



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

April 26, 2013

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Texas Commission on Environmental Quality
Commissioners' Offices

The Honorable Carlos Rubinstein
Commissioner
Texas Commission on Environmental Quality
PO Box 13087
Austin, TX 78711-3087

Dear Commissioner Rubinstein:

Thank you for your letter of April 22, 2013 regarding application of Minute No. 309, "Volumes of Water Saved with the Modernization and Improved Technology Projects for the Irrigation Districts in the Rio Conchos Basin and Measures for their Conveyance to the Rio Grande." We share your concerns about Mexico's failure to deliver volumes of water as required by Minute No. 309, and both the U.S. Section of the International Boundary and Water Commission and the U.S. Department of State have raised this issue on various occasions with the Government of Mexico.

Most recently, I sent a letter to Commissioner Roberto Salmon of the Mexican Section of the International Boundary and Water Commission requesting deliveries of conserved volumes to the Rio Grande this year as required by Minute No. 309. The Mexican Section has initiated coordination within the Mexican Government regarding this request. Although I have received no confirmation from Mexico regarding the volumes and dates of such deliveries, I remain hopeful that they could be made in the near future.

The last time Mexico released Minute No. 309 waters beginning in January as required was in 2005. Since then, Mexico has sporadically made releases from dams in the Conchos River basin at various times of the year and has notified the United States that such releases are of conserved volumes as per Minute No. 309. The last time this occurred was in early 2010 when the Mexican Section notified the U.S. Section of such releases. The U.S. Section does not concur that the various releases were made in conformance with Minute No. 309.

Although Minute No. 309 indicated that a potential volume of water of 321,043 acre-feet could be conserved annually, this estimate was based on full build-out of the proposed conservation projects. Due to funding limitations, the full range of irrigation district conservation and modernization projects contemplated in Minute 309 was never completed, meaning that conserved volumes have been less. Likewise, conserved volumes are a function of actual volumes delivered in any given year, meaning that in years when the Mexican irrigators receive reduced allocations, there is also a corresponding reduction in the volumes conserved that resulted from the construction of irrigation conservation and modernization projects. In addition, the land leveling activities undertaken are not permanent and must be done periodically.

The U.S. Section has raised concerns regarding Minute 309 compliance since 2006 when Mexico transferred the conserved volumes to the Rio Grande later in the year than required by the Minute. Mexico has indicated it would like to transfer the volumes in the spring during periods when it is making irrigation releases to its users. However, Minute 309 requires such transfers beginning in January when, according to U.S. Section analysis, losses are significantly lower than later in the year during Mexico's irrigation season. Mexico's non-compliance with Minute 309 due to failure to prepare an annual report of conserved volumes and deliver

conserved volumes to the Rio Grande was also previously raised by the U.S. Government by means of a diplomatic note sent by the U.S. Embassy.

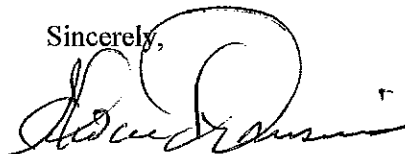
The last time the required report of conserved volumes was prepared was for 2005-2006, when conserved volumes totaled 182.3 million cubic meters (147,793 acre-feet), equivalent to 137.9 million cubic meters (about 111,797 acre-feet) in Luis L. Leon Dam from which the volumes were transferred to the Rio Grande in 2007. Because of Mexico's subsequent failure to prepare the required annual report ever since, it is difficult to determine what those conserved volumes would have been.

The U.S. Government has faced difficulty in achieving Mexican compliance due to differing views in the United States and Mexico regarding Minute No. 309. For example, the Mexican Section has stated that the format for the annual report of conserved volumes that is specified in Minute No. 309 is no longer applicable because the Minute requires the report to discuss, among other things, the "progress made during the past year regarding works constructed and amounts expended." Because there is no longer ongoing construction, this is not applicable. The U.S. Section has stated its willingness to accept a modified report format but no agreement has been reached regarding a new report format. The U.S. Section has argued that the Minute 309 reporting requirement remains applicable until agreement is reached on a new report format.

Likewise, the Government of Mexico has expressed concern that the U.S. Government has not provided funding for the conservation and modernization projects. While the U.S. Government did consider such funding, due to budgetary limitations, it was not able to invest in these projects in Mexico. The Government of Mexico has also argued that Minute No. 309 deliveries to the Rio Grande should be made when needed to help Mexico provide required treaty volumes, or to address a water debt from a previous cycle. The U.S. Government's view is that Minute No. 309 transfers to the Rio Grande are required annually, not just when there is a deficit in deliveries under the 1944 Water Treaty. However, given the current deficit in deliveries, we believe there should be no question in Mexico that such deliveries are currently required.

Again, I appreciate you raising this issue and I will continue to press this matter with the Mexican Section. I remain hopeful that conserved volumes will be transferred to the Rio Grande this year, as required by Minute No. 309.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Drusina", with a large, stylized loop at the end.

Edward Drusina, P.E.
Commissioner