

Elephant Butte is at 3 percent capacity; what happens next?

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Editor's note: This story is the first of a three-part series about the Rio Grande, its reservoirs and the U.S. Supreme Court battle over its waters.

Right now, New Mexico's largest reservoir is at about 3 percent capacity, with just 62,573 acre feet of water in storage as of Sept. 20.



Elephant Butte Reservoir on Sept. 10, 2018, when it was at 3.7 percent capacity. (Photo: Laura Paskus/NM Political Report)

Elephant Butte Reservoir's low levels offer a glimpse of the past, as well as insight into the future. Over the past few decades, southwestern states like New Mexico have on average experienced warmer temperatures, earlier springs and less snowpack in the mountains. And it's a trend that's predicted to continue.

"There was no spring runoff this year. We started this year at basically the point we left off at last year," says Mary Carlson, a spokesperson for the U.S. Bureau of Reclamation, which operates Elephant Butte Dam, just north of the town of Truth or Consequences. The federal agency runs the Rio Grande Project, which stores water that legally must be delivered downstream to the Elephant Butte Irrigation District, the state of Texas and Mexico.

Drought has moved around the U.S. Southwest since the late 1990s, and last winter's dismal snowpack broke records in the headwaters of the Rio Grande. Without runoff this spring, by February reservoir levels around the state — including at Elephant Butte — were as high as they were going to be this year. “We had some help from the monsoons,” Carlson says, “but not as much as we wanted, where we wanted.”

Many spots around New Mexico reveal signs of drought and climate change, whether it's the puny flows of the Rio Grande, the fire-ravaged forests of the Jemez Mountains or the crispy rangelands of the northeast. But Elephant Butte Reservoir offers perhaps the starkest reminder that keeping up with the changing climate may require questioning long-held ideas of how water is managed and shared, how we think about rivers and reservoirs and even, who we consider our friends or foes.

Farmers ‘dealing with La Nada’

For farmers in southern New Mexico, this year “really stung,” says Gary Esslinger, manager of Elephant Butte Irrigation District, or EBID. This year, he explains, less than 45,000 acre-feet of water flowed via the Rio Grande into Elephant Butte. That's the lowest recorded inflow since the dam was built in the early 20th century.

“There was virtually no snowpack runoff, and whatever there was didn't get to Elephant Butte,” he says. “The Middle Rio Grande, that river was drying up way too early.”

Beginning in early April, when the state's largest river is usually running high with snowmelt, it began to dry south of Socorro and upstream of the reservoir.



By early April 2018, the state's largest river, the Rio Grande, had already dried south of Albuquerque. (Photo: Laura Paskus/NM Political Report)

EBID has over 90,000 acres of irrigable land, and about 8,000 members, about half of whom own two acres of land or less, Esslinger says. This year, about 75,000 of the district's acres were in production, and farmers received a ten-inch allotment of water from the Rio Grande Project. A normal allotment is 36 inches, and in 2017—after a robust snowpack in the mountains—they received 24 inches.

As in the past, farmers supplemented their irrigation supplies from the river by pumping groundwater. That's something farmers have done for decades, increasingly so since 2003. Farmers with larger landholdings will fallow some fields, not planting some fields so they can move what surface water they have closer to their irrigation wells, Esslinger explains. Then they can "stack" both surface and ground water on those lands.

But Esslinger lets out a long, deep sigh when asked what will happen next year. Farmers can hope that the forecasts are right, that conditions in the Southwest will flip from La Niña to El Niño, bringing moisture to the region, he says. "But I'm dealing with 'La Nada,'" Esslinger says. "I have to face reality."

Watching the reservoir empty out this year makes farmers feel like they are running out of water, he says. At the same time, they're uncertain about how long their groundwater supplies will last, even though the district tries to monitor groundwater levels and has hired a full-time groundwater specialist.

"We're not cratering; it's not Doomsville yet," he says. "But we've got to find another source." People can pray for rain and snow, he says, but the challenge is finding a long-term, consistent water source. And western states, including New Mexico, don't have that.

"Everybody's thinking, 'Well, climate change is really happening,' and I think we need to change the way we're thinking. We keep looking for improvement in the West," he says.

With improvement unlikely, Esslinger says he's started considering more radical solutions — like whether western states could share the cost of a canal that would move water from the East, from someplace like the Mississippi River. "People think I might be crazy, but I think we should start looking at it," he says. "I don't think we can continue to keep playing this game of predicting and forecasting: we need to find some water and get it over here to the West."

Farmers face other challenges, too, including the growing expense of pumping groundwater and an "insurmountable" number of regulations, he says. It's also hard to find workers to hand-pick crops like chile and onions, thanks to changes in immigration policy.

Then there are the market pressures. This year, he explains, farms around Yuma, Arizona and southern California flooded the market with onions, forcing New Mexico farmers to sell theirs at a lower price. Cheaper alfalfa comes up from Mexico, he says. And even chile farmers have taken a hit: "In Mexico, they can grow chile and jalapeños much cheaper than we can grow it here, because of the labor, and they ship it here," he says. "Then, when our chile is ready, the market we could have had is already been flooded by a lower-cost chile."

Meanwhile, as the average age of farmers in the West keeps rising — most are in their 50s, 60s or 70s — Esslinger questions who will farm New Mexico in the coming years. “It would be like taking your life savings to Vegas and gambling: what young farmer would want to do that?” he asks. “Or, if you’re a farmer from Iowa or someplace else, where you grew up with a plentiful amount of water and rainfall to grow your crops, why would you come here?”

Looming impact of Texas v. New Mexico

Farmers in southern New Mexico have yet another problem: uncertainty over a lawsuit moving through the U.S. Supreme Court.

Five years ago, Texas sued New Mexico and Colorado, alleging that New Mexico failed for decades to send its legal share of Rio Grande water downstream by allowing farmers in southern New Mexico to pump groundwater from near the river. Texas filed the lawsuit after New Mexico sued over a 2008 operating agreement between the U.S. Bureau of Reclamation, EBID and Texas water users. This year, the Supreme Court allowed the U.S. government to intervene in the case against New Mexico.

Although EBID lies within the boundaries of New Mexico, for the purposes of water and compliance with the Rio Grande Compact of 1938, it’s more closely aligned with Texas. That’s because under the compact, New Mexico doesn’t deliver Texas’ water at the state line. Rather, water goes to Elephant Butte Reservoir, about 100 miles north of Texas. From there, the Reclamation delivers it to farmers in both southern New Mexico and Texas.



This June 22, 2018 image shows the Rio Grande being diverted near San Acacia, N.M. Federal water managers said portions of the river near the San Acacia and Isleta reaches in central New Mexico have gone dry due to drought. Managers, residents and farmers are awaiting the promise of summer rains that are expected to develop beginning Thursday, July 5, 2018 and continue into next week. (Photo: Susan Montoya Bryan/AP)

“We get a lot of harassment and bad press, with people saying, ‘Why can’t you just agree with (the state of New Mexico)?’” Esslinger says. “But when it comes to water accounting and the federal accounting of water through (Colorado, New Mexico and Texas), we’re in Texas.”

All that confusion and uncertainty just makes things harder for farmers, he says.

“There are so many lines in the sand that have been crossed by our own officials in the state that it makes it very difficult to sit in a room and even try to talk about settlement or negotiation,” Esslinger says. “Everyone is fearful of what they might lose, so they have fortified their positions.” People on opposite sides of the suit can’t even visit with one another, he says. And they certainly can’t plan for next year, never mind the longer-term future.

Meanwhile, as drought lengthens, water managers are refining their models and developing new technologies to manage water and also do things like reduce evaporation from reservoirs, says Reclamation’s Carlson. Agencies, irrigation districts, hydrologists and stakeholders are in constant communication with one another, moving water and trying to work together in new ways.

Along with partners, the federal agency also tried to keep as much water as possible flowing in the Middle Rio Grande this year, says Carlson. Recently, Reclamation leased 20,000 acre-feet of water from the Albuquerque Bernalillo County Water Utility Authority to keep the river running through the city through the end of the year.

And while it may be upsetting to see reservoirs like Elephant Butte drop so low this year, they have done their job, she says.

Storing water from past years allows people to survive dry years like 2018, Carlson says. Despite this year’s historically dry conditions, Reclamation delivered about 60 percent of a full supply of Rio Grande Project water this year.

“We live in the desert and are more and more dependent on reservoirs,” she says. “This is the year that reservoirs were built for; our reservoirs are doing what they were meant to do, and this year, Elephant Butte performed like a champ.”

As for next year? “We’re all on the edges of our seat,” she says. “Waiting to see what’s to come.”

This story was first published on nmpoliticalreport.com. You can also read their past coverage of the Rio Grande and the Texas v. New Mexico and Colorado litigation.

Status quo no longer works with strained water supply

Laura Paskus, NM Political Report Published 3:19 p.m. MT Sept. 25, 2018

Editor's note: This story is the second in a three-part series about the Rio Grande, its reservoirs and the U.S. Supreme Court battle over its waters.

On the downstream side of Elephant Butte Dam, U.S. Bureau of Reclamation employees navigate a stairwell above the Rio Grande, passing scat from the ring-tailed cats that like to hang out here, and enter through a door into the 300-foot tall concrete dam.

Built in the early twentieth century, Elephant Butte Dam holds back water stored for farmers in southern New Mexico, the state of Texas and Mexico. At full capacity, the reservoir is about 40 miles long and can retain more than 2 million acre feet of water.

Jesse Higgins, an electrician who manages the powerplant at the dam, goes first and flips on the lights, which flicker and fire up after a few minutes. Labyrinthine tunnels burrow throughout, and water drains along the sides of the narrow, elevated path. Inside, it's easy to imagine what the world was like in 1916, when the dam was completed. The Civil War had been over for half a century — nearly comparable to the time between the Vietnam War and now — and the Mexican Revolution was ongoing. Since 1916, there have been world wars and shifting alliances, medical and technological breakthroughs. Humans have visited the moon and landed a rover on Mars. Our understanding of the Earth and humanity's impacts upon it have changed, as well.

But during that time, comparatively little has changed when it comes to how water is managed in New Mexico. The Rio Grande Compact, which divides water among Colorado, New Mexico and Texas was signed in 1938. And New Mexico's water laws today are still based on codes that the territorial legislature passed in 1907.

But as the climate changes and warmer temperatures affect the state's rivers, reservoirs and aquifers, the same tactics and strategies that may have helped New Mexicans weather dry times over the past century won't keep working. And perhaps no place in the state offers such a stark reminder of that fact than the reservoir behind this dam. After a dry winter and hardly any snowmelt this spring, Elephant Butte Reservoir is at 3 percent capacity, storing 58,906 acre feet of water as of Sept. 24.

"Historically, people tend to listen to what they want to hear, rather than what they need to hear: What they need to hear is that our laws do not reflect hydrology and our hydrology is changing for the worse, and if we do not manage it, it will manage itself," says Phil King, an expert on hydrology and the relationship between surface and ground water in southern New Mexico. "I would much rather correct the system ourselves through management than let nature do its cold, hard reality fix," adds King, a professor of civil engineering at New Mexico State University and a consultant to the Elephant Butte Irrigation District, or EBID.

Stopping the 'death spiral'

EBID serves about 8,000 farmers in the Rincon and Mesilla valleys in southern New Mexico, from Arrey to the border town of Santa Teresa. If you've eaten chile from Hatch or pecans from Mesilla, fed alfalfa to your horses or poured milk from a New Mexico dairy into your coffee,

you've consumed water that EBID's farmers divert from the Rio Grande and Elephant Butte or pump from the aquifer.

For roughly a century, EBID farmers have supplemented irrigation water with groundwater. Without it, they would not have survived the drought of the 1950s. But they pumped during the wet years, too, including throughout the 1980s and '90s. Then, beginning around 2003, about four years into the Southwest's current drought period, pumping ramped up even more.

That's a problem, especially in the Rio Grande Valley, where river water recharges the groundwater, and pumping water from the aquifer makes it even thirstier for river water.

With both the surface water and the groundwater strained, the system suffers a double-whammy, King says. That causes a positive feedback or what King calls a "death spiral."

Even though scientists, engineers, hydrologists and farmers know the two are intertwined within the same system, in New Mexico, groundwater and surface water are managed separately. King calls that "hydrological folly."

"We've got some major rethinking to do with New Mexico water law: Status quo is not an option," he says. "I think what people need to understand is we are facing conditions that mankind has not faced here before."

And the only way to reverse that death spiral is to use less water.

One way to do that, King says, is to formalize a fallowing system that allows cities, factories and businesses — in Las Cruces or in burgeoning border cities like Santa Teresa — to pump groundwater if they pay southern farmers with surface water rights to fallow their fields. Another way is for farmers to reduce their irrigated acreage and grow higher-value crops.

It's clear that any real solutions to cut water use must focus on agriculture. That's because farms use 75 percent of the water in the Rio Grande Basin. Cities can implement conservation measures, and people can reduce their household water use, King says, but the overall savings are minimal. Even finding "new" sources of water to add to the system — like capturing stormwater runoff or desalinating brackish water — will only add only tens of thousands of acre feet, King says. That doesn't come close to making up for the amount of water drought and climate change deplete from the system.

In King's ideal world, water management schemes would reflect the connection between surface and ground water. And water management wouldn't get blown off course by political winds. "I think the handling of water policy, in terms of both promulgation and implementation, needs to be de-politicized," he says. "It needs to be based much more on science, hydrology and the hydraulics of the system, rather than on politics."

Then, rather than each sector — agricultural, municipal and industrial — fighting over every last drop of water, solutions could emerge. And so, too, could changes that protect the river and groundwater system, the economy and people's futures.

'We're going to do everything we can'

At Elephant Butte, Reclamation runs the Rio Grande Project, delivering water each year to EBID, Texas and Mexico. The agency made it through this year, getting water to downstream users, even with record-low spring runoff. Elephant Butte, and other reservoirs, did their job, spokeswoman Mary Carlson has pointed out, storing water from wetter years in the past. Meanwhile, the agency will continue refining its tools and technologies for modeling, forecasting and water delivery to figure out how to make it through next year, and the years after that.

“As you get stressed, you have to look for those outside-the-box ideas,” says Yvette Roybal McKenna, with Reclamation’s Water Management Division. “We have to find the optimum path so we can move forward and adapt.” She says she can’t accept a future where the project fails to deliver water. “We’re going to do everything we can.”

Reclamation has also been studying climate change and its effects on the Rio Grande Basin, which supplies drinking and irrigation water for more than six million people.

Between 1971 and 2001, average temperatures in the Upper Rio Grande Basin increased by an unprecedented 0.7 degree Fahrenheit per decade, or double the global average. And they’re expected to rise within the basin by an additional four to six degrees Fahrenheit by the end of the 21st century.

Those rising temperatures will cut the amount of water flowing into the system, as well as the timing of those flows, according to a 2013 report from Reclamation about the impacts of climate change on the Upper Rio Grande Basin. At the same time, more water will evaporate from reservoirs. And plants — forests and crops — will demand more water to survive. All of these factors together, according to the report, “are expected to cause significant changes in the available water supply and demand.”

A 2016 Reclamation report also notes that the rivers flows are already insufficient to meet the basin’s water demands, and the basin already experiences water supply shortages, even without the effects of climate change.

Elephant Butte is ‘out of date’

One idea to keep more water in canals and pipes, as well as in the Rio Grande itself, is to stop storing water at Elephant Butte.

“Keeping water in Elephant Butte is a practice I think is out of date, and not wise,” says Jen Pelz, an attorney for WildEarth Guardians. Located in southern New Mexico — an arid environment that keeps getting warmer — Elephant Butte Reservoir loses an enormous percentage of water each year to evaporation.

Rates of evaporation vary depending on humidity, wind, radiation, temperature and the amount of water actually in the lake. According to a 2004 report from New Mexico State University, evaporation from Elephant Butte can be up to one-third of the average inflow each year. Between 1940 and 1999, when inflows to the lake ranged from 114,100 acre feet to more than 2.8 million acre feet per year, annual evaporation averaged about 250,000 acre feet of water.

Warming will only accelerate Elephant Butte's evaporation rate — by another 10 percent, according to Reclamation's 2016 report.

That means it's time to change where water is stored on the Rio Grande, says Pelz.

WildEarth Guardians wants the National Academies of Sciences to evaluate existing reservoirs in the basin and run models of how the system would function if water were stored in different places, such as in upstream reservoirs with lower evaporative losses.

Storing Rio Grande Project water — the water in Elephant Butte that Reclamation has to deliver to EBID, Texas and Mexico — in higher-altitude reservoirs could save between 40,000 and 85,000 acre feet a year from evaporating, according a report from WildEarth Guardians called "Rethinking the Rio."

Changing where water is stored would mean renegotiating parts of the Rio Grande Compact of 1938. And since federal laws passed during the twentieth century lay out the rules for reservoir operations and water storage, Congress would need to take action.

"People have been talking about reservoir re-operation for a long time, but no one talks about how you do it," she says. "You have to deal with the compact, deal with the reservoir reauthorizations, deal with accountability along the river." If water were stored higher in the system, for example, downstream users would need to know their upstream neighbors weren't diverting their water unfairly.

Making these monumental changes demands building trust and relationships within the watershed, says Pelz. But New Mexico's vulnerability to climate change — revealed so clearly this year — should motivate everyone to start doing things differently.

"For the middle valley and in the south, (managers) delivered all the water for irrigation this year," Pelz says, "And if the reservoirs can't be filled up over the winter, there will be no water for next year."

That's a crisis, Pelz says, for the Rio Grande and for the people who depend upon it.

"Taking concrete steps to do something different means sacrifice: The reality in New Mexico is there are going to be sacrifices, areas that get dried up, and people have to change the way they make a living," she says. "That's the reality of the climate-changed world we live in."

Supreme Court battle over New Mexico water intensifies

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Editor's note: This is the third in a three-part series about the Rio Grande, its reservoirs and the U.S. Supreme Court battle over its water.

Last winter, snows didn't come to the mountains, and the headwaters of the Rio Grande suffered from drought. In April, the river — New Mexico's largest — was already drying south of Socorro. And over the summer, reservoir levels plummeted.

Meanwhile, the U.S. Supreme Court battle between Texas, New Mexico and the U.S. government over the waters of the Rio Grande marches onward. At a meeting at the end of August, the special master assigned to the case by the Supreme Court set some new deadlines: The discovery period will close in the summer of 2020 and the case will go to trial no later than that fall.

If New Mexico loses the case, Texas could seek damages of up to \$1 billion, compensation for the more-than three million acre feet of water the state says it should have received over the course of more than a half-century. Not only that, but New Mexico could be forced to curtail groundwater pumping throughout the Rincon and Mesilla valleys, the hundred-mile stretch from below Elephant Butte to the United States-Mexico border.

'Litigation is flowing'

Looking at Elephant Butte Reservoir right now, which is only three percent full as of Sept. 26, it's easy to think that New Mexico doesn't have any water to send downstream. But it's the water below-ground that has been a point of contention between the two states. And the disagreements span decades.

Texas has long-complained that by allowing farmers to drill wells alongside the Rio Grande, New Mexico has siphoned off water that is hydrologically connected to the river, and should be flowing downstream to Texas under the Rio Grande Compact of 1938.

Then, more than a decade ago, drought motivated farmers in southern New Mexico and west Texas to talk about doing things differently. With the wet years of the 1980s and '90s in the rearview mirror, they watched levels drop in Elephant Butte and Caballo reservoirs and talked about new ways to share water. In the end, Texas agreed to back off complaints about New Mexico's groundwater pumping, and New Mexico farmers agreed to share surface waters during dry times. In 2008, Elephant Butte Irrigation District (EBID) and El Paso County Water Improvement District No. 1 (El Paso No. 1) signed a new agreement with the U.S. Bureau of Reclamation. That's the federal agency that operates the Rio Grande Project and is responsible for storing water at Elephant Butte and Caballo for EBID, Texas and Mexico.

But the states hadn't agreed to the new water sharing plan, and in 2011, then-New Mexico Attorney General Gary King sued Reclamation, saying the new plan sent too much water to Texas.

In 2013, Texas took the issue to the U.S. Supreme Court. It sued New Mexico and Colorado, alleging that New Mexico failed for decades to comply with the Rio Grande Compact by not regulating groundwater pumping. Earlier this year, New Mexico was dealt another blow when the Supreme Court allowed the U.S. government to intervene in the case. According to the federal government, New Mexico has harmed its ability to deliver water under the compact and under the international treaty with Mexico.

“We may be in a water drought, but the litigation is flowing down here,” says Gary Esslinger, manager of EBID, who says he tries to keep a sense of humor through the litigation and the drought. EBID has roughly 8,000 farmers and includes about 90,000 acres of irrigable lands, though this year’s low water conditions meant only about 75,000 acres were planted.

“Elephant Butte sits in geographic New Mexico, so you would think Santa Fe would be protecting us, but when it comes to water accounting and federal accounting of water through the three states, we’re in Texas,” Esslinger says.

That’s because under the Rio Grande Compact, New Mexico doesn’t deliver water across the state line, but to Elephant Butte Reservoir about 100 miles north of Texas. From there, Reclamation delivers Rio Grande Project water to southern New Mexico, Texas and Mexico.

When the case ended up in the Supreme Court, EBID tried to intervene and become a party to the case. As Esslinger explains, the irrigation district is in a sort of limbo: it’s in geographic New Mexico but “compact Texas.”

The Supreme Court denied that intervention, but the irrigation district did file an amicus, or friend of the court, brief. And recently, the new special master on the case, Judge Michael Melloy, granted both EBID and El Paso No. 1 an “enhanced level of participation,” says EBID’s attorney, Samantha Barncastle. That status allows the districts to take part in the ongoing discovery and deposition processes.

Still frustrated that it’s on the fringes of the legal dispute, even though it could affect their farmers so intimately, the district is increasingly focused on how agriculture can survive into the future, given constraints on surface waters, due to drought and warming.

“We’re not going to have the surface water we had in the ‘80s and ‘90s, so as an irrigation district we need to find out a way to survive to benefit the economy in southern New Mexico,” she says. “It’s nice to rely on the surface water, but it’s not materializing every year like it used to, or it’s different than it used to be,” she says. Sometimes precipitation comes later in the year, as rain instead of snow, or it falls below the reservoir and can’t be captured for storage.

“At this point, everybody needs to understand it’s absolutely necessary to rely on the groundwater, but we have to do that in a responsible way,” Barncastle says. “What EBID would like to see happen is [to have] responsible limits on how groundwater can be used.”

EBID’s farmers are looking for solutions, she says, not litigation. And all the water users need to figure out what it means to have a resilient aquifer in southern New Mexico. Municipal and industrial water users rely on groundwater, too, she points out. And if groundwater is the “savings account”—the water people draw upon when surface water isn’t available—everyone needs to know their spending limits.

“We’re looking at, how do we make sure this area survives into the future, assuming we aren’t always going to have the surface water available,” says Barncastle. “Something’s got to give, so what are the give points and who is going to participate? Our position is it’s not just the farmers that should be cutting back and getting responsible about water use—it’s everybody.”



Elephant Butte Reservoir on Sept. 10, at 3.7 percent capacity (Photo: Laura Paskus)

New Mexico's defense

Today, the state of New Mexico continues to defend itself against the claims from Texas—and now, also from the United States. In May, it also filed its own complaints against the other two parties.

Among other counterclaims, New Mexico now says Texas pumps groundwater to the detriment of surface flows, and the United States acted outside its authority over the Rio Grande Project when it signed onto the 2008 Operating Agreement with EBID and the west Texas irrigation district.

Moreover, New Mexico says that through the renegotiated operating agreement and groundwater pumping, the U.S. and Texas have both reduced New Mexico's water supplies and "deprived New Mexico of the equities and protections it bargained for when it entered into the [Rio Grande] Compact."

In front of the Supreme Court, and in meetings with the special master, the state is represented by a contract attorney, Marcus Rael, Jr., from New Mexico Attorney General Hector Balderas' former law firm, Robles, Rael & Anaya. That firm is assisted by the law firm Trout Raley, which is based in Denver.

Last year, Balderas also announced a joint defense agreement with the New Mexico Office of the State Engineer, New Mexico State University, PNM, the New Mexico Pecan Growers Association, Southern Rio Grande Diversified Crop Farmers Association, the City of Las Cruces and Camino Real Regional Utility Authority.

Deputy Attorney General Tania Maestas spoke with NM Political Report about the litigation's progress as the state prepares for discovery, works with its witnesses and coordinates with the New Mexico Interstate Stream Commission and private contractors on hydrological modeling of the lower Rio Grande.

Maestas explains that each of the parties has until Feb. 1 to submit expert reports concerning the relationship between surface and groundwater in the Lower Rio Grande and the amount of water New Mexico has delivered downstream. In addition to studying historic conditions, experts are looking at what she called "significant changes" in the area, including those related to drought and climate change, since EBID, El Paso No. 1 and Reclamation signed the 2008 Operating Agreement. "We're really looking forward to revealing through our expert reports all the changes that make the 2008 Operating Agreement inadequate," she says.

It's unfortunate that EBID filed an amicus brief siding with the position of Texas, but Maestas says the Office of the Attorney General does not see EBID as its enemy.

"The way Attorney General Balderas looks at this is we are all New Mexicans and we are all looking for a way to secure a more sustainable water future," she says. "We hope that ultimately, we are able to resolve this case amicably and with input from all of our lower Rio Grande partners, including EBID."

After five years of hammering out details—like who the parties are and rejecting an earlier motion by New Mexico to dismiss the case—the court is going to start getting down to the real issues soon.

"We are coming out swinging," she says. "Although we are forced to defend this case"—which was filed before Balderas was elected Attorney General—"there are a number of facts and issues that will come out with this litigation that show the U.S. and Texas do not have clean hands."

This story is the third of a three-part series about the Rio Grande, its reservoirs and the U.S. Supreme Court battle over its waters. Read Part 1 and Part 2. Read more at nmpoliticalreport.com.