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COCHITI: MANAGING THE RIO GRANDE
IN TIMES OF SURPLUS

Draft

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Western water law in the United States has traditionally developed around the principle of scarcity. Since the late nineteenth century, demand for water in the West has generally far-exceeded supply¹. However, in a turnabout situation, the Rio Grande during the last several years has been experiencing an on-going surplus of water due to the combined influences of heavy run-off, higher-than-normal precipitation, and outside water brought into the Rio Grande system by the San Juan-Chama transbasin diversion project.² This surplus has created new problems for those state and federal agencies responsible for managing the Rio Grande. The increased precipitation has reduced irrigation needs and the heavy run-off filled all water rights leaving water to spare. Never-the-less irrigators are reluctant to let the unneeded water pass on downstream for others to use. As a result, storage space for the excess irrigation water is increasingly difficult to find and has become an important issue as irrigation reservoirs become so full they threaten to spill.

A case in point is Elephant Butte Reservoir in southern New Mexico. Following the spring run-off of 1985, Elephant Butte Reservoir became so full that the spill and loss of the 50,000 acre-foot recreation pool was imminent. The congressional authorization for the recreation pool states that when a spill occurs at Elephant Butte

Reservoir, the recreation pool must be the first water to spill.³ Parties interested in preventing the loss of the recreation pool got the assistance of the Rio Grande Compact Commission and the United States Army Corps of Engineers which devised a way to move the recreation pool out of Elephant Butte Reservoir upstream through water accounting to Abiquiu Reservoir and then later to Cochiti Reservoir. The legality of that move has been questioned and a lawsuit charging that this transfer was outside the authority of the Compact Commission and the Corps of Engineers is currently on appeal.⁴

This paper specifically focuses on the events and decision-making processes that went into the above-mentioned Elephant Butte Reservoir recreation-pool transfer in an attempt to demonstrate how the Rio Grande is being managed during times of surplus. First, a relevant history of the New Mexico stretch of the Rio Grande and the managing agencies is provided in order to lay a foundation for understanding the facts and legal ramifications of the transfer. Next, the transfer of the Elephant Butte Reservoir recreation pool to Cochiti Reservoir will be examined and analyzed in detail. Then, other management problems caused by the surplus water will be reviewed. Finally, the positive and negative aspects of the current management system will be balanced and discussed.

Relevant History of the Rio Grande
and its Managing Agencies

The vital statistics of the Rio Grande are well-stated in an early investigative report of the Rio Grande:

(The) Rio Grande is an interstate and an international stream. It rises in Colorado and flows southward for more than 400 miles across New Mexico, it forms the boundary between Texas and the Republic of Mexico for about 1,250 miles to its mouth. The total length of the river is about 1,800 miles."⁵

(See map, Figure 1). What these figures fail to make clear is that the Rio Grande is a major artery in the water system that gives life to this arid region. Over half of New Mexico's population are residents of the Rio Grande Region.⁶

By the 1890's, after hundreds of years of development of the Rio Grande, water shortages began to crop up along the Mexican stretch of the Rio Grande. In 1906, the United States entered into a treaty with Mexico agreeing to deliver 60,000 acre-feet of water per year to the International Dam at Juarez, Mexico.⁷

From 1909 to 1978, nine reservoirs were built on the Rio Grande.⁸ A combination of international, federal, and state agencies and commissions manage the Rio Grande[#] and these reservoirs. The New Mexico stretch of the river is under the control of the United States Army Corps of Engineers, The United States Bureau of Reclamation, the New Mexico State Engineer, the

New Mexico Interstate Stream Commission, New Mexico irrigation and conservancy districts and the Rio Grande Compact Commission.

RIO GRANDE COMPACT

The Rio Grande Compact of 1939 deals with and equitably apportions only the section of the Rio Grande located above Fort Quitman, Texas and permits each State to develop its water resources at will, subject only to its obligations to deliver water in accordance with the schedules set forth in the Compact.⁹

The Rio Grande Compact Commission was formed in 1923 after the legislatures of Colorado and New Mexico enacted statutes authorizing the appointment of representatives; Texas followed this lead and Congress consented to the formation of the Rio Compact Commission. The commission is made up of one representative from each of the three states and one non-voting federal representative. The President of the United States designates the federal representative who acts as the chairman. The state representatives are the state engineers of Colorado and New Mexico, and a representative appointed by the Texas governor. The rules and regulations for the administration of the compact must be acceptable to all members of the Compact Commission. Any member may have a rule struck after 60 days notice.¹⁰

In 1929, a temporary Rio Grande Compact was passed while the permanent compact was being negotiated. In 1939 the

permanent Rio Grande Compact containing many of the 1929 provisions was ratified by Congress and the Colorado, New Mexico and Texas legislatures.

THE MIDDLE RIO GRANDE PROJECT

The Middle Rio Grande Project of 1948 is a partnership arrangement between the U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers, and the Middle Rio Grande Conservancy District. The Middle Rio Grande Project initially authorized the construction of two flood and sediment control reservoirs (Jemez Canyon and Abiquiu), a low-flow channel from south of San Acacia, New Mexico into Elephant Butte Reservoir, a floodway through Truth of Consequences, and authorized the U.S. Bureau of Reclamation to maintain the channel of the Rio Grande from Velarde to San Acacia to accomodate flows of about 5,000 cubic feet per second.

Cochiti and Galisteo Reservoirs were authorized, as part of the Middle Rio Grande Project, in 1960 for flood and sediment control.¹¹ The authorization includes specific operating criteria governing the operation of the four Middle Rio Grande Project reservoirs: Jemez Canyon, Abiquiu, Cochiti and Galisteo. The U.S. Army Corps of Engineers operates and maintains the four flood control reservoirs. According to the Army Corps of Engineers, flood control principles generally dictate that stored flood waters are released as quickly as downstream conditions will allow in order to keep storage capacity at a maximum in order to protect against future

flooding. However, during the irrigation season, as long as there is sufficient flood control space in these dams, the release of water is reduced so as to prevent unauthorized users from diverting it before it reaches its rightful delivery point.¹²

COCHITI

Cochiti Reservoir, located near the (city) of Cochiti approximately 50 miles upstream from Albuquerque, was originally authorized mainly as a flood and sediment control reservoir.¹³ Congress later added the additional management purposes of conservation, recreation, and development of fish and wildlife.¹⁴ Completed in 1975, storage began at the reservoir in November of 1973.¹⁵

Cochiti has a capacity of approximately 600,000 acre ft. 450,000 acre feet are reserved for flood control, 110,000 acre feet for sediment pool, and 50,000 acre feet are used by the permanent recreation pool.¹⁶ The recreation pool is made up and maintained with San Juan-Chama Project water.

SAN JUAN-CHAMA PROJECT

The San Juan-Chama Project, authorized by congress in 1963, is a transbasin diversion of Colorado water from the San Juan Basin delivered into the Rio Grande by way of the Rio Chama.¹⁷ The project had been contemplated since the early 1900s as noted in the 1939 Rio Grande Compact. Heron Reservoir with a capacity

of approximately 400,000 acre-feet was built for the purpose of storing and regulating exclusively San Juan-Chama Project water.

The San Juan-Chama Project became operational in 1971. Albuquerque has contracted for 48,200 acre feet of water per year, about one-half of the project water. The Middle Rio Grande Conservancy District is the next largest contractor with an annual order of approximately 22,000 acre feet. At present Albuquerque and a number of other contractors don't need all their water. Projections indicate that Albuquerque will not need full use of its allotment until the year 2030.¹⁸

In 1981, Congress authorized storage of San Juan-Chama Project water in Abiquiu and Elephant Butte reservoirs.¹⁹ The Corps has entered into temporary agreements with San Juan-Chama Project water contractors for storage of water in Abiquiu. As of June 30, 1986, there was approximately 186,4400 acre-feet of San Juan-Chama Project water stored in Abiquiu Reservoir.²⁰ Albuquerque has had to juggle its surplus project water from Elephant Butte to Abiquiu to prevent as much as possible from being lost.

ELEPHANT BUTTE RESERVOIR

Elephant Butte Reservoir, completed in 1916, was paid for and is solely owned by the Elephant Butte Irrigation District. However, the dam is operated by the federal government, supposedly because of the small federal power plant that is part of Elephant Butte Reservoir. The Bureau of Reclamation, which

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manages the dam, has historically reserved 100,000 acre feet as flood control even though the reservoir is not authorized for this purpose. This amount has been recently reduced to 50,000 acre feet. The flood space reached an all time low of 17,000 acre feet in May 1986.

In 1974, Congress authorized the establishment of a 50,000 acre-foot, recreation pool at Elephant Butte Reservoir and a 10-years of maintenance using San Juan-Chama Project water.²¹ The pool was given a low storage priority because the pool takes up space that is authorized as irrigation storage and the authorizing legislation provided that if a spill from Elephant Butte was necessary, the pool would be the first water to go.²²

Caballo Reservoir, downstream from Elephant Butte, was built in 1938 and is operated by the Bureau of Reclamation. It has a total capacity of about 350,000 acre-feet. 100,000 acre-feet are reserved for flood space and are under the control of the International Boundary and Water Commission.²³ The remaining space is for irrigation needs.

The Transfer of the Elephant Butte Reservoir Recreation Pool

In the Spring of 1985 it became evident that more water was in the Rio Grande than was required to meet authorized demand. On May 13, 1985 the Rio Grande Compact Commission authorized the Corps to store water in Platoro, Jemez, Cochiti and Abiquiu Reservoirs in order "to protect life and limb".²⁴ At a meeting

on July 2, 1985, the Compact Commission determined that there had been an actual spill from Elephant Butte Reservoir on June 13, 1985. There had not been an been a spill at Elephant Butte since the actual spill during the floods of 1947. At that same meeting the commission passed a resolution authorizing the Corps to transfer the Elephant Butte Reservoir recreation pool upstream to Abiquiu Reservoir.²⁵ There was not a physical movement of the water, the transfer was done on paper through an established Compact Commission accounting procedure which resulted in the recreation pool water in Elephant Butte Reservoir being relabeled as Rio Grande Basin water and the Rio Grande Basin water in Abiquiu Reservoir being re-labeled as the Elephant Butte Reservoir recreation pool.

The Corps later decided that it lacked the necessary rights-of-way to hold the Elephant Butte Recreation Pool at Abiquiu Reservoir. As a result, the Compact Commission in December of 1985 passed a resolution recommending the physical transfer of that water from Abiquiu Reservoir to Cochiti Reservoir.²⁶ The pool was not immediately transferred. The Corps of Engineers first worked out an agreement with the Cochiti Pueblo wherein the Pueblo consented to the temporary storage of water at Cochiti Reservoir during the period of March 31, 1986 to August 15, 1986. The resolution-agreement required that all the Elephant Butte Recreation Pool water be evacuated from Cochiti Reservoir by August 15, 1986.

There are two main legal problems with the above transfer. First, an examination of the dates make it appear that on July 2, 1986 when the transfer of the of the Elephant Butte recreation pool was authorized by the Compact Commission, the pool should have already spilled and been lost on June 13, 1987. Second, there is a strong argument to be made for the proposition that the corps never had the proper authority to store the Elephant Butte recreation pool in either the Abiquiu or Cochiti Reservoir.

With regard to the first problem, the enabling statute of the Elephant Butte recreation pool states that when an actual spill occurs at Elephant Butte the recreation pool along with any other San Juan-Chama project water must be the first water to spill.²⁷ On July 2, 1986, The Rio Grande Compact Commission determined that an actual spill from Elephant Butte had occurred on June 13, 1985.²⁸ On June 13th, the recreation pool had not yet been transferred out of Elephant Butte. The Compact Commission resolution which authorized the transfer of the recreation pool was not passed until July 2nd, almost one month after the spill.

When questioned about this apparent discrepancy in dates, Phillip Mutz, the Interstate Stream Engineer, offered as the only explanation that "one has to assume that the pool was transferred prior to June 13, 1985."²⁹ In order to "assume that the pool was trasferred prior to June 13, 1985" one also has to assume that either there was a Compact Commission

resolution prior to June 13, 1985 to do so, or one has to assume that at the July 2, 1985 meeting the Compact Commission decided to move the pool and also decided to back-date the transfer so that it would appear to precede the spill date. It does not appear that either of these scenarios took place.

The resolution of July 2, 1985 was the first official action taken by the Compact Commission to transfer the recreation pool from Elephant Butte to Abiquiu. On May 13, 1985 the Compact Commission reached an "agreement in principle" authorizing the Corps of Engineers to store water in Platoro, Jemez, Cochiti, and Abiquiu Reservoirs to protect life and limb between Elephant Butte and Caballo Reservoirs.³⁰ However, this agreement in principle should not apply to the "paper" transfer of the Elephant Butte recreation pool because the transfer was done merely to save the pool from being spilled and lost, not to protect life and limb.

As for the second scenario, there was no mention made in the transfer resolution of back-dating the transfer. In fact, the resolution of July 2, 1985 states that the Elephant Butte Recreation Pool "is presently stored in Elephant Butte Reservoir...".³¹ Even if the Compact Commission had back-dated the transfer, there is no indication in the Rio Grande Compact that the Compact Commission has the authority to take such an action. Hence, it would appear to be erroneous to assume that the recreation pool had been transferred out of Elephant Butte prior to the 1985 spill of that reservoir.

If the recreation pool was indeed in Elephant Butte Reservoir at the time of the 1985 spill, then it should have spilled at that time unless there was sufficient other San Juan-Chama Project water present in Elephant Butte to constitute the full amount of the spill. Such was not the case. There was 6,666 acre-feet of the City of Albuquerque's San Juan-Chama Project water present at that time.³² However, the spill exceeded the amount of all the stored San Juan-Chama Project water and was, in fact, large enough to cause a cancellation of all existing interstate water debts and credits pursuant to Article VI of the the Rio Grande Compact.^{33 34}

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This all leads one to the conclusion that at the time the Compact Commission passed the resolution to transfer the recreation pool from Elephant Butte to Abiquiu Reservoir the pool should have already spilled from Elephant Butte and, hence, there was no pool to transfer.

Looking to the second problem, of whether the Corps of Engineers had the legal authority to store the Elephant Butte recreation pool in Cochiti Reservoir, for argument's sake, I will temporarily assume that the recreation pool was transferred out of Elephant Butte prior to the spill. Although a similar legal question exists as to whether the Corps had the legal authority to store the recreation pool at Abiquiu Reservoir, for the purpose of simplicity this paper will focus only on the storage of the pool at Cochiti.

As ~~already~~ discussed above, following the July 2, 1985 resolution of the Compact Commission, the Elephant Butte Recreation Pool was transferred on paper from Elephant Butte Reservoir to Abiquiu Reservoir, and an equal amount of Rio Grande Basin water was transferred from Abiquiu Reservoir to Elephant Butte Reservoir. The corps could not maintain the pool at Abiquiu because of the lack of rights-of-way.³⁵ At that point, the wheels were set in motion to physically move the pool from Abiquiu to Cochiti Reservoir.

In December of 1985, the Compact Commission adopted by correspondence a resolution which recommended to the corps that the pool be released from Abiquiu for storage in Cochiti Reservoir. The corps did not immediately carry out this recommendation. It first sought approval to make the move from the Cochiti Pueblo Indians.³⁶ This approval is not required by the Cochiti Reservoir enabling statutes. *

The Cochiti Pueblo, located immediately downstream from the reservoir, has experienced water seepage since the dam was built. *This seepage has* ~~that~~ flooded the land, rendering it virtually useless. The pueblo currently has a lawsuit pending in U.S. District Court against the United States over this problem.³⁷ It appears that the corps sought the agreement with the pueblo in order to protect itself against any further potential liability. On March 13, 1986, the pueblo tribal council consented to the

temporary storage of the Elephant Butte recreation pool at Cochiti Reservoir for the period of March 31, 1986 to August 15, 1986.

In 1960, Congress specified that Cochiti, along with all the other reservoirs of the Middle Rio Grande Project, are to be operated "solely for flood control and sediment control."³⁸ In 1964, Cochiti Reservoir's enabling statute was supplemented to provide for the authorization of a 50,000 acre-feet permanent pool for conservation, recreation and development of fish and wildlife services.³⁹ This change indicates that Cochiti Reservoir should no longer be managed solely for flood and sediment control, now, the supplemental concerns of conservation, recreation, fish and wildlife should also be considered. Storing the Elephant Butte recreation pool at Cochiti does not match with any of these authorized operations. In fact, as it turned out, storing the Elephant Butte pool at Cochiti actually inhibited the development of wildlife, contrary to this authorized operations purpose.

The Corps may deviate from the specified operation schedule of Cochiti in two situations: 1) The operation schedule may be altered with the advice and consent of the Rio Grande Compact Commission; and 2) when the Corps gives the Compact Commission written notice that an emergency threatening the safety of major structures or endangering life exists, the "rules of operation may be suspended during the period of and to the extent required by such emergency".⁴⁰ Even though the Compact Commission may

advise the Corps to deviate from the standard operating procedure, it can only be a recommendation and the corps has the final discretion as to whether to follow this advice.

Both of the above deviations were in effect at the time of the transfer to Cochiti. However, they may not have been sufficient to authorize the transfer. The Compact Commission resolution of December 1985 was the "advice and consent" deviation of the first kind. The Compact Commission agreement of May 1985 wherein the Corps of Engineers was authorized to store water in Platoro, Jemez, Cochiti, and Abiquiu Reservoirs in order to protect life and limb between Elephant Butte and Caballo reservoirs was the deviation of the second kind.⁴¹

What the Compact Commission did in the December 1985 resolution was to call for, not only, a deviation away from Cochiti's legislated operating schedule, but it took an additional leap and also called for a deviation away from the operating purposes of Cochiti. This leap is where the authority to make the transfer becomes questionable. The statute says only that the operating schedule may be deviated from, it does not say that the operating purposes of the reservoir may be altered. The sole purpose of storing the Elephant Butte recreation pool was to keep it from being lost. It served none of the authorized purposes of flood control, sediment control, conservation, recreation or fish and wildlife development. Rather, what it did do was contribute to the flooding at Cochiti Lake. This flooding drowned vegetation,

killed trees where bald-eagles wintered, covered indian ruins and caused general havoc with the lake's ecosystem. (CIP 1983 needed)

The second deviation, the May 1985 Compact Commission agreement, is an even weaker basis for authorizing the transfer. Under this second kind of deviation, not only is the deviation confined to changes in the operating schedule, but the changes are also confined to deviations made for the protection of life or the safety of major structures. The transfer of the recreation pool was not done for either of these emergency reasons. This is evidenced by the fact that the first move from Elephant Butte to Abiquiu was done only by a paper exchange and no actual movement of water was involved.

In 1986, there remained no viable option to store the Elephant Butte recreation pool, including the possibility to store at least a part of it in Platoro Reservoir in Colorado. As a result, the pool spilled on or about August 6, 1986.] AK

OTHER PRESSURES PUT ON THE RIO GRANDE SYSTEM BY THE SURPLUS

Besides the loss of the Elephant Butte Reservoir recreation pool, the surplus of water has put pressures on the Rio Grande system in a number of other ways. During the many years of low flow, sediment and neglect reduced the river channel to below the capacity necessary to exacuate excess waters. The excess water provided Colorado and New Mexico with an opportunity to cancel their Rio Grande Compact water debts by way of a spill at Elephant Butte, but allowing such a spill would likely interfere

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wiht irrigation rights. Elephant Butte Reservoir became so full that the expensive new low-flow channel cannot be used until the level goes down. These are just a few of the many problems that resulted from the on-going surplus.

Due to the surplus of water, the Bureau of Reclamation has been releasing 2,500 cfs from Caballo Dam since October 8, 1986, with no demand for water. They expect to dump about 120,000 acre feet in October alone, which is about as much water as the city of El Paso uses in an entire year.⁴²

Operation of the upstream flood control reservoirs in 1985 and 1986 pursuant to the May 13, 1985 Compact Commission agreement resulted in the maximum amount of water ever stored in Abiquiu and Cochiti reservoirs, with environmental consequences which enraged concerned citizens. Bandelier National Monument flooded, bald-eagle habits were disrupted, [↑] fishing and whitewater rafting were also impacted. At the urging of whitewater rafters, the district attorney for the First Judicial District in Santa Fe filed a suit claiming, among other things, mismanagement of the reservoirs and violation of the Rio Chama Scenic and Pastoral Act. The suit, State of New Mexico v. the Bureau of Reclamation and the U.S. Army Corps of Engineers, was dismissed by the federal court for lack of subject matter jurisdiction. Appeal to the Tenth Circuit Court of Appeals is pending.⁴³

The Rio Grande channel through Truth or Consequences has an authorized capacity of 5,000 cfs but arroyo inflows and sediment

plugs had reduced the channel capacity to less the 2500 cfs. In the low-flow years this was not a problem, but with the need to expell large amounts of excess water the need to restore the channel to its full capacity became imperative. Also, the earth dike at Elephant Butte showed signs of distress in the fall of 1985. These problems required reduced flow from the upstream flood control dams in order to reduce risks and provide river conditions that allowed the remedial work.⁴⁴ At the cost of \$2 million the channel capacity was restored to 5,000 cfs. Restoration work on the channel was done from October 1985 to February 1986.⁴⁵

A new (interest) for New Mexico came into play after the 1986 snowmelt caused rare flooding (the in the stretch of the Rio Grande below El Paso. The International Boundary and Water Commission (IBWC) sought help from New Mexico based agencies in minimizing flooding along the United States/Mexico stretch of the river. The IBWC requested that the flood control dams of the Middle Rio Grande Project be operated to control this flooding. The Corps of Engineers carried out this request based on the theory that the original authorization of the Middle Rio Grande Project did not limit the reaches where flood control would be provided.⁴⁶

DECISION-MAKING PROCESSES

In looking at the current structure of decision-making in the Rio Grande it is important to recognize that these systems

and policies were developed in times of water shortage and were shaped by the interested parties of the time - farmers, miners, developers, the State Engineer, the Bureau of Reclamation, and the Army Corps of Engineers - all proponents of consumptive water use. Today, in contrast, the Rio Grande is facing a time of surplus and there are ^{other} interested parties who are [#]demanding to have their concerns addressed. These new interest groups are asserting environmental, recreational, aesthetic, cultural and other non-consumptive use concerns. Are the current managers changing with the times to integrate these newer interests? It doesn't look like it. ~~There is~~ ^{is} the prevailing attitude ¹ that in order for an interest to be protected it must involve consumptive use of water.

For example, although the recreation industry is an important and growing industry to New Mexico, ^(etc) recreational water uses are almost unprotected under New Mexico's present system of water law and policy.⁴⁷ New Mexico's powerful State Engineer, Steve Reynolds, is known to be of the opinion that it is suicide for the existing water system managers to get into even consideration of the value of cultures and the environment.⁴⁸ This attitude looks at the river as a battleground of interests rather than as a community of interests to be shared for everyone's best interests.

The stresses brought on by surplus water have not improved this situation. The Rio Grande managers are essentially ~~made up of~~ specialized, decentralized agencies. This worked out during

times of low flow when the management system wasn't put to (the) test. With the high run-off, cracks have surfaced in almost every part of the system. There is not enough room in the reservoirs, not enough capacity in the channels, the potential for floods is threatening, and more water keeps pouring into the system. With the system bloated, the need to know what each other ^{is} ~~was~~ ^{have} up to [^] increased. The failure of one agency to live up to its obligations could cause severe problems for another agency.

What appears to have happened is that the surplus has made the agencies, bureaus, and commissions which manage the various *sections* Rio Grande System draw close, and created an ad-hoc centralized approach to solve each others problem. The interdependent nature of their work ^{has} [^] become apparent. They have had to enlist each other's assistance and to interact on a more cooperative basis than ever before. In this crisis-style management, the managers ^{have} [^] developed a worse case of tunnel vision, channeling all efforts into protecting and maintaining the traditional interests. Those parties who have also been affected, and in ~~some~~ cases harmed, by the Rio Grande surplus but do not have the legislative authority or political clout of the Corps, Bureau, and irrigation Districts have been left out of the decision-making to a greater extent than normal, all in the name of emergency.

The Rio Grande managers have a large degree of decision-making discretion, as evidenced by the "advice and

consent" type of clause found in the Cochiti Reservoir enabling statute. This discretion could be used to integrate non-consumptive concerns, but this is not being done.

This forces non-consumptive users to search for other ways to get their concerns addressed. The two most common approaches are the use of lawsuits and public pressure.⁴⁹ These can both be very effective, but the bottom line is that they are both fire-fighting tactics - working best in a remedial fashion, attempting to undo harm that has already been committed. In some cases lawsuits and public pressure, if applied early enough, forces the non-consumptive concerns to be addressed at the time of decision-making.

. Another approach is to get instream flows recognized as a beneficial use.⁵⁰ This legislative recognition would allow non-consumptive users to acquire legally-protected water rights. While ^{recognized} instream flow seems to be an inevitable step, one which several western states have already adopted ~~it~~, it will be a while in coming to New Mexico.

In summary, the Rio Grande managers have done a very effective job of holding together the existing system during the stressful time of excess water, but it has had the effect of magnifying the problems of those interests not addressed by the traditional system. The real stresses placed on the Rio Grande by the surplus, combined with the additional discretion granted

to the managers in this type of 'emergency' situation, have caused setbacks in getting non-traditional concerns addressed and integrated into the Rio Grande management system

FOOTNOTES

- 1 Hester, Who are the Outsiders?, 31 New Mexico Water
Conference Proc. 1 (1986)
- 2 74 Report of the State Engineer of New Mexico 71, July 1,
1985 to June 30, 1986
- 3 The Reclamation Development Act of 1974, Pub. L. No.
93-493, Section 1401, 88 Stat. 1486 (1974)
- 4 74 Annual Report of the State Engineer of New Mexico 72,
July 1, 1985 to June 30, 1986:
"On July 12, 1985, the state of New Mexico, through the
district attorney of the First Judicial District, filed a
complaint in the U.S. District Court in Albuquerque against
the U.S. Corps of Engineers and the U.S. Bureau of
Reclamation. The suit alleges that the corps and the
bureau operated reservoirs in the Rio Grande basin during
1985 in violation of the rights of New Mexico citizens.
The lawsuit also claims that the operation of Abiquiu
Reservoir violated El Rio Chama Scenic and Pastoral River
Act (N.M.Stat. Ann. Section 16-4-1 through 16-4-8
[1978]). On March 11, 1986, the court entered an order
dismissing the plaintiff's complaint for lack of subject
matter jurisdiction. On April 10, 1986, the plaintiff
appealed the court's action to the Tenth Circuit Court of
Appeals. A decision on that appeal is pending."
- 5 Report of the Rio Grande Joint Investigation submitted on
December 23, 1937, to the President by the National
Resources Committee, Introductory passage.
- 6 1, pt 33, Bureau of the Census, U.S. Dep't of Commerce,
Census of Population: 1960, Table 6, at 33-8 (1963)
- 7 Report of the Rio Grande Joint INvestigation submitted on
December 23, 1937, to the President by the National
Resources Committee
- 8 Mutz, Surface Water Resources Development, Apportionment,
Administration and Management Milestones, 31 New Mexico
Water Conference Proc. 7 (1986)
- 9 47 Annual Report of the Rio Grande Compact Commission (1985)
- 10 47 Annual Report of the Rio Grande Compact Commission
(1985)
- 11 Flood Control Act of 1960, Pub. L. No. 86-645, Section 201,
74 Stat. 488 (1960)

- 12 Flood Control Act of 1960, Pub. L. No. 86-645, Section 201,
74 Stat. 488 (1960)
- 13 Flood Control Act of 1960, Pub. L. No. 86-645, Section 201,
74 Stat. 488 (1960)
- 14 Pub. L. No. 88-293, 78 Stat. 171 (1964)
- 15 47 Report of the Rio Grande Compact Commission 49 (1985)
- 16 Flood Control Act of 1960, Pub. L. No. 86-645, Section 201,
74 Stat. 488 (1960)
- 17 Navajo Indian Irrigation Project; San Juan-Chama Project
Act, Pub. L. No. 87-483, 76 Stat. 96 (1962)
- 18 Daves, Albuquerque and the Rio Grande, 31 New Mexico Water
Conference Proc. 52 (1986)
- 19 Pub. L. No. 97-140, 95 Stat. 1717 (1981)
- 20 74 Report of the State Engineer of New Mexico 72, July 1,
1985 to June 30, 1986
- 21 The Reclamation Development Act of 1974, Pub. L. No.
22 93-493, Section 1401, 88 Stat. 1486 (1974)
The Reclamation Development Act of 1974, Pub. L. No.
93-493, Section 1401, 88 Stat. 1486 (1974)
- 23 Overvold, You Can't Put Too Much Water in Elephant Butte,
31 New Mexico Water Conference Proc. 44 (1986)
- 24 73 Report of the State Engineer of New Mexico 67, July 1,
1984 to June 30, 1985
- 25 Resolution on Exchange Storage of San Juan-Chama Project
Water Stored Pursuant to Public Law 93-493 adopted at July
2, 1985 meeting of the Rio Grande Compact Commission:
WHEREAS, the 1985 calendar year Rio Grande discharge
is much greater than average and is expected to exceed
project storage capacity, and
WHEREAS, San Juan-Chama Project water is presently
stored in Elephant Butte Reservoir pursuant to Public Law
93-493 and would be spilled after the 6,666 acre feet of
the City of Albuquerque's San Juan-Chama Project water in
Elephant Butte Reservoir pursuant to P.L. 97-140 is
spilled, if it becomes necessary to make releases from
Elephant Butte Reservoir greater than the requirements of
the Rio Grande Project, and
WHEREAS, Abiuiu Reservoir now contains a significant
quantity of Rio Grande Basin flood water, and

WHEREAS, there remains unused sediment reserve capacity in Abiquiu Reservoir that could be utilized for storage of the San Juan-Chama Project water currently in Elephant Butte Reservoir pursuant to P.L. 93-493.

NOW, THEREFORE, BE IT RESOLVED, that to prevent irretrievable loss of San Juan-Chama Project water for Rio Grande Basin flood water now stored in Abiquiu Reservoir and that the exchange shall be made under established Rio Grande Compact Commission accounting procedures. The Commission further agrees, subject to the discretion of the District Engineer of the Albuquerque District of the Corps of Engineers, that the San Juan-Chama Project water thus stored in Abiquiu Reservoir shall remain in that reservoir until sufficient storage space is available in Elephant Butte Reservoir to contain that water when released from Abiquiu Reservoir without imminent risk of spill or until its release is requested by the Secretary of the New Mexico Department of Natural Resources.

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Rio Grande Compact Commission Resolution of December 1985 (adopted by correspondence and ratified at the annual meeting):

WHEREAS, San Juan-Chama Project water authorized for recreational use in Elephant Butte Reservoir pursuant to P.L. 93-493 is temporarily being stored in Abiquiu Reservoir under an accounting exchange agreed to by resolution of the Rio Grande Compact Commission at its meeting on July 2, 1985, and

WHEREAS, the Corps of Engineers cannot continue to store the recreational water authorized by P.L. 93-493 in Abiquiu Reservoir, and

WHEREAS, there remains unused sediment reserve capacity in Cochiti Reservoir that could be utilized for storage of the recreational water authorized by P.L. 93-493 and currently being stored in Abiquiu.

NOW, THEREFORE, BE IT RESOLVED, that to prevent the irretrievable loss of San Juan-Chama Project water authorized for recreational use in Elephant Butte Reservoir by P. L. 93-493, the Rio Grande Compact Commission hereby recommends that the San Juan-Chama Project water currently stored in Abiquiu Reservoir pursuant to the July 2, 1985, accounting exchange agreement, be released for storage in Cochiti Reservoir. The Commission further recommends, subject to the discretion of the District Engineer, Albuquerque District, Corps of Engineers, that the San Juan-Chama Project water thus stored in Cochiti Reservoir shall remain in that reservoir until sufficient storage space is again available in Elephant Butte Reservoir to store that water without imminent risk of spill, or until its release is requested by the Secretary of the New Mexico Department of Natural Resources.

- 27 The Reclamation Development Act of 1974, Pub. L. No. 93-493, Section 1401, 88 Stat. 1486 (1974)
- 28 73 Report of the State Engineer of New Mexico, July 1, 1984 to June 30, 1985
- 29 Telephone conversation with Phillip Mutz, Interstate Stream Commission Engineer, on May 4, 1987
- 30 73 Report of the State Engineer of New Mexico, July 1, 1984 to June 30, 1985
- 31 Resolution on Exchange Storage of San Juan-Chama Project Water Stored Pursuant to Public Law 93-493, Rio Grande Compact Commission (1985)
- 32 Id.
- 33 Article VI of the Rio Grande Compact, 53 Stat. 155 (1939):
"In any year in which actual spill occurs, the accrued credits of Colorado, or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their prospective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the Commissioners for the States having accrued credits authorize the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.
"In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado, or New Mexico, or both, at the beginning of the year shall be cancelled."
- 34 74 Report of the State Engineer of New Mexico at 70-71, July 1, 1985 to June 30, 1986
- 35 Mutz, Surface Water Resources Development, Apportionment, Administration and Management Milestones, 31 New Mexico Water Conference Proc. 18 (1986)
- 36 Pueblo de Cochiti Resolution, March 19, 1986
- 37 Pueblo de Cochiti vs. U.S., et. al., C.V. No. 85-1552M, United States District Court, District of New Mexico
- 38 Flood Control Act of 1960, Pub. L. No. 86-645, Section 201, 74 Stat. 488 (1960).
- 39 Pub. L. No. 88-293, 78 Stat. 171 (1964)

- 40 Flood Control Act of 1960, Pub. L. no. 86-645, Section 201,
74 Stat. 488 (1960)
- 41 73 Report of the State Engineer of New Mexico 67,
July 1, 1984 to June 30, 1985
- 42 Overvold, You Can't Put Too Much Water In Elephant Butte,
31 New Mexico Water Conference Proc.47 (1986)
- 43 Mutz, Surface Water Resources Development, Apportionment,
Administration and Management Milestones, 31 New Mexico
Water Conference Proc. 7 (1986)
- 44 Cunico, Water Management Responsibilities for the Rio
Grande Basin, 31 New Mexico Water Conference Proc.23 (1986)
- 45 Calhoun, Operations on the Upper Rio Grande, 31 New Mexico
Water Conference Proc.31 (1986)
- 46 Id.
- 47 Findling, Recreation and Water - Pools and Flows, 31 New
Mexico Water Conference Proc. 80 (1986)
- 48 Hester, The Water Boss, 10 Albuquerque Journal Magazine
29, May 5, 1987 at 9
- 49 Wallin, Rio Grande Management: The View from Upstream, 31
New Mexico Water Conference Proc. 98 (1986)
- 50 Shupe, The Need for Dialogue in Basinwide Management, 31
New Mexico Water Conference 197 (1986)

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