

Texas Commission On Environmental Quality
INTEROFFICE MEMORANDUM

To: City of El Paso, El Paso County Water
Improvement District No. 1, United States Bureau
of Reclamation, Hudspeth County Conservation
and Reclamation District No. 1,
Dieter Gerzymisch, and CEMEX El Paso Inc.

Date: March 2, 2007

From: Robin Smith, Attorney, Executive Director, TCEQ

Subject: Certificates of Adjudication for Upper Rio Grande Adjudication

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 MAR -2 PM 12: 21
CHIEF CLERKS OFFICE

At the request of the Office of General Counsel, I have made a few more non-substantive changes to three of these certificates. These changes were made to make the certificates identical to the certificates attached to the Administrative Law Judge's Proposal for Decision in this case - these SOAH certificates are the same certificates that were noticed in the Preliminary and Final Determinations.

No changes were made to the City of El Paso's certificate, or CEMEX's certificate.

On the Indian Cliffs Ranch Certificate, second page, the Special Condition included what should have been the next paragraph of the certificate. We separated the two provisions.

On Hudspeth County Conservation and Reclamation District No. 1, page 3, Provision 1.a., third line was changed to add a hyphen between "27,000" and "acre-feet" and page 1, second Whereas clause, 6th line, "As" should be "as." Also, on page 4, Provision 1.b., we added a period at the end of the paragraph.

On El Paso County WID No. 1, the following changes were made:

Page 1 - first Whereas clause, change "Congress" to "United States"

Page 2, first full paragraph, line 7 was changed to add "Mexico at" after "the amount delivered to" and "for Mexico" was deleted

Page 3 - a space was added after the first line

Page 4 - first Whereas clause, change "Section 55.158" to "§ 55.185"

Page 4, line 6, ". . ." was added before "distribute."

Page 4, third full paragraph, 5th line " after "authorizes" "HCCRD to divert" is added and "diversion of" is deleted

Top of Page 5, line 3, changed "1908.)" to "1908)."

Certificates of Adjudication for Upper Rio Grande Adjudication

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Page 2

Page 5, Provision 1.a., changed from "Elephant Butte and Caballo Reservoirs" to "Elephant Butte Reservoir and Caballo Reservoir"

Page 5, Provision 1.b.ii - added a comma between "District No. 1" and "plus"

Page 6, Provision 1.c., added a hyphen between "surface" and "water"

Page 6, Provision 2.b., added a comma between "paragraph 1.d above" and "from"

page 7, Provision 4.a., 3rd line, added a comma after ""compact"

Page 8 - last paragraph was changed from "and its right of continuing supervision" to "and its continuing right of supervision" as it was in the certificate attached to the SOAH decision

Page 8, last paragraph, place a comma between "Texas Water Code" and "to the extent"

Please let me know immediately if you have any concerns about these changes. My phone number is (512) 239-0463.

Thank you.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION NO. 23-5940

Names of Holders:	United States of America	Address: Bureau of Reclamation 505 Marquette NW, Suite 1313 Albuquerque, NM 87102-2162
	El Paso County Water Improvement District No. 1	294 Candelaria Street El Paso, TX 79907
Priority Dates:	July 6, 1889 and January 1, 1918	
Purpose:	Agricultural, Municipal, Industrial, Mining, and/or Recreational Uses	Counties: El Paso and Hudspeth
Watercourse:	Rio Grande (above Ft. Quitman, Texas)	Watershed: Rio Grande Basin

WHEREAS, in 1905, the United States enacted the Rio Grande Reclamation Project Act of February 25, 1905, 33 Stat. 814, authorizing the construction of storage facilities on the Rio Grande in the Territory of New Mexico for storage of water of the Rio Grande for irrigation of lands in New Mexico and Texas for the Rio Grande Reclamation Project;

WHEREAS, in 1905, the State of Texas enacted House Bill 588, 29th Legislature, Chapter 101 (as amended, now Section 11.052 of the Texas Water Code), which authorized the Secretary of the Interior to make all necessary examinations and surveys for, and to locate and construct irrigation or reclamation works within the State of Texas, and to perform any and all acts necessary to carry into effect the provisions of the Reclamation Act of 1902 (38 Stat. 388, now 43 U.S.C. § 371, *et seq.*) as to such lands, subject to all the provisions, limitations, charges, terms and conditions of the said Reclamation Act;

WHEREAS, Section 8 of the Reclamation Act of 1902 (now 43 U.S.C. §§ 372 and 383) provides in part: "Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the

Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof.”;

WHEREAS, in 1906, the United States entered into the Convention with Mexico for the Rio Grande providing for the equitable distribution of water of the Rio Grande for irrigation purposes (34 Stat.2953). The Convention also provides that the delivery of said amount of water to Mexico shall be assured by the United States, and shall be distributed through the year in the same proportions as the water supply furnished from said irrigation system to lands in the United States in the vicinity of El Paso, Texas, and in case of extraordinary drought or serious accident to the irrigation system in the United States, the amount delivered to Mexico at the Acequia Madre shall be diminished in the same proportion as the water delivered to lands under said irrigation system in the United States. Under Article IV of such Convention, Mexico waived any and all claims to the waters of the Rio Grande for any purpose whatever between the head of the Acequia Madre and Fort Quitman, Texas;

WHEREAS, in 1906 and 1908, pursuant to the Reclamation Act of 1902, the Reclamation Service notified the Territorial Irrigation Engineer for the Territory of New Mexico of reservations by the United States of Rio Grande water for the Rio Grande Reclamation Project in accordance with the laws of the Territory of New Mexico;

WHEREAS, in 1910, Congress approved an Act (36 Stat. 559) which enabled the people of New Mexico to form a constitution and state government and to be admitted to the Union on an equal footing with the original States. Section 2 of such Act provided in part, “that there be and are reserved to the United States, with full acquiescence of the State [New Mexico], all rights and powers for the carrying out of the provisions by the United States of an Act of Congress entitled ‘An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands’ approved June seventeenth, nineteen hundred and two, and Acts amendatory thereof or supplementary thereto [43 U.S.C. § 371 *et seq.*], as to the same extent as if said State had remained a Territory”;

WHEREAS, in 1911, the State of Texas adopted what is now Section 11.005, Texas Water Code, which provides as follows: “This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 371 *et seq.*), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.”;

WHEREAS, the United States stores water in two reservoirs, Elephant Butte and Caballo, located in New Mexico, for use throughout the Rio Grande Reclamation Project and for delivery to Mexico. The United States releases water from such storage and supplements such released water with return flow to the Rio Grande and water in the Rio Grande from other sources, and

diverts such water at a series of diversion dams on the Rio Grande in New Mexico and Texas;

WHEREAS, the United States purchased lands, canals and water rights in Texas for the construction of the Rio Grande Reclamation Project, and such purchases included, without limitation, the Franklin Canal and the lands and water rights identified in the Loomis affidavits of 1889, later embodied in Certified Filing No. 123, using Reclamation funds which were subject to reimbursement to the United States by Rio Grande Reclamation Project water users;

WHEREAS, in 1939, the United States, Colorado, New Mexico and Texas entered into the Rio Grande Compact (53 Stat. 785; Section 41.009, Texas Water Code), which constitutes statutory law of the United States and the States of Colorado, New Mexico, and Texas and by the terms of the Compact cannot be modified without the approval of all four parties to the Compact;

WHEREAS, the United States releases stored water from Elephant Butte and Caballo Reservoirs to supply water to the Elephant Butte Irrigation District in New Mexico and the El Paso County Water Improvement District No. 1 in Texas. The first two diversion dams downstream of Caballo Dam (Percha Diversion Dam and Leasburg Diversion Dam) are used by the United States to deliver water to land in New Mexico. A substantial amount of water diverted by these two diversion dams for use in New Mexico is returned to the Rio Grande for use downstream of the dams. The next downstream diversion dam is the Mesilla Diversion Dam, which is located in New Mexico but is used to divert water to both the Elephant Butte Irrigation District and the El Paso County Water Improvement District No. 1. The American Diversion Dam is the next diversion dam downstream on the Rio Grande. It is the first diversion dam in Texas, and divides water in the Rio Grande between Mexico and the United States. Water for Mexico is provided by the United States and delivered to Mexico at the International Diversion Dam, in the Rio Grande downstream of the American Diversion Dam. Water for the El Paso County Water Improvement District No. 1 is presently diverted by the United States into the American Canal at the American Diversion Dam, but for many years the United States diverted some of such water at the Riverside Diversion Dam, which is presently not functional but may be rebuilt in the future;

WHEREAS, approximately 2.3 miles downstream from the American Diversion Dam is the International Diversion Dam. The International Diversion Dam is used to provide and deliver 60,000 acre-feet of water per year to Mexico pursuant to the 1906 Convention, and is the only diversion location authorized by the 1906 Convention or any other treaty between the United States and Mexico for diversion of water from the Rio Grande upstream of Fort Quitman, Texas. The Riverside Diversion Dam is the last downstream diversion dam on the Rio Grande below Caballo Dam and upstream of Fort Quitman, Texas. The Riverside Diversion Dam is presently not functional but may be rebuilt in the future;

WHEREAS, the United States entered into a contract dated December 29, 1917, with the El Paso County Water Improvement District No. 1 and the El Paso Valley Water Users' Association. Thereafter, the El Paso Valley Water Users' Association was dissolved;

WHEREAS, the El Paso County Water Improvement District No. 1 ("District") is a political subdivision of the State of Texas, organized and existing under Article XVI, Section 59 of the Texas Constitution, and is subject to Chapter 55 of the Texas Water Code and other provisions thereof. The District is authorized by statute to enter into contracts or other obligations with the United States (§ 55.185, Texas Water Code). By statute the District is required to "...distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the secretary of the interior, and provisions of the contract" (Section 55.364, Texas Water Code). The El Paso County Water Improvement District No. 1 includes 69,010 acres within its boundaries that are classified by the United States and the District as irrigable;

WHEREAS, in 1920, the El Paso County Water Improvement District No. 1 merged with the El Paso County Conservation and Reclamation District No. 2, with the merged districts thereafter known as the El Paso County Water Improvement District No. 1;

WHEREAS, in 1924, the United States entered into a contract (the "Warren Act Contract") with the Hudspeth County Conservation and Reclamation District No. 1 ("HCCRD"), pursuant to the Warren Act of 1911 (43 U.S.C. §§ 523-525), and the parties amended such contract in 1951. HCCRD holds Texas Permit No. 236 amended by Permit No. 236A. Such permit authorizes HCCRD to divert water from the Rio Grande at two grade control structures, located at latitude 31.413 degrees north 106.096 degrees west in El Paso County, Texas and at latitude 31.318 degrees north and longitude 105.936 degrees west in Hudspeth County, Texas;

WHEREAS, in 1996, the United States conveyed to the El Paso County Water Improvement District No. 1 certain facilities and rights-of-way within the District's boundaries but reserved ownership of the American Canal, the American Canal Extension, and the American, International and Riverside Diversion Dams;

WHEREAS, pursuant to 43 U.S.C. § 521, which allows the Secretary of the Interior to authorize conversion of water used in the Rio Grande Reclamation Project from irrigation to other uses, the United States entered into contracts with the El Paso County Water Improvement District No. 1 and the City of El Paso in 1941, 1944, 1949, 1962, 1999, and 2001 for the supply of Rio Grande Reclamation Project irrigation water for municipal and industrial uses by the City. The United States, the El Paso County Water Improvement District No. 1, and the Lower Valley Water District entered into similar contracts in 1988 and 1999 pursuant to 43 U.S.C. § 521 as well;

WHEREAS, in 1991, the District applied for a permit and asserted in its application that without waiving any, and while still preserving all, of its legal and "equitable" rights under federal and state law, (including, without limitation, the Rio Grande Compact; the 1906 Water Convention, May 21, 1906, between the United States and Mexico; contracts between or among the El Paso County Water Improvement District No. 1 and other entities, including the United States and New Mexico or its agencies; the Reclamation Laws of the United States and those

acquired in New Mexico by virtue of the reservation of water rights by the United States as provided by notices from the United States to the New Mexico Territorial Engineer in 1906 and 1908). The Texas Natural Resource Conservation Commission (the "Commission") recognized that the El Paso County Water Improvement District No. 1 had those rights to that portion of the facilities and water of the Rio Grande Reclamation Project and the Rio Grande and its tributaries which have been reserved for or appropriated by or for the benefit of the District and its predecessors and beneficial users or which otherwise have been provided to them by law, equity or contract;

WHEREAS, pursuant to such application, the Commission issued to the District Permit No. 5433;

WHEREAS, by final decree of the 327th Judicial District Court of El Paso County, Texas, in Cause No. 2006-3291, In Re: Adjudication of All Claims of Water Rights in the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin, dated October 30, 2006, rights were recognized authorizing the United States and the El Paso County Water Improvement District No. 1 to impound, divert, and use waters of the State of Texas as set forth below.

NOW, THEREFORE, this certificate to appropriate waters of the State of Texas in the Rio Grande Basin is issued to the United States of America and the El Paso County Water Improvement District No. 1, subject to the following terms and conditions:

1. IMPOUNDMENT AND USE

- a. Certificate Holder United States is authorized to impound 2,638,860 acre-feet of water in Elephant Butte Reservoir and Caballo Reservoir in New Mexico.
- b. Certificate Holders United States and El Paso County Water Improvement District No. 1 are authorized to divert and Certificate Holder El Paso County Water Improvement District No. 1 is authorized to use an aggregate amount of water from the Rio Grande not in excess of 376,000 acre-feet per year from the following sources:
 - i. all rights which Certificate Holders acquired or perfected pursuant to Certified Filing No. 123;
 - ii. 67/155 of all water stored in Project Storage (as defined in the Rio Grande Compact) and legally available for release to the Elephant Butte Irrigation District and the El Paso County Water Improvement District No. 1, plus any additional share of Project Water obtained by Certificate Holders, or either of them, through allocation, purchase and/or operation rules, "Project Water" being defined as all water legally dedicated to the Rio Grande Reclamation Project;

and

- iii. any waters entering Texas in the bed of the Rio Grande from New Mexico, including, but not limited to, return flows from New Mexico's use and groundwater discharged into the Rio Grande.
- c. In addition to the water diverted pursuant to paragraph 1.b above, Certificate Holders are authorized to divert from the Rio Grande up to 234,022 acre-feet per year of measurable surface-water based effluent, groundwater based effluent, or groundwater discharged into the Rio Grande by the District or any other entity with whom the District has entered into legal contract for such water. "Effluent" as used in this Certificate of Adjudication means any and all water that reaches the bed of the Rio Grande from agricultural drains, sewage treatment plants, or storm water runoff.
 - d. In addition to the water diverted pursuant to paragraphs 1.b. and 1.c. above, Certificate Holders are authorized to divert from the Rio Grande an average of 1,899 acre-feet of water per year, when averaged over any five-year period, from tributary inflows of the Rio Grande between the Texas/New Mexico state line and the Riverside Diversion Dam.
 - e. Certificate Holders are authorized to use the bed and banks of the Rio Grande to transport the water which is the subject of this Certificate of Adjudication, and to operate and maintain diversion dams and works.

2. DIVERSION POINTS

- a. Certificate Holders are authorized to divert all or any part of the water authorized for diversion in paragraphs 1.b and 1.c above at the following diversion points:
 - i. Mesilla Diversion Dam located on the Rio Grande in New Mexico;
 - ii. American Diversion Dam located on the Rio Grande at the point where Texas, Mexico, and New Mexico meet; and
 - iii. Riverside Diversion Dam located on the Rio Grande approximately 13.5 miles downstream of the American Diversion Dam;at a combined maximum diversion rate of 1,355 cubic feet per second.
- b. Certificate Holders are authorized to divert the water authorized for diversion in paragraph 1.d above, from the American Diversion Dam and the Riverside Diversion Dam at a combined maximum diversion rate of 10 cubic feet per second.

3. PURPOSE AND PLACE OF USE

Certificate Holder El Paso County Water Improvement District No. 1 is authorized to use all of the water authorized herein for agricultural, municipal, industrial, mining, or recreational purposes and/or irrigation of a maximum of 69,010 acres of land within the District's boundaries and/or to sell any of this water surplus to the District's needs for any of the authorized purposes of use in El Paso and Hudspeth Counties.

4. SPECIAL CONDITIONS

- a. This Certificate of Adjudication does not supersede any legal requirement for the protection of environmental water needs pursuant to international treaty, interstate compact, or other applicable law to which Certificate Holders are subject irrespective hereof. Nothing in this condition is intended to grant to the State of Texas any authority additional to that provided by law or to waive any right of Certificate Holders.
- b. This Certificate of Adjudication is not intended to in any way compromise or diminish the volume of water which the United States is obligated to provide to Mexico on an annual basis pursuant to the terms of the Convention of May 21, 1906, between the United States and Mexico; nor does the Certificate grant to the District, for any use whatsoever, any waters to which Mexico is entitled pursuant to the above referenced 1906 Convention.
- c. Nothing in this Certificate of Adjudication is intended to modify any authority of the State of Texas or the United States of America provided by law, now or in the future.

5. PRIORITY

- a. The time priority for use of the water included in paragraphs 1.b. and 1.c., as referenced above, is July 6, 1889.
- b. The time priority for use of the water included in paragraph 1.d., as referenced above, is January 1, 1918.

The locations of pertinent features related to this Certificate of Adjudication are shown on pages 1 through 18 of the Appendix to the Report of the Investigation of Water Rights in the Upper Rio Grande (above Fort Quitman) Segment of the Rio Grande Basin, Texas. Copies of such pages are located in the office of the Texas Commission on Environmental Quality, Austin, Texas.

This Certificate of Adjudication is issued subject to all terms, conditions and provisions in the Final Decree of the 327th Judicial District Court of El Paso County, Texas, in Cause No. 2006-

3291, In Re: Adjudication of All Claims of Water Rights in the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin dated October 30, 2006, and supersedes all rights of Certificates Holders asserted in that cause.

This Certificate of Adjudication is issued subject to senior and superior water rights in the Rio Grande Basin.

This Certificate of Adjudication is issued subject to the rules of the Texas Commission on Environmental Quality and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code, to the extent that such rules and supervision are not inconsistent with the federal Reclamation Act (43 U.S.C. § 371, *et seq.*) or the regulations made under that Act by the Secretary of the Interior as provided in Section 11.005 of the Texas Water Code.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman

Date Issued

ATTEST:

LaDonna Castanuela, Chief Clerk

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION NO. 23-5944

Names of
Holders: United States of America

Address: Bureau of Reclamation
505 Marquette NW, Suite 1313
Albuquerque, NM 87102-2162

Hudspeth County
Conservation and
Reclamation District No. 1

P.O. Box 125
Fort Hancock, Texas 79839

Priority Date: November 22, 1917;

Purpose: Agricultural,
Industrial, Mining, and/or
Recreational Uses

Counties: El Paso and Hudspeth

Watercourse: Rio Grande
(above Ft. Quitman, Texas)

Watershed: Rio Grande Basin

WHEREAS, in 1905, the United States enacted the Rio Grande Reclamation Project Act of February 25, 1905, 33 Stat. 814, authorizing the construction of storage facilities on the Rio Grande in the Territory of New Mexico for storage of water of the Rio Grande for irrigation of lands in New Mexico and Texas for the Rio Grande Project;

WHEREAS, in 1905, the State of Texas enacted House Bill 588, 29th Legislature, Chapter 101 (now Section 11.052 of the Texas Water Code), which authorized the Secretary of the Interior to make all necessary examinations and surveys for, and to locate and construct reclamation works for irrigation purposes within the State of Texas, and to perform any and all acts necessary to carry into effect the provisions of the Reclamation Act of 1902 (38 Stat. 388, now 43 U.S.C. § 371, *et seq.*) as to such lands, subject to all the provision, limitations, charges, terms and conditions of the said Reclamation Act;

WHEREAS, Section 8 of the Reclamation Act of 1902 (now 43 U.S.C. §§ 372 and 383) provides in part: "Nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity

with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof.”;

WHEREAS, 1911, the United States enacted a statute dated February 21, 1911 (36 Stat. 925, 43 U.S.C. §§ 523-525, the “Warren Act”) to authorize the United States to contract for impounding, storing, and carriage of water, to cooperate in the construction and uses of reservoirs and canals under reclamation projects, and for other purposes, and the Hudspeth County Conservation and Reclamation District No. 1 entered into a contract with the United States dated December 1, 1924, as amended in 1951, (the “Warren Act Contract”), which provides for the use of Rio Grande Reclamation Project water by the Hudspeth County Conservation and Reclamation District No. 1;

WHEREAS, in 1911, the State of Texas adopted what is now Section 11.005, Texas Water Code, which provides as follows: “This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 371 et. seq.), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.”;

WHEREAS, in 1939, the United States, Colorado, New Mexico, and Texas entered into the Rio Grande Compact (53 Stat. 785, Section 41.009, Texas Water Code), which constitutes statutory law of the United States and the States of Colorado, New Mexico, and Texas and by the terms of the Compact cannot be modified without the approval of all four parties to the Compact;

WHEREAS, the United States releases stored water from Elephant Butte and Caballo reservoirs to supply water to the Elephant Butte Irrigation District in New Mexico and the El Paso County Water Improvement District No. 1 in Texas. The first two diversion dams downstream of Caballo Dam (Percha Diversion Dam and Leasburg Diversion Dam) are used by the United States to deliver water to land in New Mexico. Mesilla Diversion Dam is located in New Mexico but is used to divert water to both the Elephant Butte Irrigation District and the El Paso County Water Improvement District No. 1. American Diversion Dam is the next diversion dam downstream on the Rio Grande. The United States diverts from the Rio Grande into the American Canal at the American Diversion Dam water for the El Paso County Water Improvement District No. 1 (some of which is subsequently used by the Hudspeth County Conservation and Reclamation District No. 1 pursuant to its Warren Act Contract);

WHEREAS, the Hudspeth County Conservation and Reclamation District No. 1 is a political subdivision of the State of Texas, organized and existing under Article XVI, Section 59 of the Texas Constitution, and is subject to Chapter 55 of the Texas Water Code and other provisions thereof. The Hudspeth County Conservation and Reclamation District No. 1 is authorized by statute to enter into contracts or other obligations with the United States (§ 55.185, Texas Water Code). By statute the Hudspeth County Conservation and Reclamation District No. 1 is required to “... distribute and apportion all water acquired by the district under a contract with

the United States in accordance with Acts of Congress, rules and regulations of the Secretary of the Interior, and provisions of the contract" (§ 55.364, Texas Water Code). The Hudspeth County Conservation and Reclamation District No. 1 includes 18,618 acres within its boundaries that are classified by the United States and the Hudspeth County Conservation and Reclamation District No. 1 as irrigable;

WHEREAS, on December 1, 1949, the United States, the City of El Paso, the El Paso County Water Improvement District No. 1, the Hudspeth County Conservation and Reclamation District No. 1, and others entered into a "Stipulation and Agreement" regarding Application No. 1584 made by the City of El Paso to the Board of Water Engineers, State of Texas, for permit to appropriate water from the Rio Grande, and attached to and made a part of such Stipulation and Agreement was a contract between the City of El Paso and the El Paso County Water Improvement District No. 1 dated August 10, 1949. Such Stipulation and Agreement set forth the terms and conditions regarding the withdrawal of protests of Application No. 1584 by the United States, the Hudspeth County Conservation and Reclamation District No. 1, and others, and established that the United States shall determine when federal Rio Grande Reclamation Project water is in excess of the requirements of the El Paso County Water Improvement District No. 1 and the Hudspeth County Conservation and Reclamation District No. 1 and is available to the City of El Paso;

WHEREAS, the Hudspeth County Conservation and Reclamation District No. 1 holds Texas Permit No. 236 from the State of Texas as amended by Texas Permit No. 236A. Such permit authorizes the Hudspeth County Conservation and Reclamation District No. 1 to divert water from the Rio Grande at a grade control structure located at latitude 31.413 degrees north, 106.096 degrees west in El Paso County, Texas, and at a grade control structure located at latitude 31.318 degrees north and longitude 105.936 degrees west in Hudspeth County, Texas.

WHEREAS, by final decree of the 327th Judicial District Court of El Paso, Texas, in Cause No. 2006-3291, in Re: Adjudication of all claims of Water Rights in the Upper Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin, dated October 30, 2006, rights were recognized authorizing the United States and the Hudspeth County Conservation and Reclamation District No. 1 to divert and use water of the State of Texas as set forth below.

NOW, THEREFORE, this certificate to appropriate the water of the State of Texas in the Rio Grande Basin is issued to the United States of America and the Hudspeth County Conservation and Reclamation District No. 1 subject to the following terms and conditions:

1. DIVERSION

- a. Certificate Holders United States and Hudspeth County Conservation and Reclamation District No. 1 are authorized to divert an aggregate amount of water from the Rio Grande not in excess of 27,000 acre-feet per year within 3,500 feet upstream of a grade control structure located at latitude 31.413 degrees north, 106.096 degrees west in El Paso County, Texas, and at a grade control structure located at latitude 31.318 degrees north and longitude 105.936 degrees west in

Hudspeth County, Texas.

- b. Certificate Holder United States is authorized to deliver and Certificate Holder Hudspeth County Conservation and Reclamation District No. 1 is authorized to use a maximum of 151,892 acre feet per year of any water available to the Hudspeth County Conservation and Reclamation District No. 1 at the terminus of the Tornillo Drain, Hudspeth Feeder Canal, and Tornillo Canal under the Warren Act Contract and in accordance with the Stipulation and Agreement.
- c. Certificate Holders United States and Hudspeth County Conservation and Reclamation District No. 1 are authorized to use the bed and banks of the Rio Grande to transport the water that is the subject of this Certificate of Adjudication and to operate and maintain diversion structures and works in the Rio Grande as necessary to divert such waters.
- d. The maximum combined rate for water diverted from the Rio Grande authorized under paragraph 1.a. above is 400 cubic feet per second.

2. PURPOSE AND PLACE OF USE

Certificate Holder Hudspeth County Conservation and Reclamation District No. 1 is authorized to use all of the water authorized herein for agricultural, industrial, mining, recreational purposes and/or irrigation of a maximum of 18,618 acres of irrigable land within the District's boundaries.

3. SPECIAL CONDITIONS

- a. This Certificate of Adjudication does not supersede any legal requirement for the protection of environmental water needs pursuant to international treaty, interstate compact, or other applicable law to which Certificate Holders are subject irrespective hereof. Nothing in this condition is intended to grant to the State of Texas any authority additional to that provided by law or to waive any right of Certificate Holders.
- b. This Certificate of Adjudication is not intended to in any way compromise or diminish the volume of water that the United States is obligated to provide to Mexico on an annual basis pursuant to the terms of the Convention of May 21, 1906, between the United States and Mexico; nor does the Certificate grant to the District, or any use whatsoever, any waters to which Mexico is entitled pursuant to the above referenced 1906 Convention.
- c. All rights of Holders under this Certificate of Adjudication shall be subject and inferior to all right of the El Paso County Water Improvement District No. 1 in and to all Rio Grande Reclamation Project facilities and water, and to all of the other

rights of the El Paso County Water Improvement District No. 1 that are described or recognized in the El Paso County Water Improvement District No. 1's Certificate of Adjudication No. 23-5940, subject to the provisions in paragraphs 2 and 3 of the August 10, 1949 Contract between the City of El Paso and the El Paso County Water Improvement District No. 1. However, this Certificate of Adjudication shall not be deemed to modify or affect the Stipulation and Agreement in any manner:

- d. Determination of the quantity of water available under paragraph 1.b. of this Certificate of Adjudication shall be made by the United States of America, Secretary of the Interior, or his or her designee in accordance with federal reclamation laws and the laws of the State of Texas.
- e. Nothing in this Certificate of Adjudication is intended to modify any authority of the State of Texas or the United States of America provided by law, now or in the future.

4. PRIORITY

- a. The time priority for use of the water included in paragraph 1. a., as referenced above, is November 22, 1917.
- b. Water use under paragraph 1.b., above, is non-priority use.

The locations of pertinent features related to this Certificate of Adjudication are shown on pages 19, 21, 22, 23, and 25 of the Appendix to the Report of the Investigation of Water Rights in the Upper Rio Grande (above Fort Quitman) Segment of the Rio Grande Basin, Texas. Copies of such pages are located in the office of the Texas Commission on Environmental Quality, Austin, Texas.

This Certificate of Adjudication is issued subject to all terms, conditions, and provisions in the Final Decree of the 327th Judicial District Court of El Paso County, in Cause No. 2006-3291, In Re: Adjudication of all Claims of the Water Rights in the Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin dated October 30, 2006 and supersedes all rights of Certificates Holders asserted in that cause.

This Certificate of Adjudication is issued subject to senior and superior water rights in the Rio Grande Basin.

This Certificate of Adjudication is issued subject to the rules of the Texas Commission on Environmental Quality and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code to the extent that such rules and supervision are not inconsistent with the federal Reclamation Act (43 U.S.C. § 371, *et seq.*) Or the regulations made under that Act by the Secretary of the Interior as provided in Section 11.005 of the Texas Water Code.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman

Date Issued

ATTEST:

LaDonna Castanuela, Chief Clerk

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION NO. 23-5943

Owner: Indian Cliffs Ranch, Inc.

Address: P.O. Box 1056
Fabens, Texas 79838

Priority Date: October 11, 1977

Purpose: Recreation

County: El Paso

Watercourse: Unnamed tributary of San
Felipe Arroyo, Tributary of
the Rio Grande

Watershed: Rio Grande Basin

WHEREAS, by final decree of the 327th Judicial District Court of El Paso County, in Cause No. 2006-3291, In RE: Adjudication of all Claims fo Water Rights in the Rio Grande (above Fort Quitman, Texas) Segment of the Rio Grande Basin, dated October 30, 2006, rights were recognized authorizing Indian Cliffs Ranch, Inc., to impound and use waters of the State of Texas as set forth below.

NOW, THEREFORE, this certificate to appropriate waters of the State of Texas in the Rio Grande Basin is issued to Indian Cliffs Ranch, Inc., subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on an unnamed tributary of San Felipe Arroyo and impound therein not to exceed 52 acre-feet of water. The dam is located in Section 41, Block 77, Township 4, T&P RR Co. Survey, Abstract No. 2038, El Paso County, Texas.

2. USE

Owner is authorized to use the water impounded in the aforesaid reservoir for recreational purposes.

3. PRIORITY

The time priority of owner's right is October 11, 1977.

4. SPECIAL CONDITION

Owner is authorized to place groundwater in the reservoir for the use herein provided.

This certificate of adjudication is issued subject to all terms, conditions, and provisions in the final decree of the 327th Judicial District Court of El Paso County, in Cause No. 2006-3291, In RE: Adjudication of all Claims of Water Rights in the Rio Grande (above Fort Quitman, Texas) segment of the Rio Grande Basin, dated October 30, 2006, and supersedes all rights of the owner asserted in that cause.

This Certificate of Adjudication is issued subject to senior and superior water rights in the Rio Grande Basin.

This Certificate of Adjudication is issued subject to the rules of the Texas Commission on Environmental Quality and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman

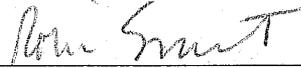
Date Issued

ATTEST:

LaDonna Castanuela, Chief Clerk

CERTIFICATE OF SERVICE

I certify that on March 3, 2007, the Executive Director's Request that the Commission sign and issue the Upper Rio Grande Certificates of Adjudication was filed with the Chief Clerk of the Texas Commission on Environmental Quality and have been sent by U.S. Postal Service, facsimile or hand delivered to persons on the attached mailing list.



Robin Smith, Attorney
Environmental Law Division
State Bar No. 08631586