

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 30, 2008

Commissioner Carlos Marin, P. E.
International Boundary and Water Commission
4171 N. Mesa, Building C 100 ~
El Paso, Texas 79902-1441

Re: United States/Mexico Rio Grande Water Accounting

Dear ~~Commissioner~~ Marin:

Carlos

I would like to bring an issue of concern to your attention regarding the accounting of the waters of the Rio Grande associated with the Convention between the United States and Mexico dated May 21, 1906 (1906 Convention) and the 1944 Treaty between the United States of America and Mexico (1944 Treaty).

As you know, the 1906 Convention provides that the United States shall deliver to Mexico a total of 60,000 acre-feet of water annually in the bed of the Rio Grande at the point where the head works of the Acequia Madre exists above the City of Juarez known as the Old Mexican Canal. Extraordinary drought or serious accident to the irrigation system in the United States allows for the delivery to be reduced in the same proportion as water delivered to the United States lands. Article IV of the 1906 Convention provides in part, "... Mexico waives any and all claims to the waters of the Rio Grande for any purpose whatever between the head of the present Mexican Canal and Fort Quitman, Texas..." Historically this water, which belongs completely to the United States, has been allocated 50% to Mexico and 50% to the United States when it flows past Fort Quitman, Texas. I believe that any waters of the Rio Grande that originate above and reaches Fort Quitman, Texas should be allocated entirely to the United States.

Article IV(d) of the 1944 Treaty addresses the waters of the Rio Grande below Fort Quitman, Texas. This Article allocates "One-half of all other flows not otherwise allocated by this Article occurring in the main channel of the Rio Grandé (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam." This provision specifically mentions "between Fort Quitman and the lowest major international storage dam". I believe this was because all water reaching Fort Quitman had already been allocated to the United States by the 1906 Convention.

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I request that the water accounting be changed from the historical practice described above to ensure that the United States receives all the water entitled via the 1906 Convention. If you have any questions regarding this matter, please feel free to contact me at (512) 239- 5515.

Sincerely,

Buddy Garcia

Buddy Garcia
Chairman

Gracias amigo!



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

November 5, 2008

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Texas Commission on Environmental Quality
Commissioners' Offices

Mr. Buddy Garcia
Chairman
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, Texas 78711-3087

Dear Chairman Garcia:

This letter is in response to your June 30, 2008 letter regarding the accounting of the waters of the Rio Grande associated with the 1906 Convention between the United States and Mexico dated May 21, 1906 (1906 Convention) and the 1944 Treaty between the United States of America and Mexico Relating to Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande (1944 Treaty). Specifically, you request a change in the accounting practice of the Commission at Fort Quitman based upon your interpretation of the 1906 Convention and 1944 Treaty, which is that the United States should be allocated all the flows reaching Fort Quitman gage. While we agree that under Article IV of the 1906 Convention, Mexico waived any and all claims to waters of the Rio Grande between the head of the Mexican Canal and Fort Quitman, a review of the historical record does not support a change in the accounting practice.

The Commission's water accounting procedures, as developed in the 1950s, reflect the position that the 1944 Treaty requires a 50/50 division of Rio Grande waters reaching the Fort Quitman gaging station. Article 4A(d) and Article 4B(d) of the 1944 Treaty (T.S. 994). This interpretation has been jointly adopted and maintained by both Sections of the Commission for over five decades and is supported by numerous internal Commission memoranda and correspondence addressing procedural concerns and 1944 Treaty interpretation during the development of the Commission's accounting procedures. Our research found no evidence to support the assignment of 100% of the Rio Grande flow reaching the Fort Quitman gage to the United States.

As the Commission's water accounting procedures were developed, they envisioned that Rio Grande water accounting would begin with the uppermost reach, the Fort Quitman-Upper Presidio reach, and would be carried progressively downstream reach by reach in an order agreed to by the Commission. In the first reach each country would be credited with one half of the measured inflow at the Fort Quitman gaging station on the main channel of the Rio Grande, its share of the flows of the measured tributaries as provided in the Treaty, and one half of the unmeasured tributary inflows as computed. The Commission agreed to detailed procedures for Rio Grande Water accounting in 1958 that provided for determination of the ownership of river flows in each reach beginning with the equal division between the two countries of the flows at the Fort Quitman gaging station.

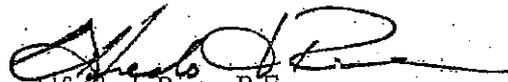
This position regarding the equal division of waters between the two countries at Fort Quitman also finds support in the ratification record for the 1944 Treaty. During the "Hearings before the Committee on Foreign Relations, United States Senate, 79th Congress, 1st Session on Treaty with Mexico relating to the utilization of the waters of certain rivers," conducted in January and February 1945, Harry W. Bashore, Commissioner, Bureau of Reclamation, Washington, D. C. testified that Rio Grande flows would be divided under the Treaty at Fort Quitman:

"Returning to conditions on the Rio Grande, we find that approximately 2,000,000 acre-feet of water rise in the States of Colorado, New Mexico, and Texas. Diversions and developments on the river consume nearly all of this and the flow, largely return flow from the irrigation, amounts to approximately 200,000 acre-feet at Fort Quitman, and becomes part of the amount which will be divided under this treaty." Hearings before the Committee on Foreign Relations, United States Senate, 79th Cong., 1st Sess. 1686 (1945).

Given the historical record evident in our review and the long-standing water accounting practice under the 1944 Treaty, the USIBWC could not support a change in the water accounting procedures of the Commission.

If you have further questions regarding this issue, please feel free to contact me at 915-832-4118.

Sincerely,


Alfredo J. Riera, P.E.
Acting Commissioner