

No. 141, Original

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**In the Supreme Court of the United States**

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STATE OF TEXAS, PLAINTIFF

v.

STATE OF NEW MEXICO  
AND  
STATE OF COLORADO

---

*ON BILL OF COMPLAINT*

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**APPENDIX**  
**TO MOTION OF PRE-FEDERAL CLAIMANTS  
FOR LEAVE TO INTERVENE AS PLAINTIFFS IN  
THIS ORIGINAL JURISDICTION CASE,  
COMPLAINT IN INTERVENTION AND  
MEMORANDUM IN SUPPORT OF  
MOTION TO INTERVENE**

---

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**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**Rio Grande Irrigation and Land Company, Ltd. (Great Britain) v. United States**

28 November 1923

VOLUME VI pp.131-138



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of 1884 (reply, p. 37). Nevertheless, the specific authority of the suzerain power was materially changed, and under the 1884 Convention it is plain that Great Britain as suzerain, reserved only a qualified control over the relations of the South African Republic with foreign powers. The Republic agreed to conclude no "treaty or engagement" with any State or nation other than the Orange Free State, without the approval of Great Britain, but such approval was to be taken for granted if the latter did not give notice that the treaty was in conflict with British interests within six months after it was brought to the attention of Her Majesty's Government. Nowhere is there any clause indicating that Great Britain had any right to interest herself in the internal administration of the country, legislative, executive or judicial; nor is there any evidence that Great Britain ever did undertake to interfere in this way. Indeed, the only remedy which Great Britain ever had for maladministration affecting British subjects and those of other Powers residing in the South African Republic was, as the event proved, the resort to war. If there had been no South African war, we hold that the United States Government would have been obliged to take up Brown's claim with the Government of the Republic and that there would have been no ground for bringing it to the attention of Great Britain. The relation of suzerain did not operate to render Great Britain liable for the acts complained of.

*Now, therefore:*

The decision of the Tribunal is that the claim of the United States Government be disallowed.

RIO GRANDE IRRIGATION AND LAND COMPANY, LIMITED  
(GREAT BRITAIN) *v.* UNITED STATES

(November 28, 1923. Pages 336-346.)

PRELIMINARY MOTION: PROCEDURE.—JURISDICTION: POWER OF TRIBUNAL TO DECIDE ON OWN.—APPLICABLE LAW, INTERPRETATION OF MUNICIPAL LAW.—PRIVATE INTEREST IN CLAIM.—PRESENTATION OF CLAIM: PROCEDURE. Lease on May 30, 1896, by American company to English company of irrigation undertaking in New Mexico. Preliminary motion to dismiss claim for absence of British interest and breach of rules of procedure in presentation of case. British objection that no written application made for motion and no written agreement existed between Agents. *Held* that Tribunal has inherent power, and indeed duty, to entertain and, in proper cases, to raise for itself preliminary points going to its jurisdiction. *Held* also that according to applicable American law lease of undertaking not valid and that English company possesses no interest on which claim can be founded. *Held* further that defects in British memorial not such as to furnish adequate ground for preliminary motion. Claim disallowed.

*Cross-references:* Am. J. Int. Law, vol. 19 (1925), pp. 206-214; Annual Digest, 1923-1924, pp. 180-183.

*Bibliography:* Nielsen, pp. 332-335.

This is a claim preferred by His Britannic Majesty's Government on behalf of the Rio Grande Irrigation and Land Company, Limited, and founded upon an alleged denial of real property rights.



As will presently appear, this opinion is not concerned with the merits of the claim itself inasmuch as, in the view of the Tribunal, the Government of the United States of America is entitled to succeed on the preliminary point, relating to the jurisdiction of the Tribunal to entertain the claim at all.

It is necessary, however, to state in some detail the facts out of which the claim arises.

In the year 1893, a corporation entitled the Rio Grande Dam and Irrigation Company (hereinafter called the "American company") was formed under the laws of the territory of New Mexico with a capital stock of \$5 million in shares of \$100 each, for the purpose, *inter alia*, of constructing a dam across the Rio Grande River and impounding its waters for irrigation purposes. The dam was to be constructed at Elephant Butte, a point in Sierra County, New Mexico, about 120 miles above the city of El Paso, and all the concessions, rights and privileges necessary to the effective equipment of the undertaking as an irrigation enterprise were legally acquired by the company aforesaid. The term of the company's existence was forty-seven years. By virtue of a Federal Act of March 3, 1891, in case of an undertaking of this character, an approval and confirmation by the Secretary of the Department of the Interior was necessary. That approval and confirmation was given on February 1, 1895 (memorial, p. 51). By section 20 of that Act it is provided as follows:

"Provided, that if any section of said canal, or ditch, shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture" (U.S. answer, app., p. 129).

In October, 1895, the Rio Grande Irrigation and Land Company, Limited (hereinafter called the "English company"), on whose behalf this claim is preferred, was incorporated in England, for the purpose of financing the American company in consideration of the transfer of the whole undertaking of the American company. Its capital was £ 500,000, consisting of £ 100,000 8 % cumulative preference shares of £ 1 each, and £ 400,000 ordinary shares of £ 1 each. There was also an authorized issue of 2,000 first mortgage debentures of £ 50 each bearing interest at 5 %. These debentures were secured on the undertaking and property of the company under a trust deed which was executed on August 28, 1896, and which conferred upon the National Safe Deposit Company, Limited, as trustee for the debenture-holders, a power of sale in the event, *inter alia*, of the company's going into liquidation, and empowered the trustee in such an event on request made, to appoint a receiver (section 10). Debentures were issued to the value of over £ 40,000, though the precise figure is uncertain. There was also an issue of preference shares to the value of £ 30,500.

The following were the arrangements made between the American and the English companies:

By an agreement dated March 27, 1896 (reply, p. 17), the American company agreed to lease to the English company:

"All the said concession of the American company and all the rights and privileges held or enjoyed by the American company therewith or thereunder as from the date hereof . . ." (reply, p. 17).

for the aforesaid term of 47 years, less three days. The American company covenanted to transfer to and vest in the English company: (a) "All the undertaking of the American company, now capable of being validly transferred to the English company; (b) "The benefit and obligation of certain contracts relating to the acquisition of land, water rights, water rents and water

supply which the American company had made with local landowners and municipalities."

The price to be paid, on completion, by the English company was 300,000 fully paid ordinary shares in the English company and £ 26,500 in cash.

By an agreement dated May 30, 1896, between the two companies, Nathan E. Boyd, an American citizen and the promoter of the whole enterprise, and R. Chetham Strode were appointed the American company's nominees to receive the 300,000 ordinary shares on its behalf (reply, p. 23); while the payment of £ 25,600 in cash was subsequently altered by an agreement of May 31, 1896, between the two companies, to £ 19,450 in debentures and £ 7,050 in cash (U.S. additional evidence, p. 1).

To revert to the agreement of March 27, 1896, in execution of a power created by paragraph 7 thereof, Dr. Nathan E. Boyd was nominated by the American company a director of the English company; and by paragraph 11 it was provided:

"11. The American company shall continue its existence and shall act as the agent of the English company and shall comply with all instructions of the English company or its directors from time to time and shall if requested so to do by the English company hold all or any of the premises hereby agreed to be sold in trust for the English company or as it may from time to time direct" (reply, p. 22).

The arrangements between the companies were completed by an indenture dated May 30, 1896, which witnesses that the American company, in consideration of a yearly rent of \$1 and certain covenants to be performed by the English company, "has leased, demised, and to farm, let, and full liberty given to enjoy and exercise" (U.S. answer, app., p. 655), to the English company the whole of its irrigation undertaking, as therein particularly described:

"To have and hold . . . from the first day of June, one thousand, eight hundred and ninety-six, for and during and until the full end and term of forty-seven years thence next ensuing and fully to be completed and ended" (U.S. answer, app., p. 657).

The English company also acquired the control of the whole of the capital stock of the American company.

There is ample evidence in the minute book of the directors of the English company that, from an early moment in the existence of that company, its directors had felt anxiety as to the validity of the lease from the American company, in view of the alien laws of the United States. In January, 1896, Mr. Newton Crane, a distinguished American counsel, practising at the English bar, was consulted on the point; and expressed the opinion that the English company:

... "may hold canals by leasehold within the territory of New Mexico and State of Texas, and take over absolutely the franchises and powers granted by the United States and the Territory of New Mexico and the State of Texas".

Mr. Hawkins, however, a local attorney in New Mexico, differed; and, this fact being brought to his notice Mr. Newton Crane, in an opinion dated November 18, 1896, while asserting the view that a lease was, both by American and English law, personal property and not an interest in real property, advised that it might be wise, in view of possible local hostility, to form another company in West Virginia, to which the stock of the American company should be transferred, the English company becoming the holder of all the stock in the West Virginia company; but that, in other respects, all arrangements should remain as they were. This advice was followed; and in April, 1897, a company entitled the Rio Grande Investment Company was incorporated



in West Virginia, to which the American company's stock was transferred as consideration for \$1 million worth of stock fully paid of the Rio Grande Investment Company, of which stock the English company became the holder (reply, p. 13; reply, p. 50; English company's minute book, meeting of Friday, April 30, 1897).

It has been discussed before us whether the undertaking as well as the stock of the American company was transferred to the Rio Grande Investment Company. There is evidence both ways, but in our view, the point is, for our present purpose, immaterial.

For some time, going back to a date anterior to the formation of the American company, there had been complaints made by the Mexican to the United States Government in respect of the depletion of the flow in the lower portion of the Rio Grande, owing, as it was alleged, to the interception of its waters for irrigation purposes in Colorado and New Mexico. Commissions of inquiry had been held, and as early as 1890, a suggestion was put forward by Colonel Anson Mills and other engineers that the United States should construct a dam near El Paso. The Elephant Butte enterprise brought this question to a point; it being alleged that the construction of the Elephant Butte dam would make a supply of water adequate for the needs of Mexico impossible.

The jurisdiction over navigable rivers in the United States is vested in the Secretary of War; and proceedings by the Attorney-General may be taken, if so advised, to prevent the diminution of the navigability of such rivers (see Act, September 19, 1890, c. 907; and Act, July 13, 1892, c. 158, printed at pages 125 and 129 of the U.S. answer, appendix).

The federal authorities, having satisfied themselves that the Rio Grande below El Paso was, for some considerable distance, navigable, in May, 1897, brought a suit in the District Court of New Mexico to obtain an injunction against the Rio Grande Dam and Irrigation Company with a view to preventing the construction of the dam at Elephant Butte, on the ground that it would obstruct and diminish the navigability of the Rio Grande. The record was amended by the addition of the English company as co-defendants. The suit was dismissed by the District Court; the dismissal was affirmed by the Supreme Court of New Mexico; but the Supreme Court of the United States, on appeal, reversed that judgment, and remitted the matter to the Court of New Mexico for inquiry as to whether the defendants' dam would diminish the navigability of the Rio Grande within the limits of present navigability. The inquiry was made, and the suit was again dismissed by both the courts of New Mexico; but, on appeal, was again remitted by the Supreme Court of the United States, for the purpose of the same inquiry. At this juncture, in April, 1903, leave was given by the District Court of New Mexico to the United States to file a supplemental complaint, praying that the rights of the American company relating to the Elephant Butte undertaking might be forfeited, on the ground that the work had not been completed within five years after the location of the section as required by section 20 of the Act of March 3, 1891, c. 561 (U.S. answer, app., pp. 74, 93, and 129). The supplemental complaint was served on the attorney of the American company but no appearance within the appointed time was entered thereto. A decree of forfeiture was granted by the District Court, and was affirmed both by the Supreme Court of New Mexico, and, in December, 1909, by the Supreme Court of the United States (U.S. answer, app., pp. 74-92).

The complaint of His Britannic Majesty's Government, as put forward in the reply, is that these proceedings were oppressively and indirectly launched and prosecuted with other than their avowed object; and that:

"The real purpose of the litigation appears to have been to defeat the Com-



pany's scheme and it is the initiation and relentless prosecution of the suit of which His Majesty's Government complain" (reply, p. 4).

More than nine years before the conclusion of this litigation namely, in April, 1900, the English company had gone into liquidation (reply, p. 26).

On May 3, 1900, Dr. Nathan E. Boyd was appointed receiver for the debenture holders (reply, p. 43); and on May 4, 1900, the liquidator of the company sold the equity of redemption in all the company's undertaking, assets and rights to the receiver (reply, p. 49), the debenture holders, thereupon, becoming the owners of everything belonging to the company.

The only remaining facts, relevant to the point of jurisdiction which we have now to decide are connected with the presentation of this case during this session before the Tribunal.

On Friday, November 9, 1923, the British Agent applied for leave to file a reply. This application was opposed by the United States Agent, broadly, on the ground, that, having regard to the history of the case, the rules of procedure, and the defective character of the memorial, so voluminous a document should not be admitted at so late a moment. After some discussion, having regard to the desire of both governments to have the case disposed of, it was agreed that the case should proceed, the reply being admitted, and both sides being at liberty to file additional evidence. Later, on the same day, the following conversation took place between the Tribunal and the Agents on both sides (transcript of record, 17th sitting, p. 23):

"The UMPIRE: . . . Mr. Nielsen, you want to present some observations about a preliminary motion, is not that so?"

"Mr. NIELSEN: I want to present a motion that this claim should be dismissed because of the manner in which it is presented, and because there is no showing of any British interest in it, I mentioned one individual whom we have always regarded as the real claimant."

"The UMPIRE: In the circumstances Mr. Nielsen will explain or deliver up that motion, and then Sir Cecil Hurst will answer."

"Mr. NIELSEN: I shall ask Mr. Dennis to argue that motion, if it pleases."

"The UMPIRE: Mr. Dennis will deliver that motion and then you will give your answer on the motion, Sir Cecil Hurst."

"Sir Cecil HURST: A reply will certainly be made on behalf of His Britannic Majesty's Government."

The motion to dismiss the claim was filed on that day by the United States Agent. Broadly, it raised two points: (1) the absence of British interest in the claim; (2) the breach of the Rules of Procedure in the presentation of the case.

On Monday, November 12, 1923, the British Agent wrote a letter to the United States Agent giving notice that he intended to argue that a preliminary motion of this character was not contemplated or provided by the rules or any of the instruments controlling the Tribunal. This point was in fact taken by the British Agent at the end of his argument made in reply to the motion, when, he further argued that, if such a motion was provided for anywhere, on the proper construction of rules 31, 37, and 38, application for leave to make it must be in writing, and that there had been no such application in writing; and further, that, while under the rules and the exchange of notes read together, an agreement in writing between the Agents, in such case, was necessary, here there was no such agreement, nor, indeed, any agreement at all.

To these arguments there is, in the opinion of the Tribunal, one conclusive answer. Whatever be the proper construction of the instruments controlling the Tribunal or of the rules of procedure, there is inherent in this and every legal

Tribunal a power, and indeed a duty, to entertain, and, in proper cases, to raise for themselves, preliminary points going to their jurisdiction to entertain the claim. Such a power is inseparable from and indispensable to the proper conduct of business. This principle has been laid down and approved as applicable to international arbitral tribunals (see Ralston's International Arbitral Law and Procedure, pp. 21 *et seq.*). In our opinion, this power can only be taken away by a provision framed for that express purpose. There is no such provision here. On the contrary, by article 73 of chapter III of The Hague Convention, 1907, which, by virtue of article 4 of the treaty creating this commission, is applicable to the proceedings of this commission, it is declared:

"The tribunal is authorized to declare its competence in interpreting the *compromis* as well as the other acts and documents which may be invoked, and in applying the principles of law."

The question, therefore, which we have to decide is this: whatever our opinion may be as to the forfeiture of the American company's rights by the courts of the United States, does the English company possess the interest necessary to support this claim?

Clearly, the debenture holders, in this respect, are in no better position than their debtors, the English company, through whom they claim.

To answer this question, it is necessary to consider carefully the provisions of the United States Alien Law, Act of March 3, 1887, c. 340 (U.S. answer, app., p. 122); it being United States law which is decisive of the validity of this leave. This point, it may be observed, is raised on the face of the record.

The following are the material sections of the Act aforesaid:

"1. That it shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, or for any corporation not created by or under the laws of the United States, or of some State or Territory of the United States, to hereafter acquire, hold, or own real estate so hereafter acquired, or any interest therein, in any of the territories of the United States or in the District of Columbia, except such as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts heretofore created:

"

"4. That all property acquired, held, or owned in violation of the provisions of this Act shall be forfeited to the United States, and it shall be the duty of the Attorney-General to enforce every such forfeiture by bill in equity or other proper process" (U.S. answer, app. pp. 122-123).

Two questions arise on these sections. The first is this: were the American company's rights, concessions, and privileges, real estate rights? This question is best answered by the description of them contained in: (1) The Agreement of March 27, 1896 (reply, p. 17); (2) The Indenture of May 30, 1896 (U.S. answer, app. p. 655); (3) The Trust Deed of August 28, 1896 (British additional evidence).

In our opinion, the answer to this question is in the affirmative. The description of these rights given in the documents referred to leaves no room for doubt on this point.

The second question is this: did the lease of these rights, concessions, and privileges, granting as it did to the English company, the entire undertaking for the whole life of the American company, constitute "an interest in real estate"? In the opinion of the Tribunal, the answer to this question also is in the affirmative. No decision to the contrary has been brought to our notice. Looking at the wording of the Act itself, the term "interest" is very wide, certainly wide enough to include a lease. It is no doubt true that a lease is personal



estate and goes to the executor; but that fact does not, in our opinion, prevent its being an interest in real estate--a view which seems to be supported by the description of a lease as a "chattel *real*". Further, the words in section I, "hold or own", appear to point in the same direction; as, had freeholds only been contemplated, the word "own" would have been sufficient; while the word "hold" is aptly referable to a lease. It should also be remembered that this claim is expressly put forward as "based on an alleged denial in whole or in part of real property rights" (reply, p. 3).

In an opinion, dated May 20, 1887, immediately after the passage of the Act under consideration, the Attorney-General of the United States expressed the view that "bona fide leases are not intended to come within the inhibition of the Act", but the recent decision on November 19, 1923, of the Supreme Court of the United States in *Frick v. Webb* (281 Federal Reporter 407), seems to support a contrary view. This was a suit brought in the United States District Court by one Frick, who wished to sell some stock in a California land corporation to his co-plaintiff, Satow, a Japanese subject, to prohibit the Attorney-General of California from taking steps to prevent the sale being carried out, as being in contravention of section 2 of the Californian Alien Land Law of 1920 (Statutes of California, 1921, p. lxxxiii).

The material sections of that law are:

"Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit, and inherit, real property, or any interest therein, in this State, in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this State.

"Section 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, and transfer real property, or any interest therein, in this State, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the Government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise" (279 Federal Reporter, p. 115).

The material portion of the headnote is as follows:

"Ownership by a Japanese subject, who is ineligible to citizenship, of stock in a farm corporation, which owned agricultural land, held 'ownership of an interest in the land,' within Alien Land Law, Cal. 1920, Sec. 2".

In the course of the judgment these words occur:

"We think the ownership of stock in such a corporation would be an interest in real property".

The plaintiff appealed to the Supreme Court of the United States which upheld the decision.

Without pushing this decision too far, it would seem, at least, to indicate that the Supreme Court of the United States is inclined to give a broad interpretation to the words "interest in real property" or "interest in real estate" where they occur in alien laws.

It was urged by the British Agent that, as the Alien Law of 1887 had never been invoked by the United States in the long litigation against the American and English companies, this point should not be taken by the Tribunal now. This, as has been said, is not the view we take of our power or duty in relation to a clear point of jurisdiction raised, as this is, on the face of the record. Further, the course followed in this respect by the United States may well be explained by the fact that the main object of that litigation was not to crush the English company, but to get rid of the Elephant Butte concession which had been granted to the American company.



It is possible, perhaps, to argue that the meaning of section 4 of the Alien Law of 1887 is that the title to such property is good until forfeited by proper process. It appears to the Tribunal that, if that meaning was intended, the words would have been "shall be subject to forfeiture", and not "shall be forfeited". However that may be, by section 1 the acquisition of real estate or any interest therein by the persons mentioned is made "unlawful". Such acquisition, therefore, cannot found any claim for compensation.

The result, therefore, is that the English company took no valid rights whatever under the lease from the American company, and possesses no interest on which a claim such as this can be founded.

A very large part of the arguments addressed to the Tribunal on both sides was directed to the transactions relating to the debentures issued by the English company and the nationality of the debenture holders. Having regard to the view which the Tribunal takes of the position of the English company under the alien law, discussion of these points is unnecessary.

Another ground urged before us by the Government of the United States was the breach of the rules of procedure which, it was alleged, His Britannic Majesty's Government had committed in the presentation of the claim. On this point, it is sufficient to say that, while recognizing that there were defects in the memorial in this case, the Tribunal does not think, in all the circumstances, that those defects were such as to furnish, in themselves, adequate ground for allowing a preliminary motion of this character.

In conclusion, we desire to say that, in our opinion, even had the lease from the American company been valid, a formidable point, arising out of the English company's relations with the Rio Grande Investment Company, might still have lain in the way of His Britannic Majesty's Government.

*Now, therefore:*

The award of the Tribunal is that the claim of His Britannic Majesty's Government be disallowed.

#### UNION BRIDGE COMPANY (UNITED STATES) v. GREAT BRITAIN

*(January 8, 1924. Pages 376-381.)*

##### AMENDMENT OF PLEADINGS.—INTERNATIONAL TORT.—NEUTRAL PROPERTY.—

LIABILITY FOR ACTS OF OFFICIALS, WAR CIRCUMSTANCES, INTENTION. Purchase in January-March, 1899, by Orange Free State from American company of materials for steel road bridge f.o.b. New York. Outbreak of war between Great Britain and Orange Free State on October 12, 1899. Arrival of materials in Port Elizabeth on October 25 and November 12, 1899. Refusal by agents of Orange Free State to pay. Annexation of Orange Free State by Great Britain on May 24, 1900. Transport of materials in August, 1901, from Port Elizabeth to Bloemfontein by order of Storekeeper of Cape Government Railways at Port Elizabeth and without notice to agents of company. Storage at Bloemfontein by Imperial Railway authorities. No request for return made by agents of company who since October, 1901, were aware of transport to Bloemfontein. No answer to letters written in 1907 by Central South African Railways to company concerning return of materials. Materials put up to auction and bought by Central South African Railways on July 22, 1908.



# DEED RECORD 17

A-10

008

*Donna Ann 1848-6-01 Western register journal*



Rio Grande Drain and Irrigation Company

Statement

San Antonio River Project from June 1895

Known and known by these statements, that the Rio Grande Drain and Irrigation Company, a corporation existing under the laws of New Mexico and doing business in the county of Santa Fe, New Mexico, hereby files this statement with the accompanying map through Edwin C. Roberts, its President, with the clerk of the Santa Fe County of Santa Fe county for the purpose of acquiring the rights of appropriation of the waters of the Rio Grande for the purposes as set forth in the charter of said company at a dam and reservoir site on the Rio Grande in sections 1, 12, 13, 24 and 25 and in sections 6, 7, 18, 19, 30 and 31 in Twp 20 South Range 2 West and 21 South Range 1 West respectively and also in such sections of Twp 19 South Range 2 West as may lie within the valley of the Rio Grande in Santa Fe county; that the said company proposes to take the waters from the Rio Grande at the points above designated by means of a dam and reservoir to be built and operated by said company; that the dam shall be located in the N.E. quarter of the N.W. quarter of Section 31 Twp 20 South Range 1 West and the reservoir site to occupy the valley above in the sections aforesaid; that the reservoir of water to which the company aforesaid lays claim under its rights of appropriation at the dam and reservoir site aforesaid includes 1000 acres of the ordinary floor of the Rio Grande at said points and as much of the flood waters of the Rio Grande as it shall be able to store within the reservoir aforesaid; that the foregoing statement and map are filed by said company in compliance with an act of the Legislature entitled "An act to provide a method for establishing the rights of appropriation of water for detention, canals and feeders to reservoirs, and requiring registration of all such heretofore made changes or enlargements," approved February 25th A.D. 1891.

Edwin C. Roberts, being duly sworn says that he is President of the Rio Grande Drain and Irrigation Company and that he files the foregoing statement and map in the manner and for the purposes therein set forth.

Edwin C. Roberts

President Rio Grande Drain and Irrigation Co.

Shown to and subscribed to before me A. M. Hoopes a Notary Public in and for the County of Santa Fe, New Mexico, this 1st day of June 1895.

A. M. Hoopes

Notary Public in and for Santa Fe County, N.M.

Filed for Record June 2nd - A.D. 1895 - at 5 O'Clock P.M.

H. P. Thompson

Recorder



Exhibit CC

WM. B. CHILDERS, U. S. Attorney,  
Albuquerque.

W. C. REID, Asst. U. S. Attorney,  
El Paso.

E. L. MEDLER, Asst. U. S. Attorney,  
Albuquerque.

OFFICE OF THE

*United States Attorney*  
FOR NEW MEXICO.

Albuquerque, N. M., Nov. 8, 1903.

Attorney General,

Washington, D. C.

Sir:

Your telegram of yesterday, reading "Take all possible means  
prevent reopening and prolongation Rio Grande case." received.

Your instructions will be carefully followed. I had assumed  
that the Government would take that position from the time of the  
notice of the application.

Respectfully,

*W B Childers*  
United States Attorney.

STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
THIRD JUDICIAL DISTRICT

STATE OF NEW MEXICO, ex rel.  
Office of the State Engineer,

Plaintiffs,

-vs-

No. CV-96-888  
Lower Rio Grande Adjudication  
James J. Wechsler,  
Presiding Judge

Stream System Issue No. 97-104

ELEPHANT BUTTE IRRIGATION,  
et al.,

Defendants.

VOLUME II

PARTIAL TRANSCRIPT

DEPOSITION OF ANDREW GAHAN, PH.D.

March 3, 2015  
9:03 a.m.  
501 Halona Street  
Santa Fe, New Mexico

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE, this deposition was:

TAKEN BY: FRANCIS L. RECKARD  
ATTORNEY FOR PLAINTIFF

(Exhibit 30 marked for identification.)

20 Q. Can you identify -- wait. Let's mark it  
21 Exhibit 30. If you would, Dr. Gahan, can you identify  
22 what's been marked as Exhibit 30?

23 A. This is the Department of the Interior,  
24 titled, "Water Supply and Irrigation Papers of the  
25 United States Geological Survey, Number 10,

**CUMBRE COURT REPORTING, INC.**

505-984-2244

STATE OF NM vs. ELEPHANT BUTTE IRRIGATION (Partial) Andrew Gahan, Ph.D., Vol. II

CV 96-888 March 03, 2015

Page 301

1 Washington, Government Printing Office, 1898."

2 Q. Have you seen this document before?

3 A. I have not.

4 Q. May I -- but you're part of the Department  
5 of the Interior also, aren't you?

6 A. Yes, I am.

7 Q. And theoretically, you would have access to  
8 this type of a document?

9 A. I'd have to go looking for it, but yes.

10 Q. But you're a historian, and I believe the  
11 answer would be, "Yes."

12 MR. RICH: Why don't you just submit a  
13 transcript, and we can skip this.

14 MR. SIMON: Excuse me for being verbose.

15 Q. There is a photograph on the third page, I  
16 believe, of this -- I'm so sorry. I don't know which  
17 one yours is. I've excised it. There is a  
18 photograph --

19 A. This photo here?

20 Q. Exactly. Can you tell us if you've ever  
21 seen this photograph before?

22 A. I have not.

23 Q. And can you tell us what this shows, or can  
24 you describe what it shows?

25 MR. LEININGER: Objection, foundation.

**CUMBRE COURT REPORTING, INC.**

505-984-2244

STATE OF NM vs. ELEPHANT BUTTE IRRIGATION (Partial) Andrew Gahan, Ph.D., Vol. II

CV 96-888 March 03, 2015

Page 302

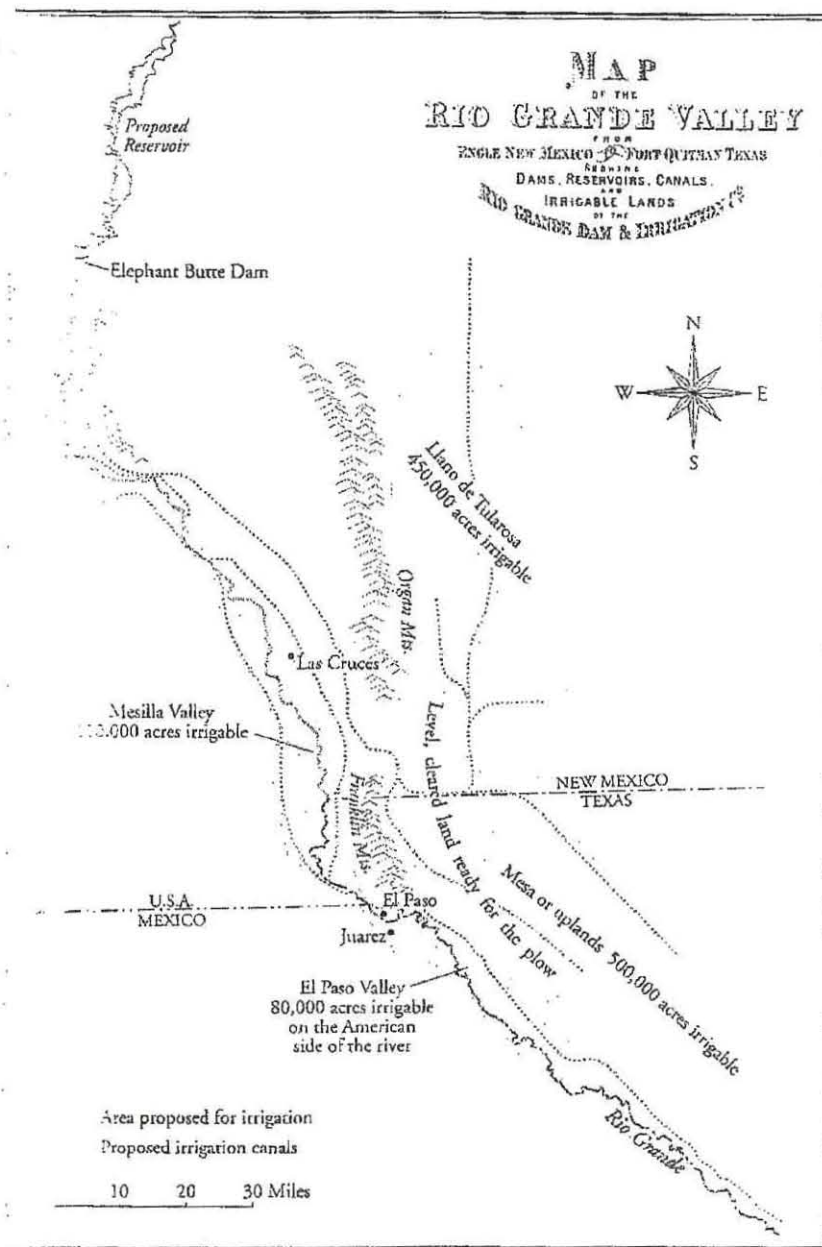
1 Q. Do you have any knowledge of what this is,  
2 based on the picture?

3 A. Based on the picture, no.

4 Q. There is a comment -- there is a caption.

5           A.    There is the caption, though, yes.  
6           Q.    I believe it says, "View of the river in the  
7 new canal at Fort Selden."  
8           A.    Yes.  
9           Q.    Do you know if this is what is typically  
10 referred to as the Leasburg Diversion Dam?  
11               MR. LEININGER:  Objection, foundation.  
12           A.    No, I don't.  
13           Q.    Do you know that there was a dam built at  
14 that location in 1897?  
15               MR. LEININGER:  Objection, foundation.  
16           Q.    I'm asking what your knowledge is.  
17               MR. LEININGER:  You said, "at that  
18 location."  
19           Q.    Well, in that general location.  
20           A.    Can I have the question again, please?  I'm  
21 sorry.  
22               (The record was read as requested.)  
23           A.    I did not know there was a dam built at that  
24 location in 1897.





...ion systems of the Rio Grande valley proposed by the Rio Grande Dam and  
...on Company, mid-1890s. Based on Map of the Rio Grande Valley from  
... New Mexico, to Fort Quitman, Texas, in International Boundary Commis-  
...ceedings, 2: insert. Map by Bill Nelson.



W. C. REID, U. S. Attorney,  
Albuquerque.

Department of Justice.

OFFICE OF THE

*United States Attorney*

FOR NEW MEXICO.

W. C. REID, Asst. U. S. Attorney,  
E. Las Vegas.

E. L. MEDLER, Asst. U. S. Attorney,  
Albuquerque.



Albuquerque, N.M., Jan. 26th. 1903.

Judge M. C. Burch,

c/o Department of Justice,

Washington, D.C.

Dear Sir:-

Judge Parker has signed an order, which has been filed in the case of the United States vs. Rio Grande Dam & Irrigation Company, denying the application of the Territory to intervene in the case, and which has been entered of record.

I had a conversation the other day with Mr. Hawkins in regard to this case. He informed me that he had seen you in Washington and had a talk with you. He stated to me that Boyd has spent all the money that he has, and is now in Philadelphia, his wife being in a precarious condition and not expect to live very long; that Boyd would probably make no more fight with the Dam case, and had not paid them any fees for the last trial of the case. He also called my attention to Sec. 20 of the Act of March 3, 1891, 26 St. at Lg. page 1101, which provides "Provided, that if any canal or ditch be not completed within five years after the location of said section, that the rights granted shall be forfeited to any uncompleted section of said canal, ditch or reservoir, etc."; that more than five years have elapsed since the rights of the Company attached by filing its papers in the Interior Department; that during more than a period of five years. the injunction first

-2-

granted against the Company has not been in force, and that therefore the Company has not been prevented from proceeding with their work. That the Government could either set that up by way of supplemental bill and get rid of the suit, or have the Interior Department take steps to cancel their rights, and that would avoid any necessity for taking the evidence, and finally dispose of the case, and that under existing circumstances the people of the Territory would be greatly benefited by having this litigation out of the way.

I submit this to you for your consideration, and ask that you lay this matter before the Attorney General and let me know what conclusion may be arrived at.

Respectfully,

*W. T. Childers*  
United States Attorney.

1180913

*File*

WASHINGTON

May 20, 1925.

✓  
Rio Grande embargo. ✓

8-3  
*Rio Grande  
Distribution of  
Water*

The Commissioner  
of the General Land Office.

My dear Mr. Commissioner:

The original withdrawal was made December 5, 1898, pending consideration of treaty with Mexico as to claimed water rights of that country. The subsequent withdrawal of <sup>April 25</sup> ~~May 18~~, 1907, was made to prevent the building of dam, canals, etc., on the Upper Rio Grande in Colorado and New Mexico, pending construction of the Government Rio Grande reclamation project and the effect of storage and diversion of water upon that project.

The treaty with Mexico has been concluded, and Mexican rights defined and protected.

The Rio Grande project has been completed, water has been stored and is available for all the lands in the project. The Rio Grande in New Mexico and Colorado is not a navigable stream.

The approval of rights of way over public lands for dams and canals is pursuant to the act of Congress of March 3, 1891, which the Secretary of the Interior has no legal right to suspend or defeat. Grants under that act are not grants of water, but simply rights of way to use and occupy public lands. Water must be appropriated under State laws, and under those laws priority in appropriation and use controls.

Present water users, including Mexico, the Government reclamation project, and others can not have their rights destroyed as proposed.



the granting of mere rights of way on public lands or by the attempted subsequent appropriation of water and use of water by others.

The purpose of the withdrawal having been accomplished, there being no power in the Secretary to suspend laws of Congress, and the granting of water rights being vested in the States, the withdrawals or embargoes are hereby lifted, effective this date.

Very truly yours,

(Sgd) Hubert Work

EX 11 24-2  
A-20

DEPARTMENT OF THE INTERIOR

WATER-SUPPLY

AND

IRRIGATION PAPERS

OF THE

UNITED STATES GEOLOGICAL SURVEY

No. 10



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1898

---

UNITED STATES GEOLOGICAL SURVEY

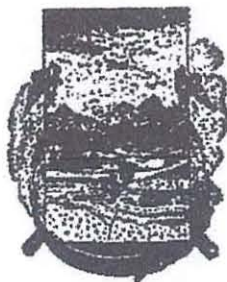
CHARLES D. WALCOTT, DIRECTOR

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IRRIGATION IN MESILLA VALLEY, NEW MEXICO

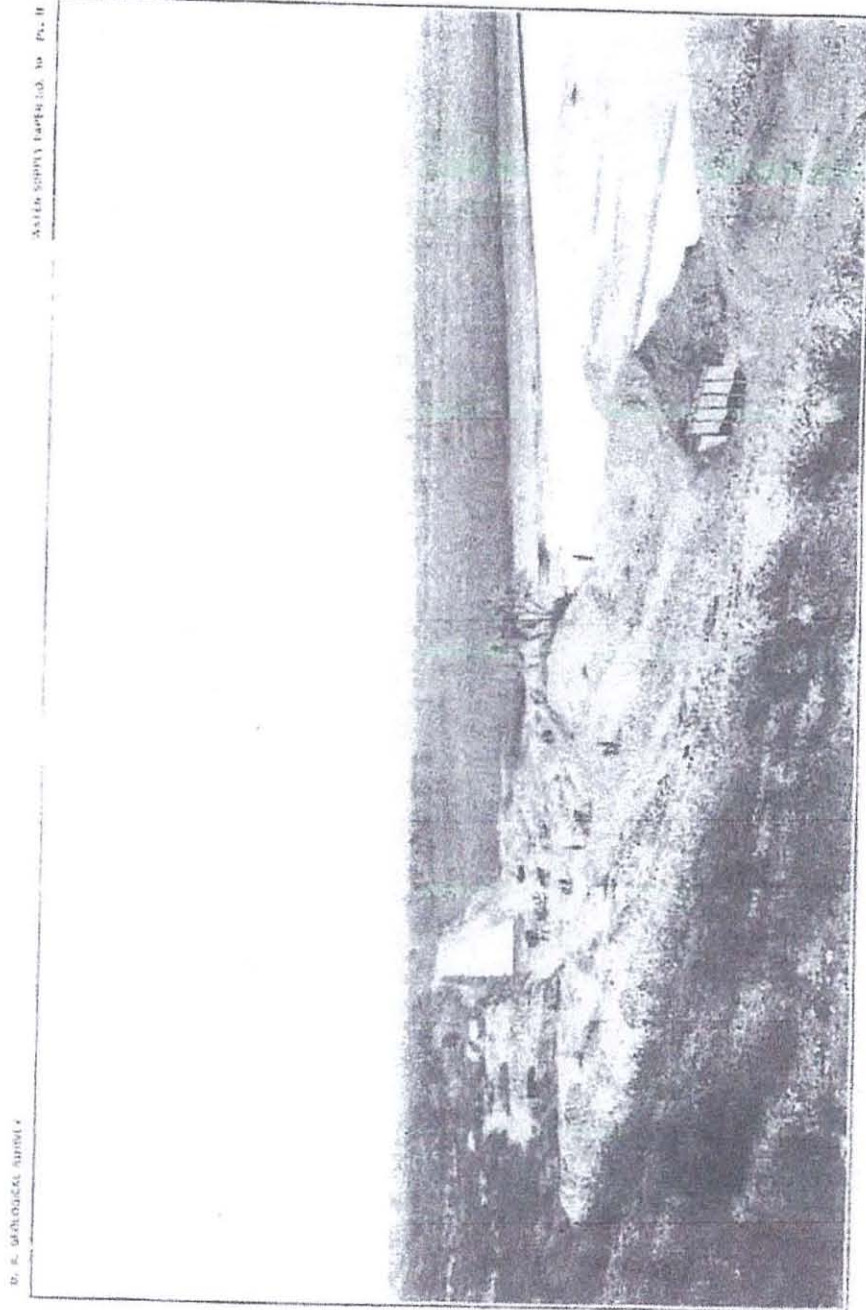
BY

F. C. BARKER



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1898

0094



VIEW OF RIVER AND NEW CANAL AT FORT SELDEN.

MAJOR SUPPLY DEPOT, U.S. ARMY.

U.S. GEOLOGICAL SURVEY.



This supply of underground water is fed by the torrents of rain which frequently fall on the adjacent mountain ranges. Whether the ground water rises or falls depends upon these rains; and the extent to which the higher or lower level of this so-called underflow may affect the flow of the river is best appreciated by reference to the accompanying diagram, showing the position that the ground water may occupy according as its level rises or falls. The dotted line represents the level of the river bed. When the underflow is at the higher level it will be seen that not only does the open river practically flow over a body of water, but it may receive a vast increase from this source. On the other hand, when the level of the ground water falls beneath the level of the river bed, there will be an immense loss of water from the latter. How great the loss may be can be imagined when one takes into consideration the fact that this ground water averages probably several miles in width during the whole course of the river.

Of course the seepage from the river bed into the water-bearing strata below is very slow and gradual. Were it otherwise, the river would be continually disappearing below. I do not advance this theory as one that is thoroughly proved. A series of long and somewhat costly tests by experts would be required to prove it, whereas I have had to depend upon only such information as I have been able to gather during a long residence in the valley.

#### WATER STORAGE.

Hitherto the scarcity of water has not been so great as to injure the orchards and vineyards, and there has not been much loss at least in the upper part of the valley, beyond an extra cutting of alfalfa or an occasional crop of vegetables. It is the fear of worse to come, rather than actual loss, which has prevented the investment of the capital necessary to develop the valley. There is, however, a remedy, and that is to build a dam and reservoir at one of the many available sites higher up the river. This would furnish a never-failing supply of water, as the surplus waters of the river during the flood seasons are more than sufficient to fill the necessary reservoirs.

With this object in view an English company has recently been formed and the capital has been raised in London. It is proposed to build at Elephant Butte, a point on the Rio Grande some 60 miles higher up the river than the Mesilla Valley, a dam of uncoursed rubble masonry, laid in cement, 96 feet high, which will form a lake capable, it is claimed, of holding 11,000 million cubic feet of water, or sufficient to cover 250,000 acres of land with 12 inches of water. The cost is estimated at \$262,000. From this reservoir can be irrigated not only the Mesilla Valley, but also the valleys of Lomo Pardo, Colorado, and Rincon, above. A smaller weir dam, which will rise 9 feet above the level of the river, is also to be built at Fort Selden, just at the head of the Mesilla Valley, at a cost of \$75,000. This portion of the project is



to be completed first. With either or both of these dams many thousand acres of land now lying idle for want of water will be brought under cultivation, and doubtless a great impetus will be given to agriculture, and more especially to horticulture, in the Mesilla Valley.

#### QUALITY OF WATER.

Owing to the rich fertilizing ingredients which are contained in the muddy waters of the Rio Grande this river is often called the "Nile of America." Prof. Arthur Goss states<sup>1</sup> that the water adds to the land eight times as much potash as is required for either alfalfa or wheat, five times as much phosphoric acid as is needed for a crop of wheat, and nearly double that required for alfalfa. As regards nitrogen, the most valuable of all fertilizers, the water supplies more than double what is required by the wheat. It is true that it does not supply all the nitrogen required by the alfalfa, but there is every reason to believe that the water deposits more than is removed by this plant, which is capable of deriving most of its nitrogen from the air.

I am acquainted with land in the Mesilla Valley which for forty years has borne a yearly crop of wheat or corn, often both in one year, without application of any manure, and is now richer than when first cultivated. And in the valley below Juarez, where the same circumstances prevail, land has thus been cropped from time immemorial, probably for two hundred and fifty years.

Professor Goss says:

There seems, on the whole, to be good evidence that the land here in the valley is practically inexhaustible when irrigated with sufficient quantities of the river water. In this connection might be mentioned the fact that fields of alfalfa can be found here which have stood for more than fifty years without being reset, and which produce as good crops now as ever. Mr. O. C. Snow, a large alfalfa grower here in the valley, states that he has produced excellent alfalfa from land originally consisting almost entirely of pure white sand, which would hardly produce anything before, by simply irrigating with the muddy river water, using large quantities at first to get a coating of the sediment over the sand and then seeding it to alfalfa and irrigating at the usual intervals.

It is also unquestionably true that much of the land here in the valley has been cultivated for a very long time and is yet exceptionally fertile. It is also well known in the case of other rivers that the land upon which their sediments are deposited is inexhaustible. The Nile furnishes a good example of this fact, the land along this stream having been cropped for ages without becoming impoverished.

Taking everything into consideration, it seems very probable, indeed, that fertile land in the Rio Grande Valley would never become so far exhausted as to produce very poor crops if sufficient muddy water from the river is applied to it. As long as the river contains plenty of water the farmers in the Rio Grande Valley certainly have much for which to be thankful. Favored with a naturally fertile soil, they have the means at hand, in the ever-present sediment in the water, of perpetually maintaining that fertility. With the small amount of rainfall, cloudless skies, and dry atmosphere the conditions for many agricultural operations, such as the curing of hay and ripening of fruit, are about as perfect as could be desired.

<sup>1</sup>Bull. New Mexico Experiment Station, No. 12. The value of Rio Grande water for the purposes of irrigation.





Add to this the fact that under a system of irrigation the water is under the control of the farmer, and one of the most uncertain factors in the agriculture of rainfall districts is removed. With a sufficient water supply agriculture in the Rio Grande Valley is about as nearly a mathematical science as it can be made.

## CANAL SYSTEM.

It would, of course, be superfluous to describe to an engineer how the canals are built and the water is diverted from the river to the land without the use of any power but that of gravity, but it may be of interest to those who have never visited an irrigation country to learn how it is done. It must be understood that as the river flows down the valley there is a continuous fall in the land from the head of the valley to the other end. In the accompanying diagram, A is the head of the valley and B the lower end.

Again, in almost all valleys there is a more or less rapid fall from the sides to the middle, where the river flows. Therefore there will be points (C and D) somewhere along the valley which will be considerably higher than the river at E and yet be a little lower than point A.

It follows that if the river falls, say, 1 foot in 100, and if a ditch or canal taken out at A is made to follow the contour of the side hills with a fall of only 1 in 500 it will very soon get higher than the level of the

river, and that, as the valley widens and the canal seeks the higher ground, it will gradually get farther and farther away from the river, until by the time it has run, say, 8 or 10 miles, there will be a considerable space intervening between it and the river. It is this strip of land between the canals on the higher level and the river on the lower which is capable of irrigation. The head or inlet of a canal is shown in the accompanying view (Pl. III), the water in the river being obstructed in its course by a temporary dam of brush and stone. Entering the canal, the water flows usually on a gentle grade, and at convenient points is taken out by lateral ditches, which carry it to the fields.

Occasionally the canal passes over land where there is a sudden fall

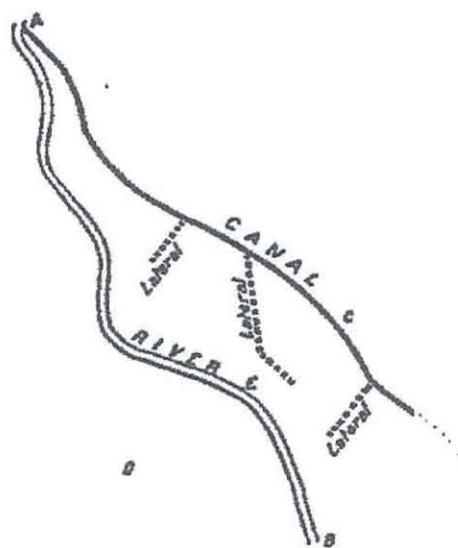


FIG. 2.—Diagram illustrating method of diverting canals from the river.

**ATTACHMENT F: EXCERPTS FROM TRANSCRIPT OF MAY 21, 2015  
STATUS CONFERENCE AND MOTION HEARING**

1 STATE OF NEW MEXICO  
COUNTY OF DONA ANA  
2 THIRD JUDICIAL DISTRICT  
3 CV-96-888  
Lower Rio Grande Adjudication  
4

5 State of New Mexico ex rel.  
6 OFFICE OF THE STATE ENGINEER,  
7 Plaintiff,  
8 vs.

9 ELEPHANT BUTTE IRRIGATION  
10 DISTRICT, et al,  
11 Defendants.  
12

13 TRANSCRIPT OF PROCEEDINGS

14 On the 21st day of May, 2015, at approximately  
15 9:00, a.m., this matter came on for INTERIM PRETRIAL  
16 CONFERENCE AND MOTION HEARING before the HONORABLE  
17 JAMES J. WECHSLER, Judge of the Third Judicial  
18 District, Lower Rio Grande Adjudication, State of  
19 New Mexico, at the Court of Appeals Building, 237  
20 Don Gaspar, Santa Fe, New Mexico.

21 The Plaintiff, OFFICE OF THE STATE ENGINEER,  
22 appeared by Counsel of Record, LAUREL KNOWLES, FRANK  
23 RECKARD and MARTHA FRANKS, Attorneys at Law, P.O.  
24 Box 25102, Santa Fe, New Mexico 87504.

25 The Defendant, ELEPHANT BUTTE IRRIGATION

1 previous rulings of this Court and the other  
2 decisions that Mr. Leininger talked about today.  
3 Those rights are gone. They are extinguished.

4 THE COURT: So to what extent has there  
5 been discovery with regard to pre-1906 claimants'  
6 issues?

7 MR. HERNANDEZ: With respect to EBID's  
8 position, we have had an expert report, his  
9 deposition has been taken. There has been rebuttal  
10 reports against our position that have been filed.

11 THE COURT: Filed by the pre-1906  
12 claimants?

13 MR. HERNANDEZ: Filed by all the claimants  
14 against EBID.

15 THE COURT: No, I want to focus my  
16 question on pre-1906 claimants and discovery.

17 MR. HERNANDEZ: Other than the -- when the  
18 witness list was presented, the State said, You have  
19 to narrow down what this testimony is going to be  
20 about, because the testimony that was listed with  
21 the witness was so broad and generic, we have no  
22 idea what they're going to testify about. Really  
23 didn't know until this reply brief came in. And all  
24 of a sudden, there is this new theory that, Well, we  
25 really own the property. We built the system. We



1 had all these contracts. So we don't have any  
2 discovery towards that.

3 THE COURT: Okay. I guess that's what I  
4 want to focus my question on, is the extent to which  
5 arguments with respect to the pre-1906 claimants'  
6 claims, regardless whether it's the argument present  
7 in this motion or arguments that were previously  
8 addressed to the Court, were the subject of  
9 discovery.

10 MR. HERNANDEZ: No, not to my knowledge.  
11 It's possible the State may have a different answer,  
12 but with respect to the irrigation district, we  
13 didn't have any discovery. To be candid, your  
14 Honor, we thought this issue was done. We didn't  
15 have to worry about it.

16 THE COURT: All right. Thank you,  
17 Mr. Hernandez.

18 Let me turn quickly to the State in  
19 response to that question. Does the State have a  
20 different answer, Ms. Franks?

21 MS. FRANKS: Your Honor, with regard to  
22 pre-1906 claimants, insofar as that is a phrase that  
23 simply means the Boyd estate, there has been no  
24 discovery. But with regard to individuals who might  
25 have assigned their rights to EBID's predecessor in

1 the 1905 subscriptions, there have been some expert  
2 testimony on that.

3 THE COURT: On what issue?

4 MS. FRANKS: Your Honor, the State  
5 believes that testimony is irrelevant, so it's not  
6 clear to us on what issue it was presented to  
7 address.

8 THE COURT: Okay. I'll get to you on  
9 that, Mr. Simon, when you come back up.

10 MR. HERNANDEZ: Your Honor, I can answer  
11 that question. It was in the motion for summary  
12 judgment and the affidavit filed by Mr. Littlefield  
13 when he said those rights, those pre-1906 rights  
14 were extinguished. Everything turned on that  
15 affidavit that he filed and the subsequent reports  
16 on that issue. Were they extinguished or not  
17 extinguished? That is what Ms. Barncastle presented  
18 to the Court previously. That's what we thought the  
19 issue was. That's how we proceeded.

20 THE COURT: Thank you, Mr. Hernandez.

21 Ms. Franks.

22 MS. FRANKS: Your Honor, I hope to tie  
23 this off. Because the United States is relying  
24 solely on the Doctrine of Relation Back and not  
25 relying on the existence or non-existence of those

1 pre-1906 rights, it makes no difference to this  
2 proceeding whether they were extinguished or not  
3 extinguished.

4 THE COURT: Okay. I understand the  
5 position of the State.

6 Mr. Leininger.

7 MR. LEININGER: Your Honor, with all due  
8 respect, I think what we're deciding here is the  
9 priority date of the project, the United States'  
10 project, for trial. There are different theories  
11 here, but the question is, have we had discovery  
12 with regard to pre-1906's new theory with regard to  
13 tenancy in common, and thereby hooking their claims  
14 to the Rio Grande Dam and Irrigation Company? No,  
15 we haven't.

16 THE COURT: I understand your position in  
17 that regard. My question was broader than just the  
18 claim about tenants in common, but was with regard  
19 to arguments that Mr. Simon has previously advanced  
20 as well with respect to the pre-1906 claims.

21 MR. LEININGER: No, your Honor, where we  
22 have gone in this discovery, I agree with both sides  
23 here, is that the existence of diversions prior to  
24 the project and what happened to those diversions to  
25 the extent they're tied to the Rio Grande Dam and



**Territorial Act of Feb. 26, 1891**  
**(Transcribed)**

AN ACT TO PROVIDE A METHOD FOR ESTABLISHING THE RIGHTS OF APPROPRIATION OF WATER FOR DITCHES, CANALS, OR FEEDERS FOR RESERVOIRS AND ACEQUIAS REGISTRATION OF ALL HEREAFTER MADE, CHANGED OR ENLARGED. H.B.113; Approved February 26, 1891.

Be it enacted by the Legislature Assembly of the Territory of New Mexico

Section 1. That every person, association or corporation hereafter constructing or enlarging any ditch, canal or feeder for reservoir, and taking water from any natural stream, shall within thirty days after the commencement of such construction, change, or enlargement, file and cause to be recorded in the office of probate clerk of the county in which such ditch, canal or feeder as situated, a sworn statement in writing, showing the name of such ditch, canal or feeder, both in width and depth, the carrying capacity in inches, the description of the line thereof, the time when the work was commenced, the name or names of the owners thereof, together with a map showing the route thereof, the legal subdivisions of the land, if on surveyed lands, with proper corners and distances, and in case of an enlargement or change the depth and width, also the carrying capacity of the ditch so enlarged or changed, and the increased capacity of the same thereby occasioned, and the time when such change of enlargement was

commenced, and no priority of right for any purpose shall attach to any such construction, change or enlargement until such record is made.

Section 2, A copy of such sworn statement duly certified by the probate clerk of the county where such record is made shall be admitted as prima facie evidence of such appropriation of water in all the courts of this Territory: *Provided*, That the provisions of this act shall not affect any existing vested rights or any public acequia or ditch used for the public, and the canals, ditches or acequias authorized by this act to be constructed shall be completed within five years from the time work shall be commenced on the same.

Section 3. All acts and parts of acts in conflict with this act are hereby repealed, and this act shall take effect and be in force and after its passage.

# Rio Grande Republic

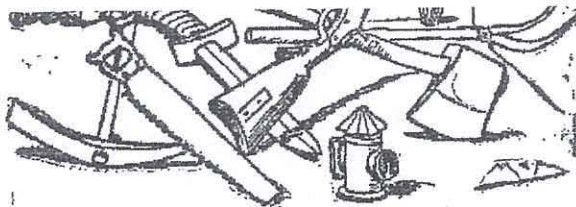
Dec. 24, 1897

poses, and connection can be made from the yards in short order.

The main line digresses from the old line about the cavalry station and crossing a corner of the reservation strikes off towards the north at considerable of an angle from the old line. Rails are down the long siding and a small part of the main line through the fields, while hundreds of tons of rails are piled up in great piles waiting along with fish toes, angle bars, kegs of spikes and other material waiting for the laying of the ties which ought to be here any day now. The grade is a fine piece of work—it ought to be with such veteran contractors as George S. Good & Co., to build it. As far as the grade can reach the grade is as clear and as true as a mathematician could desire. Gangs of men are scattered all along the line to the New Mexico line and the arrival of the ties, the rapidly with which the track is laid depend entirely upon the number of men put to work upon the grade is all ready.

The view is very attractive, and our yesterday when a Herald reporter was up there, was glorious. The whirling is good, the road from this city to just above the cemetery is in much better shape than it has been for some time; and from the latter at the bicycle path to Fort as parallels the wretched wagon road to the foot of the grade leading up onto the mesa. Of course the road through the reservation of the very best, and to the north, after leaving the cavalry block, the wagon road is in excellent shape for bicycle riding

To Cure Constipation Forever.  
Take Cascara Candy Cathartic. 10c or 25c.  
If C. C. fail to cure, druggists refund money.



FROM THE SPORTY FATHER TO HIS BABY.

clear to the railroad yards.

The railroad company have built section houses and conveniences for their men, and the general outlook suggests careful and well directed work. At present engine 634 of the Southern Pacific is in use as a construction train engine, and when the ties are on hand another engine will be needed.

Xmas Presents,  
At A. Jacoby's.

## Meeting of the Ditch People.

At the meeting of the commissioners of the Dona Ana, Las Cruces and Mesilla acequias and the representatives of the Rio Grande Dam and Irrigation company, Messrs. W. Johns and Dr. John M. Fair, the Rio Grande Dam and Irrigation company agreed to the following. They will go ahead and finish the Selden weir dam, and canal and connect with the three above mentioned ditches. They will take care of all canals, ditches and main laterals and put the water on each man's land at a cost of \$1.50 per acre. This they claim; will cost them \$80,000. They also agree to give to the people of the Mesilla valley, their weir dam, canals, and all other interests in the valley at the end of three years if by that time they have not built the Elephant Butte reservoir, and give us a permanent supply of water. The Las Cruces, Dona Ana and Mesilla commissioners agree to all the above, except that instead of \$1.50 per acre they agree to pay the com-

pany \$1.00 per acre. The representatives of the English company, have not authority to allow the \$1.00 per acre rate, but will call to London for instructions. If the London people accept the \$1.00 per acre rate, the commissioners of the three ditches will give the people of the valley, who own the water rights and acequias a vote on the subject.

Hardware, Hardware, a good and general assortment at  
MARTIN LOHMAN.

## Notice for Publication.

LAND OFFICE AT LAS CRUCES, N. M.,  
December 10th, 1897.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before Register or Receiver at Las Cruces, New Mexico, on January 22, 1898, viz: Carlos M. Byrne, who made Homestead Application No. 2510 for the SE Quarter of Sec. 8, Twp. 37 N., Range 1 West.

He names the following witnesses to prove his claim: Carlos M. Byrne, W. Ross Brown, Rudolph Vedra, of Victoria, N. M.; Casado Thompson, Escondido, N. M.

Dolls and toys, an elegant variety at M. Lohman's.

Try a 25 lbs. sack of Seal of New Mexico flour and you'll use no other. Martin Lohman.

If you need anything in the General Merchandise line, give us a call before going elsewhere. MARTIN LOHMAN.

Gents' Underwear in Balbriggan, Lisle and Knit from 25c. a suit up at LOHMAN'S.

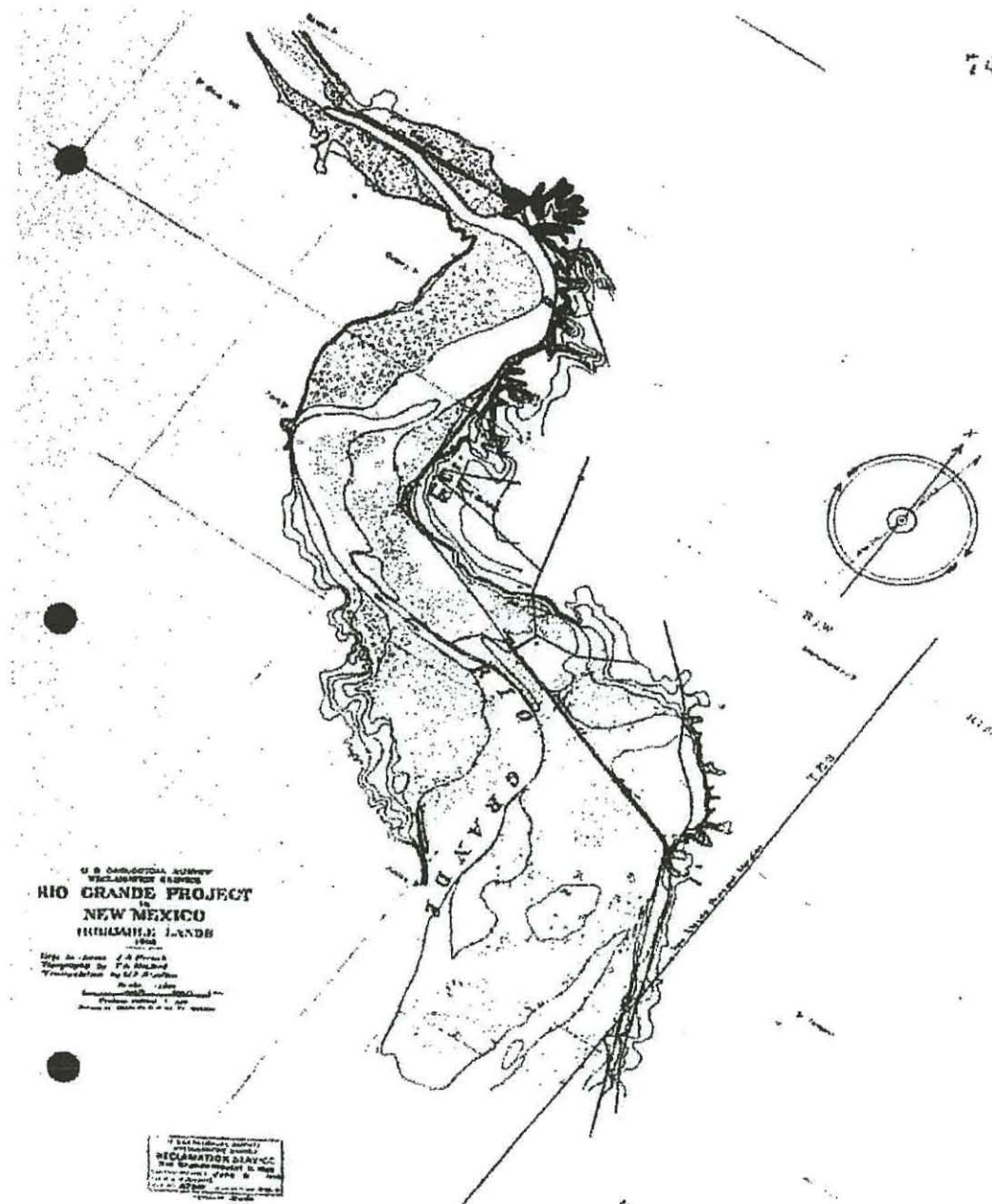
To Cure Constipation Forever.  
Take Cascara Candy Cathartic. 10c or 25c.  
If C. C. fail to cure, druggists refund money.

EX 12

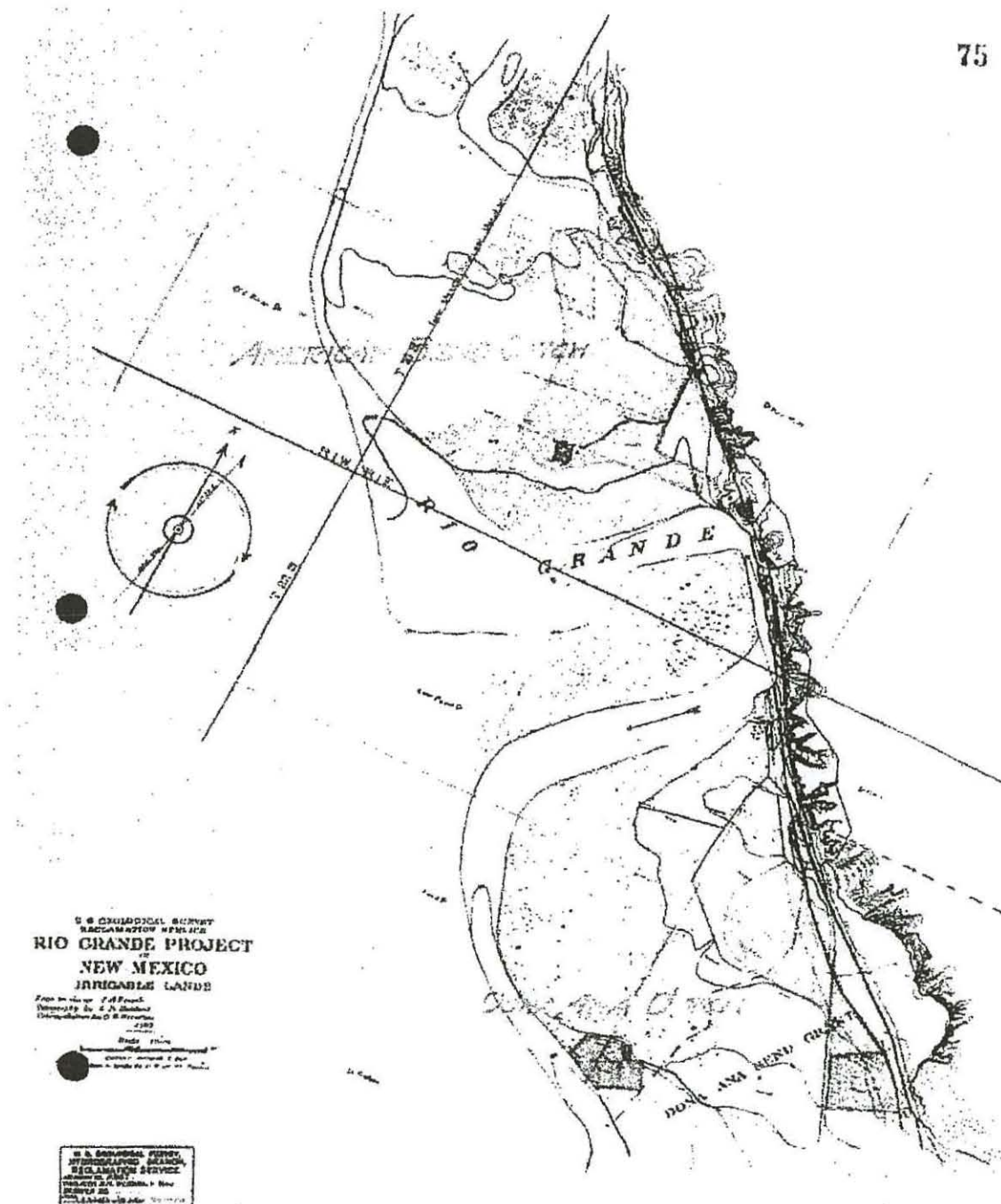


**"Meeting of the Ditch People"**  
**Rio Grande Republican (Dec. 24, 1897)**  
**(Transcribed)**

At the meeting of the commissioners of the Dona Ana, Las Cruces and Mesilla acequias and the representatives of the Rio Grande Dam and Irrigation Company, Kevin W. Johns and Dr. John M Lair, the Rio Grande Dam and Irrigation Company agreed to the following. They will go ahead and finish the Selden weir dam, and canal and connect with the three above mentioned ditches. They will take care of all of the canals, ditches and main laterals and put the water on each man's land at a cost of \$1.50 per acre. This they claim; will cost them \$80,000. They also agree to give to the people of the Mesilla Valley, their weir dam, canals and all other interests in the valley at the end of three years if by that time they have not built the Elephant Butte reservoir, and give us a permanent supply of water. The Las Cruces, Dona Ana and Mesilla Commissioners agree to all the above, except that instead of the \$1.50 per acre, they agree to pay the company \$1.00 per acre. The representatives of the English company, have no authority to allow the \$1.00 per acre rate, but will cable to London for instructions. If the London people accept the \$1.00 per acre rate, the commissioners of the three ditches will give the people of the valley, who own the water rights and acequias a vote on the subject.



**FIGURE 7: Irrigable Lands below Elephant Butte, 1903-1904, Part 1.** Source: U.S. Reclamation Service Map, Copy from Herbert Yeo, "Report on Irrigation in the Rio Grande Basin . . . 1907, 1920, 1928," Vol. 3, New Mexico State Records Center and Archives, Santa Fe, New Mexico.



**FIGURE 8: Irrigable Lands below Elephant Butte, 1903-1904, Part 2.** Source: U.S. Reclamation Service Map, Copy from Herbert Yeo, "Report on Irrigation in the Rio Grande Basin . . . 1907, 1920, 1928," Vol. 3, New Mexico State Records Center and Archives, Santa Fe, New Mexico.



D E C R E E.

This cause coming on to be heard upon the motion of the United States by its United States Attorney for the Territory of New Mexico, W. B. Childers, Esq., praying that the decree entered in this cause on the 21st day of May, A.D. 1903, may be modified and amended, and the Court having granted leave for the filing of such petition and ordered that said decree may be modified and amended as prayed for, and it appearing to the Court that a supplemental bill was filed herein, by its leave, on the seventh day of April, A.D. 1903, and that copies of the said supplemental bill were served more than thirty days past upon the attorneys of record of the defendants in said cause, and it further appearing from the certificate of the Clerk of said Court that no demurrer, answer or other pleading has been filed to said supplemental bill by the defendants in said cause, and the Court being fully informed in the premises, the Court does find that the allegations of said supplemental bill are confessed and are true; and further especially finds that the articles of incorporation and the map, survey of the reservoir of the defendant corporation, the Rio Grande Dam & Irrigation Company, were filed with the Secretary of the Interior prior to the twenty-sixth day of June, A.D. 1897, and were prior to said date approved by the Secretary of the Interior; and it further finds that the said defendants have not completed its said reservoir or said ditch, or any section thereof, within five years after the location of the said reservoir and its said ditch line, or within five years after the approval of the same by the Secretary of the Interior; and the Court further finds that five years since the filing and approval of the said articles of incorporation, proof of organization, maps and surveys of the said reservoir and ditch line of the said defendants had long since lapsed prior to the filing of the said supplemental bill and that the defendants had not



further especially finds that the articles of incorporation and the map, survey of the reservoir of the defendant corporation, the Rio Grande Dam and Irrigation Company, were filed with the Secretary of the Interior prior to the twenty-sixth day of June, A.D. 1897, and were prior to said date approved by the Secretary of the Interior; and it further finds that the said defendants have not completed its said reservoir or said ditch, or any section thereof, within five years after the location of the said reservoir and its said ditch line, or within five years after the approval of the same by the Secretary of the Interior; and the Court further finds that five years since the filing and approval of the said articles of incorporation, proof of organization, maps and surveys of the said reservoir and ditch line of the said defendants had long since lapsed prior to the filing of the said supplemental bill and that the defendants had not complied with the requirements of the Act of Congress, approved March 3, 1901, under which the same were filed but has failed to construct or complete within the period of five years after the location of the said canal and reservoir any part or section of the same.

(*"Wherefore, it is" not in record*)  
ORDERED, ADJUDGED AND DECREED by the Court that the rights of the said defendants, or either of them, to construct and complete, the said reservoir and said ditch, or any part thereof, under and by virtue of the said Act of Congress of March 3, 1901, be and the same are hereby declared to be forfeited.

It is further ordered, adjudged and decreed by the Court by reason of the premises that an injunction be, and the same is hereby granted against the said defendants, enjoining them from constructing or attempting to construct the said reservoir, or any part thereof, and that the same be made perpetual.



her especially inas much as

MAY 21 1903

Survey of the reservoir of the defendant corporation, the Rio Grande Dam and Irrigation Company, were filed with the Secretary of the Interior prior to the twenty-sixth day of June, A.D. 1897, and were prior to said date approved by the Secretary of the Interior; and it further finds that the said defendants have not completed its said reservoir or said ditch, or any section thereof, within five years after the location of the said reservoir and its said ditch line, or within five years after the approval of the same by the Secretary of the Interior; and the Court further finds that five years since the filing and approval of the said articles of incorporation, proof of organization, maps and surveys of the said reservoir and ditch line of the said defendants had long since lapsed prior to the filing of the said supplemental bill and that the defendants had not complied with the requirements of the Act of Congress, approved March 3, 1901, under which the same were filed but has failed to construct or complete within the period of five years after the location of the said canal and reservoir any part or section of the same.

( "Wherefore, it is" not in record)

ORDERED, ADJUDGED AND DECREED by the Court that the rights of the said defendants, or either of them, to construct and complete, the said reservoir and said ditch, or any part thereof, under and by virtue of the said Act of Congress of March 3, 1901, be and the same are hereby declared to be forfeited.

It is further ordered, adjudged and decreed by the Court by reason of the premises that an injunction be, and the same is hereby granted against the said defendants; enjoining them from constructing or attempting to construct the said reservoir, or any part thereof, and that the same be made perpetual.

It is further ordered, adjudged and decreed by the Court that the plaintiff have and recover from the said defendants its costs to be taxed and that execution issue therefor.

A-39

(Signed) Frank W. Parker,

Associate Justice Supreme Court of  
New Mexico and Judge of the Third  
Judicial District thereof.

ΣΧΗ-20-3



Microfilm reel 89. Frames 479 and 480

42

Santa Fe, New Mexico,  
February 21, 1908.

Hon. E. A. Hitchcock,  
Secretary of the Interior,  
Washington, D. C.

Dear Sir:-

Referring to a letter addressed to you by the Irrigation Commission of New Mexico, in reference to what is known as "The Elephant Butte case" which has been pending in the Courts of this Territory and before the Supreme Court of the United States for sometime touching the question of the navigability of the Rio Grande River in New Mexico, I am directed by the Commission at a meeting thereof just adjourned to further call your attention in this connection to the following:-

That as the defendant in that case had never acquired any water right or water interest by appropriating from the Rio Grande and had simply built, below the proposed dam site, a diverting dam to be used at sometime in connection with the larger proposition - in event of its construction - and as no diversion of water was made, the defendant simply acquiring a reservoir site by complying with the United States Law of March 3, 1897, by filing maps in the Interior Department (which maps were filed in 1896) and the injunction which had been originally granted in the case having been dissolved and no work or operations of any kind in connection with said dam or reservoir site, or storage proposition having been done or attempted by the defendant for a period

greater than five years, the Commission suggests that possibly the whole question of the "Elephant Butte" dam case might be settled by a cancellation of the map heretofore filed and approved under the Act of March 3, 1891, and all rights - which may have been acquired by reason of filing such map - forfeited.

Respectfully,

President.

Commission of Irrigation of New Mexico.



March 23, 1927

Mr. Herbert Devries  
Bureau of Reclamation,  
Department of the Interior,  
El Paso, Texas

Re: Applications Nos. 8 & 9  
United States of America,  
Applicant.

Dear Sir:

Application No. 8 appears as being filed in this office on or about January 25, 1906. This application is to appropriate waters of the Rio Grande and includes the Elephant Butte Project.

It appears that this application was never taken up for approval by the State Engineer, although what purports to be a proof of completion of works was filed under said application on September 7, 1917. The filing of this proof of completion of works appears as being the only step taken by this applicant toward complying with the laws of the State of New Mexico and the rules of this office toward the completion of applications to appropriate the waters of this State.

The only exception under the laws of this State to the regulations and requirements to appropriate the waters of this State are contained in Section 5699 ~~of~~ the Codification of 1915 of the laws of New Mexico. As I view this section, after the United States has filed its application with plans and specifications as provided therein they are required to follow the laws of this State and the rules of this office relative to the completion of said application, and their application is treated the same as one filed by any private individual. I am unable to find any other provisions in the laws of this State or in the rules of this office, giving this office the right to take any other position relative to applications filed by the United States.

Application No. 9 to appropriate waters of the Hondo River also stands in the same status in this office, there having been no further steps taken under said application other than the filing of the same.

As I understand the position of the United States relative to applications filed in the State of New Mexico to appropriate the water of this State, they do not recognize any right of this State or of this office to require them to follow the laws of said State and the rules of this office after their application to appropriate water has



March 23, 1927

been filed, but I would appreciate a letter from you explaining your position in this matter so this office can be fully advised in the premises.

Very truly yours,

HERBERT W. YEO  
STATE ENGINEER

K/M

"I hereby certify that this instrument is a true and correct copy of the original which is on file in the office of the State Engineer of New Mexico."

Witness my hand and official seal  
this 12th day of July

A.D. ~~19~~ 2005"

John R. D'Antonio, Jr., P.E.

State Engineer

By

Joseph S. Montoya

Water Rights Division

A-43

Ex. 12-2



**STATE OF NEW MEXICO**  
**OFFICE OF THE STATE ENGINEER**

John R. D'Antonio, Jr. P.E.  
State Engineer

DL Sanders  
Chief Counsel

**LITIGATION & ADJUDICATION  
PROGRAM**

130 South Capitol  
Santa Fe, New Mexico 87501

Mailing Address:  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Telephone: (505) 827-6150  
Fax: (505) 827-4200

June 24, 2010

*Via First Class Mail and Facsimile*  
505-246-2232

Mr. William M. Turner  
1527 Granite Street, NW  
Albuquerque, NM 87102

Re: Response to Request for Inspection of Public Records

Dear Mr. Turner:

This letter is an additional response to your requests, dated January 26, 2010 and February 18, 2010, to inspect public records for "Application 8" and "permit 8." All records of the Office of the State Engineer relating to your requests have been produced. This Office possesses no further records, including "Application 8" or "permit 8," that are responsive to your request for inspection of public records.

Sincerely,

Rozella A. Bransford  
Records Custodian

RAB/sh

**CERTIFICATION**

I, a Notary Public, hereby swear, certify and affirm that the document to which this stamp is affixed is a true and correct copy of the original thereof.

(SEAL)



8/15/2002

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civ. No. 97-803 JP/RLP

ELEPHANT BUTTE IRRIGATION DISTRICT,  
EL PASO COUNTY WATER IMPROVEMENT  
DISTRICT NO. 1, HUDSPETH COUNTY  
CONSERVATION and RECLAMATION  
DISTRICT NO. 1, CITY OF EL PASO,  
CITY OF LAS CRUCES, NEW MEXICO STATE  
UNIVERSITY, STAHMANN FARMS, INC.,  
STATE OF NEW MEXICO *ex rel.* STATE ENGINEER,

Defendants.

**ORDER**

The Court held a hearing on August 15, 2002 to determine whether to dismiss or stay this case.

IT IS ORDERED that this case is hereby stayed.

IT IS FURTHER ORDERED that there is no reason at this time to maintain the file as an open one for statistical purposes, and the Clerk is hereby instructed to submit a JS-6 Form to the Administrative Office.

IT IS FURTHER ORDERED that should further proceedings become necessary or desirable during the pendency of the water adjudications in New Mexico and Texas, any party may initiate proceedings as though the case had not been closed for administrative purposes.

  
CHIEF UNITED STATES DISTRICT JUDGE



STATE OF COLORADO  
DELPH E. CARPENTER  
INTERSTATE RIVERS COMPACT COMMISSIONER  
DENVER

CHIEF CLERK

1924 OCT 11 AM 9 39

October 9, 1924.

Hon. Herbert Hoover,  
Secretary of Commerce,  
Washington, D.C.



My Dear Secretary Hoover:

In Re: Rio Grande Commission.

I just talked with Commissioner Seth of New Mexico by long distance in re the Rio Grande matter and particularly my letter to Governor Neff, suggesting the appointment of a Commissioner for Texas. He informs me that the Governor Neff letter was inspired by people at El Paso; that it was issued immediately after visit by Gov. Neff at that point and that it is the natural result of the conduct of the engineers of the Bureau of Reclamation to which I will later refer. He believes that it would be useless for us to go to Texas to confer with the Governor, believing that the Governor is prompted entirely by the El Paso people who have conceived the idea of blocking the whole program and he informs me that they are threatening the New Mexico water consumers under the Elephant Butte project, saying that they will hold the New Mexico people responsible for any compact entered into which involves the water supply of the Elephant Butte project, which project in turn irrigates lands above and below El Paso.

Commissioner Seth is of opinion that it would be advisable for us to meet you at some convenient point for the purpose of conference over this situation. He suggests that you may be coming to some middle western point on other business and that we might meet you there. If this is not convenient he believes that we had better go to Washington and confer with you there although he prefers to avoid so long a trip if other arrangements can be made.

The Rio Grande situation may be outlined as follows:

In 1896, pursuant to request by the State Department, the Department of the Interior entered a general order preventing any further construction of irrigation works above El Paso (by denial of rights of way over public lands) until a treaty could be concluded between the United States and Mexico providing for the equitable distribution of the water of the Rio Grande between the two nations.

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Commerce Papers: Rio Grande River Compact

Hon. Herbert Hoover #2.

The State Department called upon the Attorney General for an opinion regarding the right of Mexico to insist upon a preferred right to the use of the waters of the river under the theory of prior appropriation by beneficial use on the lands near El Paso. Attorney General Judson Harmon replied in an exhaustive opinion in which he reviewed the international law and concluded that the United States was under no legal obligation to respect any claims of Mexico and that the matter was to be determined as one of policy. (Opinions Atty. Gen'l XXI, p. 280-3.)

Lands in Texas and Mexico which may be served from the Rio Grande consist of a comparatively narrow strip from El Paso to Fort Quitman at which point the river enters a canon and there remains for hundreds of miles, receiving contributions from the Conchas (from Mexico) and the Pecos and other streams (from the United States).

In 1906 Secretary Root concluded a treaty with Mexico by which the United States obligated itself to build a reservoir in New Mexico and to deliver to the Mexican ditches near El Paso 60,000 acre feet per annum, with a provision that full delivery of this amount should be excused in years of extreme drought.

The treaty also releases the United States from all other claims (by Mexico) to the remainder of the waters of the Rio Grande at all points above Fort Quitman.

Following the negotiation of this treaty, the Reclamation Service constructed the reservoir with Reclamation funds, with the exception of \$1,000,000 appropriated by Congress. Surveys were commenced in 1907 and the reservoir was completed several years thereafter. The project absorbed all of the old valley ditches between the reservoir and Fort Quitman and included new lands within its boundaries.

It may be generally stated that the Elephant Butte project includes all lands from the reservoir in New Mexico to Fort Hancock, Texas, and not further than Fort Quitman.

Any compact between the States of Colorado and New Mexico necessarily would consider and protect all uses of water under the Elephant Butte reservoir, including all lands between the reservoir and Fort Quitman, irrespective of whether or not Texas is a party to the compact. This would result from





Hon. Herbert Hoover #3.



the fact that the Elephant Butte Reservoir is in New Mexico. While, as a matter of fact, the seepage waters returning from the irrigated lands of the project already now aggregate more than 300,000 acre feet per year and are available for use at and below El Paso, nevertheless, any consideration of the government project would include a complete consideration and protection of the entire project and not a part thereof.

The embargo against all development along the upper reaches of the Rio Grande continued in full force and effect until about the year 1910 when so much pressure was brought to bear that the former order was modified but not removed. The Reclamation Service fixed March, 1903, as the date of the appropriation for its project and the Interior Department permitted the completion of all projects in Colorado and New Mexico initiated by proper filings with the state officials prior to that date, but continued the embargo order as to all junior projects. This order continues without practical modification to this date.

The embargo orders gave the Reclamation Service despotic control over the development of the upper river and this control has been relentlessly exercised in Colorado and New Mexico. The officials of the Bureau of Reclamation "say when" any private enterprise in Colorado or New Mexico may proceed. They have uniformly denied.

The people of the states of Colorado and New Mexico have bitterly resented this constant domination which has been as effective as though an army were stationed in the territory and has been almost as galling and oppressive. It has been the source of many bitter controversies extending over a quarter of a century. During all this time the officers in charge of the Reclamation Service manifested the usual bureaucratic attitude, which, of course, but aggravated the local situation.

Director Arthur P. Davis was at first opposed to the interstate compact plan of settlement of interstate river matters and his attitude was reflected by all the subordinates of his department. His experience on the Colorado River matter completely changed his views and he became an exponent of the plan. Unfortunately, about this time he resigned as director without having brought about a change in sentiment with the subordinates with the exception of the Chief Engineer, who though favorable to the plan, lacked the ability of bringing his subordinates into harmonious co-operation along the lines of his change of sentiment.



Hon. Herbert Hoover #4.

The theory of Government ownership of the waters of western streams "wholly removed from state control" advanced by the Legal Department of the Bureau of Reclamation is very agreeable to subordinate employees who wish to enjoy the utmost degree of exclusive power. This plan ignores state adjudications of priorities and all local administration and substitutes new decrees by Federal District Courts adjudicating the individual priorities on an entire river system and securing the enforcement of such decrees through the instrumentality of bailiffs or "water masters" appointed by the court. The court would be prone to select employees of the Bureau of Reclamation for such purposes, thereby placing such employees in permanent positions with powers superseding all state jurisdiction.

The interstate compact theory recognizes state sovereignty and leaves local administration to state authority. It is directly contrary to administration by Federal Courts foreign to the territory and by court appointees unresponsive to state law. Naturally the subordinates of the Bureau of Reclamation frown upon the compact idea and enter upon any task for its promotion with indifference if not with hostility.

Secretary Work has been very favorable to settling the Rio Grande controversy by interstate compact but the resignation of Director Davis, followed by the temporary appointment of Governor Davis as Director, with the subsequent change by the appointment of Director Mead, injected more or less confusion with the whole organization. Engineers, from the Chief down, resented the appointment of Governor Davis and were not disposed to aid the Secretary. These subordinates had been running the Rio Grande and North Platte rivers with a pretty high hand for the past generation and did not take kindly to settlement of the problems of these rivers by compacts. While the whole plan of the Legal Department of the Bureau is fantastic and impractical (if not unconstitutional), nevertheless it is the present theory under which the Bureau is working and expresses the ultimate ambition of subordinate employees. While many of these employees do not openly oppose the interstate compact plan, they believe it to be but a passing phase, that administrations will change and that by delaying the work assigned to them the whole program may be so prolonged as to be forgotten in the change of political administration.



Hon. Herbert Hoover #5.

This whole situation has reflected itself in the work on the Rio Grande. More than a year ago the Engineers of the Bureau were requested to bring their water supply and other engineering studies to a rapid conclusion in order that they might confer with the engineers for the States of Colorado and New Mexico in accordance with the plans originally outlined by Secretary Work. Various excuses for delay were imposed and the work was not seriously undertaken until late in the spring of 1924 and then only when a new man was assigned to the work. They commenced work in the Colorado area and proceeded down stream with apparent dispatch but, during August, the new man was withdrawn and the older employee was left in charge. Our engineers were surprised to be informed by him that the Bureau was making no attempt to study that part of the Elephant Butte project between El Paso and Fort Quitman and were also surprised to be informed, with apparent satisfaction upon his part, that those interested in the project in Texas were making no effort to aid. He has submitted no reports for consideration of the engineers for the states, who long since rounded out their labors and have been awaiting conference.

The same fundamental water supply data has been used by the engineers for the states and the Bureau. The only matters to be discussed are those of professional judgment respecting consumptive use, seepage returns, acreage which may be served etc.

This delay has been brought to the attention of Director Mead who will probably bring about some immediate remedy of present conditions.

The attitude of employees of the Bureau respecting that part of the Elephant Butte project between El Paso and Fort Quitman, Texas, is reflected in the recent request by Governor Neff. This request is evidently the result of an understanding with the people below El Paso and supported or acquiesced in by the subordinates of the Bureau. The fact that Texas is not a party to the compact constantly furnishes a very plausible excuse for a delay to a period when the terms of the commissioners for the states of Colorado and New Mexico will have expired and sufficient pressure may be brought to bear to cause a repeal of the New Mexico act authorizing the commission. In furtherance of this plan, the water users under the project in Texas are being encouraged to



Hon. Herbert Hoover #6.

threaten the water users in New Mexico to the effect that the latter would be held responsible by the former for any shortage of water resulting from any compact entered into by the States of Colorado and New Mexico. This entire attitude could have been prevented by the Government representatives in charge of the project had they not been opposed.

Governor Neff is not taken by surprise. Early in the spring of 1923 he was advised of the legislation by Colorado and it was suggested that he appoint a commissioner to co-operate with the States of Colorado and New Mexico. The Colorado act makes provision for such co-operation and while the New Mexico act does not so provide, there is nothing to prevent it. If the Bureau of Reclamation employees would promote the undertaking the Governor of Texas would appoint a commissioner without legislative act when confronted with the fact that the Commission, as now constituted, would proceed to act without further delay.

While any compact between Colorado and New Mexico could not prejudice Texas, no compact would be practicable which did not have the effect of protecting all the lands in Texas above Fort Quitman by reason of the fact that such lands are or will become an essential part of the Elephant Butte project. If such lands are protected Texas could have no complaint, but, in view of possible neglect of certain features, a prudent Governor would appoint a representative for Texas when confronted with the fact that his apparent indifference was not preventing action by the other states.

As already observed, both Mr. Seth and myself must report to our legislatures January 1, 1925. My finances cease to be available after December 1st and Mr. Seth is in the same situation. The proposition, therefore, is presented in two phases: (1) To proceed with the work of the Commission (with invitation to the Governor of Texas to appoint a representative) and to take chances of ratification of any compact agreed upon, and (2) To temporarily withhold any action, trusting that the Texas Legislature will authorize the appointment of a commissioner during the coming year, and running the hazard of a repudiation of the whole plan by the next New Mexico legislature.

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Commerce Papers: Rio Grande River Compact

Hon. Herbert Hoover #7.

I have realized from the outset that the situation presents some embarrassment but have felt that the hearty support given the undertaking by Secretary Work would so reflect itself in the attitude of the subordinates of the Bureau of Reclamation that the co-operation of Texas would be the natural result. Such a result is still attainable but only through the most positive and direct action by Director Mead and his subordinates.

I regret the length of this communication but feel that a full presentation of the facts is necessary.

Respectfully yours,

*Delph E. Carpenter*

Delph E. Carpenter  
Commissioner for Colorado.

C.C. to Secretary Work,  
C.C. to Com. J.O. Seth

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