



RIO GRANDE COMPACT COMMISSION

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June 14, 2022

The Honorable Raul Grijalva
Chairman
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Bruce Westerman
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
1329 Longworth House Office Building
Washington, DC 20515

Re: Written Testimony regarding H.R. 7793 – Rio Grande Water Security Act

Dear Chairman Grijalva and Ranking Member Westerman,

This testimony is submitted on behalf of the Rio Grande Compact Commission of Texas, referred to as “Texas.” This testimony is specifically related to, and limited to, H.R. 7793, referred to as “Rio Grande Water Security Act” (“Legislation”).

Within the State, Texas allocates surface water among competing uses under a system of prior appropriation relying on the information contained in water right decrees such as certificates of adjudication and permits. These decrees define the location, time, and amount of water available for defined beneficial purposes according to the specific needs of its river basins, including in the Rio Grande Basin. This system has provided the citizens of Texas with the security and flexibility needed to address past, ongoing, and future needs of its water users.

Texas is concerned with any impacts to the management, administration, and use of its equitably apportioned share of the Rio Grande, as delineated in the Rio Grande Compact, consented to by Congress in the Act of May 31, 1939 (53 Stat 785, Ch. 155). The proposed

Legislation substitutes the recommendations of a large group of federal agencies, as detailed in Section 203(a), “Rio Grande Basin Working Group,” for the water resource decisions of the responsible States, concerning the management and administration of the water resources within their boundaries. Texas does not consider the direction in Section 202(a) to “consult and collaborate with the Basin States...” to be sufficient input in potentially significant changes to the current operations within the Rio Grande Basin. Such a usurpation of long-standing state sovereignty over water resources is directly at odds with the previous decision of the United States Supreme Court in *United States v. Rio Grande Dam and Irrigation Co.*, 174 U.S. 690 (1899).

Texas’s concerns fall into several categories, including considerations for the Rio Grande Compact requirements, impacts to existing Texas water laws and water supply processes, as well as potential conflicts with ongoing long-term planning and projects within Texas.

Rio Grande Compact.

The Legislation, in Section 204(3), provides: “Nothing in this title...affects any interstate or international agreement regarding the Rio Grande and the waters of the Rio Grande, or any other interstate compact or agreement regarding water.” This is a vague description of the Rio Grande Compact and the two treaties with Mexico of 1944 and 1906 which are clearly present in federal law. Texas’s apportionment of the Rio Grande, as detailed in Article IV of the Rio Grande Compact, is of particular importance to Texas because dependable deliveries of Texas’s share of the river are critical to the health and well-being of Texans and the environment in this region. River compacts have been described by the U.S. Supreme Court as contracts, which are not subject to amendment or alteration absent the consent of the contracting parties. Therefore, Texas requests that more specific language be included in this section of the Title, to the effect:

“Nothing in this Act amends, modifies or is in conflict with the Rio Grande Compact consented to by Congress in the Act of May 31, 1939 (53 Stat. 785, Ch.155), or with the 1906 Convention and 1944 Treaty with Mexico.”

Water Rights, the McCarron Amendment, and the Texas Water Plan.

In the Rio Grande Basin in Texas, Texas makes decisions concerning the ability to permit and utilize the surface waters of the State based on the doctrine of prior appropriation and the availability of surface water and groundwater, as defined by the Texas Commission on Environmental Quality (“TCEQ”) and Texas Water Development Board (“TWDB”),

respectively. In 1952, Congress waived the sovereignty of the federal government in suits concerning the adjudication and administration of water resources, in the McCarron Amendment, 43 USC 666. The federal government does not have a role in planning the use of, or the administration of, water rights in Texas. That function is reserved to the State.

In response to the drought of the 1950s and in recognition of the need to plan for the future, the Texas Legislature created the TWDB to develop water supplies and prepare plans to meet the State's future water needs. In 1997, the legislature established a new water planning process based on a "bottom-up" consensus-driven approach. The TWDB has developed the Texas Water Plan, updated every five years, which carefully weighs all potential needs and uses of water for all of the Texas river basins. The Plan includes significant local input and a process for reviewing water supply needs which is similar to those being proposed for study in this bill. A "top-down" basin plan developed by federal agencies is not needed by Texas to guide a process over which those agencies have no authority.

Rio Grande Water Availability Study.

The 75th Texas Legislature passed Senate Bill 1 (1997), authorizing the funding for TCEQ to develop surface water availability models for twenty-two of Texas's river basins. In 1999, the 76th Legislature subsequently required the TCEQ to develop an updated model for the Rio Grande Basin. Funding for modeling development came from capital budget appropriations totaling over \$12 million. The final product of this enormous effort has been the development and operation of a sophisticated hydrologic models that accurately represent the hydrologic conditions that exist in the Rio Grande Basin in Texas.

Texas is supportive of the other states which include portions of the Rio Grande in their efforts to understand the hydrology in their respective states; however, Texas cannot support a duplicative federal effort within Texas. Therefore, Texas respectfully requests that the language of Section 201 be amended to:

- a. exclude "Texas" as a defined Basin State; and,
- b. revise the term "Rio Grande Basin" so that it is defined as: "the mainstem of the Rio Grande from the headwaters to the mouth of the New Mexico – Texas Stateline, and any hydrologically connected groundwater, aquifers and tributaries naturally connected to the Rio Grande Basin, as defined."

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Final Comments.

Texas does not object to its neighbors in New Mexico and Colorado if they wish to have a committee of federal agencies study the water resources of the Rio Grande Basin within their respective jurisdictions. However, Texas requests that any study or associated Basin Plan, as that term is currently defined in the Legislation, terminates at the New Mexico – Texas Stateline and relies on the required Rio Grande Compact deliveries to Texas as an input at that point.

With the changes described above, Texas would support the Legislation.

Thank you for the opportunity to provide these comments on H.R. 7793.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Skov', with a large, stylized flourish extending to the right.

Robert S. Skov
Texas Rio Grande Compact Commissioner

Cc: Jon Niermann, Chairman, Texas Commission on Environmental Quality
Brooke T. Paup, Chairwoman, Texas Water Development Board