1913; rev. ed., 1918); Henry P. Farnham, *Law of Waters and Water Rights: International, National, State, Municipal, and Individual, Including Irrigation, Drainage, and Municipal Water Use* (3 vols., Rochester, 1904); Clesson S. Kinney, *A Treatise on the Law of Irrigation* (4 vols., Washington, D.C., 1893; rev. ed., San Francisco, 1912); Joseph R. Long, *A Treatise on the Law of Irrigation Covering the States and Territories* (St. Paul, 1901; rev. ed., Denver, 1916); Samuel C. Wiel, *Water Rights in the Western States* (San Francisco, 1905; 3rd ed., 2 vols., San Francisco, 1911).

3. Kinney, *A Treatise on the Law of Irrigation* (1912 ed.), III, 2210.

4. The first interstate river dispute to be heard in a federal court was *Howell v. Johnson*, 89 Fed. 556 (1898), a conflict between Montana and Wyoming over the waters of Sage Creek. *Kansas v. Colorado* was a controversy over the waters of the Arkansas River, a dispute that after the initial 1907 Supreme Court ruling went back to the high court in 1943 and once again is before that tribunal. On the 1907 and 1943 Supreme Court decisions, see *Kansas v. Colorado*, 206 U.S. 45 (1907), and *Colorado v. Kansas*, 320 U.S. 368 (1943). For a thorough examination of the irrigation problems in the Arkansas Valley through the early 1950s, see James Earl Sherow, *Watering the Valley: Development along the High Plains Arkansas River, 1870–1950* (Lawrence, 1990).

Countering the march to the courts was a pronounced desire among western state officials to avoid the immense expense and time commitment such litigation involved. Beginning in the early 1920s, these concerns and the wish to prevent federal usurpation of state control over western rivers encouraged a trend toward negotiated settlements based on the compact clause of the U.S. Constitution (Article I, section 9). Resorting to this approach to divide the waters of interstate streams was a novel idea. While employing compacts to solve disputes between states was as old as the Constitution itself (in fact, some scholars argue older), using them to apportion rivers had remained untested until deliberations began in January 1922 to divide the waters of the Colorado River between an upper basin (Colorado, New Mexico, Utah, Wyoming, and a small part of Arizona) and a lower basin (California, Nevada, and most of Arizona).<sup>5</sup> When the negotiations for a Colorado River compact started to bear fruit, officials throughout the West began to consider the possibility of utilizing similar agreements to end interstate water conflicts elsewhere.

One of the oldest such controversies involved the Rio Grande, a major western river that rises in southern Colorado, bisects New Mexico, and then becomes the international border between Texas and the Republic of Mexico. Dating back to the 1880s, the problems on the Rio Grande had initially centered on strife between irrigators in southern

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5. For thorough examinations of the federal government's efforts to control western rivers, see Marc Reisner, *Cadillac Desert: The American West and Its Disappearing Water* (New York, 1986); and Donald Worster, *Rivers of Empire: Water, Aridity & the Growth of the American West* (New York, 1985). On the Colorado River Compact, see Norris Hundley, jr., *Water and the West: The Colorado River Compact and the Politics of Water in the American West* (Berkeley, 1975). On interstate river compacts in general, see Jerome C. Muys, "Interstate Compacts and Regional Water Resources Planning Management," *Natural Resources Lawyer*, VI (1973), 153-188; and Richard H. Leach, "The Interstate Compact, Water, and the Southwest: A Case Study in Compact Utility," *Southwestern Social Science Quarterly*, XXXVIII (1957), 236-247. On compacts more broadly, see Vincent V. Thursby, *Interstate Cooperation: A Study of the Interstate Compact* (Washington, D.C., 1953); and Frederick L. Zimmermann and Mitchell Wendell, *The Interstate Compact since 1925* (Chicago, 1951).

New Mexico's Mesilla Valley and those below El Paso, Texas, in Mexico and the United States.<sup>6</sup> This struggle was partially resolved by a compromise reached at the 1904 National Irrigation Congress which ratified a plan advanced by the newly created U.S. Reclamation Service (after 1923, the Bureau of Reclamation). That accord led to an international treaty two years later allocating 60,000 acre-feet of Rio Grande water annually to Mexico and prompting the construction by the federal government of a dam at Elephant Butte, New Mexico (completed in 1916 at a site about 125 miles above El Paso). The treaty and dam were to assure delivery of Mexico's share of Rio Grande water and also to supply water to the so-called Rio Grande Project, an irrigation system built by the Reclamation Service below the new reservoir in New Mexico and Texas. Relying on the 1904 compromise, the government held that the New Mexico part of the Rio Grande Project was entitled to sufficient Elephant Butte water to irrigate 88,000 acres, while the Texas section should receive enough for 67,000 acres.<sup>7</sup>

The Mexican treaty and the apportionment within the Rio Grande Project seemingly solved the dispute between irrigators above and below El Paso, yet as the Rio Grande Project was being built, a larger problem arose as regions above Elephant Butte began to divert increasingly large amounts of water, thereby causing those downstream to protest that insufficient supplies were reaching Elephant Butte Reservoir. The fundamental difficulty was that the 1904 compromise did not apply to the area upriver from the reservoir, especially the rapidly growing San Luis Valley in southern Colorado and the Middle Rio Grande Valley around Albuquerque, New Mexico. As the conflict between the regions above and below Elephant Butte grew, it became obvious to all concerned that a solution had to be found.

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6. On the history of the Mesilla and El Paso valleys, see P. M. Baldwin, "A Short History of the Mesilla Valley," *New Mexico Historical Review*, XIII (1938), 314-324; and C. L. Sonnichsen, *Pass of the North: Four Centuries on the Rio Grande* (2 vols., El Paso, 1968).

7. For details on the history of Rio Grande disputes, see Douglas R. Littlefield, "Interstate Water Conflicts, Compromises, and Compact: The Rio Grande, 1880-1938" (Ph.D. dissertation, University of California, Los Angeles, 1987).

The immediate outcome was the Rio Grande Compact of 1929—an accord that was the only interstate river agreement ever intended to last for a short period of time. Designed to freeze diversions at their existing levels until new reclamation projects could be completed that would benefit all three states involved—Colorado, New Mexico, and Texas—the 1929 accord was scheduled to end in June 1935 (later extended to October 1937). Despite its temporary nature, the 1929 agreement proved to be a crucial step leading to a permanent settlement in 1938.<sup>8</sup> It not only reinforced the utility of employing compacts to resolve interstate river disputes but also revealed the critical importance of working out *intrastate* differences as a prelude to achieving a broader *interstate* settlement. In addition, the 1929 accord illustrated the significant role that could be played by the federal government in reaching such interstate agreements, thereby contributing to the expanding presence of Washington, D.C., in western development.

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The direct cause of the negotiations for the 1929 Rio Grande Compact was an event that had taken place before the turn of the century. In 1896 Secretary of the Interior David R. Francis had announced that the federal government would no longer allow new rights-of-way over public lands anywhere in the Rio Grande Basin for reservoirs or irrigation canals. This order had resulted from the Rio Grande Dam and Irrigation Company's plan for a privately owned reservoir at Elephant Butte, New Mexico—a plan which irrigators in Texas and Mexico feared would deprive them of water.<sup>9</sup> Although the conflict between the company

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8. While the first Rio Grande Compact was signed in 1929, it was not ratified until the following year. Likewise, the second Rio Grande Compact was signed in 1938 but not ratified until 1939. To avoid confusion, this article refers to the first accord as the 1929 Rio Grande Compact and the second agreement as the 1938 Rio Grande Compact, although in other writings the two settlements sometimes carry the dates of 1930 and 1939, respectively.

9. For an overview of the Rio Grande Dam and Irrigation Company's plan and a competing proposal for a reservoir to be built at El Paso, see Littlefield, "Interstate Water Conflicts, Compromises, and Compacts," 13-154; Ira G. Clark, "The Elephant Butte Controversy: A Chapter in the Emergence of Federal Water Law," *Journal of American History*, LXI (1975), 1006-1033; Clark, *Water in New Mexico: A History of Its Management and Use* (Albuquerque, 1987), 92-96.

and El Paso-area water users was resolved by the compromise at the 1904 National Irrigation Congress, subsequent Secretaries of the Interior continued to maintain with only minor modifications what became known as the Rio Grande embargo in order to protect the Rio Grande Project and to assure compliance with the treaty obligation to Mexico. This policy prompted vigorous protests by landowners in New Mexico's middle Rio Grande Valley and in Colorado's San Luis Valley.<sup>10</sup>

As the controversy became increasingly bitter, the apparent success further west in resolving the Colorado River problem through an interstate compact led New Mexico and Colorado to pass legislation in 1923 authorizing talks to settle the Rio Grande issue through a similar accord. Julian O. Seth and Delph E. Carpenter (Colorado's negotiator for the Colorado River Compact) were named to represent New Mexico and Colorado, respectively, while the U.S. government's interests along the Rio Grande (the Rio Grande Project, Indian reservations, public lands, and the obligations to Mexico under the 1906 treaty) were to be represented by Secretary of Commerce Herbert C. Hoover, who had also been the federal delegate to the Colorado River Compact negotiations.<sup>11</sup>

While New Mexico and Colorado had agreed to hold compact discussions, there was considerable dispute over whether Texas should be included in the talks. Secretary of the Interior Hubert Work urged that the U.S. not participate until Texas named someone to represent its interests, a recommendation strenuously resisted by Coloradans and north-

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10. On the history of the Rio Grande embargo and water use in northern New Mexico and in Colorado's San Luis Valley, see a vast array of reports in the files of the Office of the New Mexico State Engineer, Santa Fe, New Mexico. Extensive files on the embargo also exist in the Records of the Bureau of Reclamation, Record Group 115, National Archives, Washington, D.C.; the Central Classified files of the Records of the Office of the Secretary of the Interior, Record Group 48, *ibid.*; and the Richard F. Burges Papers, Eugene C. Barker Texas History Center, University of Texas, Austin.

11. J. F. Hinkle to W. E. Sweet, March 11, 1923, James F. Hinkle Papers, New Mexico State Records Center and Archives, Santa Fe; Hubert Work to J. F. Hinkle, Dec. 10, 1923, *ibid.*; James F. Hinkle to Pat M. Neff, Sept. 24, 1924, *ibid.*; Calvin Coolidge to Herbert Hoover, Dec. 23, 1923, Commerce Papers, Herbert Hoover Presidential Library, West Branch, Iowa; Hoover to Coolidge, Dec. 27, 1923, *ibid.*

ern New Mexicans. Water users in those areas felt they would have enough to cope with at the discussions in dealing with southern New Mexicans from the Mesilla Valley who viewed the upriver diversions as a threat to their water supply at Elephant Butte. To have Texans as well as southern New Mexicans at the talks, contended the northerners, would give water users below Elephant Butte too much power in shaping the accord's terms. As one might expect, water users in the Mesilla and El Paso valleys saw Texas's participation as essential to protecting Elephant Butte water supplies.<sup>12</sup>

Debate over Texas's inclusion became the focus of the first meeting of the New Mexico and Colorado delegates to the Rio Grande Compact Commission, held in Colorado Springs on October 26, 1924. At the gathering, Colorado's Delph Carpenter worried aloud that Texas's presence would lead to that state calling for Rio Grande water to irrigate land as far downriver as Brownsville. The burden of such a demand, he contended, would fall heaviest on the residents of his state, who, according to Carpenter, were already considerably distressed by the continued implementation of the Rio Grande embargo. The current situation, he announced, had produced "a feeling that the whole lower end of the river is against the upper."<sup>13</sup>

Attempting to allay Carpenter's concerns was Richard F. Burges, a prominent El Paso water lawyer attending the meeting as an unofficial Texas delegate. Burges claimed that El Paso Valley residents had as much reason as Colorado's farmers to fear demands from such far downstream areas as Brownsville. New Mexico State Engineer George M. Neel agreed and also pointed out that raising the possibility of guaranteeing water to irrigators far down river would mean reopening talks with Mexico, since the stream's flows below

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12. Coolidge to Hoover, Dec. 23, 1923, Commerce Papers; Hoover to Coolidge, Dec. 27, 1923, *ibid.*; Pat M. Neff to Hoover, Sept. 20, 1924, *ibid.*; J. W. Taylor and T. D. Porcher to Charles E. Hughes, Sept. 3-4, 1924, *ibid.*; Delph E. Carpenter to Hoover, Oct. 9, 1924, *ibid.*; "First Meeting, Rio Grande River Compact Commission," 1, 24-25, copy in *ibid.*; Elephant Butte Irrigation District President and Manager J. W. Taylor to D. C. Henny, Sept. 30, 1924, box 2F4468, Burges Papers; J. O. Seth to R. F. Burges, Oct. 8, 1924, *ibid.*

13. "First Meeting, Rio Grande River Compact Commission," 1, 24-25, Commerce Papers.

the Rio Grande Project came largely from tributaries on the Mexican side of the river. Involving Mexico, Neel cautioned, would effectively kill any possibility of a compact. Such admonitions persuaded Hoover and the delegates from Colorado and New Mexico on the need to include Texas in their deliberations.<sup>14</sup> Shortly thereafter, however, the potential for future negotiations—even with Texas's participation—became seriously clouded by a change in the federal government's Rio Grande embargo policy.

Events leading to the modification of the embargo had started two years earlier at a conference dealing with another western river, the Colorado. At the 1922 Colorado River Compact deliberations, negotiators had briefly deviated from their main concern to criticize the U.S. government for unnecessarily perpetuating the Rio Grande embargo to the detriment of upper Rio Grande Basin water users. Secretary of the Interior Albert B. Fall (who was from southern New Mexico) reluctantly acknowledged that perhaps the U.S. had been dilatory in determining if there was sufficient water to satisfy the Rio Grande Project and also to allow reservoirs to be built in Colorado's San Luis Valley. Fall ordered the Reclamation Service to study the situation and provide a report. Completed in late 1922, the Reclamation Service's analysis suggested a major modification of the Rio Grande embargo that would allow the government to approve or reject applications for rights-of-way for canals and reservoirs on a case-by-case basis. No immediate government action followed, but the report prompted a petition by the San Luis Valley's River Ranch Company for a right-of-way across public lands to build the Vega Sylvestre Reservoir near Del Norte, Colorado.<sup>15</sup> While the request qualified for the recommended case-by-case review, the Department of the Interior rejected it because Secretary Fall had resigned in March 1923 and the

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14. *Ibid.*, 2-6, 25-37.

15. A. P. Davis to Secretary of the Interior, March 2, 1923, file 032, box 879, Rio Grande Project files, Records of the Bureau of Reclamation; Davis to V. E. Keyes, Dec. 12, 1922, file 032.02, box 913, Rio Grande Basin files, Records of the Bureau of Reclamation; Davis to Carpenter, Feb. 7, 1923, *ibid.*

government wanted to await his replacement before attempting any revision of the embargo policy.<sup>16</sup>

Despite the rejection, Mesilla and El Paso valley residents worried that the embargo might be altered or abolished altogether. These anxieties became acute when rumors reached the southern New Mexico-El Paso area that newly appointed Secretary of the Interior Hubert Work, a native of Colorado, planned to ask all parties to show cause why the embargo should not be eliminated altogether. Despite government assurances that the embargo would not be altered during Rio Grande Compact negotiations, the uneasiness among Rio Grande Project irrigators persisted during and well after the 1924 Rio Grande Compact Commission meeting where Texas's possible participation in the talks had been discussed.<sup>17</sup> Mesilla Valley and El Paso Valley water users were especially upset by the persistence of the rumors, and it was this apprehension that threatened to sabotage the compact deliberations just as the decision was made to include Texas.

In January 1925, with the embargo crisis looming ominously over arrangements for further compact negotiations, U.S. Senator Morris Sheppard of Texas and El Paso-area Congressman Claude B. Hudspeth, accompanied by New Mexico and Texas water users, called on Rio Grande Compact Commission Chairman Herbert Hoover to seek a solution. Explaining that Texas would not participate in the Rio Grande Compact deliberations unless the federal government

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16. George M. Corlett, "Statement to the Secretary of the Interior on Appeal from Action of the Commissioner of the General Land Office on the Application of the River Ranch Company for the Approval of a Right of Way for the Vega Sylvestre Reservoir" (N.d.), copy in Ottamar Hamele, "The Embargo on the Upper Rio Grande" (Nov. 11, 1924), New Mexico State Engineer Office, Santa Fe.

17. F. M. Goodwin to J. W. Taylor, Sept. 16, 1924, folder 1, box 40, Elephant Butte Irrigation District Records, Rio Grande Historical Collections, New Mexico State University, Las Cruces; Taylor to Richard Burges, Nov. 3, 1924, folder 4, box 39, *ibid.*; Taylor to J. O. Seth, Nov. 3, 1924, folder 7, box 39, *ibid.*; Goodwin to H. O. Bursum, Sept. 17, 1924, file 8-3, box 1638, Central Classified files, 1907-1936, Records of the Office of the Secretary of the Interior; Elwood Mead, memorandum for the Secretary of the Interior, Sept. 6, 1924, box 2F468, Burges Papers; Burges to James E. Ferguson, April 8, 1925, *ibid.*

again pledged that the embargo would remain intact until the negotiators had finished their work, the delegates asked Hoover to intervene on their behalf. Hoover agreed to secure a promise from Secretary Work that the embargo would stay in place, and Hoover later told Congressman Hudspeth that Work had given the necessary assurance. Rio Grande Project water users were pleased with the news, but to reinforce their position, Mesilla Valley irrigators recommended that a bill be introduced in the New Mexico state legislature to appropriate \$25,000 for use in litigation against Colorado should the embargo be altered.<sup>18</sup>

Regardless of Work's pledge, on February 5, 1925, he quietly responded to a request from a fellow Coloradan, U.S. Senator Lawrence Phipps, that the Department of the Interior reconsider the River Ranch Company's request to build the Vega Sylvestre Dam. After a thorough review of the proposal, Work found that the right-of-way had been denied solely because of the Rio Grande embargo, and he ruled that "additional development through storage of water along the upper reaches of the Rio Grande and its tributaries will not be inimical to the interests of the Rio Grande reclamation project." Concluding that the proposed Colorado reservoir would "in all probability tend to stabilize and regulate the flow of flood waters in the stream," Work approved the River Ranch Company's application.<sup>19</sup>

Rio Grande Project water users did not learn of Work's action for over a month, and because of his previous assurances to Hoover that the embargo would not be altered during the compact talks, irrigators below Elephant Butte continued to wait patiently for the Texas legislature to authorize the appointment of a compact commissioner.<sup>20</sup> Finally, six weeks after the Vega Sylvestre Reservoir had been approved, officials of the Elephant Butte Irrigation District and the El Paso

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18. Undated report, Arthur T. Hannett Papers, Mew Mexico State Records Center and Archives; J. W. Taylor to J. O. Seth, Jan. 21, 1925, folder 6, box 39, Elephant Butte Irrigation District Records; Taylor to Seth, Feb. 26, 1925, *ibid.*

19. "Motion for Rehearing," Feb. 5, 1925, copy in Hamele, "The Embargo on the Upper Rio Grande," 137-138.

20. Burges to D. C. Henny, March 12, 1925, box 2F468, Burges Papers; Burges to James E. Ferguson, April 8, 1925, *ibid.*

County Water Improvement District No. 1—which, respectively, represented the New Mexico and Texas farmers within the Rio Grande Project—were notified that the River Ranch Company’s petition had been sanctioned by the Interior Department. The long delay between Secretary Work’s approval and the districts’ notification shocked Rio Grande Project leaders and triggered suspicions that the right-of-way consent had been hushed-up to avoid protests. As Richard Burges irately fumed to Senator Morris Sheppard, “while we do not charge that any effort was made to suppress knowledge of the fact, it seems strange that it should have leaked out so slowly and in the way it did.”<sup>21</sup>

There was great dismay when word of Secretary Work’s decision reached water users in the Mesilla and El Paso valleys. They quickly called a conference, which included among those present New Mexico Governor Arthur T. Hannett and Rio Grande Compact Commissioner Julian Seth. Unanimously agreeing that under the circumstances further talks with Colorado would be useless, the New Mexico and Texas irrigators demanded that a lawsuit be filed in the U.S. Supreme Court to settle all water rights on the river. Seth then told Hoover that unless he had “something to suggest which will relieve the situation,” New Mexico would have to withdraw from the compact negotiations.<sup>22</sup>

Following the meeting with Governor Hannett and Commissioner Seth, representatives of the Elephant Butte Irrigation District and the El Paso County Water Improvement District No. 1 filed formal objections to the Vega Sylvestre Dam with President Calvin Coolidge and various federal agencies. The complaints condemned the project and suggested that since Secretary Work could not legally reverse a right-of-way grant, perhaps the Justice Department could file a suit to block implementation of the permit—an idea that no doubt derived from a similar tactic used three decades earlier to stop the Rio Grande Dam and Irrigation Company’s plans and to allow the 1904 compromise to take place permitting the Reclamation Service to build the dam at Elephant

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21. Burges to Morris Sheppard, April 18, 1925, *ibid.*

22. Seth to Hoover, May 15, 1925, Commerce Papers.

Butte. The two districts also sought to have the State Department intercede on the theory that the Vega Sylvestre right-of-way might interfere with Mexico's rights under the 1906 treaty.<sup>23</sup>

Despite the overwhelming opposition by southern New Mexicans and western Texans to the Vega Sylvestre Reservoir approval, their protests were in vain, and from their perspective, the situation soon went from bad to worse. Although the River Ranch Company's right-of-way had been sanctioned because of the Reclamation Service's recommendation that each Rio Grande right-of-way application be considered on its merits, the Rio Grande embargo itself was still technically in force, subject only to requests for exemption on a case-by-case basis. Then on May 20, 1925, Secretary Work vacated the entire embargo order. An outraged editorial writer for the *El Paso Herald* cynically speculated that Work had ended the embargo because he planned to resign from Coolidge's Cabinet and run for one of Colorado's U.S. Senate seats. Notwithstanding Work's possible political ambitions, the Secretary professed that the cancellation stemmed from his conviction—endorsed by most western states' water officials—that the proper arena to settle water disputes was in court. According to Work, the federal government had no authority to interfere with a state's regulation of water within its boundaries, and the Rio Grande embargo had been a manifest violation of this basic tenet.<sup>24</sup>

The lifting of the Rio Grande embargo crushed any hope that New Mexico would stay in the compact negotiations. On June 1, 1925, Julian Seth withdrew from the proceedings and resigned as a commissioner, telling Herbert Hoover that the

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23. Protest to the Secretary of the Interior, May 9, 1925, Commerce Papers; Burges to Morris Bien, April 30, 1925, Burges Papers; Bien to Burges, May 6, 1925, *ibid.*; Bien to the Secretary of State, May 28, 1925, folder 5, box 21, Elephant Butte Irrigation District Records. For considerable correspondence on the protests over the approval of the River Ranch Company's application, see folder 12, box 39, *ibid.*

24. "Department of the Interior Memorandum for the Press," May 20, 1925, Commerce Papers; undated editorial in *El Paso Herald*, reprinted in "Broken Faith?" *Santa Fe New Mexican*, May 25, 1925; Hubert Work to the Commissioner of the General Land Office, May 20, 1925, file 8-3, box 1639, Central Classified files, 1907–1936, Records of the Office of the Secretary of the Interior.

change in the embargo's status made a compact "impossible from the viewpoint of the people interested in this state."<sup>25</sup> Texas Governor Miriam "Ma" Ferguson, who had recently appointed a commissioner from her state, favored continuing with the talks in order to demonstrate in any subsequent court action that all possible steps had been taken before litigation was commenced. New Mexico Governor Hannett, however, proceeded immediately to prepare a suit against Colorado in the U.S. Supreme Court.<sup>26</sup> That action prompted the State Taxpayers' Association (a New Mexico political organization representing interests in the northern part of the state), acting with Colorado's support, to file suit in New Mexico district court to prevent the use of state funds to finance the litigation against Colorado. The district court granted an injunction on the grounds that the money to finance the suit against Colorado, which was to come from the state's Permanent Reservoirs for Irrigation Purposes Fund, could only be used to build reclamation works. The governor appealed that decision to the New Mexico Supreme Court, which vacated the injunction and allowed Governor Hannett to move forward with his plans to sue Colorado in the U.S. Supreme Court.<sup>27</sup>

The search for engineering consultants to testify in the litigation and the time required to compile technical data postponed filing the lawsuit against Colorado for about a year. This delay allowed tempers to cool and permitted the possibility to resurface of using an interstate compact to

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25. Seth to Hoover, June 1, 1925, Francis C. Wilson Papers, New Mexico State Records Center and Archives. See also J. O. Seth to A. T. Hannett, June 1, 1925, Commerce Papers.

26. Miriam A. Ferguson to Arthur T. Hannett, June 4, 1925, Hannett Papers; Taylor to Hannett, June 4, 1925, *ibid.*; Hannett to Ferguson, June 6, 1925, *ibid.*; Hannett to Summers Burkhart and James A. Hall, June 8, 1925, *ibid.*; Burkhart to Taylor, June 16, 1925, folder 11, box 40, Elephant Butte Irrigation District Records.

27. J. W. Taylor to Morris Bien, Sept. 26, 1925, box 2F468, Burges Papers; George M. Neel to Burges, Oct. 23, 1926, *ibid.*; D. C. Henny to Burges, Nov. 3, 1926, *ibid.*; Taylor to Henny, Feb. 7, 1927, *ibid.*; Burges to T. H. McGregor, June 29, 1926, box 2F469, Burges Papers; *Albuquerque Evening Herald*, Dec. 21, 1925; *Grande Junction Daily Sentinel*, Aug. 18, 1926; Hannett to Burkhart, Sept. 9, 1926, Hannett Papers; Taylor to Bien, Sept. 26, 1925, folder 5, box 21, Elephant Butte Irrigation District Records.

settle the dispute.<sup>28</sup> With compact deliberations once again seen as feasible, Francis C. Wilson of New Mexico, Delph Carpenter of Colorado, and T. H. McGregor of Texas met in Santa Fe on December 19, 1928, to begin negotiations. Also in attendance were officials from the Middle Rio Grande Conservancy District, an agency that had been created in 1925 to coordinate reclamation efforts in the basin near Albuquerque.<sup>29</sup> Other representatives came from the Elephant Butte Irrigation District, the El Paso County Water Improvement District No. 1, and the Indian Irrigation Service. Assistant U.S. Attorney General William J. Donovan was the federal delegate, replacing Herbert Hoover, who had resigned to be sworn in as the new President of the United States.<sup>30</sup>

Discussions began with New Mexico's Wilson defining his state's position. Neither New Mexico nor Texas, he stated, wanted additional Rio Grande water, but both sought to prevent further Colorado diversions. Wilson recognized Colorado's desire to increase development in the San Luis Valley, but he thought this could be done by draining the waterlogged part of the valley commonly known as the "dead" or "sump" area and using the recovered supplies elsewhere. Such a plan, Wilson believed, would allow Colorado to enlarge its irrigated acreage as well as to expand its water supplies by as much as 200,000 acre-feet a year with no detrimental effects below the Colorado-New Mexico state line. Without drainage

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28. Francis C. Wilson to T. H. McGregor, Oct. 7, 1927, Wilson Papers; Wilson to Delph E. Carpenter, Nov. 17, 1927, *ibid.*; Wilson to Carpenter, Dec. 2, 1927, *ibid.*; Edwin Mechem to Wilson, Nov. 22, 1927, box 2F469, Burges Papers; Burges to Wilson, Nov. 25, 1927, *ibid.*; Burges to Wilson, Feb. 1, 1928, *ibid.*

29. For an overview of the history of the Middle Rio Grande Conservancy District, see Clark, *Water in New Mexico*, 209-212. For unpublished reports on the purpose and nature of the Middle Rio Grande Conservancy District, see especially E. B. Debler and C. C. Elder, "Preliminary Report on Middle Rio Grande Valley Investigation—New Mexico," Dec. 15, 1927, New Mexico State Engineer Office; Joseph L. Burkholder, "Report of the Chief Engineer Submitting a Plan for Flood Control, Drainage, and Irrigation of the Middle Rio Grande Conservancy Project," Aug. 15, 1928, New Mexico State Interstate Stream Commission Records, New Mexico State Records Center and Archives.

30. "Proceedings of the Rio Grande Compact Conference Held December 19-20-21, 1928, at Santa Fe, New Mexico," 1, New Mexico Interstate Stream Commission Records.

of the sump area, he cautioned, the Vega Sylvestre Dam would be a direct threat to the water rights of the Rio Grande Project because it would impound then-existing flows leaving the San Luis Valley. To protect those downstream, Wilson insisted on the delivery of a specific volume of water at the Colorado-New Mexico state line.<sup>31</sup>

Richard Burges, who was present to advise McGregor, spoke next on behalf of Texas, affirming that his state relied upon its rights as established by the U.S. government's appropriations made in 1906 and 1908 for the Rio Grande Project. In addition, he asserted that Texas held senior water rights for 20,000 acres below the Rio Grande Project. Most of this land, he claimed, was being served by Rio Grande Project return flows and therefore was covered by the 1906 and 1908 appropriations. Finally, 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.<sup>32</sup>

With the New Mexico and Texas positions established, Colorado Lieutenant Governor George M. Corlett spoke for the San Luis Valley irrigators, outlining the history of the Rio Grande embargo and describing how, in his view, that restriction had been a grave injustice to Coloradans. Corlett offered two reasons why additional storage of Rio Grande water in Colorado would not decrease water supplies downriver. First, he maintained that even without draining the sump area, increased return flows would result from any

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31. *Ibid.*, 6-11.

32. *Ibid.*, 13. El Paso continued to seek Rio Grande water supplies over the following years and recently has engaged in litigation against New Mexico to allow the city to drill wells across the state line to tap the underground flow of the river. See *City of El Paso v. Reynolds*, 563 F. Supp. 379 (1983); Stephen Dillon, untitled summary of El Paso/New Mexico water problems (speech presented to the New Mexico legislature in 1984), New Mexico State Engineer Office, Santa Fe; Nancy E. Hetrick, "Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy—The Constitutionality of New Mexico's New Municipality Water Planning Statute," *Natural Resources Journal*, XXIX (1989), 223-249; Robert F. Durant and Michelle Deany Holmes, "Thou Shalt Not Covet Thy Neighbor's Water: The Rio Grande Basin Regulatory Experience," *Public Administration Review*, XLV (1985), 821-831; "Thy Neighbor's Water," *Albuquerque Journal Magazine*, V:3 (Nov. 3, 1981), 4-8, 13.

supplemental San Luis Valley diversions.<sup>33</sup> Second, Corlett contended that any Rio Grande water flowing from the San Luis Valley into New Mexico was (and would be) lost to evaporation in the desert heat long before it could reach Elephant Butte Reservoir. Consequently, additional storage at the proposed Vega Sylvestre Reservoir, according to Corlett, would not adversely affect irrigators below the Colorado-New Mexico state line, and he suggested that the facility might even benefit farmers in extreme northern New Mexico by acting as storage for them as well as for Colorado interests. Corlett concluded that while he was loath to abandon the quest for the Vega Sylvestre Reservoir, he was willing to work with New Mexico and Texas representatives to secure federal aid for drainage of the San Luis Valley sump area and to provide related storage works on the upper Rio Grande.<sup>34</sup>

During several more negotiating sessions, the commissioners and other delegates heard testimony by engineering consultants representing the three states, the two Rio Grande Project irrigation districts, and San Luis Valley irrigators.<sup>35</sup> As the talks dragged on from December into February, the commissioners realized that they would be unable to achieve a final agreement before the current sessions of their legislatures adjourned. Since those legislatures met only once every two years, the negotiators recognized that a temporary accord would be necessary to avoid litigation by New Mexico against Colorado in the U.S. Supreme Court. Thus, on February 12, 1929, Francis Wilson, T. H. McGregor, and Delph Carpenter signed a compact that in essence recognized the existing uses in the three states until a permanent pact could be completed.<sup>36</sup>

Acknowledging the U.S. government's right to enter into treaties with foreign nations, this 1929 Rio Grande Compact

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33. This was similar to an argument Colorado's attorneys were then advancing in that state's long-standing dispute with Kansas over the Arkansas River to justify growing Colorado depletions of that stream.

34. "Proceedings of the Rio Grande Compact Conference Held December 19-20-21, 1928, at Santa Fe, New Mexico," 15-22, New Mexico Interstate Stream Commission Records.

35. *Ibid.*, 22-78.

36. "Rio Grande Compact—Report of the Commissioner for New Mexico and Memorandum of Law on Interstate Compacts on Interstate Streams," Wilson Papers.

nonetheless asserted that the 1906 treaty with Mexico giving that country 60,000 acre-feet of water a year had been made at the expense of citizens of Colorado, New Mexico, and Texas. To remedy that fault, the compact suggested that the United States build a drain for the San Luis Valley's sump area and a reservoir in Colorado near the state line to impound the increased Rio Grande flow from the drainage works. These new reclamation features were to benefit all three states.<sup>37</sup>

Tied to this request was the central point of the 1929 compact. Until the San Luis Valley drain and the reservoir were constructed, Colorado agreed not to increase diversions, build more storage facilities, or impair the flow of the river as it then existed. Coloradans considered this a price worth paying on a temporary basis in order to prevent them from being sued by New Mexico. Moreover, the compact, by accepting the status quo so far as water uses were concerned, left the 1904 National Irrigation Congress compromise dividing water between users above and below El Paso within the Rio Grande Project firmly in place. Once the sump area drain and state-line reservoir were completed, the compact provided that representatives of the three states would meet again to work out a lasting settlement. As a final caveat, however, the pact noted that if the drain and reservoir were not functioning by June 1, 1935, or if no permanent agreement had been achieved by that date, then each state could do as it saw fit.<sup>38</sup>

Colorado approved this temporary compact in early April 1929, and New Mexico and Texas—both of which had waited for Colorado's ratification before taking any action of their own—followed suit shortly thereafter. Because the stock market crash and the beginning of the Great Depression later in 1929 made federal funding for any major project controversial, U.S. approval did not come until June 17, 1930, when President Hoover signed a congressional bill ratifying the accord.<sup>39</sup>

With the compact formally in effect, the three states next

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37. *Ibid.*

38. *Ibid.*

39. Wilson to Burges, April 5, [1929], box 2F469, Burges Papers; Herbert W. Yeo to Burges, May 29, 1929, *ibid.*; unidentified and undated news clipping in Wilson Papers.

turned to obtaining U.S. funds for the drain and reservoir, but the debilitating effects of the nationwide economic collapse made securing an appropriation extremely difficult. As the 1935 deadline approached, the three states realized that the need for a permanent compact was, if anything, greater than it had been before, especially due to the severe drought conditions of the 1930s.<sup>40</sup> Spurred by this situation as well as by a lawsuit filed in the U.S. Supreme Court by Texas against New Mexico and the Middle Rio Grande Conservancy District to force the apportionment issue, the states agreed to extend the compact for two more years until June 1937 (subsequently lengthened by four months to October 1937) to allow a study of the Rio Grande coordinated by the federal government.<sup>41</sup> Aimed partly at overcoming the lack of data on the projected operation of the drain and reservoir (which had hindered securing federal funding for those projects) the inquiry—known as the Rio Grande Joint Investigation—undertook an extensive examination of many aspects of the river basin.

The information generated by the joint investigation proved to be crucial in negotiating a permanent compact, and while the 1929 accord terminated in October 1937, the joint investigation's work had provided a sufficient foundation to allow deliberations to continue toward a final agreement.<sup>42</sup> Also encouraging the talks to proceed in the absence of the 1929 accord was the Texas suit against New Mexico, which still loomed ominously in the background. Thus, five months after the 1929 agreement expired, the three states' negotiators signed the 1938 Rio Grande Compact—an accord

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40. Burges to Pearce Rodey, July 8, 1933, box 2F471, Rio Grande Compact Commission Records, Barker Texas History Center, University of Texas, Austin; M. C. Hinderlinder to Burges, July 18, 1933, *ibid.*; George M. Neel to Burges, Aug. 8, 1933, *ibid.*; "Resolution for Special Board," June 20, 1934, *ibid.*

41. "Proceedings of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, January 28th to January 30, 1935," 2-45, New Mexico Interstate Stream Commission Records. On the Texas suit, see *Texas v. New Mexico et al.*, 296 U.S. 547 (1935), 297 U.S. 698 (1936).

42. "Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937," 6-8, New Mexico Interstate Stream Commission Records.

that remains in effect to this day—and with a permanent settlement having been reached, Texas then dropped its suit against New Mexico.<sup>43</sup>

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43. Aside from the Colorado River Compact, prior to 1929 only two other interstate stream compacts (the La Plata River Compact of 1925 between Colorado and New Mexico and the South Platte River Compact of 1926 between Colorado and Nebraska) had been negotiated. By 1951, the number of interstate river compacts had swollen to ten, one of which was the 1938 Rio Grande Compact. Many of the post-1929 compacts had been influenced by the successful negotiation of the 1938 Rio Grande Compact, which in turn had been facilitated by the 1929 accord and the Rio Grande Joint Investigation. The most obvious example of the impact of the Rio Grande experience on other interstate river negotiations is the Pecos River Compact between New Mexico and Texas. Based on information derived during the four-year federal-state Pecos River Joint Investigation (which was completed in 1942), the Pecos River Compact was signed in 1948. See Zimmermann and Wendell, *Interstate Compact since 1925*, 16; Clark, *Water in New Mexico*, 537-541.