



RIO GRANDE COMPACT COMMISSION

PATRICK R. GORDON
TEXAS COMMISSIONER

401 E. FRANKLIN AVE., STE 560
EL PASO, TEXAS 79901-1212
TELEPHONE: (915) 834-7075
FAX : (915) 834-7080

April 12, 2018

VIA ELECTRONIC MAIL AND
FIRST CLASS MAIL

Mr. Tom Blaine
New Mexico Compact Commissioner
Office of the State Engineer
P.O. Box 25102
Santa Fe, New Mexico 87102

Re: Application for Permit to Appropriate – New Mexico Copper Corporation
("NMCC") – Notice of Violation of Rio Grande Compact

Dear Commissioner Blaine:

Texas has recently been informed that an Application for Permit to Appropriate 5,234 acre feet of water (the "Application") by NMCC is in the process of being approved by New Mexico. The Application states that this water is needed by NMCC for the operation of a mine ("Mine") located close to the Rio Grande and Caballo Reservoir.

The Draft Environmental Impact Statement ("DEIS") for the Mine and the Hydrology Report prepared by John Shomaker & Associates, Inc. dated December 2017 reflect that the Mine will have a direct, large in magnitude, and long term impact on Compact water delivered by New Mexico to Texas in the Rio Grande and stored in Caballo Reservoir. The New Mexico Interstate Stream Commission ("NMISC") confirms this in a letter dated February 26, 2016, objecting to the DEIS. I wanted to put you on notice of Texas's concerns.

New Mexico is a party to the Rio Grande Compact, see Act of May 31, 1939, ch. 155, 53 Stat. 785 (the "Compact"), along with the States of Texas and Colorado. The Compact apportions the waters of the Rio Grande between the States of Colorado, New Mexico and Texas. The Compact also provides for the delivery of water to Mexico under a 1906 Treaty. New Mexico delivers Texas's apportioned water under the Compact in Elephant Butte Reservoir. At such time, the water belongs to Texas and is only available for use by Texas and certain contract and treaty parties in New Mexico, Texas and Mexico. New Mexico is prohibited from diverting or using Texas's water.

Texas is aware of NMCC's attempts to acquire rights to water that would purportedly offset the impacts to the Rio Grande and Caballo Reservoir. The fifteen year lease that NMCC has with the Jicarilla Apache Nation for San Juan Chama water that New Mexico may require as some type of offset for the diversion of Texas's Compact water would not come close to remedying the immediate and long term depletions to the Rio Grande and Caballo Reservoir caused by the Mine. In fact, NMCC states in the Application that it needs this water to operate the Mine. The DEIS states that the impacts to the Rio Grande and Caballo Reservoir will last over 100 years. A "so called" fifteen year offset that New Mexico calculates in its sole discretion does not remedy the harm to Texas that will be caused by the approval of the Application, even assuming as stated by the NMISC that such offset was in "real-time."

As you are aware, Texas sued New Mexico in the United States Supreme Court, see Texas v. New Mexico, Original No. 141. This case is currently before the Court and is moving forward toward trial and resolution, following the Court's denial of New Mexico's motion to dismiss. Discovery will commence soon.

The NMCC proposed actions and the granting of water rights by your office will directly and adversely impact Texas. New Mexico's approval of this action, as well as granting permits for other actions (such as the Gillis pump immediately below the Caballo Reservoir), are violations of the Compact. These ongoing violations reinforce Texas's action in the United States Supreme Court and add to its recoverable damages against New Mexico.

Sincerely,

Pat Gordon,
Texas Commissioner

cc: Kevin Rein, Colorado Compact Commissioner
Hal Simpson, Federal Chairman, Rio Grande Compact Commission